

## Chapter 13

### Regarding Partition of Property

**No. 1 :** While partitioning property it should be separately partitioned between the father, the mother, the wife and the sons.

**No. 2 :** Except for what is written elsewhere, while partitioning property in accord with No. 1 of this chapter all those receiving share in property should receive equally.

**No. 3 :** As for the sons of brothers living together, only their fathers receive the share in property.

**No. 4 :** If there are co-wives, all of them are entitled to have their share from their husband's share in accord with law.

**No. 5 :** If the husband or the father dies before the property is partitioned, the share in property that he is entitled to will go to his wife and his heirs in accord with law. The wife who has betrayed her husband will not receive anything from that husband's share.

**No. 6 . #** .....

**No. 7 :** The offspring born of a woman without a husband will receive only the mother's property if the husband is not identified.

**No. 8 :** A wife kept outside without making it public or a son born of her cannot claim their share in his property after the husband or the father is dead.

**No. 9 :** One who performs Vijaya Hom (religious offering) having his shaved he cannot claim his/her share in property.

**No. 10 :** The sons cannot compel their father to give them their share in property as long as the father is alive. Likewise, no father can separate a son giving him the share in property unless the son wants to be separated. The wife also cannot be separated having received her share in property without the husband's consent as long as the husband is alive. The sons and the wife should also not be kept without providing food and clothing. They must be provided with food and clothing in accord with means and social standing. If not, they should be given their share in property. As regards matters written in No. 4 of the chapter related to husband and wife, things will go accordingly.

**No. 10 a:** No matter what is written in No. 10 of this chapter, if a woman who has been married at least for fifteen years and who has at least reached the age of thirty five can separate herself having received share in property from that of her husband if she likes.

**No. 10b. :** While partitioning property between the parents and the sons and the daughters, if the parents want to stay with a particular son or daughter, it should be mentioned in the related document and such a son or a daughter should keep the parents with them and take care of them. If the aged parent's income is not enough for their food and clothing or if they do not have any son or daughter or son's son living together to take care of them, even the sons or daughters living separately should take care of them keeping them together and providing them with food and clothing in accord with means and social standing.

**No. 10c :** If a woman who is proven to be entitled to be provided with food and clothing in accord with the verdict made under No. ten of this chapter or No. 4b. of the chapter related to the husband and the wife is not provided with food and clothing or the money to be received for that purpose. Such a woman need not file a separate suit but instead suit but instead if she submits an application before the court that has made the verdict, stating the complaints, the court should, after having inquired into the subjects and the aspects, in addition to imposing a fine of Rs. one thousand or one month's imprisonment or both on the person who has not provided them, issue an order to provide the woman with food and clothing or money for that purpose in accord with the previous verdict. If the person ignores even this order, he should be punished again accordingly and the

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# Repealed by the sixth amendment.

\* Added by the sixth amendment.

+ Added by the ninth amendment.

woman should be provided with share in property on the basis of the same application, having received the details of property.

**No. 11** : If a man living separately after having received his share in property has mixed the property of his own and that of some wife or sons and kept them together with himself and afterwards, if he brings other wives and if sons are born to them, the share of property and livelihood portion of those living together should be put together and partitioned to those living together and those brought or born afterwards in accord with law. If, after having separated with his share of property, he brings another wife and if sons are born, the ones brought or born afterwards will be entitled to have all the husband's or father's share of property and livelihood portion. Those brought or born later cannot claim share in property with those who have been separated earlier after having their share in property.

**No. 12** : A widow without sons who is living together before the partition of property has taken place, cannot receive her share in property and live separately until she has completed the age of thirty years as long as the heir living together provides her with food and clothing and with the means for religious offering. If the heir does not fulfill these conditions, she is entitled to receive her share in property and live separately even when she has not reached the age of thirty.

**No. 13** : If a widow who has not received share in property and who has been treated in accord with law goes to stay elsewhere leaving her own house, the heir need not pay back the loan taken by such widow.

