

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 6 | Issue 2
2023

© 2023 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Analysis of Karta and Coparceners Role, Powers, and Liability in The Joint Hindu Family

JANNAT CHUCHRA¹

ABSTRACT

The Karta of the family would usually be the senior member of a joint Hindu family. The position held by Karta is unique, so it is also called the Sui generis position. A member would be karta or not is decided by birth or adoption, and neither he is chosen by anybody nor does it require the approval of the other coparceners. He is the seniormost, hence he has the right to be the Karta. He is the head of the family and administers the family in the best manner possible; he is not a trustee, partner, or agent of the family. Previously, a female could not be Karta since she was not a coparcener before the Hindu Succession (Amendment) Act of 2005. The amendment however brought changes in the position of women in the joint Hindu family. Since the 2005 amendment daughters have now been considered as coparceners and on equal footing as other male coparceners, this further provides that she is now qualified to be karta of the family on condition that she is the seniormost member.

Karta and Coparceners (who have right over Ancestral Property by virtue of birth or adoption) in the Joint Hindu Family have their rights and duties. This article aims to give an in-depth examination of the role of Karta, its power such as contracting debts, starting a new business, giving a valid discharge, referring disputes to arbitration, entering into contracts, Karta's duties such as rendering accounts, recovering debts due to family, etc. Coparceners' rights such as common ownership, common possession, enjoyment, and use of joint family property, right to alienation, and coparceners can challenge to restrain alienation when improper. According to Mitakshara Law, In a joint family, Coparcener's property determination can only be done after partition main reason being Community of Interest and Unity of Possession, and with this partition of joint family property, the joint family status of the family also comes to an end. Members of the joint Hindu Family have distinguished and significant roles to play in running its lineage for which it has been endowed with certain rights and obligations which have been discussed in this article.

Keywords: Karta, Coparceners, Joint Hindu Family, Mitakshara Law, Ancestral Property.

¹ Author is a student at University of Petroleum and Energy Studies, India.

I. INTRODUCTION

There can be different definitions of a Joint family, but with respect to the Hindu Joint Family, it consists of a group of individuals who are related to one another by blood, marriage, or adoption, and out of these members some are Coparceners who by virtue of birth or adoption have acquired right over the coparcenary property or ancestral property and the number of the generations that are included while determining coparcenary are four. This institution of coparcenary exists in both Mitakshara and Dayabhaga schools though there are certain distinctions present in both. Hindu Joint Families deal with outsiders as a unit, hence it is essential that they be led by a member who is both competent in representing the family and binding the family's members and property, as well as someone who is usually trusted by family members to act in the family's best interests. In the past to do such functions, patriarchs had responsibilities, but patriarchs were the ones who maintained absolute control over the lives, and property of the members of the family. But over time such power had been considerably diluted and now in the family, there is a different position of Karta that has been introduced. This concept of Karta is unique in Hindu Law and we won't find the concept of karta in any other Law.

(A) COPARCENERS:

In a Hindu Joint family, there exists an institution called coparcenary but not all the members of the family are qualified to be a coparcener, so it can be said to be a narrow institution within the HUF. It was held in the *Kamalakanta Mohapatra v. Pratap Chandra Mohapatra*² that “if a joint family is the genus, then coparcenary is the species”. Coparceners, as stated earlier, are the ones who by virtue of birth or adoption have acquired rights over the coparcenary property or ancestral property. However, in certain events like conversion, murdering a coparcener would subsequently cease to be a coparcener and become disqualified. The Unity of Possession and Community of Interest is one of the fundamental characteristics of coparcenary property under Mitakshara Law. Since the Hindu Succession Act was amended in 2005, the coparcenary now includes both sons and daughters. The members of the Hindu joint family also consist of members whose addition has been made through the institution of marriage but that is not the case for their inclusion in the institution of coparcenary, the main reason being coparcenary is the creation of Law. The coparceners here collectively own the coparcenary property, however, the rights of the female members and other joint family members to maintenance applications as well. In respect of the Dayabhaga school, there is no such differentiation between Ancestral

² Kamalakanta Mohapatra v. Pratap Chandra Mohapatra, AIR 2010 Ori 13.

