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Partition - Instrument of - Registration - Oral partition - It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration u/s 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration.

Act, 1872 — Section 91 , Registration Act, 1908 — Section 17, 17(1), 49 - [partition requires registration](#).

- Registration - Oral partition - It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration u/s 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of [will](#), but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well-settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondly evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: See Mulla” s Registration Act, 8th Edn., pp. 54-57.

[1988 PLRonline 0003](#)

Tags: [Evidence Act S. 91](#), [Family settlement](#), [Partition](#), [Partition - Oral](#), [Registration Act S. 17](#), [Registration Act S. 17\(1A\)](#)