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Legal analysis of the position of property and income of coparceners in a joint family as per the Hindu Law

Authored By- Sai Pranav

Abstract

Hindu Law concerning coparcenary in a joint family and property related laws are vast. These laws have existed for time immemorial and traces can even be found in the scriptures and writings of learned scholars which are centuries old in itself. With its wide application and vast area of governance often times there are a number of questions that is posed to the judiciary and to the lawmakers, as these set rules and laws are constantly evolving. The legal questions that this paper shall seek to answer is whether (i) the position of income of the coparceners evolved in application for the better over the years (ii) will also identify those crucial factors that determine and influence the position of such income of the coparceners, and (iii) lastly, this paper will also elaborate on the approach adopted by the judiciary in classifying property into separate property and joint-family property. The main objective of this paper is to remedy the ambiguities or inconsistencies which arise in matters relating to the income of the members in a joint family and to concisely explain the approach of the judiciary in determining self-acquired property and joint family property with the help of relevant case laws. This paper shall try and encapsulate the significance of the interpretations by the courts over different time periods and will give a clear understanding of the application of the various rules and laws concerning joint family property and income. This paper will establish the status of salaries and remuneration of the coparceners in a joint family under modern Hindu law and will also answer the question of whether the property purchased by the members amount to self-acquired property or part of the joint family property itself.

Key words - Joint Family property, salaries and remuneration, income, coparceners, self-acquired property and ancestral property

Introduction

A Hindu Joint Family

- Traces its decent to a common male ancestor. The existence of this ancestor is immaterial.
- Hindu Joint Family can be continued even if discontinued at any point of time. Requirements for continuance is - the existence of people living together (common dwelling) and is sharing of a common ancestor.
- Male lineal descendants up to any generation along with their wives/widows constitute a joint family – can be up to any generation, there is no requirement of third or fourth generation as such, even the first generation can be categorised under a joint family.
- There can be a joint family even with no male members, as long as there is a possibility of addition of any male member which can further the existence of a joint family coming into picture. Example – adoption, future son-in-law...
- Even adopted male members are members of joint family
- Unmarried daughters, widowed daughter-in-law's, widowed daughters are members of joint family – some scripts allow the widowed daughters or daughter-laws, whereas some don't.
- No legal entity distinct and separate from members – Joint family's are not a separate body corporate. It is not a legal entity in this sense.
- A unit of members – headed by Karta
- Membership is by virtue of birth (except adoption) and not by virtue of any agreement – in which case it becomes a composite family.
- Illegitimate son can also be a member, but there are certain limitations on the rights
- When it comes to a Hindu Joint Family, there is a presumption of jointness, until and unless proved otherwise – presumption of jointness in every Hindu family. This is a normal characteristic.
- Existence of a joint property is not a determining factor – not a sole determining factor

Incidence of Coparcenary:

- Coparcenary – the term implies joint ownership of property
- Coparceners – are the people who together form or constitute coparcenary
- Under the traditional law of coparcenary, only the male members are seen as members or coparceners who constitute coparcenary
 - These male members acquire the right by earth
 - More the number of coparceners, lesser the interest(ownership) & vice versa
 - Example - suppose A & B are brothers who are coparceners and C& D are the sons of

A, then, C & D not only are entitled for the property of A, *but, as per the Mitakshara (traditional scripture view on coparcenary) the property will be shared equally amongst all A, B, C and D - 1/4th of property to all.

- If any coparcener decides to separate and take his share of property, then on the consensus of the other coparceners, property can be divided to that particular member and, this member upon division or separation shall no longer remain a part of the joint family.
- A coparcener can object to any alienation of property done without his consent. Alienation is difficult in the traditional Mitakshara view, as no coparcener can take a sole decision of separation.
- In a coparcenary, there is a community of interest and unity of possession. Each and everything is jointly/collectively owned and enjoyed, no single member is entitled to the sole enjoyment
- An adopted son can be a coparcener, but an illegitimate child cannot be a coparcener although he may be a member of the joint family, as per the traditional laws
- A person who is of unsound mind can also be a coparcener. He cannot seek alienation on his own.

