

MINOR'S SUIT FOR PARTITION OF HINDU JOINT FAMILY PROPERTY*** RUCHIRA BARUAH****Introduction**

A study of the family laws is unique as the civil laws. There is lack of uniformity and is subject to the personal laws. The rules of devolution of property in a Hindu joint family are of immense importance. Under the Hindu law, the Hindu Joint family system came before the individual identity of a person. Moreover, the concept of separate and self acquired property did not exist. The members of a joint family are bound together by the fundamental principle of *sapindaship* or family relationship. Once the existence of the Hindu joint family is not in dispute, the property held by the family assumes the character of a joint or coparcenary property. As the property is called the joint family property or the coparcenary property, all members have one or the other right over the property. A member of the Hindu joint family if otherwise, is capable of being a coparcener, but is a minor, will still continue to be a coparcener. But unlike a major coparcener, he/she will not have a right to demand for partition personally. But, at the minor's instance, a partition can be effected.

The researcher through the research work intends to study in detail and analyse the case laws in regards to the suit of a minor instituted for the partition. The suit for partition cannot be instituted directly by the minor but through the minor's next friend. The judicial pronouncements have always been in regards to the interest of the minor.

Review of existing literature

- Dr. Poonam Pradhan Saxena, FAMILY LAW LECTURES FAMILY LAW II, 3rd edition, LexisNexis, 2011

This book has been helpful in giving a basic understanding of the concepts in regards to family law II. The idea of a Hindu joint family and coparcenary property has been easily explained so that the reader can have a clear idea in context of Hindu law. The book has also covered the major aspects of change brought about after the amendments to the Succession Act. Judgements of the various courts have also been discussed in the book.

- Dr. Vijender Kumar, MAYNE'S TREATISE ON HINDU LAW & USAGE, 17th edition, Bharat Law House

The book discusses in detail the incidents of Hindu joint family and joint family property. The reader can have a detailed understanding of the connotations and implications of the ideas of partition. The book has specifically dealt with minor coparceners and aided the researcher in understanding the implications of a minor's suit for partition.

- Sir D.F. Mulla, MULLA ON HINDU LAW, 21ST edition, LexisNexis

This book carries a detailed analysis of the topics under Family Law. As the book deals primarily with Hindu law, the researcher has been able to understand the concepts with clarity. The book has also dealt with the minor's suit for partition and has helped the researcher in understanding the judicial pronouncements. The author has also dealt with the difference in a major's suit for partition and a minor's suit for partition, thereby giving a clear idea to the reader.

Aim and Objectives

The aim of the researcher is to understand the partition of a Hindu joint family property and the effect of a suit instituted by a minor.

The objectives of the researcher are:

- To understand the concept of Hindu joint family
- To understand the idea of a coparcenary property
- To understand the effect of partition through a suit instituted by a minor
- To study the judicial pronouncements in relation to a suit of a minor

Scope and Limitation

The scope of this project work has been limited to understanding the concept of a Hindu joint family property and the rights of the minor coparceners during partition.

Research Questions

The researcher while carrying out the research work has faced the following research question:

- What is a Hindu joint family?
- What is a coparcenary property?
- What is the capacity of a minor?
- What is the effect of a minor's suit to partition?

Research Method Used

The research methodology adopted is a doctrinal method of research. The researcher has also utilised explanatory and analytical methods of research in order to explain and analyse the implications of suit filed by a minor for the partition of the Hindu joint family property. Secondary sources of data have been used as the researcher has used books from the library and various articles from journals available in the library as well as online sources.

Mode of Citation Used: OSCOLA

Idea of a Minor

A person has to attain a particular age before he or she can enter into transactions that are recognised under law. In the general purview, 18 years of age is taken to be legal age on the attainment of which legally the person is capable of transacting on his own. However, if the court has appointed a legal guardian to anyone, then the age of 21 years is considered to be the legal age.

