

“Karta and his Legal Position in Joint Hindu Family”

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A person who governs the proper functioning of a joint family is the head or the Karta of the family. He enjoys a unique position unlike any member of the family. The senior most male member of the Hindu joint family is usually the Karta of the or the head of the family. The Karta has innumerable rights and powers. He can exercise these rights in any manner he thinks fit as long as it is for the greater good of the family. Along with such great powers he has a number of liabilities such as maintenance of the family members and keeping proper accounts. The concept of Karta in a Hindu joint family is not just a position of power but also serves a very practical purpose. This paper seeks to analyze the position of the Karta and the extent of the extent of the duties and rights with respect to the legal position, income, properties, business etc. the recent cases with regard to the position of the Karta have also been analyzed and in most of the cases the alienation of property made by the Karta was challenged and it was to be determined whether or not the alienations were made under the ambit of legal necessity.

1. INTRODUCTION

The Hindu Joint Family is the normal condition of the Hindu society. A Hindu Joint Family consists of all the male members descended lineally from a common male ancestor together with their mothers, wives or widows and unmarried daughters¹. Joint family is an institution where different members of the family live together, having different rights over the property and performing their rights and obligations towards each other. A joint family should be headed by a person from within the family who is component to bind all the family members together and capable to represent it in law regarding all the matters. He should be a person whose decisions taken with respect to the family and property can be trusted to be for the best interest of the family.

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¹ Surjit Lal v. Commissioner of Income Tax, (1978) 101 ITR 776.

Ancient family units were headed by the senior most male member in the family, the ‘Patriarch,’ who had more or less absolute control over the property and even over the lives of the family members. In the present time the powers of the head of the family are diluted. Absolute powers have been replaced by superior powers co existing with superior responsibilities. The term Patriarch has been replaced by the term Karta which is also described as the Manager of the Hindu Joint Family.

2. WHO IS A KARTA?

The head of the joint family is called the Karta or the Manager of the joint family and occupies the position unlike any other member of the joint family. As long as the members of the family remain undivided the senior most member of the family is presumed to be the Karta of the family². This presumption is based on seniority and does not depend merely on the consent of the other family members. As long as karta is alive no one on his own take the place of Karta. If a person does not want to continue as karta he can expressly relinquish this position and with the concurrence of the family members another coparcener, not necessary the next in seniority, may be appointed as the karta.

2.1 More than one Karta

In *Union of India v. Sree Ram*³, Supreme Court observed that the very idea of there being two Kartas did not appear, prima facie, consistent with the concept of the Karta. Two persons may look after the management of the property but the joint family is represented only by one Karta⁴. Therefore there is no scope for two kartas or two representatives.

2.2 Junior member of Coparcenary as Karta-

It is well settled principle of Hindu law that the position of karta goes to the senior most member of the family. However, the senior may give up his right of management and a junior member may be appointed as the Karta⁵. A junior member can act as karta if the senior member has

² A. Kunjipokkarukutty v. A Ravunni, AIR 1973 Ker 192.

³ AIR 1965 SC 1531.

⁴ Damodar Misra v. Sanamali Misra, AIR 1967 Ori 61.

⁵ Narendra Kumar J. Modi v. Commr of IT, AIR 1976 SC 1953.

relinquished his right expressly or impliedly or in the absence of the manager under exceptional circumstances⁶.

2.3 Minor as Karta-

A Minor can act as a karta of the joint family through his natural guardian, his mother, where father's whereabouts are not known at the time.⁷

2.4 Wife and Mother as Karta-

The Supreme Court has held that only a coparcener can be the karta or the manager of the joint family. Since a widow or the mother is not the coparcener, she cannot be the manager of the joint family⁸. A wife cannot act as a karta of the joint family on the ground of her husband absence.⁹

2.5 Daughter as Karta-

After the Hindu Succession (Amendment) Act, 2005 daughters have been conferred equal status as that of the sons in a Mitakshara coparcenery. Only a person who is a coparcener can become karta. After this amendment daughters are also eligible to become a manager of the joint family.

