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Alienation of Joint Family Property under Mitakshara

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Alienation of a coparcenary property carries with it several restrictions and duties. The manager, Karta, oversees alienation rights. The joint family's father, Karta, is assumed to be the senior-most male family member in his absence. In his life, a person owns two types of property Separate property and Coparcenary property. The author emphasizes the instances in which the Karta can dispose of the property, such as for estate benefit, legal requirements, and religious and essential obligations. As well as describes the rights of the other coparceners if there is any kind of illegal alienation by challenging it in the court and by asking for partitions. Since there is a right to alienate the property, there are some limitations to this as well. The privileges of the Sole Surviving Coparceners and the alienation of a Coparcener's Part of Undivided Interest are other topics covered in this journal article. In light of this, this journal article provides a brief explanation of the concept of alienation of the coparceners' undivided joint family property under mitakshara as well as the exceptions, remedies, and rights of such members, as well as the sole surviving coparceners and restrictions on such alienation.

Keywords: *alienation, joint family property, coparcenary, coparceners, undivided interest.*

INTRODUCTION

The smritis are commentary from several schools of pondering. They got together to settle the quarrel that arose in smritis. In India, the two most common schools of Hindu law are

Mitakshara and Dayabhaga. Dayabhaga predominates in the eastern half of India while Mitakshara is practiced in the majority of other areas of the country. It was created after Mitakshara had undergone development to address its flaws. As a result, not all of India follows the same Hindu law norms and regulations. By codifying them into a single legislation, the Hindu Succession Act aimed to create uniformity across all schools. However, there are still references to schools in these statutes.

Numerous schools fell under Mitakshara. All Mitakshara's schools were intended to be governed under the Succession Act. The sub-schools of Mitakshara include:

- *“Banaras Hindu Law School;*
- *Mithila Law School;*
- *Maharashtra Law School;*
- *Schools of Punjab;*
- *Dravida and Madras School of Law.”¹*

Whereas, Dayabhaga prevailed in West Bengal, Assam and parts of Orissa. The legal school in Mitakshara leans slightly to the right. Only the male members of the Hindu Joint Family, where the idea of coparcenary is present, are taken into account. By birth, four generations of males have gained property rights. The power to request property split is reserved for Joint Family members. Up until separation, when additional family members are added, or in the event of a death, each party's share of the property changes. Only male members were allowed to enroll in the coparcenary school of law.

CONCEPT OF ALIENATION UNDER MITAKSHARA

One of the fundamental occurrences of ownership in a Mitakshara family is alienation or a transfer of property. The phrase "alienation" describes the *“transfer of property by a sale, mortgage, gift, license, or even a lease, even a perpetual lease.”²* When more than one person owns a piece of property, no one person has the authority to sell or give it away without the other owners'

¹ Sir Dinshaw Fardunji Mulla, *Mulla Hindu Law* (23rd edn, Lexis Nexis 2019)

² Dr. Poonam Pradhan Saxena, *Family Law Lectures Family Law II* (5th edn, Lexis Nexis 2022)

permission. The family's Karta is charged with overseeing the operation of the family estate. He cannot fully own the property, but he has an undivided interest in it, similar to how the other family members do. If all the coparceners agree to sell the property, then only Karta has the authority to do so, and such a transfer will have an impact on each member's interests, making the sale's objective irrelevant. In case one of the members doesn't give his consent or express any dissent to such alienation then the property cannot be transferred. Property can also not be transferred in cases like incapability of giving valid consent due to minority or ordinarily of the coparcener member. The predominant reason behind this is that until and unless there is any partition between the members, the joint family property should not be sold so that it causes any kind of damage to the coparcenary members without their consent. The property of the family ought not to be transferred without the members' approval until the family is united.

In Mitakshara, one of the jurists, known as Vijananeshwar portrayed three scenarios³ in which joint family property may be transferred:

Apatkale - It alludes to any emergency that one or more family members may be experiencing, whether or not it involves belongings from the family. *The Time of Distress is another name for this Apatkale.*⁴ Whenever it is referred to the property, the transfer of the property is given the top priority to ensure its safeguarding, conservation, or for the necessary quick action.

Kutumbarthe - It means '*benefit of the autumn or member*'.⁵ Here the transfer of the property will be utilized for the possession of the members with the help of sale proceeds. Some examples are the education of the members, medical expenses, clothing or shelter expense, etc.

Dharmarthe - *It is considered as a pious purpose like indispensable duties (e.g., funeral rites of an ancestor).*⁶ There are many duties and rituals laid down by the Shastric law which is mandatory to be performed by every Hindu.