Under the Hindu Minority and Guardianship Act, 1956 a minor is defined as “a person who has not attained the age of 18 years.”¹ However, under the Indian Majority Act, 1875 if a person is appointed with a legal guardian by the Court then, the age of majority is attained at the age of 21 year.² Again the Guardianship and Wards Act defines a minor person as one who is deemed not to have attained the age of majority under the Indian Majority Act.³ Therefore, as the legislature as provided for a wide number of definitions for a ‘minor’ it

¹ Section 4 (a), Hindu Minority and Guardianship Act, 1956

² Section 3, Indian Majority Act, 1875

³ Section 4, Guardianship and Wards Act

is to be followed that in so far as the definition of a minor is concerned, all the Acts have to be read together and a harmonious construction has to be adopted.

A minor is considered to be a child. A person ordinarily ceases to be a child on his attaining the age of majority. The term “Child” denotes a person who, on account of his young age, is considered to have immature intellect and imperfect discretion.⁴ A child is not given an opportunity to take part in any kind of legal transaction as the intellectual capacity is not deemed to be so developed so as to take decisions on their part. A child is a minor and cannot be expected to know the consequences of their actions.

In the Indian context, under several welfare legislations, the term ‘child’ is used in place of a minor. It is used in various senses. Primarily, it is used in three senses, indicating capacity, relationship and special protection under social welfare legislations.⁵

Capacity of a Minor

Capacity in law means the determination of whether a person can make binding amendments to their rights, duties and obligation in regards to different decisions such as getting married or merging, making a valid transfer of property or succession and alienation of property. There are different requirements under various legislations concerned with the capability of a person to act under it. In most cases, a minor i.e. a person who has not attained the age of 18 years (or 21 years under the Indian Majority Act if appointed with a legal guardian), is not given the capacity. The contracts to which the minor is party to does not become enforceable. Vide section 11 of the Indian Contract Act, a minor is not competent. A minor is not competent to a contract and that a contract by minor is void ab initio. Moreover, under this Act, the minor cannot ratify an agreement on attaining majority. But, if a guardian enters into any kind of transaction on behalf of the minor the contract can be specifically enforced if the contract is within the authority of the guardian and it is for the benefit of the minor.⁶

⁴ LAW OF ADOPTION, MINORITY, GUARDIANSHIP AND CUSTODY, p.204

⁵ Ibid, p.205

⁶ *Lalchand v. Narhar*, 89 IC 896

Hindu Joint Family

Under the Hindu law, the Hindu Joint family system came before the individual identity of a person. Moreover, the concept of separate and self acquired property did not exist.⁷ A Hindu “joint family” consists of all the male members lineally descended from a common male ancestor along with their wives or widows and unmarried daughters.⁸ An unmarried daughter ceases to be a member of the joint family at the time of her marriage. The widowed daughter after the death of her husband, if returns to the family of her father permanently, she again becomes a member of the Hindu joint family. Her children however, remain the joint family member of her husband’s family. A child in the womb till it is born is not a member of the joint family for taxation purposes but is treated as in existence for certain purposes under the Hindu law⁹ such as during the time of partition of the coparcenary property. To bring the joint family into existence, it is necessary that the senior most male member is present. But for the continuance of the family is not dependent on this. The death of the senior member does not end the joint family. New members are added to the family and it continues. Thus, the Hindu joint family continues to exist in perpetuity. Until the joint family is segregated by severance of status, the joint family exists.

The members of a joint family are bound together by the fundamental principle of sapindaship or family relationship. A Hindu joint family is purely a creature of law and not a creation by act of parties or agreements. A person can become a member of a Hindu joint family only by birth, marriage or adoption. Moreover, a Hindu joint family is not a legal entity.¹⁰ All members in a Hindu joint family do not have equal rights in the coparcenary property.

Presumption of Jointness

Every Hindu joint family is presumed to be a joint family. It is presumed to be joined in food, worship and estate.¹¹ But it is not mandatory that they will have a common kitchen, home or place of worship. For their convenience the members might be living separately, but they do not cease to be separated family. Suppose A has three sons, S₁, S₂ and S₃, all living together in

⁷ Dr. Poonam Pradhan Saxena, FAMILY LAW LECTURES FAMILY LAW II, 3rd edition, LexisNexis, 2011, p. 53.

