

# FINAL DECREE IN PARTITION SUITS

Presentation By:

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- **Partition means:**
- Partition is the division of jointly held properties, along with the associated rights, into different portions and delivery thereof to the respective persons.
- In partition the joint ownership comes to an end and the parties get their shares.
- **A valid partition converts:**
- joint title of parties into exclusive title of the shareholders.
- joint possession of the co-owners into exclusive possession of each shareholder.

- **In a Partition suit:** Normally, we have two decrees:
- **Preliminary Decree:** For declaring the divisible rights of each party in the joint property.
- **Final Decree:** For specifying the share and putting each party in possession of his specific share.

**Shub Karan Bubna alias Shub Karan Prasad  
Bubna v. Sita Saran Bubna and others,  
(2009) 3 SCC 689**

The Hon'ble Supreme Court of India, while considering the concept of final decree in a partition suit, has held:

*it is different from an application for a final decree in mortgage suit and has mandated that after passing of a preliminary decree in a suit for partition, the proceedings should be continued by the Trial Court till final decree is passed.*

*The relevant observations and directions issued are extracted as follows:*

- 1. In a partition suit, preliminary decree only decides a part of the suit and therefore an application for final decree is an application seeking further progress in a pending suit.
- 2. In partition suit,
  - there can be a preliminary decree followed by a final decree, or
  - there can be a decree which is a combination of preliminary decree and final decree or
  - there can be merely a single decree with certain further steps to be taken by the court.
- 3. In fact, several applications for final decree are permissible in a partition suit. A decree in a partition suit is for the benefit of all the co-owners and therefore, it is said that there is really no judgment debtor in a partition decree.

- 4. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties.
- 5. The prayer relating to actual division by metes and bounds and allotment is to be done under the final decree proceedings.
- 6. Thus the application for final decree is to be considered an application in a pending suit for granting the relief of actual partition.

- 6. Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit.
- 7. Consequently an application for a final decree in a mortgage suit is different from an application for final decree in partition suits.

- 8. Initiation of final decree proceedings does not depend upon an application for final decree for initiation.
- 9. The Code also does not contemplate filing of an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed.
- 10. It is the duty and function of the court. Performance of such function does not require a reminder from the litigant. The mindset should be to expedite the process of dispute resolution.



- Kattukandi Edathi Krishnan and Another v. Kattukandi Edathil Valsan and Others, 2022 SCC OnLine SC 737,
- Hon'ble S.C reiterated the earlier observations and held
- Once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree *suo motu*.
- After passing preliminary decree, the Trial Court has to list the matter for taking steps under Order 20 Rule 18 of the CPC. The courts should not adjourn the matter *sine die*.
- There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the party to file an appropriate application for drawing up the final decree. The suit comes to an end only when a final decree is drawn.

# Relevant partition regarding final decree in partition suit

## Order 20 Rule 18 CPC

- (a)-Decree in suit for partition of property or separate possession of a share therein- Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then-
- 1- If and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

➤ 2- If and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required.



(b)- Relevant Provisions Under Partition Act  
1893

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.

(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.

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.



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, and until such rules-art made the procedure prescribed in the Code of Civil Procedure 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.

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.

## **For Preparing final decree mode adapted be Courts**

a)- Through Court Amin with/without help of Revenue department.

(b)- Through Ld Advocate Commissioner.

(c)- Through any person/expert in the Case of Hon'ble High Court of Uttarakhand passed in Writ petition No. 1396 of 2015(M/S), **Dr. Sudesh bala Vs. Dr. Santosh Singh**, dated 18.06.2015

It is observed that – It is clear from from the said provision that for conducting a scientific survey, any person who has the expertise, may be directed to conduct said survey and the word person used in the provision is inclusive of an institution. The view that any person competent to conduct a scientific survey can be appointed by the court. court for supervising the construction of partition wall and staircase on the disputed property by the superintending engineer, P.W.D., so that the disputed property stand divided in two equal parts is correct in light of Order 26 Rule 13. C.P.C. for partition of immovable property and that the survey can be issued to be done by any person to whom the court deems fit to effect the partition of said property.

## **Challenge before Courts regarding Final Decree in Partition Suits -**

(a)- When partition is not possible in metes and bounds or the property area is not in precise orientation for partition

(b)- Parties are not agreed for compromise decree.

**THANK YOU**