³ *Ibid*

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

SITUATIONS UNDER WHICH A KARTA CAN ALIENATE THE JOINT FAMILY PROPERTY

Karta of the family can alienate the joint family property under 3 purposes, even without consulting with the other coparcenary members, which are as follows –

Legal Necessity: It refers to any need that may be met with the help of the law. The “*legal necessity*”⁷ concerning joint family property would be defined as the need of the members of the family about their members or also their property, which has a legitimate meaning in the eyes of the law. Four crucial elements must be there for alienation to be considered lawful in order to assess its validity –

- Existence of a need or purpose, i.e., a situation concerning family members or its property that requires money,
- Such requirement is for a lawful purpose, i.e., it is not for an immoral, illegal purpose or one which is opposed to public policy,
- The family does not possess monetary or alternative resources from which the requirement can be met, and
- The course of action taken by the Karta is such as an ordinary, prudent person will take concerning his property.⁸

Some examples of this situation for which Karta can alienate the asset is - for supporting his family with food, clothing, and housing, for family members' education, for paying the children's wedding costs, for funeral rites of the members, etc. In the case of *M Harish v Kum Sindhu and Anr*,⁹ “The father, who served as the joint family's Karta, had to sell the joint family's property to satisfy a court order. Through the legal guardian (the maternal grandpa), his minor son filed a lawsuit for the property's division and custody, claiming that the father had sold his portion without first seeking the court's approval as required by the Guardian and Wards Act of 1890. The sale deed recitals for the property sold to X specifically stated that it was affected

⁷ Sir Dinshaw Fardunji Mulla (n 1)

⁸ Dr. Poonam Pradhan Saxena (n 2)

⁹ *M Harish v Sindhu & Anr* (2012) Kant 1

to pay back the loan taken out from the Bank. In this case, the court determined that paying debts is a joint family's responsibility when they are incurred to meet legal requirements, i.e., for the growth of the joint family and the Karta. In this case, the court determined that paying debts is a joint family's responsibility when they are incurred to meet legal requirements, i.e., for the development of the joint family, and the Karta is legally permitted to do so without requesting the court's approval. The transaction was deemed legal."¹⁰

The Benefit of the Estate: The phrase '*Benefit of The Estate*'¹¹ is not properly defined anywhere nor is it there in Dharmashastra. According to the word, we can define it as a transaction that is for the advantage of the estate if it *benefits the property or any other family estate via the transfer of joint family property or by the sale proceeds of such property*.¹² Benefit means any advantage, profit, or betterment. The estate here refers to land ownership, just as it is a joint family property it would be referred to as a *joint family landed property*¹³. Some examples of this situation- for which the karta of the family can alienate the property are to invest in family businesses or to buy better land¹⁴, the sale of unfavorably located, encumbered, and unprofitable property, and the replacement of such property with sound investment property¹⁵ or a property mortgage to consolidate an existing share and use the loan to buy a share in the village property, etc.

Religious and Indispensable Duties: '*Religious and indispensable duties*'¹⁶ is a contemporary take on dharma described by Vijaneshwar. The life of a Hindu is encircled with a lot of rituals and ceremonies that are required to be performed at different events. These customs and practices begin even before conception, continue throughout life, and even end with the death of a family member. These ceremonies are either indispensable or optional. Hindus believe that if these occasions are conducted with the help of proper rituals, it can bring about positive outcomes such as family stability and tranquility, it also helps in the spiritual salvation of the departed ancestors. Karta can alienate the property for performing indispensable religious and charitable

¹⁰ *Ibid*

¹¹ Sir Dinshaw Fardunji Mulla (n 1)

¹² *M Harish v Sindhu* (2012) Kant 1

¹³ *Ibid*

¹⁴ *Markandey, v Badan Singh* (1933) All 568

¹⁵ *Jadu Singh v Nathusing* (1926) All 511

¹⁶ Sir Dinshaw Fardunji Mulla (n 1)

purposes. One example is the annual 'Shraddha'¹⁷ ceremony. It is considered one of the auspicious ceremonies under Hindu law as a full fortnight is dedicated to paying homage to the departed soul. Therefore, the property can be alienated for the performance of such rites which includes feasts to the Brahmins.

REMEDIES FOR COPARCENERS WHO DO NOT GIVE CONSENT FOR ALIENATION

When it comes to managing the joint family property, the family's Karta has a natural right to do so. If he sells the property for the aforementioned reasons, no co-owner can stop him by asking the court for a temporary or permanent injunction.¹⁸ There are likely two remedies available to coparceners when they refuse to consent to alienation. First, the co-parent has the right to claim his portion of the joint family's undivided share and can be separated from the family to no longer be a member. In *Rabindra Moisan Senapati v Budhiram Senapati*¹⁹ the court held that 'an injunction can be granted restraining the Karta from alienating the property during the pendency of the suit filed by the son claiming that the sale of the property by the father would be without legal necessity and, therefore, invalid. The decision, it is submitted, appears to be contradictory to the principles of Hindu law.'²⁰

Second, by contesting the legality of the transfer in court, Karta has illegally alienated the property based on other categories. When the validity of a joint family property alienation is disputed, it is the alienee – the person whose interests the transfer has affected – rather than the Karta who must prove that the Karta has the right to alienate the property. This regulation is following the notion that a transferee needs to use caution and diligence when concluding a deal with a transferor who is not the property's sole owner but has restricted or qualified alienation rights. Transferee should only proceed with the transaction once he is confident that it is legal and has made sincere inquiries about it.

