



## **Dynamic and Varied Facets of ‘Partition Suits’ of Joint Hindu Family Property: Judicial Precedents’ Perspective**

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### **Abstract**

The Joint Hindu Family (JHF) is a wider institutional setup or a body which includes not only the male lineal descendents but also the female members including the unmarried daughters and wives. It also includes the illegitimate son or sons. In contrast, the Coparcenary follows the four degree/generation rule where it includes four generation of male lineage. The Joint Hindu Family property is essential on the basis of which Coparcenary gets its interest/rights on that property. The property which comes as ‘unobstructed heritage’ following the ‘four degree rule’ as such the ancestral property can be via Inheritance, Taken by Birth, Survivorship and Partition. The instant paper looks at the varied facets of legal issues and arguments which are involved in the subject matter of ‘Partition Suits’ with respect to Joint Hindu Family Property. The partition of JHF property as per Mitakshara and Dayabhaga School of Hindu Law has a unique jurisprudential influence in legal jurisprudence in the sphere of ‘Family Law’. Reliance being placed on catena of cases which has surfaced in varied timelines in Courts of Law which delving and deliberating on the varied dimensions of partition suits, helping to understand the stance of Indian Courts. In the context, the principles of ‘Equity, Fairness and Good Conscience’ have been the guiding light to help arrive at finality of the cases.

**Keywords:** *Partition; Four Degree Rule; Joint Hindu Property; Mitakshara School of Hindu Law; Division of Property; Partition by Metes and Bounds; Ancestral Property; Self Acquired Property; Coparceners; Test of Reasonability.*

## 1. Introduction

With change of lifestyle, migration from rural to urban areas for job prospects, emerging concepts of ‘nuclear family’ and legal empowerment of daughters being a Coparcener in the same manner as a son with amendment in Hindu Succession Act, 1956 post 2005 with amendment in aforesaid Act, the cases surfacing before the Courts of Law on partition are also on rise. The Plaintiff being ‘*dominus litus*’ is the master of the civil suit involving the Partition suits are instituted under **Section 6 along with Section 16**, read with **Order XX Rule 18** of Code of Civil Procedure, 1908 specifying ‘Decree in suit for partition of property or separate possession of a share therein’ in the jurisdiction of District Judge’s Court, as court of first instance in the judgeship of Honourable Civil Judge Junior or Senior Division Court depending on the pecuniary jurisdiction factors in the instant partition cases.

## 2. Partition by ‘Metes and Bounds’

It consists of ‘*division of the property*’ by which all the coparceners with respect to all the joint property is fixed and defined; whereby it is shared from the ‘*joint fund*’ or ‘*joint account*’ which is created and then is equally divided between the members of Joint Hindu Family for effecting the partition. It also necessarily meaning to take all type of properties into consideration while going for partition via. metes and bounds. It is a form of ‘de facto partition’ and arrived at by conclusion of agreement or arbitration or by civil suit of partition. It follows from the coparcener’s intention to sever as to ‘status’ of Joint Hindu Family as well as ‘joint Hindu Property’ in question or notice is being given for ‘filing of partition suit’. For examples the market valuation of say the following is being done:

1. **Immovable properties** such as ancestral home, land.
2. **Movable property** of the nature of jewellery, Car (vehicle), Utensils and furniture.

3. Cash in the common *joint account or fund maintained* for the Joint Family (which may be maintained by 'Karta' or any other coparcener prior to the partition)

It is vital to note that the properties which are subjected to "partition" has to be assess based on 'Market value' or 'depending on the position' that the members of the Hindu Joint family who agree by some 'agreement' or 'understanding' by a registration of 'partition deed' or decree of the Court.

The '*Partition suit*' involves the following steps:

1. The Court passing a 'Preliminary decree', where the legitimate claimants are identified
2. Followed by assessment in field by 'Advocate Commissioner' appointed by Court, who would go to the field and see the status of the property which is the subject matter of partition
3. The 'final decree of the Court' is then implemented via executory order of the Court.

