

CHAPTER III.

Partition by Brothers.

SECTION I.

Partition improper in the Mother's life-time—Management of the affairs during the continuance of the family partnership—Any one coparcener may insist on separation—Right by representation admitted as far as the third degree.

1. Partition among brothers, after the demise of the father, is next explained. That partition is pronounced to be not lawful, among brothers of the whole blood, while the mother lives, although the ownership of wealth be vested in them by the death of their father. For the text ("after the father and the mother" &c.*) propounds a division of the paternal estate among brothers of the whole blood subsequent to the demise of both parents.

2. It does not intend a distribution of the mother's goods, after her demise. For partition of the patrimony only is suggested by the term paternal; and there is no authority for interpreting it parental.

3. Besides, it would be a repetition: for the division of the maternal estate, on the death of the mother, is subsequently noticed by MANU in a separate text.†

4. Thus YAJNYAWALOYA says "Let sons divide equally the effects and the debts, after the death of both parents. But daughters share the residue of their mother's property, after payment of the debts; and the [male] issue in default of daughters."‡

ANNOTATIONS.

1. *That partition is not lawful.*] The partition is valid, but is not morally right. SRIGRISHNA.

Partition is not lawful while the mother survives. If it be nevertheless made, a share is ordained for the mother. BAGH. *Dayatattva*.

By declaring it unlawful, it is intimated, that partition is not laudable, while the mother is living; not that it is null. CASIRAMA on the *Dayatattva*.

* MANU, 9, 104. Vide C. 1. § 14.

† MANU, 9, 192. Vide C. 4.

‡ YAJNYAWALOYA, 2, 118. Vide supra, C. 1. § 48.

5. Since the latter half of this passage shows, that sons have no right of participation in the mother's goods, if daughters exist; but, if none exist, then sons have the right of succession, being intended by the term "issue;" the father's estate only can be meant, in the former half of the text, by the word "parents:" for otherwise there would be tautology.

6. The author, declaring that brothers may divide after the death of the father and mother, propounds a time subsequent to the demise of both as a fit period of partition; and the association [of their deaths] appears therefore to be designedly expressed.

7. Accordingly SANKHA and LIKHITA say, "Since the family is supported on the inheritance, sons are not independent: but as it were under the authority of a father, as long as the mother lives." They are not independent of their mother: they are not competent to make a partition.

8. VYASA very explicitly declares it. "For brethren a common abode is ordained, so long as both parents live: but, after their decease, religious merits of separated brethren increase."

9. Since the author forbids the separation of brethren by commanding them to live together, and prohibits partition with one whose father and mother are living, the association of their survival is not positively intended in the phrase "so long as both parents live." Therefore, if one parent be living, partition is not lawful: but it is so, when both are dead.

10. Thus VRIHASPATI says: "On the demise of both parents, partition among brothers is allowed: and, even while they are both living, it is right if the mother be past-child-bearing."*

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6. *The author declaring.*] In several copies of JIMUTAVAHANA, I find the name of YAJNYAWALKYA here interpolated. But it appears from the remarks of SRICRISHNA, who refers to the particle "and" as marking the association of the terms, that MANU before cited is the author intended.

9. *The association of their survival is not positively intended.*] If the association, suggested by the dual member in the phrase, "so long as both live," were positive, dwelling together would not be requisite in consequence of the survival of one; partition might therefore take place while the mother was living, and might be even claimed on her death while the father was yet living. The author therefore declares it not to be positively intended. SRICRISHNA.

* Vide supra, C. 2. § 1.

11. Since partition while the mother is living cannot be relative to the mother's particular property, and since the authorized partition after the demise of both parents, which is indicated by the particle in the phrase "even while they are both living," is thus pronounced to be proper; partition among brothers after the death of parents is evidently relative to the father's wealth.

12. Accordingly VYASA propounds partition, in the mother's life-time, made with reference chiefly to her: "If there be many sons of one man, by different mothers, but equal in number, and alike by class, a distribution among the mothers is provided." So VRIHASPATI says: "If there be many sprung from one, alike in number, and in class, but born of rival mothers, partition must be made by them, according to law, by the allotment of shares to the mothers.

13. Since there is no difference in the sons' shares, for they are equally numerous and of the same tribe, partition is to be made by an allotment to the mother, not to the sons. Therefore, as in the case of other wealth of the mother's, so in this instance [of the father's wealth, which is become their property,*] sons have not independent power to make a partition among themselves, while the mother lives; but, with her consent, the partition is lawful.

14. Hence, what is said by GAUTAMA and others ("In partition there is increase of religious merit;†) must be understood after the demise of the mother.

