

According some
members contend
that the partition was



According to Supreme Court, partition may be partial or total. Partition could be partial with respect to the members of joint family or joint family property.

When a partition takes place, the presumption is about the total partition. But where some members contend that the partition was partial with respect to members or property, onus is on them to prove it. A partition can be effected by the father even during his lifetime among his sons. A partition could also take place by (i) agreement, (ii) institution of a suit to that effect, (iii) arbitration. It is not necessary for partition that the joint family property is divided by every bit of it.

The severance in the joint status could be brought about by any of the above mode and some property could be used by the coparceners as joint tenants.

The following modes of partition are important:—

(1) Partition by Mere Declaration:

Partition under the Mitakshara law is severance of joint status and as such it is a matter of individual volition. An unequivocal indication of desire by single member of joint family to separate is sufficient to effect a partition.

The filing of a suit for partition is a clear expression of such an intention. The oral or written communications by a coparcener could be enough to sever the joint status but the communication could be withdrawn with the consent of other coparceners and with its withdrawal partition would not take place.

It is not necessary that there should be a partition by agreement. It can take place by an act or transaction of coparcener, by which there could be an indication of the separation of his interest.

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What type of act, conduct or expression of intention would disrupt joint status, will be decided on the basis of facts in each case. Where the communication of the intention to separate has been given with an intent to give only a threat to it without any real desire to this effect and later on the intention is not pursued, it would not be enough for severance. There would be no separation on account of the fact that some one of the members of joint family has filed a suit to get a declaration of insolvency for himself. In absence of any joint property mere communication of the intention to separate would be enough. In *Raghvamma v. Chenchemma*, the Supreme Court laid down that it is settled law that a member of joint Hindu family can bring about a separation in status by a definite declaration of his intention to separate himself from the family and enjoy his share in severalty.

Severance in status is brought about by unilateral exercise of discretion. One cannot, however, declare or manifest his mental state in a vacuum. To declare is to make known, to assert to others. 'Others' must necessarily be those affected by the said declaration. Therefore a member of a joint Hindu family seeking to separate himself from others will have to make known his intention to the other members of the family from whom he seeks to separate. The process of manifestation may vary with circumstances. It is implicit in the expression 'declaration' that it should be to the knowledge of the persons affected thereby.

An uncommunicated declaration is not better than a mere formation or harbouring of an intention to separate. It becomes effective as a declaration only after its communication to the person or persons who would be affected thereby. The Supreme Court in *Puttorangamim v. Rangamma*, reiterated that <https://assignbuster.com/according-some-members-contend-that-the-partition-was/>

“ it is, however, necessary that the member of the joint Hindu family seeking to separate himself must make known his intention to other members of the family from whom he seeks to separate.

The process of communication may vary in the circumstances of each particular case. The proof of a formal despatch or receipt of the communication by other members of the family is not essential, nor its absence fatal to the severance of the status. It is of course, necessary that the declaration to be effective should reach the person or persons affected by some process appropriate to the given situation and circumstances of the particular case”.

“ It is, of course possible for the members of the family by a subsequent agreement to reunite, but the mere withdrawal of the unilateral declaration of the intention to separate, which already had resulted in the division in status, cannot amount to an agreement to reunite.” The Patna High Court laid down that for separation a division of property by metes and bounds is not necessary, there must be unequivocal declaration by a member to show that he separated from the rest of the family. There is no need of giving a written notice by one coparcener to the other coparcener.

The expression of the desire of a coparcener to separate can be inferred from the cognate circumstances. An undivided coparcener cannot merely by declaration and definition of his share in a deed of transfer executed by him validly make a transfer of a share to which he would have been entitled if he had effected a partition before making the transfer. The unequivocal intention to separate has to be communicated to the other coparceners in

order to effect a partition by severance of status. A severance of status is not brought about by transferring a certain specific share in joint family property.

(2) Partition by Will:

Partition may be effected by a coparcener by making a will containing a clear and unequivocal intimation to the other coparceners of his desire to sever himself from joint family or containing an assertion of his right to separate.

In *Potti Laxmi v. Potti Krishnamma*, the Supreme Court observed, “ Where there is nothing in the will executed by a member of Hindu coparcenary to unmistakably show that the intention of the testator was to separate from the joint family, the will does not effect severance of status.” An ineffective will, sometimes though not always, if otherwise consented by all adult member’s may be effective as a family arrangement but as the father of a joint Hindu family has no power to impose a family arrangement under the guise of exercising the power of partition, the power which undoubtedly he has but which he had failed to effectively exercise, cannot in absence of consent of all members bind them as family arrangement”. Where partition takes place on an unilateral will of a coparcener, it cannot be brought to an end by revocation of the will.