¹⁷ Dr. Poonam Pradhan Saxena (n 2)

¹⁸ *Sunil Kumar v Ram Prakash* (1988) SC 576

¹⁹ *Rabindra Moisan Senapati v Budhiram Senapati* (2014) Ori 152

²⁰ *Ibid*

RIGHTS OF THE COPARCENERS TO ALIENATE THE PROPERTY

Sole surviving coparceners: He becomes the Sole Surviving Coparcener (SSC) when there is just one coparcener in the joint family. He is allowed to treat the property as his distinct property and to dispose of it in whatever he pleases.²¹ If there is a female member present who is entitled to maintenance, the property may only be sold once a specified part has been set aside for her upkeep. If a later-born coparcener was in his mother's womb at the time of the alienation and not otherwise, he may contest an alienation of property affected by the sole surviving coparcener. If a solitary living coparcener creates a will for the property and another coparcener enters the picture before the death of the only surviving coparcener, at which moment the will takes effect, the will is void since the original coparcener is no longer the only one left. The Will will be valid if he still holds that status at the time of his death, i.e., is the only surviving coparcener.

Alienation by a coparcener of his undivided interest in the coparcenary property: Each member of a family asserts a stake in "*possession, ownership, and alienation*"²². Only a joint effort can advance these objectives. Therefore, the consent of all the members is required to fulfill the interest. One coparcener cannot independently sell his share without the consent of other coparceners²³. A coparcener may, with the approval of others, alienate the joint family property to the extent of his undivided share of interest, however, he may not sell a specific share of the property before the actual partition and demarcation of shares²⁴.

LIMITATIONS

The relevant limitation time varies according to the requested remedy, which is as follows:

1. If the son wants to file a lawsuit to have the father's alienation of any moveable or immovable property reversed, he must do so within 12 years of the alienation date.²⁵

²¹ *Parmila Bai v Narad Ram* (2019) Sec App No 295/2002

²² Dr. Poonam Pradhan Saxena (n 2)

²³ *Pannamma v Aspinwal and Co Ltd* (1988) AIR 1988 Kant 99

²⁴ *Parmal Singh v GhanshyamI* (2019) MP 131

²⁵ Indian Limitation Act 1908, art 126

2. A coparcener may file a lawsuit to reclaim ownership of immovable property once it has been alienated by the Karta or by an ordinary coparcener, the alienee has taken possession of the property, and the coparcener has a 12-year window in which to do so.²⁶
3. In circumstances where the action seeks a declaration that the alienation is unlawful and not binding on the family, the statute of limitations is six years from the day the right to sue accrues.²⁷
4. If the contesting coparcener was under the age of 18 when alienation took place, the minor may initiate a lawsuit to have the alienation revoked within three years of becoming an adult.
5. When a father alienated property in 1935 that included both of his minor sons' interests and the older son was unable to challenge an alienation because he failed to initiate a lawsuit within three years of reaching a majority, it was determined that the younger son's rights were unaffected.
6. His 1953 action to set aside the father's alienation and for possession recovery was timely filed in the case where the father, who had three minor sons, alienated the property in 1935, his second son gained adulthood in 1946, and the third son became a major in 1951.

CONCLUSION

In a Hindu joint family, the coparcenary relationship is apparent, starting with the eldest male family member and extending for four generations. This senior male member, known as the Karta of the joint family, has the power to alienate the joint family's property with the consent of the other Coparceners. However, such alienations may only be carried out when they are legally required, in the estate's best interests, or to perform important obligations like pious or religious needs. A shared family asset, in addition to the Karta, can be transferred by the father, a Coparcener, or the last living Coparcener with the consent of the other Coparceners or by self-transfer, as appropriate. Each member of a coparcener is entitled to make full use of the shared property without hindering it or utilizing it in a way that would be detrimental to the interests

²⁶ Indian Limitation Act 1908, art 144

²⁷ Indian Limitation Act 1908, art 120

of the other coparceners. To sustain the family's whole company, however, the family manager, Karta, should enjoy some privileges. For the smooth operation of the family business, it is vital to transfer some control to him. One such authority that is granted to him to use in cases of legal necessity and under the other two circumstances is the alienation of property. Most of the high court's rulings on the subject are mentioned in this journal article. The Supreme Court ought to step in and clarify the definition of the terms "legal necessity," "benefit of the estate," and "performance of indispensable duties" in these cases. The problem of unauthorized alienation is the worst one. The individual who is not involved in the transaction has the burden of evidence.