15. If then they desire to remain unseparated, the eldest brother, being capable of the care and management of the estate, may take the whole: and the rest should live under him, as under a father. Thus MANU says, "The eldest brother may take the patrimony entire; and the rest may live under him as under their

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13. *For they are equally numerous and of the same tribe.*] If they were of different tribes, the shares would be unequal; viz. four, three, two, and one, in the order of the classes. If they were not equally numerous, inequality in their rights, as sons might be apprehended. CHUDAMANI.

15. *The analogy of the loaf and staff.*] To gnaw the staff was difficult for the rat; but, if that were accomplished, the eating of the loaf, which was attached to it, was easy. So in other cases, according to the circumstances of them, if one of associated things be true, the other may be rightly inferred. RAGH. *Dayatattva*. Vidé supra. C. 2. § 25.

* ACHYUTA and SRICRISHNA.

† GAUTAMA, 28. 1.

father.”* So GAUTAMA : “Or the whole may go to the first born ; and he may support the rest as a father.”† From the particle “or” it appears, that they may either become separate or continue to dwell together ; and their dwelling together must be by consent of all. Thus NARADA says, “Let the eldest brother, by consent, support the rest like a father ; or let a younger brother, who is capable, do so. The continuance of the family depends on ability.”‡ Even the youngest being capable, may govern all the brethren. The middlemost of course may, being here inferred by the analogy of the loaf and staff.

16. But the partition takes place by the will of any one [of the coheirs], as before intimated.

17 Accordingly [since partition by the choice of one coheir is lawful ;§] CATYAYANA, treating of partition, says : “Let them deposit, free from disbursement, in the hands of kinsmen and friends, the wealth of such as have not attained majority ; as well as of those who are absent.” So a text expresses, “The property of minors should be so preserved until they attain their full age.”||

18. The rule of distribution among sons extends equally to them and to grandsons and great-grandsons in the male line. There is not here an order of succession, following the order of proximity according to birth. For those three persons, the son, grandson and great-grandson, do not differ, in regard to the presenting of two oblations at solemn obsequies, one which it was incumbent on the ancestor to present, and the other which is to be tasted by his manes. Hence it is, that DEVALA says, ‘A father,

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16. *As before intimated.*] For it was declared, in treating of partition, that any one person is complete owner of his own wealth. CHUDAMANI, SRIKRISHNA, &c.

17. *Such as have not attained majority.*] Whose age does not exceed fifteen years. SRIKRISHNA.

As well as those who are absent.] It is here evident, that partition takes place without their consent. SRIKRISHNA, CHUDAMANI, &c.

18. *In regard to the presenting of two oblations &c.*] Where two persons are connected by a common oblation, the one partakes of the oblation presented at the other's obsequies. (Vide infra. C. 11. Sect. 1. § 86.) MAHESWARA.

* MANU, 9. 105. † GAUTAMA, 28. 3. ‡ NARADA, 13. 5. § ACHYUTA.
 || In the *Viramitrodaya*, where the whole passage of JIMUTAVAHANA is quoted, this text is ascribed to VISHNU. It is not, however, found in VISHNU'S institutes

a grandfather, and a great-grandfather, assiduously cherish a new-born son, as birds the holy fig-tree,* [reflecting] he will present to us a funeral repast with honey, meat, and herbs, with milk, and with rice and milk, in the season of rains, and under the asterism *Magha*." So SANKHA LIKHITA and YAMA,† 'A father, a grandfather, and a great-grandfather, welcome a new born son, as birds the holy fig-tree, [reflecting] "he will give us contentment with honey, and meat, and [especially the flesh of] rhinoceros, and with milk, and with rice and milk, in the season of rains, and under the asterism *Magha*." From the mention of the great-grandfather, it appears that "son" here intends a descendant as low as great-grandson. Thus, since such a descendant confers benefits ancestors up to the great-grandfather, by presenting oblations to the manes, the descendant within the degree of great-grandson has an equal right of inheritance.

19. Hence it is, that the son and grandson, whose own fathers are living, have no right of succession; for they do not present oblations to the manes, since they are incompetent to the celebration of solemn obsequies.

20. After the death of parents, the special distribution, [which might have been] made by a father, cannot have effect among brethren. But all the rest, as before explained, must be here again admitted.

21. If there be one son living, and sons of another son [who is deceased,] then one share appertains to the surviving son, and the other share goes to the grandsons however numerous. For

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Hence it is &c.] The author adds this as a further proof, that the daughter's son, though within those degrees, does not inherit jointly with son's sons. CHUDAMANI and ACHYUTA.

