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LEGAL AND JUDICIAL

Gift Deed Property: Is the House or Land Also Subject to Partition?

30 August 2026

Only the House is Subject to Partition

Hon’ble Justice Gopal Parajuli

Hon’ble Justice Govinda Kumar Upadhyay

Case No.: 070-CR-0079

Subject: Partition and Possession (Ansha Chalan)

Bhagwati Devi Upreti

Versus

Annapurna Upreti

It appeared that the respondent, Bhagwati Upreti, had received the entire land bearing **Kitta No. 25**, together with one floor of the house constructed thereon, by way of a gift deed in her individual capacity. Therefore, the property so received privately by her, pursuant to **Section 18 of the Chapter on Partition of the Muluki Ain and Sections 4 and 5 of the Chapter on Women's Property**, constituted her private property acquired by way of gift.

Accordingly, the other coparceners could not claim that such property was subject to partition.

It further appeared that, after the property had been received by gift deed, **two additional floors were constructed**. The appellant-respondent Bhagwati Devi Upreti was unable to disclose the source from which those additional floors had been constructed. The evidence further showed that the plaintiff and defendants had continued to live together as members of the same undivided family when the additional floors were constructed.

Since there was no evidence establishing that the additional floors had been constructed by Bhagwati Upreti exclusively from her private resources, the Court was required to infer that the additional construction had been made with investment from the **joint family property and resources**.

Therefore, the additional floors or the property thereby increased were found to be **property subject to partition**. Adalat Lawyers in Nepal.

Legal Principle

The decision establishes an important distinction between:

- property received privately by way of a gift deed; and
- additional property or construction subsequently created while the parties continued to live as an undivided family.

Thus, although the land and the portion of the house received by gift deed remained private property, the subsequently added floors were held subject to partition where their construction from private resources was not established.

Land Also Becomes Subject to Partition

Hon'ble Justice Tej Bahadur K.C.

Hon'ble Justice Purushottam Bhandari

Case No.: 070-CR-0080

Subject: Partition and Possession (Ansha Chalan)

Geeta Devi Tiwari

Versus

Ram Chandra Tiwari

At the time the land bearing **Kitta No. 1335** was received by way of gift deed, there was no house constructed upon the land. The evidence showed that the house was subsequently constructed while the plaintiff and defendants were living together as members of the same undivided family.

The construction of the house appeared to have been carried out through the direct or indirect labour of all the coparceners, as well as through joint family property and income derived therefrom.

In such circumstances, it could not be held that the land was the private property of Nand Kumari while only the house constructed upon it was joint family property and therefore subject to partition.

Accordingly, Kitta No. 1335 and the house constructed thereon were found to be property subject to partition among the three coparceners, namely the plaintiff and the defendants.

The disputed Kitta No. 1335 was shown to have been received by Nand Kumari Tiwari, the co-wife of the appellant Geeta Devi Tiwari, from her mother by way of gift deed. Since there was no legal basis for the appellant, being the co-wife, to claim partition in such property, the finding of the Trial Court that Kitta No. 1335 and the house constructed thereon were not subject to the appellant Geeta Devi Tiwari's share in partition, and the judgment of the Appellate Court at Patan affirming such finding, could not be considered reasonable.

Legal Analysis: Gifted Property, House Construction and Partition Rights

The above two decisions raise an important issue concerning the **partition of land and houses received or constructed in connection with property acquired by gift deed** .

The central legal question is not merely whether the land was received by gift deed. It is also necessary to examine:

1. What property was actually received by gift deed?
2. Whether a house existed on the land at the time of the gift.
3. When the house or additional floors were constructed.
4. Whether the parties were living together as an undivided family at the time of construction.
5. What source of funds, property, income or labour was used for the construction.
6. Whether the person claiming private ownership can establish that the construction was made exclusively from private resources.
7. Whether joint family property or income contributed to the construction.

These factual circumstances may determine whether the property remains private or becomes property subject to partition.

Whether a House and Land Received by Gift Can Be Separated for Partition?

The decisions discussed above demonstrate that **land and the structure constructed upon it cannot necessarily be treated separately in every case**.

In the case of **Bhagwati Devi Upreti v. Annapurna Upreti**, the land and one floor of the house received through the gift deed were treated as the private property of the recipient. However, the two additional floors constructed thereafter, while the parties continued to live as an undivided family, were treated as property subject to partition because the recipient failed to establish that the additional construction had been made exclusively from her private resources.

On the other hand, in **Geeta Devi Tiwari v. Ram Chandra Tiwari**, the land had been received by gift when no house existed on it. The house was subsequently constructed while the parties were living together as an undivided family, with the use of joint family resources and labour.

In that circumstance, the Court held that the **land and the house constructed thereon were both subject to partition**.

Commentary

A judgment rendered beyond the scope of the applicable legal provisions cannot be regarded as legally correct merely because extensive reasoning has been advanced in support of it. A judgment must be rendered within the framework of law.

The underlying principle is that persons placed in similar circumstances should receive equal treatment under the law.

In the case referred to above concerning **Nand Kumari Tiwari**, however many arguments may be advanced to defeat her claim, the decision appears to have been rendered contrary to the applicable legal framework.