In order to have a thorough understanding of the status of salary and remuneration of the family members in a joint family under the Hindu law, we must look into the various other subjects that have relevance with our topic. Therefore, it is important that we also brief the readers about the classification of property under the Hindu Law, and how the income of the coparceners is directly related to this classification (ancestral and separate). The necessity to familiarise ourselves with the status prior and after is essential in order to have a complete picture of the development. The status of income of the family members in a joint family has undergone an evolution on its own.

Before the Hindu Succession Act came into picture, the joint family income and the joint family property was governed by a totally different set of rules and procedures. Dwelling further into the way in which it was viewed, it is clearly visible that there is a massive difference in ideology and the whole approach by the judiciary in itself was different.

The Classification Of Property Under The Mitakshara Laws Of Inheritance Are As Follows:

Property traditionally was classified into two different categories –

- SapratibandhDaya [obstructed heritage] – There is some obstruction to it, and the inheritance to the property is not ‘ipso facto,’ it does not devolve automatically. The type of property will determine the obstruction. It is basically, a type of property which is transferred by way of gift or inherited by persons other than male ancestors or other than paternal ancestors, which gives rise to an obstruction. Inheritance is not unconditional. Example – property inherited by A from A’s mother’s father. The son of A cannot inherit this by birth.
- ApratibandhDaya [unobstructed heritage]– It is one which is inherited by a Hindu male from a direct male (paternal ancestor). Example – F, FF, FFF, S, SS, SSS. The three-generation rule/four degrees of relationship comes under this category. This is a right

acquired by birth by virtue of him being a male. The father/grandfather cannot alienate the property of the son/grandson, against the disadvantage of the son/grandson. There has been a difference of opinion w.r.t the property of maternal father/uncle. Strictly looking in the Mitakshara system, it does not include property of maternal ancestors. Ancestral property comes under the category of ApratibandhDaya

Self-acquired properties are considered to come under the category of SapatibandhDaya. In the Mitakshara system by Vijnaneshwara, the commentary explicitly mentions that ‘we do not give up to the co-heirs, what has been gained by him through science, by reading the scripture or by expounding the meaning.’¹Yajnavalkya mentions that, ‘whatever has been acquired by the coparcener himself without detriment to the fathers estate, as a present from a friend or a gift at nuptials, does not devolve to the co-heirs nor shall be who recovers hereditary property which has been taken away – give it up to coparceners nor what has been gained by science.’²

Gains from learning under the Mitakshara law is also known as ‘Katayana.’ The Katayana enumerates certain steps which were later recognised as gains from learning of an individual. They are:

- By proving superior learning
- Or gained something or obtained from a pupil, officiating as a priest, display of knowledge or debates³
- Earning through performance of arts/sports/skills
- Performance of sacrifices
- Recitation of Vedas/scriptures etc
- Learning acquired by science – scientific knowledge, religious/spiritual knowledg

There was a difference of opinion as to whether such income earned is to be seen as joint family income or separate (self-acquired) income. Before 1930’s, there was a difference of specialised training and ordinary training. In 1930, the English came up with the Hindu Gains Of Learning Act, solely to solve or rather to answer this confusion. It therefore eliminated the distinction between specialised and ordinary training.

Hindu Gains Of Learning Act, 1930

Section 2(b) states that “gains of learning - means all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning; and”⁴

Section 2(c) states that “learning means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession of avocation in life.”⁵

Section 3 *Gains of learning not to be held, not to be separate property of acquirer merely for*

¹<https://legalacharya.com/classification-of-property-under-hindu-law/>

²The Vyuvuharu Muyookhu, Pg 86 - 88

³<https://legalacharya.com/classification-of-property-under-hindu-law/>

⁴https://www.indiacode.nic.in/bitstream/123456789/2391/1/a1930____30.pdf

⁵https://www.indiacode.nic.in/bitstream/123456789/2391/1/a1930____30.pdf

certain reasons] states “Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of— (a) his learning having been; in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof, or (b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.”⁶

Prior to the passing of this Act, the courts used to take an approach that if it is a specialised training, then it is separate income, whereas if it is an ordinary training, then it is coming at the detriment to the joint family property, therefore it will be seen as a family income (because some way or the other there being a usage of the family resources in acquiring a particular skill). However, this approach in itself was eliminated through the passing of the Hindu Gains Of Learning Act, 1930. Income through any sort of skill (specialised or ordinary) was seen as a separate income, as a gains of learning of that individual in order to distinguish it from ancestral income. However, the relevance of the above act is very less now. It is replaced in significance by the Hindu Succession Act.