⁸ Ibid

⁹ Ibid ; *Gur Narain Das v. Gur Tahal Das*, AIR 1952 SC 225

¹⁰ *Ram Kumar v. Commissioner of Income Tax*, AIR 1953 All 150

¹¹ Dr. Poonam Pradhan Saxena, FAMILY LAW LECTURES FAMILY LAW II, 3rd edition, LexisNexis, 2011, p.58

Guwahati. Now, S₂ gets a job in Mumbai and S₃ secures a job at Delhi. Subsequently they move to their respective places of work. This does not sever the Hindu joint family of A. Mere separation of food and place of worship does not result in or as separation¹² or severance of status. However, in the case of *Commissioner of Income Tax v. Gomedalli Lakshminarayan*¹³ it was held by the court that the presumption of jointness necessarily varies in each case. It is on the party who claims a share of the property on the contention that it is a divided family. On the death of all the male members of the Hindu joint family, it has been held by the Supreme Court that the female members continue being members of the joint family. As long as the surviving female members have the capacity to add a male member to the family, the joint family continues to be in existence.

Coparcenary

A coparcenary is a narrower institution within the Hindu joint family.¹⁴ Not all members of a Hindu joint family can be part of the coparcenary. Prior to the 2005 amendment to the Hindu Succession Act, 1956 daughters could be part of the coparcenaries. Coparcenary could comprise only of the male members. This was related to the restrictions imposed by texts of Manu and other sages, the inability of the daughters to offer pious obligation to the ancestors. The membership of the coparcenary is subject to the four generation rule. The senior most member becomes the last holder of the coparcenary is the propositus. The coparcenary concept is related to the ownership of family property. The four generation rule holds that the lineal male descendants of a person up to the third generation (excluding himself) can acquire by birth, an interest in the coparcenary property held by him.¹⁵

Minor Coparceners

A member of the Hindu joint family if otherwise, is capable of being a coparcener, but is a minor, will still continue to be a coparcener. But unlike a major coparcener, he/she will not have a right to demand for partition personally. But, at the minor's instance, a partition can be effected. In this case, the father or the karta is presumed to act in his/her interest. The court will look into the question as to who are the persons who can manage the property

¹² Ibid, p.59

¹³ *Commissioner of Income Tax v. Gomedalli Lakshminarayan*, AIR 1935 Bom 412

¹⁴ *Bhupatrai Hirachand v. Commissioner of Income Tax*, (1977) 109 ITR 97 (Cal)

¹⁵ Dr. Poonam Pradhan Saxena, FAMILY LAW LECTURES FAMILY LAW II, 3rd edition, LexisNexis, 2011, p. 86

effectively, for the benefit of the minor and what would be the consequences of the partition as regards to the minor.¹⁶

Coparcenary Property

Once the existence of the Hindu joint family is not in dispute, the property held by the family assumes the character of a joint or coparcenary property. Every member of the family would be entitled to a share in the coparcenary property unless anyone claims and proves that some of the property is his/her self-acquired property.¹⁷ Earlier the property of the Hindu joint family did not have the concept of separately owned property. All that the members earned, individually or collectively, would be the property of the joint family. With the coming of the Hindu Gains of Learning Act in 1930, the concept of self-acquired property came into the picture. All the members did not have any interest in such property.

As the property is called the joint family property or the coparcenary property, all members have one or the other right over the property. The right may be to acquire a share of the property or to claim right to maintenance and right to residence from such property. In the absence of such joint family property, which includes joint family property and the ancestral property, the coparceners can pool in their self-acquired property. Unlike in separate property where the title, possession and enjoyment vests in the same person, in the joint family property, the right of alienation of such property lies on the Karta. The other coparceners can however, ask for partition of the property. The separate property of any coparcener will be inherited and gain the character of a coparcenary property with respect to his successors.