### 3. Mode of Partition

As per Mitakshara School of Hindu Law, the modes of partition include:

1. By giving 'Notice' to effect Partition
2. By Partition Suit
3. By doing Partition by agreement which can be either Oral or Written
4. By Renunciation of right to own property
5. By a process of 'Arbitration' or by 'Compromise' which follows

In *Guramma Bhratar Chanbasappa Deshmukh v. Mallapa Chanbasappa*<sup>1</sup>, is guiding lighthouse as *how coparceners have interest by birth in joint family property*. It is vital to note that a coparcener, naturally born or adopted, acquires interest in ancestral property by virtue of his birth or adoption to the family. The manager of joint family property cannot alienate such property only on grounds of family necessity, for benefit of family estate or with consent of other coparceners. The sole surviving coparcener has absolute right to alienate family property. However in this context , the right of manager is limited as such the Manager cannot dispose

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<sup>1</sup> Guramma Bhratar Chanbasappa Deshmukh v. Mallapa Chanbasappa AIR 1964 SC 510

with absolute power the joint family property to any stranger on the ground of charity. So, the manager's right is limited and depends on the necessity. Alienation done with disregard to a foetus developing in the womb of the mother or an adopted member is *voidable*. The manager can make gifts to a widowed daughter, already maintained by her family, for the necessity to get certain portion of land for the interest and share on the profit accrued. Test of reasonability is subjective and shall depend on the status of joint family and the circumstances as and when it arrives.

**The vital quintessential grounds for defendants to avert partition includes the following:**

- a. **Encumbrance by lease or Mortgage on property**
- b. **Non-sustainability of partition** on *business income generated* from the skill, expertise, labour and professional acumen of Coparceners.
- c. Lack of clarity or devoid of any 'intent' by any notice as pre-requisite for any partition or in contravention of established norms and procedure via judicial rulings and precedents on the matter of partition.

The averments in the arguments posited are based on rationale and reasonableness, fairness and equity for all the family members of the Hindu Joint Family in synergy with **Harmonious Construction of various provisions with respect to Coparcenary Property partition and for the business income generated from the sole efforts of Karta or any coparceners.**

**During the Lifetime of the senior most Coparcener of the family** it has to provided 'due credence' whether the coparceners of property **has asked or expressed any intention** whatsoever, in oral or written form, to the then 'Karta' of the family.

Furthermore, **it has to be seen whether the Karta had denied or thwarted any efforts towards the partition of ancestral property** with the averment that the income from the property from 'self acquired property', which is 'totally' on his entrepreneurial skill and professional knowledge/acumen which warrants that the same has to be construed as a 'Self acquired property' and not forming the part of 'Ancestral property' which is the subject matter of Partition suit as supplicated in varied property disputes which surfaces before the Court of Law.

In *Bhagwat v Digambar*<sup>2</sup>, it was held that if it is the income or essentially remuneration for the services rendered by the coparcener, the circumstances that the services were availed by the expertise and the professional know-how, is separate income of the coparcener.

If the **nature of property** in contention is an **encumbered property** as by the character of encumbrance created on the property is subject to ‘Lease deed’ or ‘Mortgage’, then such property cannot be partitioned. It also has to be seen whether the lease was renewed by lessor on application of renewal in his or her name. Another vital aspect, which has to be factored in is, whether there was no objection at the time of lease deed execution and any ‘intention in contravention to established practice’ with no objection from any family members, makes it untimely and against the spirit of Joint Hindu Family property. In *Piyare Lal v Commissioner Income Tax*<sup>3</sup>, it was held that the ‘Karta’ becoming the manager of business concern and the joint family had given security of its property, the Court said the earnings of the Karta as manager were not the result of family investment, but were the income of the Karta’s personal skill and labour.

The Joint Hindu Property Partition suit instituted before the Hon’ble Court is unwarranted if the subject matter of partition is ‘Coparcenary Property which is not free from the encumbrances and which subsumes the fact that the Court merits only those property which has the basis of income eventually being ‘thrown into the common stock of the Joint Hindu family’.