Property and Separate Property but a coparcenary can exist between brothers, uncle and nephew, niece and uncle but never between father and son.

II. RIGHTS OF COPARCENERS

Right by Birth in Property: According to Mitakshara school, the right of the coparcener in the joint family property is created as of the moment of the birth of the coparcener in the family, to be specific the right is created from the moment the child is conceived and still is in the womb of the mother. The interest of the newborn coparcener would be equal to that of other coparceners, that is the reason that under mitakshara law, the share or interest of coparceners keeps on fluctuating. All the rights which were vested in the other coparcener by virtue of being coparcener now will also be available to the newborn coparcener from the moment of his birth, such as common ownership, enjoyment, etc. Also, to become a coparcener not only the child who is born within the family but also the child who has been legally adopted is deemed to be a coparcener. There is no differentiation between the adopted children and the natural-born children and both are treated on equal footing, so their interest in the joint family property is also the same.

Right of Common Ownership: Due to the Community of Interest and Unity of Possession, all coparceners collectively have a joint title or ownership of the coparcenary property, and until they determine their shares by way of partition, the extent of their own is unclear. This right of common or joint ownership also denotes coparceners' joint liabilities to settle family debts and the restriction against general alienation of the property without the owners' consent.

Right of Common Enjoyment: Coparceners togetherly own the joint family property, so every coparcener has the right to enjoy the same, but in the family, for convenience or some other reason certain property enjoyment is done by a single coparcener, but this does not implies that the coparcener has the exclusive right over that property which he can demand at the time of partition, this is because every coparcener has the right to common enjoyment, unity of possession, and community of Interest of the joint family property.

In the case of **State Bank of India v. Ghamandi Ram**³, it was held that “No coparcener can claim to enjoy the particular portion of the joint family property solely, till the time partition has been taken place”.

The enjoyment of the joint family property includes that, the coparceners, his wife, and children are entitled to the right of residence in the joint family's home. Also, The maintenance right of

³ State Bank of India v. Ghamandi Ram, AIR 1969 SC 1330.

the coparceners emerges from this right of enjoyment, however, while deciding the amount of maintenance of the coparcener the karta need not be impartial. Also, it must be noted that there is the possibility that coparceners residing away from the joint family property or house may be due to the reason of his/her employment, but this does not implies that they no longer possess the right of common enjoyment of the joint family property.

Right of Survivorship: When a coparcener who is part of an undivided coparcenary passes away, his interest in the property is immediately taken by the surviving coparceners, according to the doctrine of survivorship that is prevalent in the mitakshara school. A coparcenary, for instance, consists of the father and his one son and one daughter. Each of them will probably own a third of the coparcenary property in this case (after 2005 daughter too became a coparcener and here the share is referred to as probable because till the time partition happens the share will keep on fluctuating). By virtue of the doctrine of survivorship, the father and the surviving sister inherit the probable one-third share of the property that belonged to the son, upon his death. Now, the father and daughter's shares will probably increase to half. But no such doctrine of Survivorship is applicable in Dayabhaga school, all property goes through inheritance.

Right to Accounts: Coparceners have the right to ask for accounts from karta, since he is the one who is in charge of managing the family affairs and property in HUF, in cases when he demands partition from HUF or when karta has been charged for the misappropriation or fraud or when the family business which is conducted by karta is of such a nature in which maintenance of proper accounting is necessary.

