
The Partition Act 1893

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THE PARTITION ACT, 1893

INTRODUCTION

The law dealing with the partition of land paying revenue to the Government, besides various local laws, was enshrined in sections 265 and 396 of the Code of Civil Procedure Act, 1882 (14 of 1882). Section 265 simply enacted that the partition would be made only by the collector, and need not, therefore, be noticed further. Section 396 laid down the procedure which was to be adopted in the partition of lands not paying revenue to the Government. That section only authorised the court to divide the property, and in some exceptional cases where an equal division was not practicable to award a money compensation for the purpose of equalising the value of shares. In making an equal division, in many cases, practical difficulties were faced by the courts. The courts in such cases were either powerless to give effect to their decrees or were driven to all kinds of shifts and expedients in order to do so. To overcome such like difficulties and to properly amend the law relating to partition throughout the country. The Partition Bill was introduced in the Legislature.

STATEMENT OF OBJECTS AND REASONS

The present statutory law on the subject of partition, apart from various local laws dealing with the partition of land paying revenue to Government, is contained in sections 265 and 396 of the Code of Civil Procedure. Section 265 simply enacts that the partition or separation of a revenue-paying estate shall be made only by the Collector, and need not, therefore, be noticed further, as the present Bill leaves untouched all local laws dealing with the partition of such property. Section 396 lays down the procedure which should be adopted in the partition of lands not paying revenue to Government. That section, however, only authorises the court to divide the property, and in some exceptional cases where an equal division is not practicable to award a money compensation for the purpose of equalising the value of the shares. But as the law now stands, the court must give a share to each of the parties and cannot direct a sale and division of the proceeds in any case whatever. Instances, however, occasionally occur where there are inseparable practical difficulties in the way of making an equal division, and in such cases the court is either powerless to give effect to its decree or is driven to all kinds of shifts and expedients in order to do so. Such difficulties are by no means of very rare occurrence although in many cases where the parties are properly advised they generally agree to some mutual arrangement, and thus relieve the court from embarrassment.

It is proposed in the present Bill to supply this defect in the law by giving the court, under proper safeguards, a discretionary authority to direct a sale where a partition cannot reasonably be made and a sale would, in the opinion of the court, be more beneficial for the parties. But, having regard to the strong attachment of the people in this country to their landed possession, it is proposed to make the consent of parties interested at least to the extent of a moiety in the property a condition precedent to the exercise by the court of this new power. In order at the same time to prevent any oppressive exercise of this privilege, it is proposed to give such of the shareholders as do not desire a sale the right to buy the others out at a valuation to be determined by the court. The power, moreover, which it is proposed to give to the court will be discretionary one to be exercised on a consideration of all the circumstances of the case. It should be added that, where the court is obliged to

direct a sale, a right of pre-emption is given by the Bill to the parties similar to that conferred on shareholders by section 310, Civil Procedure Code.

It is also proposed in the Bill to give the court the power of compelling a stranger, who has acquired by purchase a share in a family dwelling house when he seeks for a partition, to sell his share to the members of the family who are the owners of the rest of the house at a valuation to be determined by the court. This provision is only an extension of the privilege given to such shareholders by section 44, paragraph 2 of the Transfer of Property Act, and is an application of a well-known rule which obtains among Muhammedans everywhere and by custom also among Hindus in some parts of the country.

The other sections of the Bill only deal with matters of procedure and do not call for any detailed notice.

ACT 4 OF 1893

The Partition Bill was passed by the Legislature and was assented on 9th March, 1893. It came on the Statute Book as THE PARTITION ACT, 1893 (4 of 1893).

LIST OF AMENDING ACTS AND ADAPTATION ORDER.

1. The Repealing and Amending Act, 1914 (10 of 1914).
2. Government of India (Adaptation of Indian Laws) Order. 1937.
3. The Part B States (Laws) Act, 1951 (3 of 1951).

THE PARTITION ACT, 1893

(4 of 1893)

[9th March, 1893]

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

1. Title, extent and saving.—(1) This Act may be called the Partition Act, 1893.

(2) It extends to the whole of India ¹[except the State of Jammu and Kashmir] ²[***].
²[***].

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

2. Power to court to order sale instead of division in partition suits.—

Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested *individually or collectively* to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

3. Procedure when sharer undertakes to buy.—(1) If, in any case in which the court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

4. Partition suit by transferee of share in dwelling-house.—(1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

1. Subs. by Act 3 of 1951, sec. 3 and Sch. for "except Part B States".

2. The word "and" at the end of sub-section (2), and sub-section (3) omitted by Act 10 of 1914, sec. 3 and Sch. II.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

COMMENTS

A person who had purchased a share in the property as successor-in-interest of any particular person through a court sale is a co-owner on the bases of the certificate issue of by the court and entry in the register proving title of that particular person. *Parbati Devi v. Purana Patra*, AIR 1997 SC 2331.

5. Representation of parties under disability.—In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

COMMENTS

If a request for sale or an undertaking, or application for leave, to buy is given or made on behalf of any party under disability then the court will comply with the requests undertaking or application only when it is of the opinion that the sale or purchase will be for the benefit of the party under such disability.

6. Reserved bidding and bidding by shareholders.—(1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the court in such manner as it may think fit and may be varied from time to time.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

COMMENTS

Every sale shall be subject to a reserved bidding and the amount of the bidding shall be fixed by the court. Any of the shareholders in the property is at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money instead of paying the same and if two or more persons, of whom one is a shareholder, advance the same sum of any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Procedure to be followed in case of sales.—Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely:—

- (a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay, in the exercise of its original jurisdiction, [***] the procedure of such court in its original civil jurisdiction for the sale of property by the Registrar;
- (b) if the property be sold under a decree or order of any other court, such procedure as the High Court may from time to time by rules prescribe in this behalf;

1. The words "or of the Court of the Recorder of Rangoon" omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

and until such rules are made the procedure prescribed in the Code of Civil Procedure¹ in respect of sales in execution of decrees.

8. Orders for sale to be deemed decrees.—Any order for sale made by the court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure (14 of 1882).

9. Saving of power to order partly partition and partly sale.—In any suit for partition the court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

COMMENTS

In a suit for partition the court is empowered to make a decree for a partition of part of the property to which the suit relates and a sale of the remainder.

10. Application of Act to pending suits.—This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the partition has been finally approved by the court.