The averment from the counsel are relied on the presumption as it is based on ‘**sufficient nucleus of Coparcenary property**’ which has to be proved by **the plaintiff’s learned counsel being the dominus litis**. If the master of the suit has failed to establish any cogent connection via corroborated document or sales deed, which defeats the very purpose of any Joint Hindu Property and the essence of carrying forward the basis of any ‘Joint Hindu Property’ as seen in catena of judgment before any Court of the Land, then suit of partition may not be sustained and may be defeated on the ground lack of cogent reason as averred by the opponent, that is the defendants in partition suits.

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<sup>2</sup> Bhagwat v Digambar AIR 1986 SC 1251

<sup>3</sup> Piyare Lal v Commissioner Income Tax AIR 1968 SC 678

In sequitur, the averment point to the fact that it has to be seen from the '*factum of the case*', whether the '**intent**' of **Karta or any coparcener is failing in the grounds sustained for the sustenance of the Joint Hindu family** and the miniscule amount which is being made out with the income from such nucleus which is the business and the bread and butter for the income generated from business endeavor, which is acquiring the contour of 'self-acquired property'. In *Commissioner Income Tax v DC Shah*<sup>4</sup>, where the partnership deed showed that one of the coparceners as partner was given a salary on account of his rich experience, knowledge and skill/expertise, the Hon'ble Court held that the salary constituted his self-acquired property, despite the fact that the family contributed a large part of the capital to the firm, as the connection between the salary and the detriment of Hindu Joint Family Property was not sufficient.

It has to be seen whether the contention before the Hon'ble Court involves the income, profits, taxation amount including the lease deed executed between the Karta, the lessor and the lessee was done in last substantial number of years without any assistance whatsoever from other coparceners, and hence, if the personal skills and labour is the fit parameter on the basis of which the partition is meted out, then does it not defeat the purpose of any incentive or commensuration of hard work which also is embodied in the Partition of 'Metes and Bounds' where the 'Karta' can year mark certain expenditure for the utilization of '**Apatkale**'.

In *B.R. Patil v. Tulsa Y. Sawkar & Ors.*<sup>5</sup> the Hon'ble Supreme Court held that certain property is deemed not to be really available for partition, as for instance, where part of the family property is in the possession of a mortgagee or lessee, or is an impartible Zamindari, or held jointly with strangers to the family. So, if the property is leased and is encumbered immovable property, then may not come in the ambit of partition suit.

In *R. Janakiammal and Ors. vs. S.K. Kumarasamy (Deceased) through Legal Representatives and Ors.*<sup>6</sup>, held that in the year 1979 when residential property of Tatabad was obtained in the name of one of the defendant, all three branches were part of the joint Hindu family and the

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<sup>4</sup> Commissioner Income Tax v DC Shah AIR 1969 SC 927

<sup>5</sup> B.R. Patil v. Tulsa Y. Sawkar & Ors. – Civil Appeal No. 2652-2654 of 2013 (Decided on 9 February, 2022, Bench of Hon'ble Justice K.M. Joseph and Hon'ble Justice Hrishikesh Roy)

<sup>6</sup> R. Janakiammal and Ors. vs. S.K. Kumarasamy (Deceased) through Legal Representatives and Ors. (2021) 9 SCC 114

house property purchased in the name of one member of joint Hindu family was for the benefit of all and during the purchase of property amount was not paid by the defendant from his separate account or in cash. So, it becomes vital to note whether the individual coparceners have done investment from their bank account personally or via. third party which becomes essential factor to be looked into in subject matter of 'partition' in civil cases.

It is averred /supplicated that in some instances, the question circumscribed on the point of partition of the property as seen in *Lakkireddi Chinna Venkata Reddi v Lakkireddi Lakshmama*<sup>7</sup>, clear intention should be communicated when it comes to '*Blending or throwing some self acquires property in common stock*' and intention should be of abandoning and surrendering his rights. In such cases, the 'Blending of the self acquired income to the common stock' is subject matter which is provided 'due credence' at the time of the institution of partition suits, even if instituted by the 'Karta' of the Joint Hindu family.