The proposition that the land and house cannot be separated for the purpose of partition is difficult to reconcile with the decision in **Bhagwati Devi Upreti v. Annapurna Upreti**, discussed above.

The decision in Bhagwati Devi Upreti's case demonstrates that not only the **land and house**, but even **different floors of a house**, may be treated differently for partition purposes where the source of construction and acquisition is different.

The Court held that the portion received privately by gift remained private property, whereas the additional floors constructed from resources attributable to the joint family were subject to partition. This approach appears consistent with the applicable legal principles.

Similarly, in **Mandil Shrestha v. Mahalakshmi Shrestha**, where one-half of the land was treated as private and therefore not subject to partition, the house constructed upon that land was nevertheless held subject to partition. This provides further support for the proposition that the legal character of the land and the structure constructed upon it may, depending upon the facts and source of investment, require separate consideration.

On that basis, the decision in **Bhagwati Devi Upreti's case** appears consistent with the law, whereas the decision concerning **Nand Kumari Tiwari** appears to have adopted an approach that is difficult to reconcile with the applicable legal principles.

Judges are not at liberty to decide cases beyond the limits prescribed by law. Judicial discretion must be exercised within the framework of the Constitution, statutes and established legal principles.

It is not known whether a petition for review was filed against the decision concerning Nand Kumari Tiwari. Even if Nand Kumari accepted that decision, the decision, as discussed above, appears to be inconsistent with the applicable legal principles.

It is hoped that judgments of such nature will not be repeated in future and that cases involving **gift deeds, private property, joint family property, house construction and partition rights** will be decided consistently with the governing law and established judicial principles.

Frequently Asked Questions (FAQs)

1. Is land received through a gift deed subject to partition in Nepal?

Land received privately through a gift deed may constitute private property. However, whether the land or any subsequent construction upon it is subject to partition depends upon the applicable law and the facts relating to acquisition, construction and investment.

2. Is a house constructed on gifted land subject to partition?

Not necessarily. The Court may examine the source of funds, labour and property used to construct the house. If the construction was made from private resources, it may remain private. If it was constructed using joint family property, income or labour while the parties were living as an undivided family, the house may become subject to partition.

3. Can a house and land be treated separately in a partition case?

Yes, depending upon the facts and the source through which the land and house were acquired or constructed. The decision in **Bhagwati Devi Upreti v. Annapurna Upreti** illustrates that different portions or floors of a house may have different legal characters depending upon their source.

4. What happens if additional floors are constructed after receiving land through a gift deed?

Where additional floors are constructed while the parties remain members of an undivided family, the source of the construction becomes important. If the recipient cannot establish that the additional construction was made exclusively from private resources, the additional construction may be treated as property subject to partition.

5. Does joint family investment in a privately gifted property create partition rights?

Joint family investment may give rise to a claim concerning the resulting construction or enhancement of the property. The precise legal consequence depends upon the facts, applicable law and evidence establishing the source of the investment.

6. What if the gifted land was vacant when the gift deed was executed?

Where land was received by gift without a house and a house was subsequently constructed while the parties were living together as an undivided family, the source of construction becomes particularly important. The decision in **Geeta Devi Tiwari v. Ram Chandra Tiwari** provides an example where both the land and the house were treated as property subject to partition.

7. Does the labour of coparceners matter in determining whether a house is partitionable?

Yes. Where evidence shows that the house was constructed through the direct or indirect labour of coparceners together with joint family property or income, such circumstances may be relevant in determining whether the resulting property is subject to partition.

8. If a person cannot prove that the house was built with private funds, can the house be partitioned?

Where the parties were living as an undivided family and the person claiming private ownership cannot establish that the construction was made exclusively from private resources, the Court may consider whether joint family resources contributed to the construction. The Bhagwati Devi Upreti decision illustrates this approach.

9. Does receiving property through a gift deed automatically exclude all claims by other coparceners?

No general conclusion can be drawn in every case. Property validly received as private property may remain outside partition. However, subsequent construction, investment, improvement or acquisition through joint family resources may create a separate issue concerning partition.

10. What is the key legal issue in partition cases involving gifted land and houses?

The principal issue is often the **source and nature of the property**. The Court may consider when the property was acquired, what was received through the gift deed, when the house was constructed, who financed the construction, whether joint family resources were used, and whether the parties were living together as an undivided family.

Key Legal Takeaway

The mere fact that land was acquired through a **gift deed** does not, in every factual situation, determine the legal character of a house subsequently constructed upon it.

The Court may need to distinguish between:

- **land privately received through a gift deed;**
- **a house or floor existing at the time of the gift;**
- **additional construction made after the gift;**
- **private funds used for construction;**
- **joint family property or income used for construction; and**

- **labour contributed by members of the undivided family.**

Accordingly, the question of **whether only the house is subject to partition or whether both the house and land are subject to partition** must be determined by examining the specific facts, evidence, source of acquisition and applicable law in each case.

The Supreme Court of Nepal has emphasized the importance of its decisions and principles for legal study and research, and the Court's English publications are intended, among other purposes, to make significant judicial decisions accessible to the wider legal community.