

## CHAPTER VII.

*On the participation of sons born after a partition.*

1. The share of a son born after the partition of the estate is now declared. On that subject MANU and NARADA say, "A son, born after a division, shall alone take the paternal wealth; or he shall participate with such [of the brethren,] as are reunited with the [father.]"\*

2. If the father, having separated his sons, and having reserved for himself a share according to law, die without being reunited with his sons; then a son, who is born after the partition, shall alone take the father's wealth; and that only shall be his allotment. But, if the father die after reuniting himself with some of his sons, that son shall receive his share from the reunited coheirs.

3. Thus GAUTAMA says: "A son, begotten after partition, takes exclusively the wealth of his father."†

4. He, of whom the conception was subsequent to the division of the estate, is a son begotten after partition: being procreated by a person, who is separated [from coparceners:] for without conception, there is no procreation. Therefore if the sons were

## ANNOTATIONS.

2. *Having reserved a share according to law.*] It is thus hinted, that, if the father, through ignorance of the law, have made a partition in which he took a very small share for himself, his son, afterwards begotten, shall receive a due allotment from the brethren. SRICRISHNA.

4. *Shall receive his share from his brothers.*] This must be understood where the father remains separate, having reserved for himself what ought to be reserved by him, and having given the residue to his sons. But, if the father be dead, the shares of him and of the brethren must be thrown together, and divided, according to law, by all the brothers. However, CHUDAMANI directs a new partition by mixing the whole of the effects, although the father be living; because the double share, or other allotment reserved by him, was not according to law. In the case supposed, if a share were previously set apart for the child in the womb, the wife's pregnancy being known, all shall participate in the father's allotment [after his demise,] provided there be no son begotten after the partition. But, if the father himself, though apprized of the pregnancy, have given shares to his

\* MANU, 9, 218. NARADA, 13, 48.

† GAUTAMA, 28, 27.

separated [from the father,] while his wife was pregnant but not known to be so, the son who is afterwards born [of that pregnancy,] shall receive his share from his brothers.

5. Not one only, but even many sons, begotten after a partition, shall take exclusively the paternal wealth. Thus VRIHASPATI says : "The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father's share. A son, born before partition, has no claim on the paternal wealth ; nor one, begotten after it, on that of his brother."

6. One, born previously to the partition, is not entitled to the paternal estate : nor one begotten by the separated father, to the estate of his brother. So the same author declares : "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those, born before it, are declared to have no right ; as in the wealth, so in the debts likewise, and in gifts, pledges and purchases."

7. Under the term "all," wealth, however considerable, which is acquired by the father, goes to the son begotten by him after partition.

8. "They have no claim on each other, except for acts of mourning and libations of water."

9. By specifying "Acts of mourning and libations of water" only, the author excludes the remoter pretensions to a participation in wealth.

10. This is applicable only to the case of wealth acquired by the father. But if property inherited from the grandfather, as land or the like, had been divided, he may take a share of such

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#### ANNOTATIONS.

sons, in virtue of his power as owner ; the child in the womb has no right to participate, since their property in those shares is complete : he has a right only to the father's allotment ; and if there be a son begotten after the partition, he is entitled to partake equally with him. SRICRISHNA.

6. *Which is acquired by himself.*] It is thus intimated, that which is acquired through personal labour, on separate funds, by the father who is reunited after partition with another son, belongs also to the son begotten after the partition, and not be the reunited parceners. SRICRISHNA.

10. *Land or the like.*] A corrody and shares are intended by the terms " or the like ;" for gems, pearls &c. are similar to a man's own acquired wealth. SRICRISHNA.

property from his brothers : for partition of it is authorized [only] when a mother becomes incapable of bearing more children. [Consequently, since the partition is illegal, having been made in other circumstances, it ought to be annulled.\*]

11. That is declared by VISHNU : "Sons, with whom the father has made a partition, should give a share to the son born after the distribution."†

12. So YAJNYAWALOKA : "When the sons have been separated, one, afterwards born of a woman equal in class, shares the distribution. His allotment must positively be made, out of the visible estate corrected for income and expenditure."‡

13. Since it disagrees with the ordinance, that "he shall alone take the paternal wealth," (§ 1.) it must relate to hereditary property, for the reason abovementioned.

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ANNOTATIONS.

12. *Must positively.*] The particle *va* is affirmative; and what has been consumed, is consequently excepted. SRICRISHNA.

The particle signifies 'or,' and denotes a regulated alternative. If there be evidence of the income and expenditure, the allotment shall be made, out of the 'visible estate;' if not, it must be grounded on a reference to the amount originally distributed. MAHESWARA.

*The visible estate.*] The wealth forthcoming. ACHYUTA.

The remainder after allowing for income and expenditure : or that which is forthcoming. MAHESWARA.

13. *For the reason abovementioned.*] That which was stated; 'because distribution is authorized when the mother becomes incapable &c.' Therefore, whether pregnancy were known or not; the partition being illegal, which has been made, of the grandfather's estate, without the mother's being incapable of bearing more children, it ought to be annulled; and the two last cited passages will relate to the distribution of such property; but the preceding texts of MANU and the rest regard the father's own acquired wealth. The contrary must not be supposed. SRICRISHNA.

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\* SRICRISHNA.

† VISHNU, 17. 3.

‡ YAJNYAWALOKA, 2. 123.