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Ancestral Property and Its Significance in the Contemporary Hindu Law

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The basic motto of this article is to explain the various types of ancestral property like that inherited from any of the male descendants until three degrees upwards, the property acquired by adverse possession namely the one inherited from the maternal grandfather, the one which is obtained by means of a will or a gift from a paternal ancestor, the one which is inherited from collaterals, the various accretions which are obtained and the share which is allotted on the partition. The major focus of the article is to explain the different amendments and developments in the Hindu Law to fit the ongoing circumstances in not only defining the legal heirs of the ancestral property but also the distribution of this property amongst them. One of the significant amendments in the Hindu Law is made in the year, 2005 through which the daughter in the family is also added as a coparcener.

Keywords: *ancestral property, hindu law, partition.*

INTRODUCTION

The property which is acquired from any ancestor is said to be ancestral property. The several types of inherited property could be any of the following:

- Property which is inherited from any of the male descendants until three degrees upwards.

- Property which is acquired by adverse possession.

PROPERTY INHERITED FROM ANY OF THE MALE DESCENDANTS UNTIL THREE DEGREES UPWARDS

In this, the property is inherited from the father, father's father, or father's grandfather. This is said to be apratibandhadaya according to the Hindu Mitakshara Law. This is also called unobstructed heritage because there is no breakage in the male lineage and the property is devolved upon by survivorship which means that the sons, grandsons, and great-grandsons of anyone who inherits the property attain the rights attached to the property and acquire an interest in that property at the very moment of their birth.

In the case of *Sirtaji v AlguUpadiya*,[1] the Court held that if a person inherits a movable or immovable property from his father or father's father or father's father's father, it is said to be an ancestral property about the male issue. If a person, X has male lineal descendants and then subsequently if some more are born, then they get entitled to an interest in the property by virtue of their birth and X cannot retain absolute ownership for the same and the person cannot dispose of the property at his own will and this is well stated in the case *of Jugmohandas v Mangaldas*[2]and after the Hindu Succession Act, 1956 has come into effect, the position of the same has been reinforced. There is no scope for the father to change the nature of the property from the joint family property into absolute property of his son just by means of a will because it is not his self-acquired property. This means that the son will hold the property as ancestral property and his son, either natural or adopted, will take interest in that property by virtue of ancestral property itself. But then, if there is a self-acquired property of the father which is given to a son, then that case, would not be said to be an ancestral property in the hands of the son.

For example, if X inherits any property from his father and he has no son, grandson, or great-grandson, but then he has a brother or a paternal uncle, then that brother's interest or the

[1] *Sirtaji v Algu Upadiya* (1937) 12 Luck 273
[2] *Jugmohandas v Mangaldas* (1886) 10 Bom528

paternal uncle's interest in the property is not by birth. The property acquired by A is his separate property. He can dispose of at his discretion. If the sons are living in a joint family at the time when the father has died, then, in that case, the self-acquired property of the father is taken to be as joint family property. But then the view of the Madras High Court is different in the case of *P. Periasami v Pat Periathambi*[3].

If we take another instance, suppose A inherits some immovable properties from his father and then plans to alienate one of them to someone as he had no sons at the time of alienation. But then, later a son was born to him. In that case, the son has no right or interest in the alienated property. However, the son does have an interest in the remaining two properties by virtue of coparcenary. If Z has acquired an ancestral property inherited from his father and suppose he has a son, Y, then definitely the son needs to be treated as a coparcener in this case. Y has a right to ask for partition in this case. If Y is not asking for partition, then in that case, after Z's death, Y will acquire the entire property by means of survivorship. Sapratibandhadaya is a concept in which there is a breakage in the line of the male lineal descendants and hence it is called obstructed heritage. In this case, the property passes to the person who is vested in its rights by means of survivorship.

After the enactment of the Hindu Succession Act, 1956, Section 8 of the Act defines the heirs of the property. According to the Hindu Mitakshara Law, only the male lineal descendants will be acquiring the ancestral property whereas in the case of the Hindu Succession Act, 1956, the property, the heirs could be both male and female after its devolution amongst the legal heirs takes the shape of the separate property and not the joint family property anymore. This is the current position as decided by the High Courts and the Apex Court of India.

