



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

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LECTURE : 11

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Persons who have a right to partition and Persons

Both under Mitakshara and Dayabhaga school, every coparcener has a right to partition and is entitled to share.

A minor coparcener can also ask for partition.

Every coparcener has a right to partition except in case of

Unqualified coparcener

Under Bombay school, sons cannot ask for partition against their father if the later is attached with his own father or collateral.

The following people can claim partition and are entitled to share in the partition-

Father- under mitakshara school, the father not only has a right to partition but also has the power to effect partition among the sons. The father can also impose partial partition among the sons but he must act bona fide and not unfair to anyone. A suit to re-open, the partition can take place in case of partiality or mala fide partition by the father.

Son, grandson, great-grandson -under mitakshara school, son, grandson and great grandson have a right to seek partition

Son born after partition- According to Vishnu and Yajnavalkya the partition should be reopened to give the share to the son born after partition. However, Gautama, Manu, Nerada held a different view about the same.

Before the amendment of 2005, females couldn't be the coparceners but some females like the mother, father's wife and grandmother had the right to share at the time of partition.

Position of the minor coparcener: There is no distinction between a minor and a major coparcener under Hindu law with respect to their right in the joint family property. A suit for partition can be filed on behalf of the minor, by his/her guardian or next friend.

An unfair partition can be reopened by the minor on attaining majority.

Alienee: A purchaser of coparcener's interest in a court sale or private sale where coparcener has the power to give his interest in the property as consideration. Such a purchaser has a right to demand partition as he steps into the shoes of the coparcener.

Absent coparcener

If a coparcener is absent at the time of partition, it is implied that his share is to be kept separately. In case no share has been kept aside for him, he is entitled to get the partition reopened.

Generally the entire joint family property constitutes the subject matter of the partition. Separate or self-acquired property of any member of the family is not eligible to be divided amongst all the coparceners of the family on partition.

If partition of a property can be done without shattering the intrinsic value of the whole property, such partition is mandatory to be made. On the contrary, if a partition cannot be made without shattering the intrinsic value of the property, in such circumstances, a money compensation must be given to every coparcener instead of his respective share.

If a joint family property consists of movable and immovable properties then each coparcener must be given his share in all movable and immovable properties. As per the interpretations of the court in various cases, there is no hard and fast rule as far as the share of each coparcener in immovable properties is concerned. It may be possible that some coparceners may not get any share in immovable property. It depends upon the nature and number of the immovable properties and also the number of coparceners in a joint family to whom the share in the property has to be given. Properties of greater value may go to one coparcener while of lesser value to another. In such a situation, the adjustment of the value is important. So, the coparcener who gets the larger value property may provide money to the one who gets the share of lesser value. In this way, a justified and satisfactory division of joint property can be done so that each coparcener is equally benefited.

MCQ

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| 1. | Hindu Law is | Personal | Local | Indian | None of these |
| 2. | Hindu law is applicable to Hindu for | General | Personal | All the means | None of these |
| 3. | | | | | |
| 4. | Hindu undivided family is not like as corporation a entity | Artificial | Legal | Separate | A & B is correct |
| | The status of the member of HUF is | Individual | Joint | A & B is correct | None of these |

5.

Generally hindu
family is presume to
be a family

Divided

Undivided

Divided &
Undivided

None of these