In sequitur, it is humbly supplicated that the partition by any coparcener could be meted out via other modes of partition, that is by agreement or amicable settlement via. notice of partition, which is anticipated by any other brothers of blood relation. It is vital that the proper procedure of partition should be intimation to the family member on understanding, that is Partition by 'Metes and Bound' which requires market assessment of valuation of property, such a hasty decision is unwarranted and uncalled for. The reliance of the argument is based on judgment with the possession of Joint Hindu Family Property by a member is not adverse to other members was the core issue delved at length in *Annasaheb Bapusaheb Patil v Balwant*<sup>8</sup>

As delved by **Law Commission Report** on 'oral partition and family arrangement'<sup>9</sup>, as it alluded to the case, in *Kale and Ors. v. Deputy Director of Consolidation and Ors*<sup>10</sup>, the Hon'ble Supreme Court of India had observed that, "*By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in*

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<sup>7</sup> Lakkireddi Chinna Venkata Reddi v Lakkireddi Lakshmama AIR 1963 SC 1601

<sup>8</sup> Annasaheb Bapusaheb Patil v Balwant AIR 1995 SC 895

<sup>9</sup> Law Commission of India Report (*Report Number 8, Dated July 2008*) on 'Explanation to Section 6 of the Hindu Succession Act, 1956 to include oral partition and family arrangement' with reference to definition of "partition"

<sup>10</sup> Kale and Ors. v. Deputy Director of Consolidation and Ors., 1976 (3) SCC 119

*the family...*” In the instant perspective, it is seminal to note that clarity of intention of partition via. ‘oral intimation’ or ‘oral partition’ is one of quintessential factor which has a bearing in cases of partition, as the same has to be communicated in the entire life time of Karta or from any coparceners in the family. If no such communication of partition is called into question, it strikes at the heart of the harmony and fabric of Joint family.

The degree of prudence required from the ‘Karta’ is higher than the level that is expected of a person when it involves the property matters with reliance to the case *Balmukund v Kamla Wati*<sup>11</sup>. In the judgment (supra), legal necessity dimension of role of Karta was adjudicated upon as to whether the transaction was for the ‘benefit of the estate/family’.

As seen in the case of *Palaniappa v Deivasikamony*<sup>12</sup>, the Privy Council while expressing the difficulty in defining the word ‘benefit of the estate’ held that preservation of estate was a distinctive role of a Karta in Joint Family system. Any activities to protect the property from ‘hostile litigation’ or protecting it from injury is of the nature of ‘protection from the threat of the estate’. In the aforesaid case, the interpretative meaning of the ‘estate’ and the role of Karta was of defensive character. It is pertinent placed in this context that as seen in *Palaniappa v Deivasikamony*<sup>13</sup> and *Balmukund v Kamla Wati*<sup>14</sup>, the interpretation of ‘defensive character’ for the benefit of the estate or for the wider interpretation of the well-being of the family.

The Partition is based on The ‘Doctrine of Per Stripes’ implies that each member of each branch or branches take a share as regards each other and the ‘Doctrine of per capita’ implies that each member of each branch or branches take a share as regards each other<sup>15</sup>. It is vital to note that the properties which are subjected to “partition” has to be assess based on ‘Market value’ or ‘depending on the position’ that the members of the Hindu Joint family who agree by some ‘agreement’ or ‘understanding’ by a registration of ‘partition deed’ or decree of the Court. Market valuation of **Immovable properties** such as ancestral home and land has to happen with assessment of Movable property. In this instance the communication for ‘intent of partition’ at the lifetime of Karta is quintessential.

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<sup>11</sup> Balmukund v Kamla Wati AIR 1964 SC 1385

<sup>12</sup> Palaniappa v Deivasikamony (1917) PC 68

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Mulla, Hindu Law by Sir Dinshaw Fardunji Mulla (LexisNexis, 24th ed., 2021)

In sequitur, it is further placed that the 'Karta' has to be take some obligation on behalf of his family in the course of well-being and responsibility as a 'Karta' as seen in the case *Nirmal Singh v Satnam*<sup>16</sup>, in the judgment the Hon'ble Rajasthan High Court observed that the 'Karta' is a prudent manager and do activities in furtherance of the family's advancement. Such activities would be imperative for preventing probable losses, provided the acts are not purely of speculative or visionary character. To substantiate, lets exemplify for instance if the Karta has the good and '*bona fide*' intent to stability the business by his acumen, professional skill and knowledge as is evident from the long sustainability and business growth of the business. Then, Karta's decision for partition may not be subject matter which could be challenged in Court of Law.