PROPERTY ACQUIRED BY ADVERSE POSSESSION

If there is any property that is acquired by adverse possession by a father, then that particular property would not be considered ancestral property in the hands of the father and his sons would not be able to take interest in the same by virtue of birth. In the case *of Janarethbee v*

[3] *P. Periasami v Pat Periathambi* (1980) AIR Mad 33

Pralhad[4], the Court held that the father has total discretion in the disposal of the property because it is to be treated as his self-acquired property.

This adverse possession of property can be of two types namely:

- Property inherited from the maternal grandfather;
- Property that is obtained by means of a will or a gift from a paternal ancestor;
- Property inherited from collaterals;
- Accretions;
- Share which is allotted on the partition.

PROPERTY THAT IS INHERITED FROM A MATERNAL GRANDFATHER

In the case of *Venkayamma v Venkataramanayamma*[5], the Privy Council has held that the property which is inherited from a maternal grandfather would be said to be a joint property but then later in the case of *Muhammad Husain Khan v BabuKishyaNandanSahai*[6], it was held by the Lordships that this property cannot be ancestral property because a maternal uncle is not an ancestor and hence any property which is inherited from him is not ancestral property. It is also stated in the case of *Manibhai v Shankerlal*[7], that if a daughter possesses an absolute estate, then the sons would succeed that property as stridhana heirs and not as the property heirs of their maternal grandfather.

PROPERTY THAT IS OBTAINED BY MEANS OF A WILL OR A GIFT FROM A PATERNAL ANCESTOR

A Hindu gift a property to his son or he bequeaths the property to him by means of a will instead of allowing it to go to his sons as a self-acquired property or a separate property. In this case, the issue would be whether the property is acquired by the son as separate property of the son or whether it goes to the masan ancestral property. This very issue was addressed by

[4] *Janarethbee v Pralhad* (1978) AIR Bom 229
[5] *Venkayamma v Venkataramanayamma* (1902) 25 Mad 678
[6] *Muhammad Husain Khan v Babu Kishya Nandan Sahai* (1937) 64 IA 250
[7] *Manibhai v Shankerlal* (1930) 54 Bom 323

different courts in diverse ways. In the case of *Arunachala Mudaliar v Muruganatha*[8], the Supreme Court has examined the opinion of the High Court and observed that the primary thing to be considered is the intention of the donor to be figured out from the gift deed or will. If there is nothing that is explicitly mentioned in the gift deed or will, which describes the kind of interest with which the property is to be given, then, in that case, the intention is to be drawn from the language of the document and the situations surrounding the making of the same. The real issue, in this case, would be the very intention of the grantor. There can never be a presumption that he intended to do anything.

For instance, a person X had three sons and he gave certain properties to his wife and other relatives and then gave his three sons D, E, and F, D being the eldest and F being the youngest, his properties at places A, B, and C by means of a will. All these properties were his self-acquired properties. It was also stated in the will that all the sons have complete discretion over the properties allotted to them and they have all the rights of alienation over the same. In the case of *Arunachala Mudaliar v Muruganatha*[9], it was held that the property which was gifted to the sons was not ancestral property to the sons. Also, in the case of *Muddun Gopal v Ram Buksh,*[10] it was held that if there is any gift which is made by a father to his son on his marriage, then that property is to be treated as separate property of the son and not as ancestral property.

PROPERTY INHERITED FROM COLLATERALS

The property which is inherited from a brother, uncle, or mother is said to be collateral property. In *BabooNandCoomer v Razeeooddeen*[11], it was held that collateral property is said to be separate property. For example, a person had one daughter and two sons. After he dies, his property is devolved upon his two sons equally. After the first son died, his share of the property went to his son. The other son had no Class I legal heir according to the Schedule given in Section 8[12] of the Hindu Succession Act, 1956. So, after his death, the property was

[8] *Arunachala Mudaliar v Muruganatha* (1954) 1 SCR 243
[9] *Ibid*
[10] *Muddun Gopal v Ram Buksh* (1863) 6 WR 71
[11] *Baboo Nand Coomer v Razeeooddeen* [1873] 10 Beng LR 183
[12] Hindu Succession Act, 1956, s 8

devolved upon the first son, the children of the daughter as they are Class II heirs. The property received by the son and the daughter of the daughter was not held to be a coparcenary property. The Supreme Court, in the case of *Bant Singh v Niranjan Singh*[13], held that because it was a question of fact, the severance of status could not be reopened.

