



FACULTY OF JURIDICAL SCIENCES

COURSE:

Semester

SUBJECT:

SUBJECT CODE:

NAME OF FACULTY:

Lecture-1



LECTURE 1: How partition is effected

1. By agreement:

Execution of an **agreement** in writing to hold the property separately operates as a partition. The agreement to separate may even be oral.

As observed by the Privy Council in *Approvier v. Rama Subha Aiyar*, (11 M.L.A. 75), the true test of partition of property is the intention of the members of the family to become separate owners. Intention being the real test, it follows that an agreement between members to hold and enjoy the property in defined shares as separate owners constitutes a partition, although there has been no physical division of the property.

2. By conduct:

Separation of a family can be inferred from the conduct of the parties coupled with attendant circumstances.

When the members of the family actually divide the family property by metes and bounds, and each member is in separate possession and enjoyment of the share allotted to him, a partition is said to take place by conduct.

3. By arbitration:

A claim for partition and an agreement appointing arbitrators to divide the property effects a severance to the joint status, although the reference to arbitration may subsequently prove infructuous.

4. By notice:

A partition merely requires an intention to separate; it can therefore be effected even by a notice, whether followed by a suit or not.

5. By will:

Partition may be effected by a coparcener making a will containing a clear and unequivocal intimation to his coparceners of his desire to sever himself from the joint family or containing an assertion to his right to separate. But the head of a family cannot effect a partition by will amongst the various members of the family inter se.

6. By apostasy:

The conversion of a member of a joint family to another religion, such as Mohamedanism or Christianity, effects his severance from the joint family, but not of the other members inter se.

7. Marriage of a coparcener under the Special Marriage Act:

A "civil marriage" of a coparcener (i.e., a marriage under the Special Marriage Act) also effects his severance from the joint family.

8. By institution of a suit:

The institution of a suit for partition by a member is an unequivocal indication of his intention to separate, and therefore, there is a severance of the joint status from the date of the institution of the suit. A decree may be necessary for working out the result of the severance and for allotting definite shares, but the status of the

plaintiff as separate in estate is brought about by the assertion of his right to separate, whether he obtains a consequential judgment or not.

The Kerala High Court has reiterated that the institution of a suit for partition is an unequivocal intimation of a member of the family of his intention to separate, and there is severance of the joint status of the family from the date on which the suit is filed. (P.G. Hariharan v. Padaril, A.I.R. 1994, Ker. 36)

However, if the suit is withdrawn before the Court tries it, it indicates that the plaintiff does not desire separation, and there will therefore be no severance of the joint status. Likewise, if the defendant dies, and the suit is withdrawn on that ground, no partition will take place. Similarly, if the suit is shown to be a sham transaction, resorted to only for creating false evidence of separation, no severance of joint status will take place.

Formerly, there was a divergence of views on whether a minor's suit for partition also has the same effect as stated above. Several decisions had held that the institution of a suit by a minor through his next friend does not ipso facto effect a severance of a joint status; however, if a decree is passed ordering partition, the severance takes effect from the date of the suit. The reason given was that the minor is incapable through his next friend of making up his mind whether he should separate or not when instituting the suit, unless the discretion is approved by the Court.

The matter is, however, now set at rest by a decision of the Supreme Court (Redasubhayya v. Akkamaa, A.I.R. 1958 S.C. 1042), which laid down that a suit instituted on behalf of a minor coparcener also brings about a division of the joint status. The Court observed that what brings about such severance is the very action of the minor's next friend in instituting the suit. The decree, in such a case, merely renders such act effective, by confirming that what the next friend had done was for the benefit of the minor.

9. By renunciation of share:

Separation of a coparcener may be effected by his renunciation of his interest in the coparcenary. Such a renunciation must be in favour of all the other coparceners and it must relate to the whole joint estate. (Tulsi v. Haji, A.I.R. (1938) Lah. 478). However, a coparcener's renunciation merely extinguishes his interest in the estate. It does not affect the status of the remaining members, who continue to be coparceners as before. (AHuri v. Dantauluri, 63 I.A. 397)

10. By sale by one coparcener to another:

In States where a coparcener may sell his undivided interest (as in Tamil Nadu, Maharashtra and Gujarat), when a coparcener sells his interest in the coparcenary property, he becomes divided from the other coparceners in respect of such property.

11. By any other conduct:

A severance of joint status may result from any other act or transaction having the effect of defining the shares of the coparceners in the estate. Thus, an entry in the Record of Rights showing the share of each member

separately is evidence of division of shares of coparceners in the joint family, and constitutes partition.

[Anurago Kuer. Darshan Raut, 40 Bom. L.R. 785 (P.C.)]

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()