

In a fresh partition is possible if the



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In *S. Nayak v. Satyawadi Nayak*, the Orissa High Court held that where there was a previous partition in the year 1918, a fresh suit for partition was not maintainable. Merely because a party faced certain difficulty decades after being in the enjoyment could not furnish a cause of action for a suit for fresh partition.

Partition dissolves the coparcenary. Community of interest is lost. The members upon partition hold their respective shares as their separate property.

A fresh partition is possible if the male members to the original partition fuse their separate interest by re-union with the intention to re-unite in estate and interest, to revert to their former status. There are, however, certain exceptions to the general rule and a partition can be re-opened in the following cases:— 1. A son conceived at the time of partition, though not born before partition, can reopen it, if a share has not been reserved for him. On the other hand if a son is begotten as well as born after partition, and if a share is allotted to the father, such after-born son is not entitled to have the partition re-opened and he is only entitled to succeed to his father's share and his separate or self acquired property to the exclusion of the other divided sons.

2. A son begotten as well as born after partition can demand a re-opening of partition, if his father, though entitled to a share, has not reserved a share for himself. 3. A disqualified coparcener after the removal of disqualification or a missing coparcener on his return can reopen the partition. 4.

A minor coparcener on attaining his majority can ask for the re-opening of the partition, if it was made during his minority and was unfair or prejudicial to his interest. The Supreme Court has held that if the partition is detrimental to the interest of minor or it was improperly effected, the partition could be re-opened irrespective of the fact that there was no fraud or mis-representation or undue influence. 5. Similarly, if a coparcener has obtained an unfair advantage in the division of the shares, the partition may be re-opened for the re-adjustment of shares. The Supreme Court in *Ratnam Chettiar v.*

S. M. Kuppuswami, held that where a partition effected between the members of the Hindu undivided family by their own volition and with their consent, it cannot be re-opened unless it is shown that the same is obtained by fraud, coercion, mis-representation or undue influence. When undivided family consists of minors, and partition effected therein is proved to be unjust and unfair and is detrimental to the interest of the minors, partition can be re-opened whatever be the length of time when the partition took place.