
HINDU JOINT FAMILY & KARTA RIGHT OF ALIENATION

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ABSTRACT

Karta of the Hindu joint family plays an important role. He holds a prominent position and holds the responsibility of the family. He can be called as the person with vast powers. In a hindu joint family the senior most male member of the family is considered as the Karta. In the absence of any senior most male member of the family the junior male member is considered as the Karta. In exceptional cases the female can also act as the Karta and also in rare cases there can be two Kartas in a family. The Karta can also look after the legal proceedings of the family and he can also represent the family in such conditions. The senior most male member is the Karta of the joint family. *Jandhayala Sreemamma v. Krishnavenamma AIR 1957 A.P.434*. In the case of Hindu Joint Family a suit to set aside on alienation filed by the younger of the two brothers within three years of his attaining majority would be barred by limitation if the elder brother, who was the manager and an adult has failed to sue within three years of his attaining majority

In the Hindu Succession Act that came into force on June 17, 1956 worked for the cause of women's right to inherit property. Over a period of time many changes were also made that improved the condition of women in a hindu joint family.

Alienation refers to the transfer of property. For eg: sales, gifts, mortgages, and so forth Property alienations have an additional significance in Hindu regulation, as, typically neither the Karta (the chief of a joint family and the properties of such joint family. He additionally cares for the customary expenses of the family and furthermore safeguards the joint family property) nor some other Coparcener has indisputably the full force of alienation over the joint family property or over his advantage in such property.

Keywords: Hindu Joint Family, Karta, survivorship, Hindu Succession Act, Alienation, Coparcener etc.

Abbreviations

HUF	Hindu Undivided Family
HAS	Hindu Succession Act
HMA	Hindu Marriage Act

Cases And Statutes Involved

Cases

1. KANDASAMI VS. SOMAKANDA (1910).
2. Manohar vs. Dewan (1985)
3. Gangi vs. Tammu (1927)

Statutes

1. Constitution of India
2. Hindu Succession Act, 1956
3. Hindu Marriage Act, 1955

Introduction

In a Hindu joint family there are common ancestors and all the male upto any generation together with the wives, widows, unmarried daughters of the common ancestor and of the lineal male descendants. In the hindu joint family, Karta is the manager of the joint family and holds an important position in the family. He caters the need of and day to day expenses of the family. He holds an important position and also protects the family property. The most senior member of the family is assumed to be the karta of the family. No outsider or unknown person can become the karta of the family. They hold special power and respect. If there is a senior most person in the family then the junior person cannot become a Karta, unless all coparceners agree. In most of the cases Females are not accepted as the Karta but in exceptional cases they can also act as Karta. As per the Nagpur High Court, a mother in the absence of an adult male can act as a Karta. Unlike the relationship between the principal and agent or like the partners in a firm, Karta it's basically the head of the family and can take decisions on their behalf. He has

a fiduciary relationship with the other members of the family. The position of the Karta can be understood as the Sui Generis (of its own kind). If a coparcener charges the Karta, then the burden of proof lies on the coparcener to prove that such acts are Karta's malafide act.

Karta enjoys a supreme position in the family and enjoys some powers.

Right to income- any person of the family who does his job or business out of joint family property must give his income to Karta. The Karta then allows the fund to the other members of the family as per their requirements and necessity. allows the fund to the other members of the family as per their requirements and necessity. allows the fund to the other members of the family as per their requirements and necessity and distribution of t and distribution of the fund to the other members of the family as per their requirements and necessity.

Power to get into a contract- the Karta of the family has the power to get into a contract which will be enforceable by the family.

Representation- the Karta has the power to re-present the family all matters, legal, social and religious. He can also enter into any transaction on the behalf of the family.

Alienation- Karta also holds the power of alienation under three conditions- when there is a benefit of estate, a legal necessity arises, and indispensable duties.

Management power- the Karta holds absolute powers and he can manage the family functions and other events like family property. He can do whatever you think is the best for the estate and no one can question his management.

The karta also holds other powers and rights of the family which is used for the betterment.

Who can be the Karta?

In a Hindu joint family, Karta is the most senior male member of the family. As long as he live, he will remain as the Karta of the family. However due to certain exceptional cases like insanity the next senior most male member will become the Karta. In the presence of the senior most member as Karta, a junior male cannot become the Karta unless the coparceners agree. So long as the members of a family remain undivided the senior member is entitled to manage the family properties including even charitable property and is presumed to be the manager until

the contrary is shown. But the senior most member may give up his right of management and a junior member may be appointed as manager.¹

The concept of Karta or the manager of the family is more than 2000 years long. In rare cases the Female members can become the Karta. In the case of *Tax v. Seth Govind Ram*² After reviving the authorities it was held that the mother or any other female could not be the Karta of the Joint Family. As per the Hindu sages, only a coparcener can become the Karta of the family. As the females of the family cannot be coparceners, eventually they cannot become the Karta of a Joint Hindu Family. According to the Dharmashastra in absence of male members, female members can act as karta of the family, or in case where male members are minors, she can act as karta. It has been a contested issue for a very long time that whether, the daughters in the house have equal say in the ancestral and self-acquired property or not. The main issue in this contention is whether a daughters stands at equal footing as the sons of the house and does dowry at the time of marriage effects the share of daughter? The literature present on the issue is fairly settled but with quite a handful of caveats here and there. The Mitakshara School of Hindu Law covers the concept of coparcenary, i.e., parental property succession to the coparceners [a person, who assumes a legal right in his ancestral property, by birth in a Hindu Undivided Family (HUF)]. Initially, the daughters had a hard time claiming any rights in the family's parental property, but since the 2005 amendment to the Hindu Succession Act, the daughter's have got the right to claim over her father's property, which is at par son's right over the property.

