

Procedures

Law of Partition: The Goan Perspective¹



In India, the partition of property is governed by different personal laws. However, the State of Goa, by virtue of being an erstwhile portuguese colony, operates on a separate civil code. One area that is govered by this separate law is land and related rights.

¹ Please read this procedure in conjunction with the Procedure on Partition for detailed information on partition in India along with best practices for a partition suit and partition deed.



Initially governed by the Goa civil code (modelled on the Portuguese Civil Code), property rights have now come to be covered by a new law. In 2016, the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 (“the Act”) was passed which replaced the civil code on subjects of succession, notarial law and inventory proceedings, i.e. proceedings to partition inherited land.

The procedure

The Act provides for two types of partition:

By filing a suit for partition:

This is the usual route for partition where a suit will have to be filed. Once the court passes an order on the partition, a chart of partition will be prepared within 10 days and a copy supplied to the parties.² Parties can peruse this chart and apply for rectification, i.e. object and ask for a change in shares allotted within 10 days.³ The next stage is “Sortition” in which a draw of lots is carried out if disagreement between parties persists.⁴ After this, the Court carries out the confirmation of the partition and passes a decree. A certified copy of this decree is to be registered in accordance with provisions of the Indian Registration Act, 1908.⁵ With this, the partition is complete.



² Section 386, Goa Succession, Special Notaries and Inventory Proceedings Act, 2012

³ Section 439, Goa Succession, Special Notaries and Inventory Proceedings Act, 2012

⁴ Section 440, Goa Succession, Special Notaries and Inventory Proceedings Act, 2012

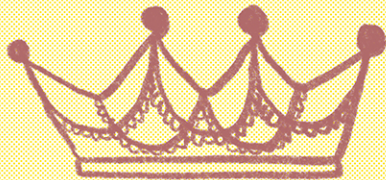
⁵ Section 442, Goa Succession, Special Notaries and Inventory Proceedings Act, 2012

The procedure

The Act provides for two types of partition:

Partition executed outside the court:

This route is available in case there is mutual agreement. A deed of partition is drawn up by parties, executed in terms of the Registration Act, 1908.⁶ However, this deed has to be preceded with a declaration of heirship. A deed of heirship is a declaration made under oath before the Special Notary by three persons and at least one interested party that the interested party/parties named in the deed are the only heirs.⁷ Partitions that are executed outside court can be cancelled only on the grounds on which a contract can be cancelled, which means that a partition deed is considered to be the same as a contract when it needs to be cancelled or rescinded.



⁶ Section 15, Goa Succession, Special Notaries and Inventory Proceedings Act, 2012

⁷ Section 15, Goa Succession, Special Notaries and Inventory Proceedings Act, 2012

In case you opt for a partition through the Court, ensure that the decree passed includes the following:

1. The name of the original applicant and of the estate leaver (the deceased);
2. Names of the heirs
3. Description of the assets
4. Chart of Partitions
5. Outstanding debts due by inheritance
6. Order confirming the partition



Things to keep in mind

Certain salient features and terms that you need to keep in mind when involved in the partition procedure:



Moiety Holders: In Goa, a spouse is entitled to half share in the property. A moiety holder is a spouse who has a right to “moiety” which means half the share.



In case an heir or a moiety holder is deprived of their share, a suit for recovery of compensation (also known as suit for damages) has to be filed within a period of 3 years.



In case of a partition by Court, in case any party has any contentions, a review application can be filed within a period of 30 days from the date of the order.

1) What are the routes for ownership of immovable property?

A) A person may acquire immovable property in any of the following ways:

- By inheritance of ancestral property.
- Through a will
- Acquisition by oneself such as purchase etc (self acquired property)
- Through gift, trust, settlement deeds. Grant, sanad / Inam by the Government.
- Through partition deed.

2) When can partition be sought?

A) If all the parties have a share (common right) in the property then partition can be sought.

3) When there are two or more heirs, can one or two be made full owners by others by taking money in lieu of their share?

A) Yes. Any of the co-owners can individually or collectively release their right in favour of one or more collectively as the case may be and make them full owner. This kind of release can be with or without payment of money.