20. *The special distribution.*] The allotment of unequal portions on account of piety and so forth. CHUDAMANI and ACHYUTA.

All the rest.] Giving to the first born, or withholding from him, the deduction of a twentieth part. (Vide C. 2. § 74.) CHUDAMANI and ACHYUTA.

21. *For their interest is founded on their relation by birth.*] The right of succession is not founded solely on the gift of a funeral oblation: but also on the relation by birth as son or grandson. Else the daughter's son might be supposed to have an equal title. ACHYUTA.

* *Pippala*. *Ficus religiosa*.

† This is the reading of all the collated copies of JIMUTAVAHANA; but the manuscript of this passage in the *Vramitrodaya* exhibits the name of GAUTAMA.

their interest in the wealth is founded on their relation by birth, to their own father ; and they have a right to just so much as he would have been entitled to.

22. The text, which expresses " Among the issue of different fathers, the allotment of shares is according to the fathers,"* does not relate to this case [of partition between uncle and nephew.†] For the whole estate belonged to the uncle's father, and therefore the whole would belong to him, and no part of it, to his nephews. Or, if partition is to be made as between father and son, under the direction for the allotment of shares according to the fathers, the uncle would have two shares because a father has a right to a double portion ; and the nephews would have a single share. But this is contrary to the approved usage of the wise.

23. The purport of the text, however, is this. If there be a numerous issue of one brother and few sons of another, then the allotment of shares is according to the fathers.

SECTION II.

Partition with or without specific deduction—Provision for the Mother ; and for the Sister.

24. In the next place, [after defining the periods, when partition among brothers may take place,‡] two modes of partition among brethren alike by class are propounded ; namely, either with specific deductions of a twentieth and so forth, or else an equal division.

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22. *The text does not relate to this case.*] Does it signify, that the same share, which would have been the father's, is the son's ? or does it direct, that partition be made as between father and son ? The author successively refutes both these interpretations. **SRIKRISHNA.**

A variation in the reading of the text is noticed by **VISWESWARA BHATTA** in his commentary on the *Mitakshara*, which obviates all ambiguity : viz. " whose fathers are deceased " (*Pramita-pitricanum*) instead of " whose fathers are different " (*Aneca-pitricanum*.)

24. *Either with specific deductions.*] Partition with regulated deductions has been already stated (**MANU**, 9. 121.) Vide C. 2. § 37. The author proceeds to adduce authority for an equal division. (§ 25.)

* **YAJNYAWALKYA**, 2. 121.

† **MAHESWARA.**

‡ **SRIKRISHNA.**

25. HARITA ordains an equal distribution without deductions, in the following passage, after speaking of a father ; "If he be dead, the partition of inheritance should be made 'equally.'" So USANAS says, "This rule of partition is declared for brethren of various tribes, being born of women of classes below the father's ; but the distribution among brothers born of women of the same tribe is ordained to be made equally." Thus PAIT'HINASI says, "When the paternal inheritance is to be divided, the shares shall be equal." YAJNYAWALCYA also declares, "Let the sons divide equally the effects and the debts, after the death of both parents."* Thus, there are two modes of distribution ; namely, with or without specific deductions.

26. It must be argued, that the practice of equal partition is indispensable, as the only mode authorized by law. For the brethren may consent to the deductions by reason of great veneration [for the eldest.] An option exists like that of making or omitting partition.

27. Accordingly, since persons of the present day [who are younger brothers†] entertain not great veneration [for their elders,] equal distribution is alone seen in the world ; as also because elder brothers deserving of deducted allotments are now rare.

28. If one of the coheirs, through confidence in his own ability, decline his share of the wealth inherited from the father, grandfather or other ancestor, something should be given to him, be it only a *Prastha* of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir.

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25. *Two modes of partition* § 24. *Two modes of distribution* § 25.] Constituting an optional alternative. CHUDAMANI. A regulated not an optional alternative. SRIORISHNA.

* 27. *Like that of making or omitting partition.*] Entrusting the estate to the management of the eldest brother, the rest live under him as under a father ; this is omission of partition. Separation is the making of partition. MAHESWARA.

28. *Any future cavil on the part of his son.*] Or recourse to litigation on the plea that his father did not relinquish his share. MAHESWARA.

A different interpretation of the passages here cited, which is maintained by the author of the *Pracasa*, and which disagrees with the *Mitakshara* and of other authorities, is confuted by SRIORISHNA and ACHYUTA.