A daughter's right over her father's property was only available if the property was ancestral. In this case, if the property was worth Rs. 10 crores, both the son and the daughter will receive equal parts of the property, i.e., Rs. 5 crores each. In case of father's self-acquired property, he has the last word on whether to give any share to his daughter or create a Will as he thinks fit. The Amendment Act of 2005 changed the status of daughters giving them the right over their father's property only in the case, if it was an ancestral property owned by the father and did not consider any self-acquired property owned by the father. If the father's Will is not in existence, then in such scenarios the self-acquired property is also divided equally amongst the children of both the genders.

¹https://www.legalserviceindia.com/articles/karta_hsa.htm

²AIR 1966 S.C. 2

The marital status of a daughter is immaterial in daughter's rights and liabilities. Dowry is considered illegal in marriage, so therefore, any transactions related to dowry does not effect the daughter's right or claim in any manner what so ever. The recent supreme court judgment clarified that even married daughters are considered coparceners.

Alienation of Coparcenary Property

Alienation refers to the transfer of property. For eg: deals, gifts, contracts, and so on Property alienations have an additional significance in Hindu regulation, as, normally neither the Karta (the chief of a joint family and the properties of such joint family. He additionally cares for the normal costs of the family and furthermore safeguards the joint family property) nor some other Coparcenar has indisputably the full force of alienation over the joint family property or over his advantage in such property. Notwithstanding, under the Dayabhaga school (in this way of thinking the male descendants don't hold any directly over the hereditary property after the ancestor's death), a Coparcener has the alienation directly over his squarely in the alienation property.

The alienations related to coparcenary property under the Hindu law are governed by the Hindu Succession Act, 1956 and the Transfer of Property Act, 1882.

Karta's power of alienation

Generally, an individual Coparcener, including the Karta, comes up short on ability to discard the joint family property without getting the assent of any remaining Coparceners. In any case, as per the Dharmashastra, any relative is enabled to distance the joint family property.

The Mitakshara school is express on this. As per Vijnaneshwara, under 3 excellent conditions, the alienation of the joint family property by an individual is conceivable:

- 1.Apatkale, for example during trouble;
- 2.Kutumbarthe, for example for the family;
- 3.Dharmarthe, for example for discarding vital obligations.

Notwithstanding, with the coming of time, Vijnaneshwara's definition has gone through alteration in two viewpoints. Initially, the alienation power isn't exercisable by some other

relative, with the exception of the Karta.

Besides, the joint family property can be estranged for the accompanying 3 purposes:

1. Legal need;
2. Benefitting the domain;
3. Acts including irreplaceable obligation.

Coparceners power

Neither the Mitakshara nor the Smritikars presented any kind of force of alienation to the Coparceners over their unified interest in the joint family property.

Nonetheless, the literary authority is exceptionally restricted in such manner. The law connecting with Coparcener's alienation power is an offspring of legal regulation. The principal advance arose when it was held that an individual cash order against a Coparcener could be executed against his unified revenue in the joint family property. A few courts have broadened this guideline for including deliberate alienations moreover. In this way the Coparceners' alienation power can be ordered under the accompanying heads:

Compulsory Alienation - This alludes to the alienation of the unified interest in the execution suits. The Hindu sages enormously stressed upon the installment of the obligations. The courts held onto this Hindu lawful standard and began its execution on private cash orders against the joint family revenue of the judgment-borrower Coparcener.

In *DeenDayal versus Jagdeep* (1876), the Privy Council settled the law for every one of the schools of Hindu Law, by holding the buyer of unified interest at an execution deal during the lifetime of his different obligation gets his advantage in such property with the force of surveying it and recuperating it through the parcel.

This standard is, be that as it may, as held in *Shamughan versus Ragaswami* restricted to the non-execution of the announcement, against the Coparceners interest, succeeding his downfall.

Deliberate alienation - After tolerating the way that the unified revenue of a Coparcener is appendable and saleable during the execution of a cash order against him, the subsequent stage

included, stretching out the rule to intentional alienations too.

LANDMARK JUDGEMENTS

KANDASAMI VS. SOMAKANDA³(1910)

It was observed in this case that Karta can alienate the joint family property, after obtaining the consent of the other Coparceners, even in the absence of legal necessity, the benefit of the estate, or acts involving indispensable obligation. Provided that the consenting Coparceners are adults.

