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Partition reduces the members to the position of tenant-in-common requiring only a definite, unequivocal intention on the part of member to separate and enjoy his shares in absolute severality. As soon as the shares of the coparceners are defined, the partition is deemed effected. It is not necessary that there should be an actual division of the property by metes and bounds. Once the shares are defined, there is severance of joint status. The parties may then make a physical division of the property or they may decide to live together and enjoy the property in common. According to Mayukha “ partition is only a particular condition of the mind, where intention to separate constitutes partition. It is a law by which the joint family severs and the coparcenary comes to an end.

There is no need of any consent by other members nor a decree of a Court or any other writing is necessary for partition. The Karnataka High Court in *B. Bassamma v. K. B. Sadyajathappa* has held that severance of status is brought about when shares of coparceners are crystallized by defining their share and once that is done the mere fact that they continued to stay together in the same house would not by itself make any legal impact on the severance of the status already brought about as subsequent conduct of the parties would only pertain to the domain of mode of enjoyment of the properties.

Once the members of the joint family or the heads of the different branches of the coparcenary agree to specification of shares, the same can be treated to result in severance of joint status, though the division by metes and bounds may take later on. The Kerala High Court reiterated that the actual physical division or partition by metes and bounds is not an essential

ingredient for the purpose of effecting severance in status. That is only a procedural formality to be undergone in the process of partition. Even without going through that formality severance in status could be held.

Expression of an unequivocal intention to separate resulting in division of status is sufficient to bring about the severance of status. When severance is attained, joint family status is disrupted. Where there is no joint property to divide, there can be a partition by the mere declaration " I am separate from thee" for a partition merely indicates state of mind. Existence of property is not essential for partition, and reasons for severance are immaterial. The Supreme Court in *Kalyani v.*

Narayanan, clearly laid down that " to constitute a partition all that is necessary is a definite and unequivocal indication of intention by a member of joint family to separate himself from the family. What form such intimation, indication or representation of such interest should take, would depend upon the circumstances of each case. A further requirement is that this unequivocal indication of intention to separate must be to the knowledge of the persons affected by such declaration. A review of the decisions shows that the intention to separate may be manifested in diverse ways. It may be by notice or by filing a suit.

Undoubtedly, indication or intimation must be to members of the joint family to be affected by such a declaration. Such an unequivocal intention to separate brings about disruption of joint family status, at any rate, in respect of separating members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of

disruption of joint family as tenant in common". The Privy Council in *Girjabai v. Sad a Shiv* said that the intention to separate may be evinced in different ways either by explicit declaration or by conduct and it is an inference derivable from conduct. There is no such clinching record or material to gain that impression.

The Madras High Court in a case laid down that while in joint ownership the joint owners do not own anything in specie and every joint owner has got a right, title and interest over every piece and parcel of the joint property, on partition, each joint owner comes to own and possess in severalty the property in specie according to his share. It is a division by metes and bounds and the allotments amongst the joint owners of the parts relates to their shares thus putting an end to the community of the ownership. Where the partition deed effected by the propositus, clearly defined the shares of coparceners and even allotted them their shares, there could not be any shadow of doubt that the deed brought about severance of status by crystallizing the shares of various coparceners in the joint family property and such a severance of status brought about could not be affected merely because subsequently they stayed together in the same house. The Karnataka High Court reiterated that once the intention to separate has been expressly stated, the joint status of the family comes to an end. In case certain part of the joint family property remains undivided, a presumption is drawn that the members of joint Hindu family are holding that property in the capacity of joint coparceners.

The Supreme Court in *Sarin v. Ajeet Kumar* held that having regard to the basic character of the joint Hindu family property, each coparcener has an

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antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparceners had subsisting title to the totality of the property of the family jointly, that title is transformed by partition into separate titles of the individual coparceners in respect of several items of properties allotted to them respectively. As this is the true nature of partition the contention that partition of an undivided Hindu family necessarily means transfer of the property to the individual coparceners cannot be accepted. In the case of a property, which was enjoyed by the members of the coparcenary and which they divided among themselves in a partition, there is no transfer of the property from coparceners as a unit to individual coparceners who divide it. It is only a case of converting what had been enjoyed by them with separate title.

There is no element of transfer in such a division.