

Short Note on Hindu Joint Family- Under Mitakshara and Dayabhaga

Saimy Eliza Abraham
Assistant Professor
KMCT Law College, Kuttippuram,
Kerala, India

ABSTRACT:

Joint family is a fundamental aspect of Hindu Law in which the concept of joint family is where their common ancestor and his male lineal descendants along with other members such as wives, daughters, unmarried persons who stay together under one roof sharing everything in common. In both the school i.e. Mitakshara and Dayabhaga. The concept of joint family property is the area which makes each of them different from one other. For every Hindu there will be no escape from the Joint Family, may be in one generation or other the Hindu will come into the existence of Joint Family automatically. Therefore it is mentioned under the Hindu Laws that there is a presumption that each family will be considered as a Joint Family. So under this article would be focusing more on the concept of Hindu Joint Family involved and the major roles played by of Karta, Coparcenary in handling with the Joint Family Property. Apart from all the above will come into the major difference between Mitakshara and Dayabhaga.

Keywords: Hindu Law, Joint Family Property, Mitakshara, Dayabhaga.

I. INTRODUCTION

Before began with the study firstly we will understand the layman language what is Joint Family Property? According to Oxford dictionary Joint Family means were an extended family consisting of two or more generation and their spouses living together as a single household. So similarly the Hindu Joint Family is the composition of a common ancestor along with his lineal male descendants and their wives, daughter's etc. So for the existence of joint family there must be a common ancestor but it doesn't mean that for the continuance of Joint Family the common ancestor must require, by this it's meant that whenever a common ancestor dies there is always an addition to the lower link of the Family. So once an upper link is removed it doesn't means that the Joint Family will end. This concept is followed under both Mitakshara and Dayabhaga but it is an area where it makes distinguish between each of them. In most parts of India the Mitakshara concept of Joint Family is followed but in West Bengal, Assam, and other part the Dayabhaga concept of Joint Family is followed by the people.

In a case *Rajgopal v Padmini*¹ whenever if two or more families agree to live together by sharing their food, work, resources, gains etc. into a common stock, then there will be an existence of Joint Family. In other case *Ram Kumar v Commr. Income Tax*² It was observed that Hindu Joint Family is considered as a unit and it is headed by a Person called as Karta.

¹ AIR 1990 Mad 353

² AIR 1953 ALL 150

In Mitakshara Joint Family Property son has a right over the property since the birth, even an illegitimate son or a widowed daughter has a right over the property of their father's Joint Family Property. Another feature is the right to Maintenance and right of survivorship which will be given to the unmarried daughters and other members respectively in the Joint Family. Under Mitakshara only Joint Family property will be acquired by the coparcenary by the concept of succession and survivorship. In case *Board of Revenue v. Muthu Kumar*³ it was observed that when a son inherits the father's separate property, he will acquire it as a separate property even if he has a son under Section 8 of Hindu Succession Act⁴. Whereas in Dayabhaga Joint Family Property son has no right over the properties by birth. Even the concept of Survivorship is not given to son and therefore there is no joint family between the son and the father. Under Dayabhaga it includes all the properties both self-acquired and joint family property will be devolve by succession

II. COPARCENARY UNDER MITAKSHARA SCHOOL OF JOINT FAMILY

Coparcenary idea under Hindu Law was mainly by the male member of the family where just children, grandsons and great-grandsons son who have a right by birth, who has an interest in the coparcenary property. No female of a Mitakshara coparcenary could be a coparcener but she will always be a part of the Joint Family. So under Mitakshara a son, son's son, son's son's son can a coparcenary i.e. father and his three lineal male descendants can be a coparcener.

For Example: Suppose in a Joint Family a Coparcenary will be consisting of four members including father and his three male lineal descendants. They will be form a coparcenary with the limit of four degree Fig. No. 1.