As made out in the case of *Ram Nath v Ghurantial*<sup>17</sup>, the 'Karta' cannot alienate property merely for purpose of enhancing its value or for converting property into money. Reliance is being placed on the aforesaid judgment as it spells out the essence of non-partition solely for 'profit motive' or any other commercial interest. To exemplify, in the lifetime of Karta to alienate a property, which is say the subject matter of partition, situated in the posh locality of hub-bubs of a city, which experience huge footfall, the pressure of sale of the property was always there for 'Karta' but in due diligence and objectivity of the responsibility of the 'Karta' is another factor which has a bearing in the instant situation.

In sequitur, it is also averred that if Karta of the family does not share the responsibility as an able coparcener in his family duties and obligation in day to day errands, which becomes a vital point when deciding upon the cases of partition. Considering that if the Karta, did not even involve any family members in the pious occasion of marriage of other family members, then such cases strikes the very essence of Joint Hindu family in the subject matter of partition. If the conduct of partition seeker never corroborates with the petition filed for the good cause and bona fide intent which is unwarranted and unfounded on the basis 'Principles of Natural Justice' in line with extant rules and laws as 'Karta' have to stabilize the turbulent and the pressing demands of the business environment. Suppose, the Karta is working in Medical Shop or in business of life saving drugs considering that the vital sector of medical field requires urgency in

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<sup>16</sup> Nirmal Singh v Satnam AIR 1960 Raj 313

<sup>17</sup> Ram Nath v Ghurantial AIR 1935 All 221

delivery of medicine on timely basis to save the life and to be construed in the broader ambit of the essence of 'Right to Life' as enshrined in Article 21 and freedom to do business or carry in occupation with applicability of Article 19(1)(g) of Constitution of India. All the above factors weighs in, when arriving on the decision as what was the reason for the partition as decided by Karta for alienation of property without seeking permission of all coparceners in Hindu Joint Family as per Mitakshara Hindu Law for partition.

#### 4. Conclusion

While dividing the property 'due cognizance of' varied factors, inter alia, in case of Partition by 'Metes and Bounds', becomes quintessential. *Firstly*, the family members of the Joint Hindu Property have sentimental attachment to the ancestral property. While dividing the property, it is being alluded that 'Ancestral House or Building' have an 'intrinsic value' and it provides an identity to the family, so it may be divided with the senior Coparceners. *Secondly*, the consideration to the likely timeline or till the 'last Karta is alive' – A religious ceremony could continue likewise. It is vital to note that a 'Trust' considered for the 'Religious Property' and for the 'litigation expenses related to the family' can be created and vital to note that 'Trust' may be run by the family members with due consideration by family members keeping the expenses for administration/running of the trust for 'certain number of years'. *Thirdly*, Hindu Marriage of family members or marrying another person of another religion has a 'bearing' on the severance of the status and estate and such a person may be told to go with his share and subsequently for him or her branch the property may not be subject matter of consideration for partition as per Mitakshara partition done by Coparcenary family members. *Fourthly*, how much excess remains to be provided to the other generations is another vital point to taken care of? Jewellery is being sold and the subsequently the amount which is pooled into the 'Joint account of the family' to take care of the 'balance'. *Fifthly*, Potential amount generated from an encumbered property or from property matter in *sub judice* or property matter which is '*lis pendens*' is also not considered for division. As such expenses should be considered for certain number of years and the expenses would form part of 'Liability'. *Sixthly*, Jewellery as an ensemble for the family's tradition and culture is divided among the young generation. *Seventhly*, the young generation generally have the 'movable property' being liquidated and the amount is being paid and hence

according balanced. *Eighthly*, the recurring Liabilities are considered for certain number of years and hence it has to be provided weightage in the calculation of the 'net amount'. Though, the above generic points are helpful guide while looking in cases of partition suit, the decisions are based on broader principles and doctrine of "*Equity, Fairness and Good Conscience*", which acts as guiding light in deciding the cases.