



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

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LECTURE : 10

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Subject matter of partition,

Before the Hindu law was codified with the Hindu Succession Act of 1956, the ancient Schools of Hindu laws are believed to be of two types-

The Mitakshara School- derived from the name of a commentary written by Vijnaneswara, on the Yajnavalkya Smriti.

The Dayabhaga School- derived from a similarly named text written by Jimutavahana.

The Dayabhaga School of law is observed in Bengal and Assam. In all other parts of India, the Mitakshara School of law is observed. The Dayabhaga and The Mitakshara are the two schools of law that govern the law of succession of the Hindu Undivided Family under Indian Law.

Under the mitakshara school, partition means- Severance of status or interest and actual division of property in accordance with the shares by *metes and bounds*.

Under Dayabhaga law, partition means- only division of property by *metes and bounds*.

The subject matter of Partition

As a general rule, the whole joint family property is available for partition. Exceptionally, there are certain kinds of joint family property which are incapable of division by their nature. Such properties are impartible and indivisible. The following are the description of such properties and rules in this regard:

Impartible estates: The property which descends to one member of the family to the exclusion of other members either because of the application of the rule of primogeniture (the status of being the firstborn child among several children) or by a custom or under any provision of law.

Indivisible property by its nature: There are certain properties which are incapable of division by their very nature. For example, animals, wells, stair case, furniture, utensils, ornaments etc. The general division of these types of property will lead to distortion of their intrinsic value, thus cannot be divided directly. Therefore, these can either be sold and its value is distributed among all the coparceners or may be distributed by agreement by adjusting the corresponding values of the properties. While distributing such properties, due care must be taken to maintain equality in share of each coparcener.

Dwelling house: If we consider the ancient view, the dwelling house should not partitioned. But according to the modern perspective, the law does not consider this ancient rule as sacrosanct. A partition of a dwelling house can be done through a decree by court. The court will put all its

effort to make such an arrangement so that all the coparceners are equally benefited. If the court fails to make equitable agreement, the dwelling house will be sold and the value will be divided equally among all the coparceners.

Family shrines, temples and idols: These are the kinds of properties which can neither be divided nor sold. For such properties, the courts have adopted the following systems:

The possession of idols, temples or shrines may be given to the senior most coparcener or a junior coparcener if he seems to be more religious or suitable amongst all others with a liberty to other coparceners to access them for the purpose of worship at all reasonable times.

The coparceners may hold them turn wise for a period in proportion to their share in the property.

Staircases, wells, etc: The species of property like staircase, wells, courtyards, tanks, roads, etc. are incapable of division and valuation by their nature of existence. For such properties, an arrangement has to be formulated so that they remain in common use of all coparceners.

Liabilities attached to the property

Before the division of a joint family property at the time of partition, provisions should be made for the following liabilities attached to the property:

Debts- provisions for outstanding debts of father or the karta taken on behalf, or for the purpose of the joint family should be made.

Maintenance- there are some members of the hindu joint family who are not coparceners but entitled to be maintained out of the joint family property, they can be-

Disqualified coparceners and their immediate dependents

Mother, step-mother, grandmother and other females entitled to be maintained by the joint family property

Unmarried sisters

Widowed daughter of a deceased coparcener

Marriage expenses of daughters- in case of the family which consists of father and sons as coparceners, provisions should be made for their unmarried daughter's marriage. In case of a family consisting of brothers as coparcenary, provisions should be made for the marriage of their unmarried sisters before partition.

Performance of certain ceremonies and rites- provisions should be made for the essential ceremonial expenses.

MCQ

1.

In the joint family property, the right of partition is _____.

2.

Liabilities attached to the property _____.

3.

The property which is indivisible by its form or type, its division _____ done.

4.

Is there any difference between the rights of the owners and adopted son?

5.

In hindu coparcenary property, each coparcener can acquire interest by _____

Always there

Can not be there

Only B is correct

A and B both are wrong

Debts-

Maintenance

Disqualified coparceners

All the above

Can be

Cannot be

Depends on time and situation

None

yes

No

Only true

None of these

By partition

By birth

By attaining majority

All the above