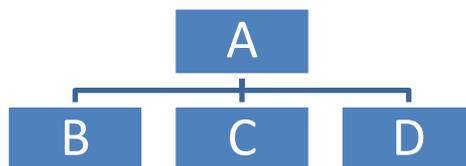


Fig. No. 1

Suppose if a Joint Family consist of eight male lineal descendants i.e. B, C, D, E, F, G, H, I. then they will not be forming a coparcenary because we have understood from the above example that only a coparcenary can be consisted on four degree, then B, C, D, E, F, G, H, I Fig. No. 2 will not form a coparcenary in the Joint Family. If they have to a coparcener in the family then only four degree members should be taken into the consideration i.e. B, C, and D Fig. No. 3 along with a common ancestor. Then if anyone of the coparcener dies, the next person be added to the coparcenary subsequently.

³ AIR 1979 Mad

⁴ Hindu Succession Act, 1957

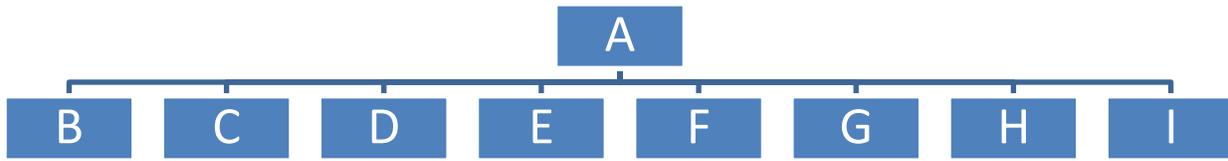


Fig. No. 2

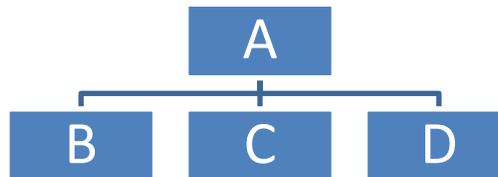


Fig. No. 3

In case *Venugopala v. Union of India*⁵ it was held that under Mitakshara School of coparcenary is based on the notion of birth right of son, son's son, son's son's son. All this concept were followed by the Hindu Succession Act, 1956 but there was recent amendment made to the Hindu Succession (Amendment) Act, 2005 that even a daughter is entitled to a coparcenary under the joint family. In *SubhashEknathraoKhandekar v. PragyabaiManoharBirader*⁶ it was held that even a daughter can be a coparcener according to the Section 6 of the Act⁷, but widows of the son can't be a coparcener according to the Act.

So all the examples it's clear that a coparcenary can't be consist of a female under Mitakshara School either by entering into the agreement between the members of Joint Family nor with the coparceners. It is a creation of law that only four degree lineal male descendants can be coparcenary. We have noted under Mitakshara School the coparcener's acquires a birth right over the properties of the Joint Family property but the main issue is that the interest acquire them will be fluctuating and unpredictable. It means that until the partition is done in the Joint Family property share will not be fixed or specified. The interest of person will be fluctuating and unpredictable because there can be birth and death happens in the family by which the share of each individuals will be effected.

Suppose, in a Joint Family a coparcenary consist of a father F, and two son A and B. then if partition happens in this family each of them will be entitled to a share of 1/3. But suppose if one more son is born to Father (F) i.e. C and partition was not done in that family then we can say that the share of each person will be fluctuating

⁵ AIR 1969 SC 1094

⁶ 2008 Bom. 46

⁷ Hindu Succession (Amendment) Act, 2005

because one more person is added to that family members. So it is understood that only by the concept of partition the shares can be fixed for each persons. Under Mitakshara School there’s a concept of community of interest and unity of possession.

The coparceners have the following rights:

- Right to maintenance: Every person in the joint family property is entitled to get maintenance. Mainly the female members, the persons who doesn’t receive any share from the family because of disqualification grounds, or unmarried daughters, then all of them will be getting maintenance from the Joint family.
- Right to challenge alienation: The term alienation means transfer of property in case of any legal necessity or benefit of the estate. The coparcener, karta and the sole surviving coparceners have the right to alienate the property for the debts of the family or for any kind of legal necessity of the Joint family. If the above mentioned person alienate the property with any kind of improper intention or without any clear intention then the coparcener can challenge the alienation.
- Right to partition: The coparcener’s have the right to partition in the joint family property. Until the partition is done, the shares of the each individuals will be fluctuating and unpredictable.