Doctrine of Survivorship

On the death of a coparcener, his interest in the coparcenary property is taken by the surviving coparceners under the doctrine of survivorship. The shares of the coparceners in the coparcenary property are not specific. The doctrine of survivorship means that the shares are subject to change with the birth and death in the family. On birth the interests of the coparceners diminishes and on death, it increases.

¹⁶ Ibid, p.216

¹⁷ Dr. Vijender Kumar, MAYNE'S TREATISE ON HINDU LAW & USAGE, 17th edition, Bharat Law House, 2014, p. 827

According to Narada, “If among the several brothers, one childless or become a religious ascetic, the other shall divide his property, excepting the stridhana”.¹⁸

Partition

Partition means to divide into parts or separate. Under Hindu law, it generally means a division or splitting up of a joint property into smaller, separate and independent units with conferment of separate status on the undivided coparceners. For partition it is necessary that the Hindu joint family has more than one coparcener.

A partition refers to the severance of joint status of the coparceners and a division of the coparcenary property only.¹⁹ A partition is complete the moment the community of interest is severed or severance of status takes place. Partition is not a transfer of the property but it is the separation of the interests of several co-owners of the joint property. It signifies the surrender of a joint right in exchange for a similar right from the other co-sharers or co-owners.²⁰

The coparcenary property has two basic incidents: community of ownership and unity of possession. Based on this, partition can be of two types – de jure and de facto partition. Community of ownership indicates that the ownership of the coparcenary property is joint and the unity of possession signifies the common physical enjoyment.²¹ When the community of interest is broken or divided, either at the instance of one or all the coparceners, the shares of the property become fixed. The unity of possession might be retained but the moment the community of interest is divided, it becomes a partition. This is simple severance is de-jure partition. On the other hand, the breaking up of the unity of possession is effected by an actual physical division of the property is called de-facto partition or partition by metes and bounds.²²

¹⁸ Dr. Vijender Kumar, MAYNE’S TREATISE ON HINDU LAW & USAGE, 17th edition, Bharat Law House, 2014, p. 824

¹⁹ Dr. Poonam Pradhan Saxena, FAMILY LAW LECTURES FAMILY LAW II, 3rd edition, LexisNexis, 2011, p. 86

¹⁹ Ibid, p.211

²⁰ *Mohr Singh v. Devi Charan*, AIR 1988 SC 1365

²¹ Note-19, p.210

²² Dr. Poonam Pradhan Saxena, FAMILY LAW LECTURES FAMILY LAW II, 3rd edition, LexisNexis, 2011, p. 210

Suit for Partition

A coparcener can manifest his unequivocal intention to separate through a partition suit.²³ A suit demanding partition is an evidence of the declaration of his/her intention to separate from the joint family. Through a suit for partition, the Hindu coparcener asks for his share in the joint family property and asks that he be put in possession thereof, and that he is not bound by any alienations or interests of others in such properties which fall to his share. Now, in a suit instituted for partition, by any one of the members of the coparcenary, all coparceners should be made parties to it as defendants.²⁴ But in cases where the partition is asked between branches, only the respective heads of the branches must be made parties.

Suit for Partition by Adults

The institution of a suit for partition by a member of a joint family is an unequivocal intimation of his intention to separate and there consequently is a severance of his joint status from the date when it is instituted.²⁵ A decree may be necessary for the working out of the results of the severance and for allotting definite shares, but the status of the plaintiff as separate estate is brought about by his assertion of his right to separate, whether he obtains a consequential judgement or not. If the plaintiff dies, the suit can be continued by the heir.²⁶ The filing of a suit is strong evidence but not conclusive evidence of the intention to separate. When a suit for partition is instituted by members of a joint family, the court has power not only to divide the properties by metes and bounds but also to effect a separation of status without the actual division of the property.²⁷ Such direction is generally helpful in the suits where a minor is party to the partition.

Minor's Suit for Partition

Merely because one of the members of the joint family is a minor, it does not operate as a bar to partition. The Hindu law does not make distinctions between a major and minor coparcener so far as the rights to the joint properties are concerned. A minor is equally entitled to be suitably maintained out of the family properties and at partition his rights are precisely, the same as that of the major coparceners.

