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The Partition Act, 1893

[Act 4 of 1893]¹

[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:—

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 insuperable 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 PC.

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 Muhammadans everywhere and by custom also among Hindus in some parts of the country.

1. The Act has been extended to—

Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, S. 2 and Sch. I.

Pondicherry by Act 26 of 1968, S. 3 and Sch. (w.e.f. 24-5-1968).

Sikkim (w.e.f. 1-9-1984) vide Notification No. S.O. 651 (E), dt. 24-8-1984, Gaz. of India Extraordinary, Pt. II, S. 3 (ii).

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

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

(2) It extends to the whole of India ²[* * *] ³[* * *].

(3) ⁴[* * *]

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immovable 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.

CASE LAW ► Object.—The purpose underlying Section 2 of the Partition Act undoubtedly appears to be to prevent the property from falling into the hands of third parties if that can be done in a reasonable manner, *R. Ramamurthi Iyer v. Raja V. Rajeswara Rao*, (1972) 2 SCC 721.

► Applicability.—One of the essential conditions for the applicability of Section 2 of the Partition Act is that it should appear to the court that a division of the property cannot reasonably or conveniently be made, *R. Ramamurthi Iyer v. Raja V. Rajeswara Rao*, (1972) 2 SCC 721.

Court may partition on principle of owelty, *Badri Narain Prasad Choudhary v. Nil Ratan Sarkar*, (1978) 3 SCC 30.

► Powers of court.—Where provisions of Partition Act are applicable court is bound to comply with provisions of said Act. It has no power to direct sale of suit properties dehors the provisions of said Act, *Rani Aloka Dudhoria v. Goutam Dudhoria*, (2009) 13 SCC 569 : (2009) 5 SCC (Civ) 194.

► Sale of shares of party.—When other shareholders are offering to buy at a valuation the share of the party asking for sale, court is bound to offer to sell share to shareholders, *R. Ramamurthi Iyer v. Raja V. Rajeswara Rao*, (1972) 2 SCC 721.

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

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

3. The word “and” at the end of sub-section (2), and sub-section (3), repealed by Act 10 of 1914, S. 3 and Sch. II.

4. The word “and” at the end of sub-section (2), and sub-section (3), repealed by Act 10 of 1914, S. 3 and Sch. II.

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.

CASE LAW ► Applicability.—To attract the applicability of Section 3 all that the law requires is that the other shareholder would apply for leave to buy at a valuation. Once that is done the other matters mentioned in Section 3(1) must follow and the court is left with no choice or option. In other words when the other shareholder applies for leave to buy at a valuation the share of the party asking for a sale the court is bound to order valuation of his share and offer to sell the same to such shareholder at a price to be ascertained, *R. Ramamurthi Iyer v. Raja V. Rajeswara Rao*, (1972) 2 SCC 721.

Section 3 of the Act envisages sale of the property within the shareholders. It, unlike the provisions of CPC does not debar a shareholder from taking part in the auction inter alia on the premise that the shareholder may be interested in keeping the property to himself. A balance must be struck in regard to the individual interest of the shareholder having regard to the conflicting interest in the respective bids vis-a-vis the value of the property, *Rani Aloka Dudhoria v. Goutam Dudhoria*, (2009) 13 SCC 569 : (2009) 5 SCC (Civ) 194.

► **Power of the court.**—The language of Section 3 of the Partition Act does not make it obligatory on the court to give a positive finding that the property is incapable of division by metes and bounds. It should only appear that it is not so capable of division, *G. Sathyavelu v. G. Pramila Devi*, 2015 SCC OnLine Kar 8635 : ILR 2016 KAR 813.

► **Assignment of rights.**—For seeking of assignment of rights of other co-sharer under this section, there is need for prompt action by shareholder seeking the assignment, *Punjab National Bank v. Sahu Jain Charitable Society*, (2007) 7 SCC 83.

The language of Section 3 of the Partition Act does not appear to make it obligatory on the court to give a positive finding that the property is incapable of division by metes and bounds. It should only “appear” that it is not so capable of division, *R. Ramamurthi Iyer v. Raja V. Rajeswara Rao*, (1972) 2 SCC 721.

► **Sale of property.**—Valuation of the shares under sale must be with reference to the rates prevailing at the time of making the application under Section 3 when right to buy accrued and crystallised. That right would not be postponed thereafter by reason of death of the purchasing shareholder(s) till obtaining of probate or letters of administrations by legal representatives or by reason of continuance of the proceedings due to appeal filed by the plaintiffs, *Malati Ramchandra Raut (Mrs) v. Mahadevo Vasudeo Joshi*, 1991 Supp (1) SCC 321.

