



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

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LECTURE : 12

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III. People who are entitled to a share in partition

The general rule is that any non-coparcener members of a joint family, whether male or female is not entitled to get a share in the joint family property on partition. However, this rule goes with certain exceptions under the Mitakshara law. The Mitakshara law safeguards and protects the rights of women of the family including wives, widows, mothers and daughters. These members of the Hindu Joint family have no right to demand partition but if anyhow partition takes place, they are entitled to their respective shares. For these females, the entitlement of shares arises only if there is severance of status of the joint family accompanied by a partition by metes and bounds. If she is not allotted with her share at the time of partition, she has the right to reopen the partition to claim her share.

Father's wife: A wife does not have a right to demand partition in a Hindu joint family as she is not recognized as a coparcener. But if partition takes place between her husband and sons, she is entitled to get a share **equal to that of a son**. If a father was married before the enactment of the Hindu Marriage Act, 1955, and has more than one wife, each wife is entitled to a separate share equal to that of a son. However, if the father dies before partition, the son will take the entire property under the doctrine of survivorship and the wife/wives will not get any share.

Widowed mother: After the death of the father, if a partition takes place between the brothers, their widowed mother will get the share equal to the share of a brother. Widowed mother includes the step mother too if she was married to the father prior to the HMA, 1955.

Paternal Widowed Grandmother: She has no right to demand partition but if a partition is taking place between her grandsons, she is entitled to get a share equal to that of a grandson. Grandmother includes step grandmother too.

Besides these three females, no one else is entitled to receive a share on partition. Daughter since, is considered as a coparcener, has the right to demand partition after the amendment of the legislation, thus, is not entitled to get share.

How does Partition come into effect?

Effecting a partition simply means effecting of severance of joint status of a coparcener in a Hindu joint family. There are two essentials of a partition:

The physical division of property by metes and bounds.

The severance of the status of the joint family property.

As far as effecting a partition is concerned, the second essential plays a very significant role. The physical division of the property is a decision of an individual and comes into effect by expressing an unequivocal desire to get separate from the joint family property. The severance of the joint status is the resultant of the individual's decision which may be arrived at either by private agreement of the parties or if not then, by the interference of the court.

MCQ

1. HUF is a coparcenary of.....

| | | | | |
|--|-------------------------|-------------------|--------|-------------|
| | Not a small part of HUF | Small part of HUF | H.U.F. | None of the |
|--|-------------------------|-------------------|--------|-------------|
2. who hold position in hindu coparcenary family ?

| | | | | |
|--|-----------|-------------|------------------|---------------|
| | Only male | only female | A & B is correct | None of these |
|--|-----------|-------------|------------------|---------------|
3. Once partition take place, the parted hindu can not get _____ position.

| | | | | |
|--|-----------|-------|------------------------|----------------------|
| | Separated | Joint | A & B both are correct | A & B both are wrong |
|--|-----------|-------|------------------------|----------------------|
4. The properties which is not heritable:

| | | | | |
|--|-----------|---------|---------------|---------------|
| | Ancestral | Movable | Self acquired | None of these |
|--|-----------|---------|---------------|---------------|
5. Each heir of deceased person is liable to the debts of a his / her deceased _____ :

| | | | | |
|--|-----------|-------------|----------------|---------------|
| | Severally | Exclusively | Not beyond 1/3 | None of these |
|--|-----------|-------------|----------------|---------------|
6. A Deceased person survived by son's son and a daughter. Daughter will get _____ :

| | | | | |
|--|-------|-------|-------|---------------|
| | 3-Jan | 2-Jan | 4-Jan | None of these |
|--|-------|-------|-------|---------------|