²³ Ibid, p.229

²⁴ *Ramanatha v. Veerappa*, AIR 1956 Mad 89 (DB)

²⁵ Mulla, p.516

²⁶ *Rajrup Rai v. Sheo Shankar Rai*, AIR 1945 All 287

²⁷ Note-25

The adult coparceners have unqualified rights in regards to instituting a suit for partition of the joint family property. A minor coparcener has no unqualified right to enforce a partition.²⁸ Even a mere institution of a suit on his behalf does not effect a separation. Division in status in such a case takes place only if the court finds in its discretion that the partition is beneficial to the interests of the minor and directs the preliminary decree for partition.²⁹ The difference in a minor's suit for partition from that of an adult is that in case of a minor the right to separate is asserted on his behalf by his guardian. The court grants relief on the cause of action stated in the plaint if it is satisfied that the assertion by the guardian was properly made and that the partition was in the interest of and for the benefit of the minor. Action by a minor for a decree for partition and separate possession of his share in the family property is not founded on a cause of action personal to the minor. The right claimed is in property and devolves on his death during minority upon his legal representatives. The minor cannot on their own bring a suit for partition. But can do so through his/her next friend. However, a partition can be instituted on behalf of a minor, only when it is in the best interest of the minor. Again, some malversation, danger or loss the minor on the one hand, or some benefit or advantage on the other hand, must be proved before the Court will compel partition.³⁰ In the case of *Ganapaty v. Subramanyam*³¹ it was held that if the institution of the suit for partition is not in the interest of the minor it does not effect the separation of the minor from the family.

Direct partition of the property by a suit for partition by the minor is allowed only if it is in the interest of the minor but the limitation arises not because of any peculiarity in the nature of the minor's property but is imposed for the protection of his interest. The effect of the decision by the court is not to create a new right that the minor possesses but merely, to recognise the right which accrued to him when the action was commenced. In a minor's suit for partition, where another son was born to the father before the pronouncement of the preliminary decree, the institution of the suit itself effected the severance and the minor's share did not suffer a diminution at the birth of the other son.³² In case of a minor's suit for partition the effective date for severance of status would be the date of the institution of the suit for partition. The interest of the minor is of prime interest. If the conduct of the adult

²⁸ M.N. Srinivas, COMMENTARIES ON HINDU LAW, 5th edition, Delhi Law House, 2013, p.876

²⁹ *Jhavva Rangasayi v. Jhavva Nagarathamma*, Air 1933 M.W.N 1324

³⁰ *Bachoo v. Khuskaldas*, 4 Bom L.R. 883

³¹ *Ganapaty v. Subramanyam*, AIR 1929 Mad 738

³² *Krishna Lal v. Nandeshwar*, AIR 1918 Pat 91

coparceners is prejudicial to the interests of the minor, the court will readily presume that it is for the benefit of the minor to divide the estate.

The next friend or guardian making the demand for the partition must act in the best interest of the minor. In the case of *Peddasubbayya v. Akkamma*³³ it was held that the true effect of a decision of the court that the action is beneficial to the minor is not to create in the minor *proprio vigore* a right which he did not possess but to recognise the right which he already possessed. Therefore, the suit for partition on behalf of a minor coparcener is maintainable in the same manner as one filed by an adult coparcener, with the difference that if the plaintiff is a minor, the court has to be satisfied that the action has been instituted for the benefit of the minor. Moreover, the suit filed on behalf of the Hindu minor for partition does not on the death of the minor during the pendency of the suit abate, and may be continued by the legal representatives. If the minor died as a separated member then, the share as per rules of inheritance, would go his mother.

Judicial Pronouncements

Kakamanu Pedasubayya v. Kakamanu Akkamma, AIR 1958 SC 1049

Facts – The maternal grandfather of a minor, aged 2 and a half years, filed a suit for partition on his behalf, as against his father and two brothers. His main contention was that the Karta and his two major sons born to him from his first wife were managing the joint family property in a manner that was detrimental to the interests of the minor. They were selling off the joint family properties which included the share of the minor and out of the sale proceeds were buying property in their individual names. The minor died during the pendency of the suit for partition.