► **Filing of application.**—Filing of application is not always essential, *R. Ramamurthi Iyer v. Raja V. Rajeswara Rao*, (1972) 2 SCC 721.

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.

(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.

CASE LAW ► Object and purpose.—Section 4 deserves a liberal construction because its very object and purpose is to preserve the integrity of the dwelling house, *Srilekha Ghosh (Roy) v. Partha Sarathi Ghosh*, (2002) 6 SCC 359.

► Applicability.—Right under Section 4 becomes available only after execution of sale deed in favour of vendee, *Kammana Sambamurthy v. Kalipatnapu Atchutamma*, (2011) 11 SCC 153.

Suit for partition in the context includes initiation of proceedings for execution of partition decree. Section 4 operates at all stages of litigation in a partition suit from its inception till its termination not only by the final decree for partition but also by its complete satisfaction and discharge in execution proceedings. Where pursuant to a final decree for partition a co-owner transferred his share in the house to a stranger and the stranger transferee thereafter files petition for execution of the decree, Section 4 can be invoked by any other co-owner family member for purchasing the stranger's share but once the final decree for partition is completely satisfied and discharged in execution proceedings, Section 4 cannot be invoked, *Ghantesher Ghosh v. Madan Mohan Ghosh*, (1996) 11 SCC 446.

► Right of pre-emption.—Section 4, Partition Act is *pari materia* with Section 44, TP Act. The notions of coparcenary property of a Hindu joint family are wholly irrelevant in considering Section 44, TP Act and what is relevant for the purpose of such proceeding is whether the dwelling house belonged to an undivided family, *H. Vasudeva Pai v. Kamdrunnisa*, (2011) 15 SCC 768.

► Right to pre-empt purchase by stranger.—Right to pre-empt purchase by stranger, held, does not accrue till such stranger transferee sues for partition. Till a stranger transferee of a share in a dwelling house belonging to an undivided family, initiates proceedings seeking separate possession, members of such family do not acquire the right to buy the share of the transferee. All conditions laid down in Section 4 have to be complied with, before the right can be exercised. However, family members are protected against intrusion by an outsider into their dwelling house by Section 44 TPA, *Gautam Paul v. Debi Rani Paul*, (2000) 8 SCC 330.

► Purchase of share.—Even if a family member co-sharer once fails to purchase share of a stranger transferee, a second application under Section 4 filed by the co-sharer or his successor-in-interest for purchase of such share maintainable, *Hurmat Bibi v. Prodosh Kumar Bajpayee*, 1988 Supp SCC 507.

► A married daughter.—For the purpose of application of Section 4, a married daughter could not be said to be "a person who is not a member of an undivided family", *Srilekha Ghosh (Roy) v. Partha Sarathi Ghosh*, (2002) 6 SCC 359.

► Pre-emption — Claim for.—When there is transfer of share to a non-member of the undivided family, filing of suit by such stranger-transferee for partition and separate possession of the undivided share transferred to him essential for operation of Section 4. In absence of such suit, application filed under

Section 4 by owner of another portion of the house undertaking to buy the share of the stranger-transferee would not be maintainable, *Babu Lal v. Habibnoor Khan*, (2000) 5 SCC 662.

► **Undivided family.**—Merely being a blood relation does not make a person a member of the family within the meaning of the term as used in Section 4, *Gautam Paul v. Debi Rani Paul*, (2000) 8 SCC 330.

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.

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.

CASE LAW ► Nature.—Provisions under this section regarding fixation of reserve price in relation to properties in question imperative in character, *Rani Aloka Dudhoria v. Goutam Dudhoria*, (2009) 13 SCC 569 : (2009) 5 SCC (Civ) 194.

7. Procedure to be followed in case of sale.—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,⁵ [* *] 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, and until such rules are made, the procedure prescribed in the Code of Civil Procedure (14 of 1882) 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 Sections 2, 3 or 4 shall be deemed to be as a decree within the meaning of section 2 of the ⁶Code of Civil Procedure (14 of 1882).

5. The words "or of the court of the Recorder of Rangoon" omitted by the A.O. 1937 (w.e.f. 1-4-1937).

6. See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

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.

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 property has been finally approved by the court.