Understanding Joint Family Income And Separate Income

The property gained with the help and support of the property of the communal (joint) family is also considered to be communal. Therefore, the property purchased with such income, such as by the accumulation of income, the rental of the property of the co-family, the sales income of such property and so on- property purchased with these income are also the property of the co-family.

If in a communal family under the name of one of the members a property is being purchased, it will be considered as the property of the co-family and not as a self-acquired property. If you acquire the property without the help of the property of the communal family, it may be treated as another property. This self-acquired property will be accounted for as common joint family property, if it is mixed with the joint family property.

Similarly, if the head of the family purchases any property on his own, then the weight of verification is on him to show that the property was purchased without detriment to the joint family property. In the absence of such evidence, it is presumed that the property is a property of the extended family.⁷

When a property is given to the family or to a member of the family as in order for him to meet the family's costs and expenses and, if out of the benefits arising from such a property, the person purchases some other property, then even this property will be considered as a joint family property.⁸

Businesses started with the help of the joint family property by any coparcener or any such profit arising out of the business will not always be seen as a joint family income. It depends on a case-to-case basis. In one such case, one of the members of a Dayabhaga coparcenary started a cinema theatre in with the due consent of the other coparceners in which the property was co-owned by all. There was no involvement of the other coparceners in this business in any way. The license for beginning such a cinema hall was also obtained only in the name of that member who wanted to start such a business, and there was enough evidence which showed that even the granting of such a license was not in any way objected upon by the coparceners. The court in this case expressly held that a business started or run on a joint family property merely will not make it as an income of the

⁶https://www.indiacode.nic.in/bitstream/123456789/2391/1/a1930____30.pdf

⁷<https://legalacharya.com/classification-of-property-under-hindu-law/>.

⁸D. Latchandora v. Chinnabadu

extended family, as in this case the profits arising as a result of the cinema hall likewise is a separate income of that member and does not add up as the income of that family.⁹

Property procured by a Hindu in any of the accompanying ways is his self-gained property despite the fact that he be an individual from a joint Hindu family:¹⁰

- (i) Property gained by a Hindu by his own effort would be his self-gained property as it isn't the aftereffect of any joint work with different individuals from the joint family, and if detriment is not caused to the joint family property. Where an individual has obtained any property via unfavourable belonging in the wake of staying in its ownership antagonistically for a time of twelve years it would be treated as his self-gained property not a joint property.

Where an individual from joint family carries on a business of clinical professional in Ayurvedic meds and subsequently earns a weighty amount of cash and gives credit on contract, in this manner collecting further pay, all the income and the property hence obtained by him would be his different or self-gained property.

As of late in the Supreme Court saw that if a male individual from the Joint Hindu Family bought the property by his own earnings like his work pay or salary, such property is his self-obtained property. Such property devolves over his children by succession. It was held that that such property can't be called for as the property belonging to the joint family.¹¹

- (ii) Property acquired by a Hindu from any individual other than his father/grandfather/great-grandfather can be classified as his self-obtained property. Adding to that, a person earning income as a result of his hereditary profession will not constitute as a joint family income. Example: Hereditary profession as in a priest

In a renowned case, the court held that a Hindu can possess separate property parallel to having a share in the hereditary property. Where in if any member of a joint family succeeds to the property of his uncle, he has an absolute right to enjoy that property on his own and it will be seen as a self-gained property of that individual. Similarly, property acquired by an individual from collaterals like siblings, uncle or auntsetc will not be hereditary property and his child can't claim for it as a ancestral property. If a person obtains the property of his brother because he died issueless, then such property obtained by that person will be seen as a self-obtained property.¹²

- (iii) Property obtained by a member of the Hindu joint family via partition of the joint family property, and if he has no male issue, it will be dealt with as his different or individual property. Similarly, if such a member makes a few purchases with the assistance of his share in the joint family property, it will be seen as his individual or self-obtained property.
- (iv) Any property lapsing on a sole enduring coparcener given there is no widow in presence who has ability to adopt or conceive, will be viewed as his different property.