Manohar vs. Dewan⁴ (1985)

Dewan Chand, the dad of the appellants, sold off land for Rs. 8000/- . The appellants filed a suit for joint belonging over the said land, claiming that they comprised a joint Hindu family with their dad, that the land sold was a coparcenary property, and that the deal was executed with next to no consideration and lawful need. The suit was challenged by the merchants who went against every one of the claims and further argued that the deal having been made to assist the family, and being a demonstration of good administration was, hence, restricting on the plaintiffs. The Trial Court in the wake of recording proof of the gatherings negated the supplication that the property was coparcenary property and further held that the deal was executed in return for consideration and lawful need and as a demonstration of good administration excused the suit. Its discoveries were asserted on advance which prompted the recording of this second allure by the plaintiffs. Here it was held that any distance without the assent of Coparceners and furthermore for any reason barring legitimate need will be void stomach muscle initio.

GANGI VS. TAMMU⁵ (1927)

A person had two sons, one of who had predeceased him, leaving only one son, the present plaintiff. The younger son and his son were the present defendants. There were also several daughters.

³(1910) 20 MLJ 371

⁴ AIR 1985 P H 313

⁵ (1927) 29 BOMLR 856

That person had made 3 wills before his death asserting that the properties were self-acquired. However, such properties were later found to be ancestral and thus could not be disposed of through will.

The Privy Council, in this case, held that dedication of a portion of the joint family property for the purpose of religious charity may validly be made by the Karta, if the property allotted is small compared to the absolute means of the family. Such alienation cannot be made through a will.

Background and History

The time goes back to when there was no codified law that governed the inheritance of property among the Hindus. Based on caste and customs various laws were formed, but difference practices of these laws can be witnessed in different locations. To establish a uniform law that would deal with all forms of coparcenary inheritance under the Hindu law, the Hindu Succession Act, 1956 was enacted.

The Hindu Succession Act, 1956 introduced the survivorship rule, i.e., the property devolves upon the survivor only after the death of the common ancestor. The inheritance of the ancestral property depended on this rule. The coparcenary rights on such property was given only to the male members who fall within the ambit of three categories of coparceners. They were known as lineal descendants of the ancestor.

Women were not considered to be the equivalent legal heirs of the ancestral property as to male members of the family. The reason for such exclusivity was based on the argument of marriagewhere the daughter will one day marry and become a part of some other family. The exclusion of wife of the coparcener, was based on the reason that she does not count as the direct bloodline of the ancestor. This discriminatory approach towards gender and the oppression of the fundamental rights of women called for an amendment of the Hindu Succession Act, 1956.

After five decades of going back and forth over the topic of deciding whether a woman has the right to inherit the coparcenary property or not, the Hindu Succession (Amendment Act), 2005 was passed. Coparcenary property here means a property that is inherited by any Hindu from his father or grandfather or great grandfather. Coparcener is a term used to describe any person who has the right to inherit the ancestral property by birth.

It amended the provision which took away the right of daughters to inherit coparcenary property. In case a Hindu dies then the right on the coparcenary property shall be equal among the daughters and the sons. It established that the daughter of a coparcener shall be a coparcener by birth just as is the son.

the survivorship rule was done away with and introduced Testamentary Succession and Intestate Succession. In a Hindu Undivided Family, the demand of partition was entitled to the daughter as is given to son. A daughter on her own will can dispose-off her share of the coparcenary property.

In case a partition happens immediately before a female coparcener dies then the children of such coparcener shall be entitled to inherit the coparcenary property.

Hindu Succession (Amendment) Act, 2005 proved to be more gender-neutral. It cut off the aspects of gender discrimination and oppression of the fundamental right to equality of women associated with the 1956 Act. It empowered women to be the coparceners in inheriting the Mitakshara Coparcenary Property. It upheld the constitutional principles by providing equal rights to women. However, the Amendment Act came with its ramifications of legal ambiguity.

Conclusion

From the above analysis, it is clear that the coparcenary relationship exists in a Hindu joint family, beginning from the senior-most male part up to the four degrees. Such senior-most male part is considered as the Karta of the joint family and has the ability to distance the joint family property with the assent of any remaining Coparceners. Notwithstanding, such alienations must be done in situations including legitimate need, the advantage of the bequest, and performing basic commitments like strict or devout exercises. Aside from the Karta; the dad, a Coparcener, or the sole enduring Coparcener is fit for moving a joint family property with the assent of other Coparceners or by self, all things considered.

Nonetheless, it is fitting that to manage lesser intricacies it is in every case better that individuals clutch their own property and segment the offers for their descedants..

BIBLIOGRAPHY

1. <https://www.scconline.com/blog/post/2021/12/14/explained-can-karta-alienate-joint-hindu-family-property-without-coparceners-signature/Judgments>
2. https://www.legalserviceindia.com/articles/karta_hsa.htm
3. Family law by Paras Diwan
4. Kandasami vs. Somakanda (1910)
5. Manohar vs. Dewan (1985)
6. Gangi vs. Tammu (1927)