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## HUF PROPERTY- SOURCES AND ASPECTS

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### ABSTRACT

There are only two principal sources either a gift by paternal ancestor or a share in partition, the property will be considered as HUF property of the individual. The Supreme Court restricted the source and prohibited the tax planning of an individual who inherited the property from father treating it as HUF property. Even for HUF, the taxing authority has to examine the residential status.

The source of HUF property and the nature and right of individual coparcener in relation of HUF property, There is a basic distinction between Mitakshara and Daya Bhag regarding HUF property because in Daya Bhag son does not have birth right in the property during the life time of the father. Only after the death of the father brother's can consider the property as HUF property till they remain joint and can be assessed as HUF whereas in Mitakshara ancestor property from paternal side automatically takes shape of HUF property and every coparcener has fluctuating interest in the property under the concept of common ownership and unit of possession. From time to time the taxing authorities restricted the source of HUF property and prohibited blending of individual property in common pool of HUF even then in hundreds of cases HUF property has been separately assessed. If a coparcener transfers his individual property in the common pool, the property would become HUF property but the income from that property will be treated as individual income.

**Index Terms:** *ancestral descending , joint family property, sapratibandha, survivorship , devolution of property.*

### 1. INTRODUCTION

Institution of family came only after the recognition of possession and ownership of property. In Shastric era concept of both Jangam (movable) and Sthaver (immovable) property was accepted during Vedic and post Vedic era. There were rare cases of individual property. The property was either stridhan of woman as joint property of the family.

HUF is capable of holding property. In fact the existence of HUF itself depends on the holding of properties by it. A property held by HUF is known as HUF property. It is also known as joint family property. That apart, any of the members of the HUF, coparcener or otherwise, may hold property which is separate and distinguishable from the HUF property. Such property is known as individual property of the particular member.

While the HUF property will usually be ancestral descending from one generation to the other without altering its character, the HUF Property- Sources and Aspects individual property may have either been acquired by the member concerned by his personal exertion in which case it is known as his/her self acquired property or it may have come to him in some form or other by way of gift or share, etc<sup>1</sup>.

### 2. JOINT FAMILY PROPERTY (APRATHIBANDA DAYS) NATURE AND CHARACTERSTICS

The joint family property or HUF property as tax statutes call it (and it is HUF property which is taxed) is the most important and significant aspect of law of Hindu joint family. The Hindu joint family property is like a big reservoir into which property flows in from various sources and from which all members of the joint family draw out to fulfill their multifarious needs.

The Mitakshara's basic classification of property into pratibandha daya or unobstructed heritage and sapratibandha daya or obstructed heritage is the natural corollary to the twin concepts of son's birth right and devolution of joint family property by survivorship. The Mitakshara explains both the terms.

Thus, the wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons in the right of their being his sons or his grandsons; and that is an inheritance not liable to obstruction. But property devolves on parents or uncles, brothers or the rest upon the demise of the owner, if there is no male issue; and thus the actual existence of a son, and the survival of the owner are impediments to the successions and on their ceasing, the property devolves on the successor in right of his being uncle or brother. This is an inheritance subject to obstruction<sup>2</sup>.

In other words-unobstructed heritage is property in which a person gets a right by birth. Property inherited from the paternal ancestors in the male line up to the third degree i.e. father, father's father and father's father's father; is unobstructed heritage as regards the inheritors lineal male descendants up to the third degree because they take a right in the property by birth.

Apratibandha is not such a partitioned succession and the interest of the co-heirs is indefinite liable to fluctuation by deaths or birth in the family till their shares are fixed by a partition among the co-heirs.

### 3. CHARACTERISTICS OF JHF PROPERTY

Joint Family Property governed by Mitakshara law is that in which every coparcener has a joint interest and joint possession in joint family property. The following are the main characteristics of a joint family property :

#### A. Fluctuating interest of coparceners in Joint Hindu Family Property

The Mitakshara coparcener's interest fluctuates both at birth and deaths in the family. The remarkable feature of interest pometnadal by birth is that the interest which a coparcener acquires by birth is not a specified for fixed interest.

At no time before partition can it be predicated that he is entitled to so much share (one- half or one-fourth or one-third) in the joint family property. Nor can he say that such and such items of property belong to him even if the properties are in his possession or use. The interest fluctuates with the births and deaths in the family<sup>3</sup>.

For instance a coparcenary consists of father F and his son A. If partition takes place at this stage, F and A each will take 2 properties. But suppose no partition takes place and another son B is born to F. The interest of F and A has fluctuated and if partition now takes place, A, B and F will each get 1/3 share only by partition the interest can be fixed. In other case a joint family consist of F and his three sons A, B and C. None of them can say what is their share in joint family property. If at this stage partition takes place each of them will get 4 share. But suppose, no partition takes place and A dies. The interest has fluctuated. Now if partition takes place each will get 1/3. The Mitakshara coparcener's interest fluctuates both at birth and death<sup>4</sup>.