In the case of **Suryanarayana v. Sugamanathi**⁴, “the court held that when karta has been charged with misappropriation or fraud or when the family business is conducted by karta is of such a nature in which maintenance of proper accounting is necessary, in such situations, karta can be asked to give the past accounts of the transactions”

Right to make Acquisitions: There is no restriction on the coparcener that states that just because he is a coparcener, he has a share in the joint family property but is not permitted to own his own separate property. This was also upheld by the court in the case of **Abhimanyu Kumar Singh v. Branch Manager, IDBI Bank Ltd**⁵, in which the court observed that the coparceners have the right to acquire along with the ancestral property. Furthermore, the consent of the other coparceners is not a prerequisite for a coparcener to hold an interest in the

⁴ Suryanarayana v. Sugamanathi, AIR 1961 AP 393.

⁵ Abhimanyu kumar Singh v. Branch Manager, IDBI Bank Ltd, Patna, AIR 2020 Pat 22.

coparcenary property and to own separate property of his own at the same time. Coparceners can earn separate property in many ways such as, in way of remuneration if he is doing some job, or he inherits property by way of will or gift, etc.

Right to ask for Partition: Coparcener is competent to ask for the partition, and by doing so, he can change his varying and uncertain share into a fixed and certain share. Each coparcener has the right to ask for a partition by communicating his intention to do so to the karta or, if he is not present, to the other coparceners. In the case of **Addagada Raghavamma v. Addagada Chanchamma**⁶, it was held by the court that “The coparceners in the HUF have the right to ask for partition by communicating his intention to do so to other coparceners.”

Once the demand for partition has been made its demand can not be refused by Karta as well as other coparceners. But if karta refuses the demand for the partition, then the coparcener has the option available to approach the court of law to seek partition by filling the suit. In such scenarios, the court lacks the authority to inquire into the coparcener's reasons for demanding partition or to ask him to provide justifications for leaving the family. In case the coparcener is minor and wants partition then he can get it only by a court of law. A suit can be filed in this regard through the next friend of the minor coparcener to achieve the partition. In this situation, the court will only enforce partition if it is convinced that doing so would benefit or advance the interests of the minor. Hence, a minor coparcener can also get the partition.

Right to Renounce his Interest: Among many rights coparceners also have the right to renounce their share in the joint family property. But there are certain restrictions in doing so. When a coparcener exercises his right of renunciation, he must renounce his entire share, and that share must be allotted to all the coparceners. In the case of *Chaudhuri Raghubans Narain Singh v. State of UP*⁷, “the court upheld these conditions and these must be complied with to duly exercise the right by the coparcener to renounce his interest.” This is so because this right can be exercised by the coparceners only before the partition has taken place and while the status of the undivided property is maintained, the fixed share of the coparceners is not known to them so the restrictions while exercising this right must be duly complied with. The coparcener’s decision to give up his share has no effect on the coparcener’s children who were still alive at the time.⁸ However, there can be certain scenarios where the coparcener has begotten the son/daughter after such renunciation, and that child would not have any share in the joint family property.

⁶ Addagada Raghavamma v. Addagada Chanchamma, AIR 1964 SC 136.

⁷ Chaudhuri Raghubans Narain Singh v. State of UP, AIR 1972 SC 2096.

⁸ Krishan Chander v. The Board of Revenue for Rajasthan, AIR 1973 Raj 171.

Right of Alienation: Alienation includes selling, mortgaging, leasing, etc the coparcenary property. Under Mitakshara school, generally, there is no right to alienate their share in the joint family property in any way aforesaid mentioned, vested in the coparceners because the ownership as whole vests with all the coparceners. This was upheld in the case of **Syed Kasam v. Jorawar Singh**⁹ and the “court said that coparcener does not have right to alienate their share”.

But in certain situations, alienation without the consent of other coparceners can take place.

1. If all the coparceners have given valid consent to it, or
2. If it is done for the daughter's or sister's marriage, or
3. If the alienation has been done in the favor of other coparceners only and there is no introduction of strangers into the coparcenary property.

All three situations here constitute voluntary alienation. However, there are also instances when Involuntary alienation can take place.