A. COPARCENARY WITHIN THE COPARCENARY

In Mitakshara school there’s a concept of Coparcenary within the Coparcenary i.e. a separate coparcenary’s can be existed within a coparcenary. Suppose a coparcener consist of P and three sons Q, R and S. Q having two sons QS1, QS2. R having three sons RS1, RS2, RS3. Suppose P and three sons Q, R and S acquire the separate property then when Q dies his separate property can be acquired by his sons QS1, QS2 and they can form a separate coparcenary themselves. This concept is called Coparcenary within the Coparcenary. Fig. No. 4.

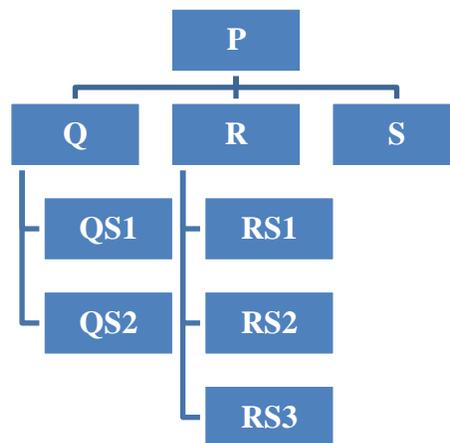


Fig. No.4

B. CLASSIFICATION OF PROPERTY

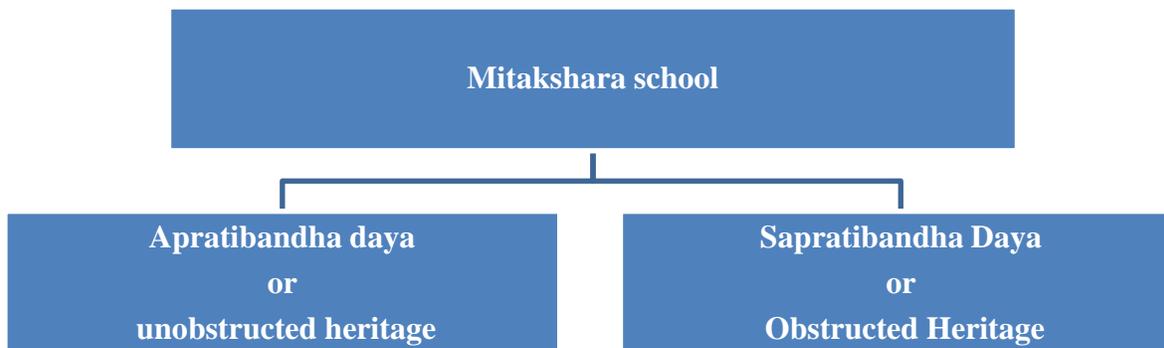


Fig. No. 5

Apratibandha Daya (unobstructed heritage) property inherit from direct male ancestor but not exceeding three degree who is higher than him. In case *Radha v Ram*⁸ it was held that the property can be acquired by son and son's son by the interest of birth. Under the concept heritage is devolved by survivorship. Sapratibandha Daya (Obstructed Heritage) property inherited from any other relations i.e. paternal uncle or brother, nephew etc., under this its devolved by inheritance.

Under Hindu Law, the property is furthered divided into:

- Joint Family Property: Important aspect of Hindu Joint Family. Mainly under this properties are inherited from ancestral Property by any Ancestor or ancestress.
- Separate Property: In this property acquired by individuals will be involved.

C. KARTA

Karta is a person who acquires a main position in the joint family property. He is denoted a manager, occupier of the family. The position of Karta is known as Sui Generic means he hold a unique position in the Joint family property. There can be more than once Karta in the Joint Family⁹. The Karta can be the Senior most male member of the family. His main duty is to represent his family members or act behalf of them. He is a person to whom all the family members are depended upon just they hold a fiduciary relation between them that they always wants a person to manage and look after the wellbeing of the family without any issues. So the Karta will look after the females, minors in the joint family and also give them maintenance. If the Karta fails to give maintenance then he can be sued or the maintenance as well as the arrears of the maintenance. He is responsible to give maintenance to unmarried daughters in the Joint family along with the debts if the family is

⁸ AIR 1985 Pat. 285

⁹ Darshan v. Prabhu, AIR 1946 ALL 67.

having at any point of time. Thus all this will be the liability of a Karta to maintain the Joint Family member as well the business carried on.