**No. 14** : While partitioning property after the death of the father and the husband, all that remains after performing his last rites including the earnings and loans of the father and the grand fathers living together or separately should be partitioned equally between the wives and the sons in accord with law. If after the death of the father some sons are living with the mother or no sons are living together but are living separately without seeking share in the property at their own free will and property is to be partitioned after the death of the mother, all that remains after performing her last rites including the earnings and loans of the fathers and grand fathers should be partitioned equally between all the sons in accord with law. The property and loans that remains after the separation with maintenance should be treated in accord with law.

**No. 15** : The partition of property in a large or a small quantity is called livelihood portion. While giving livelihood portion, up to 5% of the share he/she receives will be lawful. If, after giving livelihood portion, a complaint is lodged within the time fixed under No. 32 of this chapter, the property including the livelihood portion should be put together and be partitioned in accord with law.

**No. 16** : The daughter who has reached the age of 35 and who is unmarried is entitled to get share in property as equal ..., to the sons. If she gets married or elopes after receiving the share in property, then the remaining property after having set aside the wedding expenses in accord with law from the property she has received will go to the person who is entitled to it.

**No. 17** : While setting aside the wedding expenses for the sons and daughters who are not married, regardless of whether the number of unmarried sons and daughters is large or small, five percent should be set aside for wedding expenses if the total property amount to more than two thousand, ten percent if the total property amounts to less than two thousand up to one thousand and twenty percent if the total property amounts to less than one thousand and the resulting amount should be equally partitioned for wedding expenses. While making the partition as mentioned above, if there is only one person to receive wedding expenses while those entitled to have share in property happen to be many and if the wedding expenses amount to more than the amount to be received by those entitled to receive share in property, then he/she will get up to two-third of the amount of the share that one gets as wedding expenses and no more than that. While partitioning property among brothers, no wedding expenses need to be set aside for the brothers' sons and daughters.

**No. 18** : In the case of individuals living together partitioning their share in property, all the property collected by any individual from agriculture, industry, business etc. or the loan taken in accord with No. 8 of the chapter related to transaction will be partitioned between all those living together. But the property earned by any individual by his/her own knowledge, skill or efforts or the property given to him/her personally as donation or gift or the property from someone's absence of inheritance or received from the property of woman's share in property in accord with No. 5 of the chapter related to property will be proven as the personal property of the one who has received or earned it, so he/she can use it as he likes. He/she will not be compelled to divide it. If the individuals are living

separately even when the property has not been partitioned or have been using the property without having it legally registered, being responsible for their own profit and loss, they will be proved to be separated having received their share in property, though they are living together. In this situation, their earnings and loans will be their own.

**No. 19 :** The movable and immovable property of the wife, sons and widow daughter-in-laws who have not received their share in property will be as follows :.....

As for the movable and immovable property from the ancestors' time, all of the movable property and up to half of the immovable property can be used as one likes to meet the household needs even without the consent of the wife, sons of widow daughter-in-laws. As for more than half of the immovable property, it can be spent only after having the consent of the wife, sons and daughter-in-laws even for meeting the household needs. If used without their consent, it will be not be lawful .....

As for the movable and immovable property earned during one's time, the person who has only one wife and sons from only one wife or in a similar situation arising from the death of other sons and wives, can use as he likes. The person who has wives more than one or sons from more than one wife or sons from this and that wife, can use such property as he likes, except that he cannot give it to his favorite wives and sons. He cannot give it as a gift to only the wives and sons who are favorites. It will be lawful only if it is partitioned among all wives and sons in accord with their lawful share. ....

The act of using the property mentioned in the above articles which the individual can use as he likes without the consent of his wives, sons and widow daughter-in-laws will be lawful. As for the property which he cannot use as he likes, the act of giving the movable and immovable property from the ancestors' time to his favorite wives, sons and widow daughter-in-law as he likes will be lawful only if the wives, sons and widow daughter-in-laws above the age of twenty-one who have not received their in property agree to it. ....

If the property that can be given as mentioned above is given to certain wives, sons or daughter-in-laws having prepared documents before the partition of property takes place, it need not be partitioned while partitioning the property afterwards. The one who has received it can use it by himself/ herself. If the property given in this way proves to be unlawful, it should be put together with the rest of the other and be partitioned.

