

THE PARTITION ACT, 1893 (4 OF 1893)



LAWYER STATUTES

(Act Amended / Modified as of Act 3 of 1951)

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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 **b***[except the State of Jammu and Kashmir] **a***[.....]

a*[.....]

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

[a] The word “and” at the end of sub-section (2), and sub-section 3, omitted by the Repealing and Amending Act, 1914 (10 of 1914), S.3 and Sch.II.

[b] Subs. by Part B States (Laws) Act, 1951 (3 of 1951), S.3 and Sch. for “except Part B States”.

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 offer 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.

(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.

Author's note:- Plz also refer sec. 44 of Transfer of Property Act, 1882 –

“44. Transfer by one co-owner.- Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

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 authorized to act on behalf 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 person, 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.

7. Procedure to be followed in case of sales. - Save as herein before 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, **a*[.....]** 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 **b*[Code of Civil Procedure (14 of 1882)]** in respect of sales in execution of decrees.

[a] The words “or of the Court of the Recorder of Rangoon” omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

[b] Author’s note – Code of Civil Procedure (14 of 1882) repealed. Plz refer Code of Civil Procedure (5 of 1908).

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 a decree within the meaning of **Sec.2 of the Code of Civil Procedure (14 of 1882)**.

Author’s Note: Code of Civil Procedure 14 of 1882 repealed. Plz refer s. 2 (2) of the Code of Civil Procedure, 1908 (5 of 1908).

2 (2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [....omitted.....] Section 144, but shall not include ~~~~

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order for dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.



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.



STATUTES UP DATE:-

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

STATUTES REFERRED IN THIS ACT:-

CODE OF CIVIL PROCEDURE, 1882 (14 of 1882) – Repealed. Now Code of Civil Procedure, 1908 (5 of 1908).

Other Relevant Statutes:-

Transfer of Property Act, 1882 (4 of 1882) – Sec. 44.

Author's Note on the scope of the Partition Act of 1893:- If in a suit for partition the Court considers that a division of the property cannot reasonably or conveniently be made and that a sale of the property and distribution of the proceeds will be in the interest of all the shareholders, the Court may, in its discretion, direct accordingly on an application made for the purpose by such shareholders interested individually or collectively to the extent of a moiety or more of such property. Likewise, under this Act, when a share of a dwelling-house belonging to an undivided family entitled has been alienated to a stranger, any member of the family entitled to a share in the dwelling-house can buy the share of the alienee at a valuation made by the Court." Ref:-A treatise on Hindu Law by S. Venkataraman Formerly Professor of Madras Law College.

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