⁹Satchidananda Samanta v. Ranjana Kumar Basu and Others Calcutta High Court F.As Nos. 21 and 22 of 1976

¹⁰<https://legalacharya.com/classification-of-property-under-hindu-law/>.

¹¹Makhan Singh v. Kulwant Singh (2007) 10 SCC 602; Appeal (Civil) 4446 of 2005

¹² Madanlal Phulchand Jain v. State Of Maharashtra And Ors SC Civil Appeal No. 2627 Of 1982 | 09-04-1992

- (v) Property acquired by a Hindu by a blessing (gift) or by will except if made by his father/grandfather/great grandfather would be viewed as his individual property.
- (vi) Endowment of hereditary property made by the father through fondness to his son, will be his self-obtained property.
- (vii) Property acquired by a Hindu by award from the Government will be viewed as self-obtained property.

Position Under Modern Law For Treating Salary/Remuneration Of Coparceners As A Separate/Joint Family Income

There are divergent opinions with regards to salaries of individuals in a family on whether they are to be looked at as separate or family income. Most courts have found that, if it turns out to the understanding of the court that substantially there is nothing but that the income was as a result of investments or from utilizing the resources of the family or if it is a namesake salary, but in fact, it is nothing but precisely the profits coming out of the family investments – the courts have taken an approach wherein it suggests that such incomes should not be seen as a separate income. It however depends on the facts of the case.

There has been a conflicting opinion in the High Courts. But, the Supreme Court has eventually said that, until and unless it can be seen outrightly/apparently where the income is nothing but the family assets, which are a source of that particular income/profit, and if such profits are being coloured as salary, then it cannot be seen as a separate income in this regard. However otherwise if there is an element of individual skill, labour, effort which is applied as the case may be by a particular coparcener, then it can be viewed as a separate income of that coparcener.

Case: M.NMurugappa Chetty and Sons v. Commissioner of Income Tax¹³- In this case, one of the coparceners was appointed as the MD of a particular mill, and it was seen by the court that the commission which was earned by him would be his individual income unless it can be shown that it was not acquired by utilizing a portion of the Joint Family property, to which detriment has been caused.

Case: Commissioner of Income Tax v. Kalu Babu Lal Chand¹⁴- In this case, the Calcutta High Court was of the opinion that whatever the earning is received by the MD, that is a consideration for the service he is rendering and therefore, it has to be seen as a separate income even if the Managing Directorship was as a result of the family investment. But then, this matter was appealed to the Supreme Court. The apex court was of a different finding. It said that, in this case, the Joint Family property were used entirely for acquiring a concern, and the entire arrangement – the purchase of the shares by the two coparceners, and one being appointed as the MD, all of this was a part and parcel of the same scheme. So, the Supreme Court was of the opinion that it cannot be seen as a separate income.

Case: Commissioner of Income Tax v. Palaniappa Enterprises¹⁵- In this case, the Madras High Court was of the opinion that the manager of the family cannot gain a pecuniary advantage by utilising family assets. So, the Madras High Court had a very strict approach. It was appealed to the Supreme Court, and the apex court held that, the family funds were invested only to receive dividends and the family funds as untouched by the Karta in earning his remuneration. It was held that the salary earned by him was separate and belonged to him personally.

¹³AIR 1952 Mad 828, 1952 21 ITR 319 Mad, (1952) 2 MLJ 17

¹⁴1959 AIR 1289, 1960 SCR (1) 320

¹⁵1984 150 ITR 237 Mad

Case: V. D. Dhanwatey vs The Commissioner Of Income Tax¹⁶- In this case, the coparceners constituted a partnership firm in such a way that the profits arising out of the partnership was coloured as salary. The court held that, it cannot be a separate income, and it was not salary per se and it has to be seen as family income.

Conclusion

Hindu Law lays down a wide array of rules and principles concerning joint family property. The Mitakshara law particularly has been followed majorly in India since ages until the Hindu Succession Act came into picture. By this paper we were able to establish the position of the income earned by the coparceners as to whether it is a joint family income or separate income. There are a number of subjects affecting this topic, and the classification of property in Hindu Law in one of the major influencers. We have dealt in detail with all the relevant factors which determine the position of income earned by the coparceners and also as to what constitutes as a self-obtained property. All the topics dealt with by us are interrelated and necessarily complement each other.



¹⁶1968 AIR 682