

# Partition Suit

1. The parties are residing in their respective building for a long time obviously amicably. HCD refused to divide the property by metes and bounds as the relief for partition. The SCAD set aside the view of HCD and observe that amicable partition is no partition in the eye of law and co-shearer are always entitle to pray for partition. | *1 XP(AD) 114*
2. In a suit for partition the plaintiff and defendant stand on the same footing with regard to a party's capability to 'sue' and 'to be sued'. | *26 DLR 96*
3. The plaintiff is entitled to maintain a suit for partition if his possession in some part of the joint property is admitted or established. | *61 DLR 804*
4. Value Relating Jurisdiction: in a Partition suit the value of the whole property which determines the jurisdiction of the court and not the value of the plaintiff's share only. | *21 BLC 306*
5. Taking Evidence at any Stage : The HCD held that it is settled principle of law that in a suit for partition any statement or any evidence of the proceedings even before the final decree is drawn up for doing compete justice in a case.....| *8 ALR 28*
6. A defendant can pray for his saham without filing any written statement. | *6 MLR(AD) 234*
7. Hindu widow or Hindu woman having life interest can very much maintain a suit for partition for the fullest enjoyment of her such right in the joint properties. | *68 DLR(AD) 157*
8. Partition Suit not maintainable when :
  - Already amicably partitioned.
  - Specific share of respective co-sharer recorded S.A. Khatian
  - Separate Municipal holding have been opened.
  - Enjoying the separate saham so allotted. | *10 BLC(AD) 1*
9. Partial Partition: The Rule that all joint properties should be included in suit land for partition is not an inflexible one. Partial Partition can be allowed if not prejudiced by such partition. | *49 DLR(AD) 151, 4 BLD(HCD) 21, 6 BLD(AD) 86*
10. Hotch-Potch: The general rule of including all lands of co-sharers in the hotch-potch is not an inflexible one and can be released in appropriate case if such omission does not case any prejudice to any of the parties in dispute. | *25 BLD(HCD) 283*
11. S.A. and R.S. Khatian- distinct and separate holdings for more than 12 years, the plaintiff no more need partition for their land. | *14 BLT(HCD) 225, 56 DLR 563*
12. Evidential value of preliminary decree: Before making final decree, the preliminary decree for partition on the basis of a solenama being an unstamped memorandum of partition cannot be admitted in evidence. | *2 XP(AD) 31*
13. Reallocation of Shaham in preliminary decree: When the exact area of the suit property was not ascertained and the area mentioned in the report by the advocate commissioner was different with the plaint, the trial court will entitle to reallocated the shaham to the parties in the preliminary decree afresh. | *2 XP(AD) 31*
14. Defect of parties and defect of hotch-potch are not formal defect of the plaint. | *1 XP 89*
15. In a suit for partition a defect of hotch-potch is formal defect. | *1 XP 89*
16. Nobody can acquire any title on the basis of forceful possession. Suit for partition not necessary and suit for declaration of title and recovery of khass possession is proper remedy. | *1 XP 135*

17. When several co-owners as brothers and sisters transfer a part of estate, the share of each co-owner brothers and sisters 2:1 share proportionately reduced, due to unequal of their sharers and the transferee stands in the shoes of the transferor, transferee never get more share beyond the share of transferor. | **4 XP(AD) 1**
18. The property left by the father of the plaintiff and defendant where put to auction and same where perched in the name of defendant's wife during joint mess and in common fund, the said auction was not genuine rather the defendant perched the property in the name of his wife to deprive the other co-sharers and said auction perched by co-sharer be considered the perched for all. | **3 XP(AD) 7**
19. A party cannot change both the preliminary decree and final decree in only one appeal. An appeal against a preliminary decree is filed U/S 96 of the C.P.C and against the final decree U/S 97 of the C.P.C. | **6 XP(AD) 105**
20. Any document filed earlier, which indicate the plaintiff saham which subsequently allowed and there is no bar to allotting saham at appellate stage in a suit for partition. | **7 XP(AD) 149**
21. In a suit for partition without asserting the saham as per genealogy of the title of the respective parties cannot pass a decree of partition. | **7 XP III**
22. The Appellate Division views expressed above shall not be binding in the trial court is any suit is filed for partition. In such event the trial court will be at liberty to give saham to the parties in accordance with title and possession established in such partition suit. | **8 ALR(AD) 144**
23. Joint ownership and ejmali possession are pre-requisites of partition suit to be maintainable. | **11 MLR(AD) 113**
24. Sub-sequent suit for partition of suit land is maintainable where the plaintiff was not allotted saham in previous suit. Mere payment of rent by one co-sharer does not extinguish the title of the other co-sharer in joint possession. | **15 MLR(HCD) 197**
25. There are three stages in partition suit. 1. Preliminary decree. 2. Final decree. 3. Execution of decree... and which a decree holder get separate possession through the court in the decreetal land. In the instant case everything was done within a very few days and since the final decree was passed upon vague ascertained of share the final decree is not suitable in law. | **1 LNJ 227**
26. A mere denial of plaintiff's title by the defendant would not convert a partition suit into a declaratory suit. | **2 BLD(HCD) 36**
27. Possession of the one co-sharer is the possession of all co-sharer can be claim title by adverse possession by ousting another co-sharer. | **2 BLD(HCD) 36**
28. Where appeal from preliminary decree infectious when there is no interim order staying the order of lower appellate court. Such an appeal could be heard although a final decree has been passed in the case and no appeal had been filed against the final decree. | **3 BLD(HCD) 30**
29. Whether maintainable without prayer for establishment of title: Admittedly the plaintiff is in possession of land in homestead plot. She should not be driven to file a separate suit in order to prove her right or interest therein - a question of title can incidentally be gone into in partition suit. | **4 BLD(AD) 23**
30. Defendants prayed for saham on the basis of documents admitted into evidence in absence of oral evidence to connect the documents with defense case. Statement made in the W/S are not evidence prayer for saham could not be considered...remand allowed. | **8 BLD(AD) 3**
31. In a partition suit for immovable property all the incidental question of title, however, complicated may be, can be decided and disposed of finally. Onus of proof is spirited and spitted up not fixed like criminal cases. | **1 ADC 124**
32. Suit for partition and declaration of title: Dismissal of title suit does not always bar a subsequent partition suit. | **18 BLD(AD) 95**