ACCRETIONS

In the case of *Ramanna v Venkata*[14], the Court held that the income which is accumulated from the ancestral property is said to be accretions. Also, any property which is bought or is acquired with the help of the ancestral property or out of income as held in *Venkataramayya v Krishana Rao*[15]is called accretion. In the case of *Jugmohandas v Mangaldas*[16], it was held that the male lineal descendants are vested with the interest in the income and the accretions of the ancestral property which are acquired by them both before and after their birth.

SHARE ALLOTTED ON PARTITION

If a coparcener receives a share during the partition of ancestral property, then this property is regarded to be the ancestral property of the coparceners. In the case of *Rulla Ram v Amar Singh*[17], it was held that the coparceners take an interest in the ancestral property by virtue of their birth. It does not matter whether they are alive during the time the partition has taken place or if they were born after the partition has taken place. But the property is said to be ancestral property only if the partition is happening in between the coparceners (male issues). In any other case, the property is said to be separate in nature. If the coparcener dies, without having any male lineal descendant, in the ninth case, the property devolution happens via Section 8 of the Hindu Succession Act, 1956.

If a coparcener receives any share of the property which is subjected to mortgage, then, in that case, the nature of the property remains ancestral even though he clears the mortgage later and

[13] *Bant Singh v Niranjan Singh* (2008) 1 HLR 353
[14] *Ramanna v Venkata* (1888) 11 Mad 246
[15] *Venkataramayya v Krishana Rao* (1963) AIR AP 305
[16] *Jugmohandas v Mangaldas* (1886) 11 Mad 246
[17] *Rulla Ram v Amar Singh* (1994), AIR HP 102

this person acquires interest in this property by birth as held in the case of *Visalatchi v Annasamy*[18]. On a similar note, in the case of *MShanmujhaUdayar v Sivanandan,*[19] it was held that if a coparcener is given a specific piece of property to discharge specific family obligations like debts, then, in that case, that particular property will have its ancestral character and it is said to be joint property.

CONCLUSION

According to the Hindu Mitakshara Law, any son by virtue of his birth takes an equal interest in the ancestral property as that of his father. This right of the son is said to be an independent right. After the amendment of the Hindu Succession Act on 9.9.2005, the daughter has also become a coparcenary since then and takes a similar interest in the property as that of the sons. There is no difference in the rights of the father and the son in the ancestral property, but thenthefatherhas the right to make gifts, and use the property for family support, etc., unlike the son. The Supreme Court has held that when any male Hindu dies after the enactment of the Hindu Succession Act, 1956, then his property will be devolved among the surviving members of the coparcenary as per Section 6[20] of the Hindu Succession Act, 1956. Also, there is an exception in Section 30[21] of the Hindu Succession Act which says that any male Hindu has an interest in the Mitakshara coparcenary property and then can be disposed of by will or testamentary disposition. One more exception is the proviso in Section 6 of the Hindu Succession Act. Any self-acquired property of a male Hindu devolves upon not by survivorship but by intestate succession by the application of Section 8 of the Hindu Succession Act, 1956. **Emmanuel Kant's** idea of ***categorical imperative*** where he talked about the basic objectives every society needs to fulfill even fits here in the present topic where the coparcenary status has been given to the female members of the Hindu Joint Family and is rationally necessary for the society overall to achieve the larger goal that is gender equality.

[18] *Visalatchi v Annasamy* (1871) 5 Mad HC 150
[19] *M Shanmujha Udayar v Sivanandan* (1994), AIR Mad 123
[20] Hindu Succession Act, 1956, s 6
[21] Hindu Succession Act, 1956, s 30