- In certain situations where to execute the money decree by the court of law, the share in the joint family property of the coparcener has to be sold, so in such cases, involuntary alienation took place. Here two scenarios are possible, If the order by the court in which attachment of the property has been done is given when the coparcener was alive then in such case there is no bar in selling the property to anyone. But if the coparcener dies before such order of attachment has been passed and after the case has been filed then in such a scenario the doctrine of survivorship comes into play under mitakshara school and the share of the deceased coparcener will be given to the remaining alive coparceners by virtue of this doctrine and no such attachment of property can take place.
- In the case of a Gift, generally, the coparcener is not entitled to give away his share of the joint family property in the gift. In the case of **Govindbhai Chhotabhai v. Patel Ramanbhai Mathurbhai**¹⁰ the court also stated the same. But this rule has the exceptions as given below:
 1. If all the coparceners have given valid consent to it, or
 2. If it is done for the daughter's or sister's marriage, or
 3. If the alienation by gift has been done in the favor of other coparceners only and

⁹ Syed Kasam v. Jorawar Singh, AIR 1922 PC 354.

¹⁰ Govindbhai Chhotabhai v. Patel Ramanbhai Mathurbhai, AIR 1967 SC 1153.

there is no introduction of strangers into the coparcenary property.

- The disposition of undivided interest by way of Will could only be done by the sole surviving coparcener in the joint family before 1956, but after 1956 coparceners were made competent to enact their will of the coparcenary interest.

III. KARTA

Within the HUF there is a certain position that plays a crucial role in its management known as Karta. Ordinarily, The member who is the most senior and either born or adopted into the family is the Karta of the family. The determining factor about who will hold the position of karta is the member's seniority rather than the approval or consent of the other family members. If the karta is temporarily absent, it would not be sufficient to make the other coparcener the karta of the family, but there are certain exceptions to it:

- karta is in a remote location or
- his whereabouts are unknown or
- his return within a reasonable time frame is not possible.¹¹

But karta has the option to renounce his position. Then in such a case, the other member can be made karta with the approval of all the family members and there is no boundation as such in this regard that the next senior most member should now hold the position of karta, it can be the younger family member as well who nextly becomes karta. Also in such cases, there is the possibility of division among family members as to who should hold the position of karta, then the seniority of the members will answer this question. The senior most will be made karta.

(A) Powers of karts

Power to Manage Family Affairs: To deal with certain matters it is necessary that a single person from the family performs them so that they are conducted in a more organized, efficient, and beneficial manner for the family. Managing the family affairs and the joint family property is one of them and since karta is in the position of head of the family he holds this power and responsibility. This power of karta to manage is absolute in nature which is in contrast with his power of alienation. The power of management with karta is of a very wide ambit, in this, he is the one who on the behalf of the family acquires the joint family income regardless of its source also he can take possession of the entire property. In case the coparcener's bad habits become the source of trouble for the family members then karta has the power to expel him from the

¹¹ Nopany Investment Pvt. Ltd. v. Santokh Singh, AIR 2008 SC 673.

house. The coparcener in such a case won't have any right to challenge karta's decision, but he can always seek partition and get his share. In the house which room will belong to whom or which portion of the house will be whose will also be decided by the karta of the family and no one can question this, so this also displays that karta can show favoritism in decisions related to family members.

Power to Representation: Karta can enter into any business dealing or transaction while acting as the karta so he can also sue the other party in respect of this transaction. So here karta will be representing the family members, and he can represent them in all matters. Eg: Religious matters, social matters, legal matters, suits related to properties, etc. The family will file a lawsuit in his name in court, and he will also defend a lawsuit against the family.¹²

In the case of **Singriah v. Ramanuja**¹³, it was held by the court that "the karta has the right of representation in the legal matters concerning the HUF." If in the suit, the decree is passed against the karta it will have a binding effect against all the members of the family, even minors of the family, here this binding effect cannot be challenged on the ground that members were not the direct party in the suit, because the karta was acting in the representing character.

