

Procedures

Partition

Partition is a severance of shares, which entails division of lands held commonly by joint owners/co-owners into distinct portions so that they may be held separately.

The Law

Partition in India is governed by the Partition Act, 1893 and more specifically by different personal laws such as the Hindu Succession Act, 1956 or Muslim personal laws as applicable since it involves questions of inheritance.

For instances not covered under the relevant personal laws the Indian Succession Act, 1925 consolidates laws relating to succession. With regard to partition, this Act becomes important for the purpose of executing a Will.

Section 2(15) of the Indian Stamp Act, 1899 defines “instrument of partition” *as instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an arbitrator directing a partition.*

Modes of Partition

There are different ways to affect partition of a property under different circumstances:

1 consent
ms

In case of mutual consent :

1 consent
ms

Through a partition deed



In case all co-owners are not agreeable to partition :



Through Court by filing a partition suit

Through Will probate :

“Probate” is a copy of the Will certified under the seal of a court having jurisdiction, which essentially makes all provisions of the Will valid in law.

Partition Deed

This route to Partition is adopted when parties are in agreement and decide to do so mutually. However, a partition deed can be challenged in Court at a later stage and hence care has to be taken in drafting the same.

Key Ingredients:

The text of the deed must carry the **DETAILS** of the parties, i.e. their name, address, age, name of parent, occupation.

The deed must explicitly mention each aspect of the division as well as the **DATE** from which partition is affected.

TERMS and **CONDITIONS** must be clearly set out after mutual discussion.

Attach the details of the property and their respective allotment to parties as **SCHEDULES** to the deed.

To attain legal validity, a partition deed has to be **REGISTERED** before a sub-registrar for which stamp duty will have to be paid.

STAMP DUTY will be calculated in accordance with the Indian Stamp Act, 1899.



Partition Suit

Where all co-owners are not agreeable to partition, partition can be sought by filing a partition suit in Court.

Key Ingredients:

The first step in filing a partition suit is sending a legal notice to the opposite party. If there is no response, one can proceed to file a suit.



The plaint, which is the formal document containing your grievance before the Court, has to carry all relevant details including the facts, the description of the property, the grounds for filing such a suit and the prayer and relief sought.

Certified copies of all relevant documents such as title deed should be added as annexures.

₹ STAMP PAPER ₹

Once the Court passes a decree of partition, it has to be reproduced on a stamp paper and registered in order to become effective.

Will Probate



Partition can be affected by way of a Will where shares of the owner are divided amongst certain persons.

Every Will appoints an executor and Section 222 of the Indian Succession Act, 1925 provides that a Probate shall only be granted to the executor named under the Will. A petition for grant of probate can be filed by the executor under Section 276 of the Indian Succession Act, 1925.

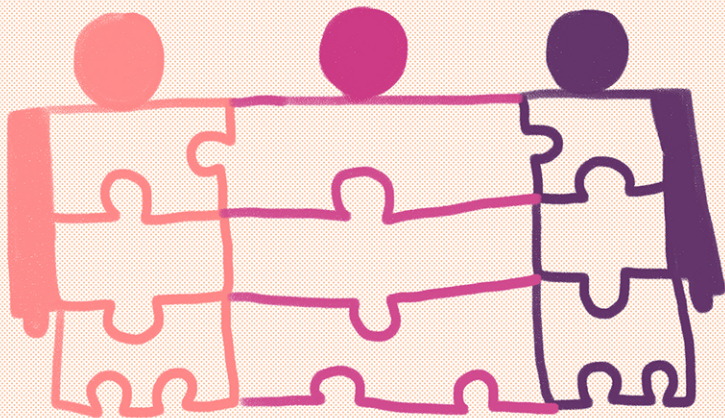
After filing the petition, the Court gives public notice in leading newspapers to invite objections and thereafter, if there is no such objection, Court grants probate.

FAQs

1) Who can ask for a partition?

A) The right to partition is incidental to ownership of the property and once ownership is established, their right to partition cannot be restricted.

Every co-owner has the legal right to have the joint property partitioned.



FAQs

2) What kind of properties can be partitioned?

A) The two types of properties that can be partitioned are self-acquired property or ancestral property.

Self-acquired Property

It is the property an individual acquires from their own earnings and is not inherited from ancestors. A property acquired as gift or by Will is also considered a self-acquired property.

It cannot be partitioned during the lifetime of the person who acquired it but can be partitioned through a Will.

Ancestral Property

It is the property inherited from ancestors (through male lineage under Indian laws). Right in the property is vested by virtue of birth.

Ancestral property can be partitioned by way of mutual agreement by a partition deed, by the Court or through a Will.

FAQs

3) What happens when the property cannot be divided?

A) If a Property is indivisible then one party may be allowed to keep the whole property while the others may be compensated for the same with the value of their share.



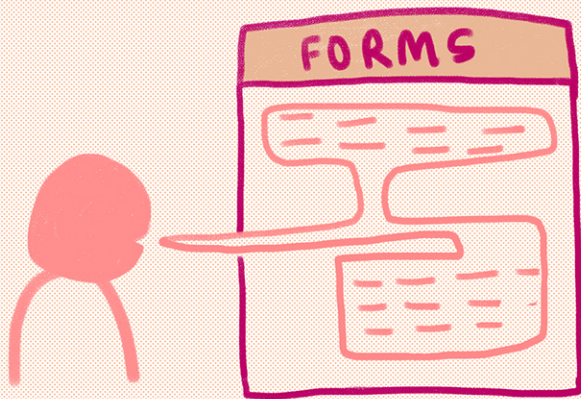
In case there is no possibility to divide the property or partition the same by metes and bounds, i.e. by the way of measurements and boundaries, the property may be sold and the proceeds (money received) of the same may be distributed amongst the co-owners.



FAQs

4) Can a partition be done orally?

A) Yes, a partition can be affected orally (through a family settlement/agreement) but it will have to be reduced into writing in the form (These form part of Section 17 of the Registration Act, 1908, which provides for documents of which registration is compulsory.) of a memorandum of agreement and registered* in order to be admissible in Courts.



* These form part of Section 17 of the Registration Act, 1908, which provides for documents of which registration is compulsory.