Thus MANU says, "If any one of the brethren has a competence from his own occupation and desire not the property, he may be debarred from his share, giving him some trifle in lieu of a maintenance."* So YAJNYAWALCYA; "The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some trifle."†

29. When participation is made by brothers of the whole blood after the demise of the father, an equal share must be given to the mother. For the text expresses, "The mother should be made an equal sharer."‡

30. Since the term mother intends the natural parent, it cannot also mean a step-mother. For a word employed once cannot bear the literal and metaphorical senses at the same time.

31. The equal participation of the mother with the brethren takes effect, if no separate property had been given to the woman. But, if any have been given, she has half [a share.§] And, if the father make an equal partition among his sons, all the wives [who have no issue||] must have equal shares with the sons. So YAJNYAWALCYA declares: "If he make the allotments equal, his wives, to whom no separate property has been given by their husband, or their father-in-law, must be rendered partakers of like portions."¶ "To a woman, whose husband marries a second wife,

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31. *But if any have been given, she has half.]* Although this property relate to the case of a superseded wife, yet it may be so assumed in the present case also; conformably with the maxim, that the sense of the law, as ascertained in one instance, is applicable in others also, provided there be no impediment. CHUDAMANI.

If the reasoning be equally applicable, an interpretation of law, ascertained in one case, is admitted in another. Therefore, a son must give, both to his mother and step-mothers, allotments equal to half his own share, if separate property have been bestowed on them, because that is ascertained to be the law in the case of partition made by the father. MAHESWARA.

Provided no separate property have been bestowed on her.] This is the reading of the text, as it is cited by the author of the *Tatwa*. In many copies of JIMUTA-YAHANA, the reading is "them" (*yasam*) for "her" (*yasayai*). It is an error of the transcriber; for the context requires the singular number. MAHESWARA.

* MANU, 9. 207.

† YAJNYAWALCYA, 2. 117.

‡ VRIHASPATI. It is the sequel of the passage cited in Oh. 2. § 35.

§ MAHESWARA.

|| SRIKRISHNA.

¶ YAJNYAWALCYA, 2. 116.

let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her : but, if any have been assigned, let him allot half.”*

32. Wives of the father [meaning step-mothers†] who have no male issue, not those who are mothers of sons, [must be rendered†] equal sharers [with the son.†] So VYASA ordains “Even childless wives of the father are pronounced equal sharers ; and so are all the paternal grandmothers : they are declared equal to mothers.” VISHNU likewise says, “Mothers receive allotments according to the shares of sons ; and so do unmarried daughters.”‡

33. According to the shares of sons.] As sons are entitled to four shares, three, two or one, in the order of the classes ; so are the wives also.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus VRIHASPATI says, “Mothers are equal sharers with them ; and daughters are entitled to a fourth part.”

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Let him allot half.] The allotment of a moiety implies that the other moiety is completed by the woman's separate property. Else so much only should be given as will make her allotment equal to the son's. MAHESWARA.

32. *Childless wives of the father.]* A certain author supposes this to relate to partition made by sons, because the father's wives, whether mothers of sons or childless, take one share apiece at a distribution made by the father. But that is erroneous : for it is inconsistent with the remark, that the word mother does not signify step-mother (§ 80.) SRICRISHNA and ACHYUTA.

Grandmothers.] When the father divides his own father's property with his sons, it is right, that he should give to his own mother, on whom no separate property has been bestowed, a share equal to his own. But if there be any childless step-mothers, he need not give them allotments out of the grandfather's estate but food and raiment only ; for they cannot be intended by the word grandmother and the analogy of the step-mother holds good. CHUDAMANI.

Some say, that the word grandmother here signifies the father's natural mother : for the reasons before explained. But others infer from the use of the plural number, and the mention of “all,” that all the wives of the grandfather shall have shares. SRICRISHNA.

The first is CHUDAMANI's interpretation, which is refuted by MAHESWARA, who maintains the second opinion.

* YAMNYAWALCYA, 2. 149.

† RAGH. on *Daya-bhaga*.

‡ VISHNU. 18. 31—35.

35. A son has three parts and a daughter one. So CATYAYANA declares; "For the unmarried daughter a quarter is allowed; and three parts belong to the son. But the right of the owner [to exercise discretion] is admitted when the property is small."

36. If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus MANU says, "To the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they, who refuse to give it, shall be degraded."*

37. Let each give.] From the mention of giving, and the denunciation of the penalty of degradation, if they refuse, it appears, that portions are not taken by daughters as having a title to the succession. For one brother does not give a portion out of his own allotment to another brother who has a right of inheritance.

38. Thus YAJNYAWALCYA saying, "Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share;"† declares the obligation of disposing of them in marriage, not their right of succession.