**No. 20 :** When a suit is filed for partition of property and if the case proves to be reasonable, before announcing the verdict, the detailed description of the property, movable and immovable including debts, should be taken from the head of the family responsible for all domestic transactions, having him pledge by god that he has shown all the property and has not hidden anything, and then it should be partitioned. If the person responsible for giving the details does not abide by the court order, he should be imprisoned in accord with No. 21 of this chapter until he provides the details of all the property. When he provides the details he should be freed from prison and then the property should be partitioned in accord with law.

**No. 21 :** If the person responsible for giving the share in property is imprisoned for disobeying the court order to provide the details of the property, he should be ordered to give the details every two months from the date of imprisonment and as for those who want the share in property, they should also be handed a notice with the order that they need to present the exact details of the property to be partitioned in writing and get them sign a receipt for the same. If the one imprisoned provides the details within six months since the date of imprisonment, it should be accepted and then the property should be partitioned in accord with law. If he does not provide the details within six months, the court should obtain the document containing the details from those wanting to have the share in property within the same period of time, and then the one imprisoned for disobeying the court order should be given another order stating if he does not report within thirty-five days starting from the date he receives the order that those wanting to have their share in property have either not shown all the property or listed the non-existent property or shown it to be more or less with intent to having it for themselves leaving aside the share of the one in prison from the only property as listed, then all the property will go to his co-partner and his complaint will be invalid. Having handed this order he should be made to sign a receipt for the same and if he reports within that period of time then the property should be partitioned in accord with law. If he does not report, a witness document should be prepared to the effect that the details of property as submitted by those wanting share in property is exact, and no more and no less, and that if afterwards it proves to be false, they will be punished in accord with law, and then the property as listed in the witness

document should be partitioned in accord with law. If any property is found to have been hidden, the one who has not hidden will receive it in accord with law. No complaint of the one not abiding by the order will be accepted.

**No. 22 :** If in a case related to the partition of property the party responsible for providing the details of property does not present himself before the court before the date is expired, he should be arrested immediately and obtain the details. If he is not found when searched for one month excluding the time taken by the journey or after having been arrested he will not be provided the details within the period of time fixed by law, then if the one wanting share in property is present, the details should be obtained from him and act in accord with No. 21 of this chapter and if he is not present and if the one wanting share in property has not shown any property that he wants to have solely, a summon should be issued and be pasted up to the effect that he should report being present within the set time, his co-partner will receive the property solely. Following the summon being pasted up, whether or not he presents himself before the court to report, the property should be partitioned in accord with the same No. 21. If the one responsible for presenting the details of the property does not present it or if he gets arrested and so does not appear before the court and if the one claiming his share says that he too is unable to present it for certain reasons, a document to that effect should be prepared and have it signed, and the verdict should be made in accord with law that the rest proceeding will take place when he prepares and submits the details. Following such verdict, if he comes to submit an application afterwards, it should be accepted and remaining action regarding the document should be performed in accord with law and the necessary receipt should be performed in accord with law and the necessary receipt should be prepared and handed.

**No. 23 :** While describing the details of the land, houses and other articles to be partitioned, the four side boundary, the quantity of land in Ropani, Bigha or Muri, the taxes also if they have been levied and if not the production, and shutters, stories, the four side boundaries of houses, whether built from concrete or mud bricks and the approximate price, and apart from houses, the number of saleable articles, if there are any, with descriptions of their shape and size, and the probable price in cash currently common in the village or the market and the approximate price should be mutually exchanged. If anyone lodges a complaint to the effect that the given price has been exaggerated, then the price be fixed by having a meeting of the rich and the gentle persons and by weighing the articles or estimating the reasonable price.

**No. 24 :** If the party of the dispute supposed to give the key of the store has been absent expiring the date or if he does not give the key even when he is present and if the one entitled to receive share in property presents an application demanding that the store be opened and the details of property be checked and be partitioned, then the court should in the presence of the one who has the key, if he is present, or if not even in the presence of only one party of the dispute and in the presence of at least two gentle persons along with the member or representative of the concerned Village Development Committee or that of the municipality, open the store, check and document the details and partition the property.

