



FACULTY OF JURIDICAL SCIENCES

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Person have right to demand partition

But, Section 30 of the Hindu Succession Act, 1956, confers the right to coparcener to make testamentary disposition of his interest in the joint family property. This right can be used for separation also. Therefore, a coparcener can make a valid will to separate his interest from the joint family property and to be donated to a hospital, school, any other person, etc.

As a general rule, every coparcener of a Hindu joint family is entitled to demand partition of the coparcenary/ Hindu joint family property. However, every coparcener has not an unqualified and unrestricted right to enforce partition. The ambit of their right to effect partition can be studied under the following heads:

- **Special power of father:** Under the Mitakshara law, a Hindu father can affect a partition between himself and his sons and also among his sons. Despite the express dissent of his sons, he can exercise this right. The consent of sons is not compulsory. The father is authorised to divide the title as well as the corpus of the property by metes and bounds. This right of father has three restrictions on it-
 1. Father can divide his property only during his life time but not by will after his death. A testamentary partition can only take place with the consent of all the coparceners.
 2. A father cannot effect partial partition among his sons without their consent.
 3. The allotment of the property must be equal and fair, He must treat every son equally by giving equal share to everyone and should not favour one against the other. If the sons find that the partition was not just and fair, they may challenge such partition in the court and ask to reopening the partition for the purpose of readjusting shares.
- **Son, Grandson and Great-grandson:** All coparceners, who is major and of sound mind is entitled to demand partition anytime irrespective of whether they are sons, grandsons or great-grandsons. A clear demand made by any coparcener, with or without reasons, is sufficient and the Karta is legally bound to comply with his demand.
- **Daughters:** Under the Hindu Succession (Amendment) Act, 2005, it has been admitted that a daughter can also be a coparcener in the Mitakshara Coparcenary like

a son and has all the rights that any coparcener has. Therefore, a daughter has also acquired the right to claim partition in the same way as if she was a son.

- **Son in the womb:** A son who is in the womb at the time of partition and born alive thereafter, is also entitled to a share, though he was not in existence at the time of Partition. Under Hindu law, a child in the womb is considered to be as good as in existence for this purpose. A separate share has to be allotted to him. If his share is not kept, he has the right to ask for the reopening of the partition so that his share may be allotted to him thereby.
- **Son conceived and born after partition:** The right of a son who is conceived and born after the partition depend upon whether the father has taken a share for himself at the time of partition from his sons. Where the father has taken no share for himself at the time of partition, the son conceived as well as born after partition can demand the reopening of the partition and obtain his share. In such a case not only the property which existed at the time of the earlier partition is subject to the repartition but also the property came into existence thereafter.

Where the father has reserved share for himself, a son who is begotten as well as born after Partition, is not entitled to have a partitioned reopened, but in lieu thereof he is entitled after the father's death, to inherit not only the share allotted to the father on partition but the whole separate property of the father, whether acquired by him before or after partition, to the entire exclusion of the separate sons.

- **Adopted Son:** The inequality between a natural son and an adopted son on the issue of their shares on the partition of the coparcenary property has been abolished by the Hindu Adoption and Maintenance [HAMA] Act, 1956. Adopted son is now entitled to equal share and has the right to demand partition just like a natural born child.
- **Son born of a void or voidable marriage:** A child born of a void or voidable marriage, is a legitimate child of the parents and therefore, statutorily entitled to inherit their separate property. At the same time, he cannot inherit property from any other relative of parents. Due to statutory legitimacy, he can be treated as a coparcener

only for the properties held by the father. He is not entitled to seek partition during the lifetime of the putative father. Moreover, he can seek partition only after the death of the father. It can be concluded that the rights of a son born of a void or voidable marriage are better than those of an illegitimate child, but inferior to those of a child born of a valid marriage.

- **Illegitimate son:** The rights of an illegitimate son are the subject of special rules of Mitakshara. The rules differ from class to class. In the higher three classes, no illegitimate child is entitled to the share in the coparcenary property. Although, he cannot ask for partition but still he is entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family. This rule is not followed by Shudras.
- **Minor Coparcener:** The existence of a minor coparcener is not a bar to partition and a minor has equal rights to claim partition in the coparcenary property just like a major coparcener. The only condition that applies in the case of a minor is that the suit for partition has to be filed by a guardian or next friend on behalf of the minor. A suit filed by a major coparcener itself brings partition but this is not mandatory in the case of a minor coparcener. The court will pass a decree for partition only if it finds that the partition is in the best interests of the minor and will benefit him. If the court finds it to be against the welfare of the minor, it will dismiss such suit.
- **Disqualified and Absent Coparcener:** Any coparcener who is disqualified from inheriting under any defect are equally disentitled to a share on partition.

If any coparcener is absent at the time of partition due to a strong reason and his share is not kept, he is entitled, on his reappearance to demand partition through reopening.

MCQ

Person have right to demand partition:	Son	Grandson	Father	All of the above
Who have right to demand partition ?	Son	Grandson	Great grandson Son born of a void or voidable marriage:	All the above
Who have right to demand partition ?: Under the <u>Hindu Succession (Amendment) Act, 2005</u> , it has been admitted that a daughter can also be a coparcener in the Mitakshara Coparcenary: Any coparcener who is disqualified from inheriting under any defect are equally disentitled to a share on partition:	Illegitimate son	Disqualified and Absent Coparcener		All the above
	True	Partial true	False	None of these
	True Father can divide his property only during his life time but not by will after his death.	Partial true The allotment of the property must be equal and fair,	False A father cannot effect partial partition among his sons without their consent.	None of these
Special power of father is :				All the above