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36. *If the funds be small.*] If the property be not sufficient to defray the nuptials of a daughter with a fourth part of the amount receivable by a son, the funds are said to be small. In such a case a partition is made exclusively among the brethren; and afterwards the daughter's nuptials are defrayed with contributions from their respective allotments. SRICRISHNA.

Out of their own allotments respectively.] This is according to the usual reading of the text. But VACHASPATI MISRA reads and interprets *svabhyaḥ svabhyaḥ* 'taken from their own brothers,' instead of *svabhyaḥ nradhyaḥ* 'out of their own allotments.' The author of a commentary on the *Daya-bhaga*, to which RAGHUNANDANA's name is affixed, censures that variation of the reading.

37. *Not as having a title to the succession.*] The doctrine of the *Mitācshara*; that the daughter has a right of inheritance like the son, is thus refuted. RAGH. on *Daya-bhaga*.

38. *By those for whom the ceremonies have been performed.*] MAHESWARA quotes and refutes the author of the *Tatva*, as maintaining, on the authority of this text, that the charges of a sister's marriage are to be defrayed by those brothers only who have been initiated. But no passage of such an import has been found in the *Dayatattva*.

* MANU, 9, 118.

† YAJNYAWALCYA, 2, 125.

39. Thus, [since the daughter takes not in right of inheritance;*] if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule, that a fourth part shall be assigned.

40. This [allotment of a fourth part if the funds be small†] must be understood as applicable only, where the number of sons and daughters is equal. For, if the number be unequal, either the daughter would have a greater portion, or the son would be entirely deprived of property. But that cannot be proper, since the son is principal [in relation to the inheritance].

41. It is stated as an objection, that, as the defraying of the nuptials of the sister is an indispensable obligation under the text of NARADA, which expresses, "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated; contributing funds out of their own portions;"‡ the impoverishment of the brothers is no exceptionable consequence.

42. That is wrong. For the text is intended to provide for initiatory ceremonies of brothers; and the reading of it, which expresses, that "the ceremonies of brethren must be defrayed by

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39. *It is not indispensable that a fourth be assigned.*] For a passage of VISHNU cited by [VACHASPATI] MISRA and the rest, provides, that "the son should defray the initiatory ceremonies [of other sons] and nuptials of unmarried sisters, suitably to the wealth." The *Ratnacara* and the rest concur in this. RAGH. on *Daya-bhaga*.

40. *If the number be unequal.*] If there be four sons or a greater number, and only one daughter, she has a larger portion. If there be four daughters and one son, he is deprived of wealth. SRICHISHNA.

42. *The reading which expresses "ceremonies of brethren" is unauthentic.*] Some writers, who so read the text, interpret brethren as signifying brothers and sisters (the feminine word being merged in the masculine term); and they infer that the ceremonies of both are intended. The author refutes that opinion. CHUDAMANI.

That passage relates to the initiation of brothers.] Is not then the defraying of a sister's nuptials enjoined? Thou art mistaken in that supposition. The marriage of a sister is an indispensable obligation. What then? On the demise of the father, the obligation of completing the initiation of brothers devolves on the brethren. But, in the regard to the marriage of a sister, the authority devolves

* MAHESWARA.

† MAHESWARA.

‡ NARADA, 18. 84

§ VISHNU, 15. 81.

those who are already initiated," is unauthentic,* and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brethren out of the patrimony."† Here the pronouns "those" and "whose" are in the masculine gender. But this text immediately precedes the one before cited ["If no wealth of the father exist &c."] That passage therefore relates to the initiation of brothers.

48. Thus partition of the wealth of the father, grandfather or other ancestor [has been fully explained.‡]

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on the grandfather by the death of the father; and on the brethren, if the grandfather be dead. Thus in a case where the disposal rests with the grandfather, the brethren, though not competent to dispose of their sister in marriage, might be liable to a impoverishment. RAGH. on *Daya-bhaga*.

In fact, after the demise of the father and grandfather, the brother also is bound to defray his sister's nuptials, as having the authority to dispose of her in marriage. Therefore, as the brother may be impoverished by defraying the initiatory ceremonies of numerous brothers, so it is no exceptional consequence that he may be impoverished by defraying his sister's nuptials. This should be considered by the wise. SRICRISHNA.

The ceremonies of brothers include marriage, according to some authors. But [VACHASPATI] MISRA here explains them as terminating at the investiture with the sacrificial thread. RAGH. on *Daya-bhaga*.

* The reading here censured occurs in the *Ratnacara, Chintamani, &c.*, viz., *bhratrinam purva-sansritaih*, in place of *bhratribhik purva-sansoritaih*. The latter is the reading in the *Viramitrodaya, Dayatattva, &c.*

† NARADA, 18, 33.

‡ CHUDAMANI.