3. POSITION OF KARTA-

The position of karta is *sui generis*. It is a unique position and the relation between him and other family members is not like any other relationship. He is the custodian of the family interest and his actions are backed by the by a presumption of the promotion of the general family affairs. He is the head of the family but his relationship is not that of the principle and agent under the Contract Act, nor even of partners. It is at best, comparable to that of a trustee, as he stands in a fiduciary relationship with the other members of the family, but unlike a trustee, he is not accountable to the family generally, and even where he mismanages or incurs a loss while managing the family affairs, unless he is charged with fraud or misappropriation of the joint family property his actions and decisions are binding on all members of the family, including those who may not like his decision.

⁶ Nopany Investments v. Santokh Singh, AIR 2008 SC 673.

⁷ Jaggernath Singh v. Narayan, AIR 1965 AP 300.

⁸ Commr of Income Tax v. Govindram Sugar Mills, AIR 1966 SC 24.

⁹ Sheogulam v. Kisun Chaudhuri, AIR 1961 AP 212.

It is the duty of the karta to see that all reasonable wants of the members are satisfied. If the karta fails to fulfill his duty the members can enforce it by legal action.¹⁰

The karta can file a suits or take other legal proceeding to safeguard the interest of the family and its properties and business.¹¹ He can represent the family effectively in a proceeding even if he not been named as such. There is no right in a minor or an adult member of the family to bring a suit to set aside a decree passed against the manager on the ground that the manager acted with gross negligence in the conduct of the suit. Karta can refer any disputes to arbitration or can effect settlement or compromise of such disputes. The reference may be in respect of disputes between the family and an outsider, or disputes between the members of the family themselves, e.g. as to the shares on partition. A compromise entered into by the manager bona fide for the benefit of the family, binds the other members of the family including minors.

3.1 Karta's power over income

Karta as the manager and head of the family has control over the income and expenditure. As long as he spends the income for the purpose of the family in good faith he is not under the obligation to economies or save as a paid agent or trustee would be. If he spends more than the other member approve their remedy is partition. Besides the expense of management, realization and protection of family estate, the family purposes are ordinarily maintenance, residence, education, marriage, sradha and religious ceremonies of the coparceners and their respective families.

3.2 Karta's power to account over partition

In the absence of the proof of misappropriation or fraudulent and improper conversion by the manager of a joint family estate, he is liable to account for partition only for assets which he has received, not for what he ought to or might have received if the family money has been profitably dealt with.¹² However it is open to show that the expenditure which the manager

¹⁰ Werner Menski, Hindu Law Beyond Tradition and Modernity 491 (Oxford University Press 1st ed. 2003).

¹¹ Sheoshankar v. Jaddokunwar, AIR 1914 (41) IA 216

¹² Narayanswami v. Ramkrishna, AIR 1965 SC 289.

alleges he has incurred, has not in fact been incurred, or that more properties are available for partition than those disclosed by him.¹³

Since the institution of a suit for partition amounts to a severance of joint status, the manager is, from and after the date of such a suit, strictly bound to account for all the recipients and expenses, and can take credit for only such expenses as have been incurred for the benefit or necessity of estate, and the net income, after deducting such expenses, is to be divided among the coparceners according to their shares.¹⁴

3.3 Karta's power regarding debts

Karta can acknowledge liability to pay debts due and payable by the family, and to give discharge for debt; to pay interest on money borrowed etc. due and payable by the family.¹⁵

If the manager alone receives a time barred debt he alone is liable for the debt.¹⁶

3.4 Alienation of the property

The manager or the Karta can alienate the joint family property by sale or mortgage for legal necessity or benefit of estate or for performing of some religious duties. The Karta is not required to take consent of the coparceners, if the alienation is the above reasons. When Karta exercises the power of alienation in three exceptional cases the consent of coparceners is implied. If the alienation is for the legal necessity it will bind the other coparceners.¹⁷ When a

junior member is allowed to deal with the family properties as if he was the manager, any alienation by him for family necessity is binding on all the members of the family, including the real manager.¹⁸ It cannot be said to be beneficial for the Hindu joint family for the manager to purchase property for which the family is unable to pay when the family is unable to pay, it is certainly not for the benefit of the family that the liability should be cast upon the joint family ancestral property.¹⁹

¹³ Manaharanlal v. Jagiwanlal, AIR 1952 Nag 73.