The same consequence will follow where a desire to severance has been expressed by the guardian of a minor coparcener and the court has upheld its propriety.

(3) Conversion to another Faith:

Conversion of a coparcener to any other religion or faith operates as partition of the joint status as between him and other members of the family. The coparcener, who has converted, no longer possesses the right of survivorship as he ceases to be a coparcener from the moment of his conversion and he takes his share in the family property as it stood at the date of his conversion. Reconversion of the convert to Hinduism does not ipso facto bring about his coparcenary relationship in absence of subsequent act or transactions pointing out to a reunion.

(4) Marriage under Special Marriage Act, 1954:

Marriage of a Hindu under the Special Marriage Act, 1954 causes severance of joint status.

(5) Partition by Agreement:

An unequivocal expression of the desire to use the joint family property in certain defined shares may lead the members of joint family to enter an agreement to effect a partition. The two ideas, the severance of joint status and a de facto division of property are distinct. As partition under the Mitakshara law is effected on severance of joint status, the allotment of shares may be done later. Once the members of joint family or heads of 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 place later on. In *Approver v. Ram Subba Iyer* the Privy Council had observed that no coparcener can claim any defined share in the joint family property in a joint family, but where the

coparceners enter into an agreement to the effect that every member will have a specific and defined share in future, the joint status is affected and every coparcener acquires a right to separate his specific share and use the same to exclusion of others.

(6) Partition by Arbitration:

An agreement between the members of joint family whereby they appoint an arbitrator to arbitrate and divide the property, operates as a partition from the date thereof. The mere fact that no award has been made is no evidence of a renunciation of the intention to separate.

Where all the coparceners jointly have referred the matter relating to the partition of their shares in the joint family to an arbitrator, this very fact expressly indicates their intention to separate from joint status. In such cases even if award is not given, their intention is not dissipated.

(7) Partition by Father:

The father may cause a severance of sons even without their consent.

It is the remnant of the ancient doctrine of 'Patria Potestas'. The father during his lifetime is competent to effect such partition under Hindu law and it would be binding on his sons. It would be binding on the sons not because they have assented to it but because the father has got the power to do so, although this power is subject to certain limitations on the basis of its utility and general interest of the family. It has to be considered as to whether it is lawful in accordance with the spirit of Hindu law or not. According to Supreme Court's decision is Kalyani v. Narayanan, a Hindu father under

Mitakshara law can effect a partition among his sons even in the lifetime of karta of joint family and such partition would be binding on them. In such a case he can define and specify his share along with his sons and thus effectuate a separation among them.

But in no case ho can divide the joint family property among the different members by virtue of a Will, although he could do it with their consent.

Where the father has divided the property unequally amongst his sons, then too it would be binding. But no person can give his consent to the unequal share on behalf of a minor.

The sons have the right to challenge the unequal division of shares or an act of unilateral division of shares by the father, but it will have no bearing on the severance of their joint status. Where the father has divided his self-acquired property unequally among his sons, it could not be challenged by them, nor is there any need of a registered deed to this effect.

(8) Partition by Suit:

Mere institution of a partition suit disrupts the joint status and a severance of joint status immediately takes place. A decree may be necessary for working out the resultant severance and for allotting definite shares but the status of a plaintiff as separate in estate is brought about on his assertion of his right to separate whether he obtains a consequential judgment or not. So even if such suit was to be dismissed, that would not affect the division in status which must be held to have taken place when the action was instituted.

Ordinarily a partition is affected by instituting a suit to this effect. In case of a suit for partition in joint status, father's consent to the suit for partition is

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no longer necessary. The son is fully eligible to file a suit for partition even during the lifetime of father.

When the plaintiff files a suit for partition the share which he received in the earlier partition would not be free from charges and liabilities. If the creditors have obtained the decree against the joint family property, then even that share of the plaintiff which he did not receive, would also be liable in the same manner as that of the other coparceners. The above nine modes of partition are not exhaustive. There may be other situations as well which, if expressed in equivocal intention for partition, will be admissible. Exception: The general rule mentioned above will not apply where a suit is withdrawn before trial by the plaintiff on the ground that he did not want separation any more.

In such a case there would be no severance of joint status. Where the suit is proved to be fraudulent transaction resorted to with an intent to create evidence of separation, no severance in the joint status takes place. If the defendant dies and the suit is withdrawn on that ground there is no separation. Mere institution of a suit for partition by a minor followed by abatement of the suit by death of the sole defendant does not effect the severance of the joint status.