The following persons can be Karta in the Joint Family:

- Senior Most Male Member: It is observed in *Shreeama v. Krishavenanama*¹⁰ that the Senior male can be Karta without the agreement or consent of the coparceners and he hold the Kartaship
- Junior Male Member: it is observed in *Narendra Kumar v. Commissioner of Income Tax*¹¹ that Junior Male can be Karta by understanding or agreement among the coparceners. In case *M/s Nopany Investments (P) Ltd. V. Santokh Singh*¹² it was held that the Junior Karta will not the capacity to file a suit. In *HariharSethi v. Ladu Kishore Sethi*¹³ it was held by the Orissa High Court that junior coparcener can be the Karta when the senior most coparcener waives his right of Karta then a junior member can become Karta.
- Female Member: It was observed in *Pandurang v. Pandurang*¹⁴ that the females can be Karta in the absence of the male adult member. In the case *Commr. Of Income Tax v. Seth Govind Ram*¹⁵ it was held that the females can't hold the position of Karta as per the Hindu Law text. It is contravention part of the Joint Family.

D. KARTA'S POWER IN THE JOINT FAMILY PROPERTY.

1. Power to manage
2. Power to contract debt
3. Power to represent¹⁶
4. Power to enter into contracts
5. Power to refer dispute to arbitration
6. Power of acknowledgment¹⁷
7. Power of alienation

¹⁰ AIR 1957 AP 434

¹¹ AIR 1976 1953

¹² AIR 2008 SC 678

¹³ AIR 1968 SC 678

¹⁴ AIR 1847 Nag. 178

¹⁵ AIR 1966 SC 24

¹⁶ *Amrit v. Suresh*, AIR 1970 SC 5

¹⁷ Section 21, Limitation Act.

III. COPARCENARY UNDER DAYABHAGA SCHOOL OF JOINT FAMILY

There is no concept of Joint Family under the Dayabhaga School as compared to the Mitakshara. There is no coparcenary consisting of Father, son, son's son, son's son's son. The existing of Dayabhaga coparcenary comes only after the death of the father, by that the son will inherit the property of him and constitute a coparcenary. The concept of Dayabhaga is followed only in certain parts of India like West Bengal, Assam etc. in this school there is no right by birth given to son.

Son can inherit the property on his father's death. Likewise when son dies his heir's male or females can succeed his property. If suppose the son dies leaving behind widows or daughter's then they can succeed the property and becomes coparcener. The main difference between both the schools is that here the females can become coparcener. Here the each coparceners takes a definite shares, unity of possession.

Suppose in a family consist of P and three sons B, C, D. On the death of A, the B, C, D will consist a coparcener. On the Death of B his heirs will coparcener and so on. But under Dayabhaga school the coparcenary can't consist of only females, there should be a male in first and followed by female's members. So if a male dies leaving behind his widow and two daughter they will succeed upon his property but will not be forming a coparcener.

A. CLASSIFICATION OF PROPERTY

Under Dayabhaga school also classify the properties in Apratibandha daya (Unobstructed Heritage) and SapratibandhaDaya (Obstructed Heritage). But Unobstructed Heritage is not recognised under this school. All the property under this school is governed by the Obstructed Heritage. All other classification of Property under Mitakshara is similar to Dayabhaga.

B. KARTA

Similar to other school, here the eldest male person will be Karta. The power, its liabilities and power of alienation is similar to of the Mitakshara School.

IV. CONCLUSION

So by this paper we have understood the concept of Joint Family Property under Mitakshara and Dayabhaga School. Coparcenary idea under Hindu Law was mainly by the male member of the family where just children, grandsons and great-grandsons son who have a right by birth, who has an interest in the coparcenary property. No female of a Mitakshara coparcenary could be a coparcener but she will always be a part of the Joint Family. So under Mitakshara a son, son's son, son's son's son can a coparcenary i.e. father and his three lineal male descendants can be a coparcener. There is no concept of Joint Family under the Dayabhaga School as compared

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