¹⁴ Gopal v. Trimbak, AIR 1953 Nag 195.

¹⁵ Annamalal Chettlar v. Veerappa Chettlar, AIR 1956 SC 12.

¹⁶ Thaker Das v. Mst. Putli (1924) 5 Lah 317.

¹⁷ Ramesh Damodar Deshmukh v. Damodar D. Deshmukh, (1999) 1 Mah. L.J.153

¹⁸ (1902) C 797 (DB).

¹⁹ AIR 1939 All 486.

The alienee therefore has to prove one of the following two things:

- (1) The transaction was in fact justified by legal necessity for the benefit of the estate.
- (2) He has made reasonable or bona fide enquires as to the existence of the necessity and satisfied himself that the manager was acting for the benefit of the estate.²⁰

4. CASE ANALYSIS-

Some of the most recent cases involving the law regarding the rights and the duties of karta of the Hindu joint family have been analyzed.

In *Bhagyamma v. Ningaramma*,²¹ it has been held that the rights and interests of the people

affected need to be taken into consideration by the alienee. A similar view was given by Court in the case of *Chanumuri Subhaveni and Ors v. Sappa Srinivisa and Ors*.²² Where it was held that in the case there was no pressing need for the payment of debts, the alienation made at a low consideration, could not be said to be for the legal necessity.

In *Jagdish Prashad v. Laxmi Narayan and ors*.²³ It was held that any suit instituted for an injunction to restrain the karta from alienating property, was not maintainable. Further it was also said the legal necessity cannot remain static and it was for the karta to decide the existence of legal necessity or use of property as an act of good management. A similar ruling was given by court in the case of *Kishnamoorthy Gounder v. Sitarama Gounder and ors*.²⁴

In *Catholic Church v. Vishal Kumar*, approving the view the Jammu & Kashmir High Court,

held that where on attaining majority a minor challenges alienation of ancestral property, (1) an alienee is required to establish only the legal necessity for the transaction and it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting the family necessity, and (2) where a major portion of the amount of sale consideration is applied to satisfy the pre-existing debt it is enough to support the sale without further proof as to how the balance had been applied

²⁰ B. Ranga Rao v. G. venkaa Rao, 1996 (1) HLR 337.

²¹ MANU/KA/0497/2008.

²² 2004 (4) ALD 745.

²³ 2003 (135) PLR 481.

²⁴ (2002) 3 MLJ 284.

In *CIT v Gangadhar Sikaria Family Trust*²⁵ held that the alienation of property by Karta without any legal necessity/ benefit of estate/ discharge of indispensable duties is only voidable at the instance of any coparcenery and not void. In *R.C. Malpani vs CIT*²⁶ Where HUF is governed by Mitakshara School of Hindu law and property is alienated by Karta without legal necessity or benefit of minors, it is only voidable and not void, and therefore, any income derived from properties so transferred is not assessable in hands of HUF.

5. CONCLUSION

A person who governs the proper functioning of a joint family is the head or the Karta of the family. He enjoys a unique position unlike any member of the family. The senior most male member of the Hindu joint family is usually the Karta of the or the head of the family. The Karta has innumerable rights and powers. He can exercise these rights in any manner he thinks fit as long as it is for the greater good of the family. Along with such great powers he has a number of liabilities such as maintenance of the family members and keeping proper accounts. The concept of Karta in a Hindu joint family is not just a position of power but also serves a very practical purpose. The Karta is entrusted not only with the management of properties of the family but is also entrusted with the general welfare of the family. Karta is the head of the family and acts on the behalf of all members of the family but an agent of members of the family.

²⁵ (1983) 142 ITR 677.

²⁶ [1995] 80 Taxman p.546.