**No. 25 :** Once the partition of property is made and one's own respective share accepted no complaint asking for replacement of the articles that are found to be damaged will be valid.

**No. 26 :** If in a case concerning partition of property if the one supposed to provide the details of property does not provide it and the partition is made on the basis of the one provided by others, the one who does not provide the details should be, in addition to the punishment to be given by other acts, fined by 5 percent of the whole property of which he has not provided the details.

**No. 27 :** If property is found to have been hidden after a document is prepared stating that no property has been hidden, then the one who has hidden it will be deprived of share in it. The other co-partners who have not hidden the property will be entitled to partition it among themselves in accord with law. No punishment will be imposed for hiding the property.

**No. 28 :** While partitioning property, if the co-partners agree to receive a combination of good and bad articles, they should be partitioned accordingly, if not, they should be partitioned by means of lottery.

**No. 29 :** If within three years following the date of the partition of property, the movable or immovable property of one's own share proves to be other's or if following a complaint registered at the court it proves to be other's, it can be had on the basis of equal amount from all the others who have received the share.

**No. 30 :**While partitioning property, witnesses should be present, and after having partitioned it in accord with law a document of partition should be prepared, and having it signed by those who give and receive including by the witnesses, and have it registered. No partition of property without completing all these conditions will be valid. But if, before the time this act has been commenced, partition of immovable property is made by a combination of good and bad articles by preparing or not preparing a document of partition, and if following the partition the co-partners have lived separately taking their rightful share and have also used it separately taking their rightful share and have also used it separately or even sold it as they liked, and if it is proven from practical evidences that the partition has taken place, then no complaint made on the ground that the document of partition has not been registered or that there has been more or less share in the partition will be valid. Even if it is not registered, it will be valid. As regards taking less than the rightful share at one's own free will or abandoning the share in property, it needs to be registered.

**No. 31 :**After a complaint is registered demanding that share in property be partitioned and if it is established that the person concerned is entitled to receive share in property, and after the details of property share is submitted, if the plaintiff registers an application demanding that the income from his share be stopped, then the share he is entitled to receive should be stopped in accord with No. 10 of the chapter related to the encroachment of land until the property is partitioned, and after the partition is made the restriction should be lifted.

**No. 32 :**While partitioning property it should be partitioned in accord with law. It should be no more, no less. If those above the age of sixteen and those below the age of sixteen who are not satisfied with the partition of property within three months starting from the date of which the partition document is signed and within three months from the date of completing age of sixteen respectively, the complaint will not be valid. <sup>#</sup>In a suit related to partition of property, even if the plaintiff expires the date, rather than dismissing the case verdict should be made in accord with what appears to be reasonable.

**No. 33 :**While living together, if the common land, houses, rice field etc. to be partitioned are taken away by the government or if they are stopped by the government or the salary, allowance and remuneration not being released are returned or released by any of the co-partners, the property returned or released will be partitioned in accord with the document stating the portion to be shared to each if such a document exists, if it does not exist, the co-partner who has returned it from His Majesty's Government is entitled to use the immovable property solely for three years starting from the date of having it returned and from the fourth year all the co-partners will be entitled to have their share from it, and as for the movable property, it should be partitioned among all co-partners but the one who has returned it can have up to ten times more than the others. The same law is applicable if any co-partner returns any property taken away by someone other than the government.

**No. 34 :**If one not eligible to have share of property registers a case demanding that he/she be given share of property, he should be fined on the basis of the amount if it is mentioned in the document, if not he should be fined up to two hundred rupees depending on his means.

**No. 35 :**In a case where no partition of properties has been made, or in case where property has been partitioned having it registered in the concerned office and obtained a registration document, or even if not registered, both the parties have been using their respective share received equally, and in a case where there exists neither a document nor the property is being used, then if a case is registered demanding that the portion of properties remaining from the partition made previously or claiming the portion hidden, the suit will be valid up to bhinna bhinna Miu. If there exists a document of partition received from the concerned office, each individual receiving his rightful share will be entitled to use it as he/she likes.

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\* Amended by the first amendment.

# Added by the sixth amendment.