

# The Partition Act, 1977

JAMMU & KASHMIR

India

## The Partition Act, 1977

### Rule THE-PARTITION-ACT-1977 of 1977

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The Partition Act, 1977(Act No. 30 of Svt. 1977)[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement So. 8372, dated 11th September 1920 read with State Council Resolution No. 1, dated : 5th April, 1925, Notification So. 14-L/81An 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. Saving.

- Nothing herein contained shall be deemed to affect any local law providing for the partition of immovable property paying revenue to Government.

#### 2. Rower of 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 reasonable 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 lit. 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 required under the last foregoing section to direct a sale, any other shareholder applies for leave to by 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 thinks tit 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 as ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.The Act extends to the whole of Jammu and Kashmir State and came into force on the 1st day of Baisakh, 1978 (by Act IV of 1977).

#### **4. Partition suit by transferee of share in dwelling house.**

- (i) Where a share of a dwelling house belonging to an undivided family has been transferred to 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 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 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 it 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 shareholders 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 :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 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 In Court under section 2.3 or 4 shall he deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

## **9. Saving of powers to order partly partition and partly sale.**

- In any suit for partition the Court may. it shall think fit. make a decree for partition or 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.