Power to Recieve and Spend the Family Income: As discussed earlier, the power of management with karta is of a very wide ambit, in this, he is the one who on the behalf of family acquires the joint family income regardless of its source. Additionally, it is up to the Karta to decide how and with whom to spend this income. However, karta does not have any duty or is bound to economize the joint family income. In the case of **Bhowani v. Jagannath**¹⁴, the court held that since karta is not the same as an agent or even trustee, karta has no duty to economize.

Power of Alienation: The power of karta to manage is absolute in nature which is in contrast with his power of alienation i.e however qualified.¹⁵ Generally, Karta can do alienation only with the consent of all coparceners but in three situations, i.e Legal necessity, the benefit of the estate, religious and indispensable duties, karta does not require the consent of the rest of the coparceners and alienation done by karta under any of these conditions have the binding effect on other coparceners as well.

Kechar Singh v. Nachittar Kaur: In this case, the family-owned two debts and furthermore required cash to make upgrades in the agricultural joint family property. The court, in this case, held that karta actions of selling the land were justified because in these circumstances the legal

¹² DR. POONAM PRADHAN SAXENA, FAMILY LAW 2 160 (5th ed. 2022).

¹³ Singriah v. Ramanuja, AIR 1959 Mys 239 (DB).

¹⁴ Bhowani v. Jagannath, (1909) 13 Cal WN 309.

¹⁵ Bhaskaran v. Bhaskaran, (1908) ILR 31 Mad 318.

necessity does arise.¹⁶

Power to Acknowledge and Contract Debts: If there is debt pending against the family, karta in that regard has the power to acknowledge and pay interest on the same. In cases, where for any lawful purpose loan is needed, then karta has the power to take the debt for it and this debt would be binding on all the coparceners.

Power to Settle Family Disputes: In the event of disagreement among the family members or between the family members and the outsiders, karta in such cases has the power to refer the dispute for arbitration.¹⁷ To bind all the members of the family it is pertinent that such reference by the karta is made for the family's benefit. Here minors are not exempted from such binding effect of reference.

Bhola Prasad v. Ramkumar: In this case, the court observed whether karta can enter into a compromise on the behalf of the members of the family or not, and stated that he/she can do it, but the condition provided that it must not be done for his/her private benefit.

(B) Liabilities of karta

- Since Karta has the power of management, he, therefore, has the responsibility to provide the members of the family with residency. And the obligation of the members' maintenance is also vested in the karta of the family. In addition, he also has a duty to pay for the funeral expenses of the deceased family members as well as the wedding costs for the marriage of the children of the family members.
- When lawsuits are brought against karta by family members or outside parties he is obligated to defend the family as he is the family's representative.
- Since karta holds the position who manages the joint family property in the family, accountability arises on him for duly paying all the pending taxes or debts if any.
- Karta has a duty to render accounts to other coparceners in the case when a coparcener demands partition.

IV. CONCLUSION

In the Hindu Joint Family, different position like Coparceners and Karta exists, so all the members of the HUF are not on equal footing. Also, To be Karta, first being a coparcener is mandatory. There are certain rights that are vested in Coparceners to the exclusion of other family members which are discussed above. Also, it has been noticed that many times Karta's

¹⁶ Kehar Singh v. Nachittar Kaur, AIR 2018 SC 3907.

¹⁷ DR. POONAM PRADHAN SAXENA, FAMILY LAW 2 162 (5th ed. 2022).

position is confused with the manager of the family but his position per se is not of manager as Karta's work has the sanctity attached to it, and on the contrary, the manager would work to gain the profit or salary only, So it is rightfully said that karta position is of unique character. With the progressive time and to make sure that law does not become redundant, females were made coparceners and are now part of the institution of the coparcenary. They are also competent to become karta provided they are born or adopted into the family and not married.