Held - The court observed that under the Hindu law, there is no distinction between the rights of the major and minor coparceners. The minor's share is equal to that of the major coparcener. However, since the coparcener in question is a minor, the court would act as the *parens patriae*, in order to protect his interests and assess whether the partition will be beneficial to the minor. The date of severance of status of the minor would be the date of institution of the suit. Moreover, the suit on the death of the minor during pendency of the suit would not abate. The court was of the opinion as the father and two brothers were acting in a manner so as to defeat the interest of the minor, the partition was desirable.

³³ *Kakamanu Peddasubayya v. Kakamanu Akkamma, AIR 1958 SC 1042*

Ganapati v. Subramanyam, (1929) 57 MLJ 374

Facts - In this suit the 1st defendant is the father of the 1st plaintiff and the 2nd defendant by different mothers. Plaintiffs 2 and 3 are the minor sons of the 1st plaintiff and defendants 3 and 30 are the minor sons of the 2nd defendant. The suit was instituted by the 1st plaintiff on behalf of himself and his minor sons for a partition. It is alleged that the 1st plaintiff wished to effect a partition in 1915 or 1916 but no partition appears to have been effected before this suit was filed in 1920 and it has not been shown that there was any separation in status. During the pendency of this suit, the 1st defendant died on 26th October, 1923, and in June, 1924, the 1st plaintiff died. On the 1st plaintiff's death, the 2nd plaintiff who had attained majority, elected to continue the suit on behalf of himself and his minor brother the 3rd plaintiff. At the end of the trial the 3rd plaintiff's mother applied to be made guardian of her minor son the 3rd plaintiff and stated that the partition was not in the interest of the 3rd plaintiff and that she did not want a partition so far as he was concerned. The 3rd plaintiff was accordingly transposed as the 31st defendant. The only question that arises for consideration is whether the minor 3rd plaintiff was separated in status from the defendants by reason of the father's unequivocal declaration of an intention to be divided in status.

Held - It is well settled that in a litigation in which a minor is concerned, the Court is bound to look after the interests of such a minor and this has been recognised so far back as 1866.³⁴ It is therefore clear that it is the duty/of the Court to protect the interests of a minor party. Ordinarily when a father sues on behalf of his minor son it may be presumed that he is acting in the interests of that son unless there is anything to show the contrary. If, however, it does appear to the Court that a father is not acting in the best interests of his son, on the principle set forth above the Court is bound to protect that son's interest even against the acts of his father.

³⁴ *Kamakshi v. Chidambara Reddy, (1866) 3 M.H.C.R. 94*

Conclusion

Partition means to divide into parts or separate. Under Hindu law, it generally means a division or splitting up of a joint property into smaller, separate and independent units with conferment of separate status on the undivided coparceners. When the community of interest is broken or divided, either at the instance of one or all the coparceners, the shares of the property become fixed. A coparcener can manifest his unequivocal intention to separate through a partition suit.

Merely because one of the members of the joint family is a minor, it does not operate as a bar to partition. However, a minor coparcener has no unqualified right to enforce a partition. Action by a minor for a decree for partition and separate possession of his share in the family property is not founded on a cause of action personal to the minor. The right claimed is in property and devolves on his death during minority upon his legal representatives. Direct partition of the property by a suit for partition by the minor is allowed only if it is in the interest of the minor but the limitation arises not because of any peculiarity in the nature of the minor's property but is imposed for the protection of his interest. In case of a minor's suit for partition the effective date for severance of status would be the date of the institution of the suit for partition. The interest of the minor is of prime interest. Therefore, the suit for partition on behalf of a minor coparcener is maintainable in the same manner as one filed by an adult coparcener, with the difference that if the plaintiff is a minor, the court has to be satisfied that the action has been instituted for the benefit of the minor.