#### B. No automatic devolution of property on the death of either Karta or any coparcener

There is no partition of Hindu Undivided Family property on the death of coparcener. A notional partition assumed for the purpose of working out interest of the deceased coparcener in the coparcenary of which he was a member does not result in disruption of Hindu Undivided Family unless and until physical partition takes place by voluntary act of the claimants to partition.

In CWT w Chandrasinharao D. Gaekwad<sup>5</sup>, it was held that a close look at the provisions of Hindu succession Act, particularly, Section 6 would go to show that it does not ordain that a coparcenary which exists at the time of the death of one of its male member come to an end on the death of its member.

It only deals with devolution of the undivided or unseparated interest that the deceased coparcener had in the coparcenary property at the time of his death. Devolution of that interest is to be governed depending upon the fact who are the surviving heirs to the deceased to claim the property on his death. It is a composition of the heirs that is determinative factor whether the property is to devolve by survivorship or the remaining members of coparcenary or by succession, to body of heirs.

Determining the pre quantum of interest that the deceased coparcener had in the coparcenary property at the time of his death to pass on by succession. It does not envisage actual partition of the property and disruption of the family bringing an end to coparcenary or the status of the family as HUF.

The legislature has not expressed that a partition is deemed to have taken place but only tells to assume the share if the partition had taken place which clearly indicates that no partition either actual or notional is deemed to have taken place.

The family as it is minus the deceased continues as before. Law is also trite that succession does not remain in abeyance. There is no hiatus between the death of a person and vesting of his estate in his heirs. It is nobody's case that any claim to actual partition of the whole property in definite proportion has been made or such partition has taken place.

In fact the claim to complete partition has been made on the basis of notional partition, that is deemed for the purpose of determining the share of deceased in coparcenary at the time of his death under Section 6 of the Hindu Succession Act.

Thus, the principle that on notional partition assumed for the purpose of working out interest of the deceased male Hindu in the coparcenary of which he was a member, does not result in disruption of the status of coparcenary and HUF unless and until physical partition takes place by voluntary act of the claimants to partition. The fiction is notional determination of share of the deceased in coparcenary and not of any deemed disruption of coparcenary.

#### C. Rule of survivorship

Survivorship is a peculiarity of the Hindu Law. Where a coparcener dies without male issue his interest in the joint family property passes to the other coparceners by survivorship and not by succession to his own heir.

Even where a coparcener becomes afflicted with lunacy subsequent to his birth, he does not lose his status as a coparcener which he has acquired by his birth, and to although his lunacy may under the Hindu Law disqualify him from demanding a share in a partition in his family. Yet where all the other coparceners die and he becomes the sole surviving member of the coparcenary, he takes the whole joint family property by survivorship<sup>6</sup>. The beneficial interest of each coparcener is liable to fluctuation, increasing by the death of another coparcener and decreasing by the birth of a new coparcener. But this right of a surviving coparcener to take by survivorship the interest of a deceased coparcener is defeated; (i) where the deceased coparcener's interest had vested in the official Assignee on his insolvency<sup>7</sup>; (ii) where interest had been attached during the deceased coparcener's lifetime in execution of a decree against him<sup>8</sup>; (iii) where the deceased coparcener has transferred his interest for consideration with or without the consent of the other coparceners in Madras<sup>9</sup> and with the consent of the other coparceners or family necessity; (iv) where he has become a convert to an alien faith; and (v) by his contracting a marriage under the Special Marriage (Amendment) Act, 1923<sup>10</sup>, wherein a partition between the father and sons a property is allotted to the Co father and after the father's death his sons take that property, they take it as tenants-in-common and not as joint tenants with the right of survivorship<sup>11</sup>.

**D. In HUF property a philosophy of common ownership and unity of possession recognised**

The nature of ownership of the Mitakshara coparceners in the joint family property is common ownership. No individual member can say that, "this is mine" or that "this item of property belongs to me", what he can say is, "this is ours". The moment a person is born as a son in the family, he acquires an interest in this sense that he has a right of common ownership and unity of possession. This phenomenon is expressed by saying that the one who is born in the family has a right by birth and those who are left behind, i.e. survive others, have a right of survivorship.

Thus the communal nature of interest in the joint family has to be expressed by saying that a son (i.e., son, son's son and son's son's son) has a right by birth and that the interest of a deceased coparcener passes by survivorship.

The remarkable feature of common ownership of the Mitakshara joint family system is that a son is born with property. In no other system of law one is born with silver spoon. The expression that one is born with silver spoon means that he is born in a rich family so much so that for his feeding a silver spoon is used. But, then the child has no right, no interest in that spoon, and if the father takes away the spoon, the child may cry hoarse, he cannot recover it, as the ownership in the spoon belongs to the father if he is born a son in a Mitakshara family he acquires an interest in the joint family property.

**4. CONCLUSION**

HUF property is the property held by HUF, it is also known as Joint family property. Tax statutes understand HUF property as a taxable own where as it is assumed to be family reservoir or common pool of income where philosophy of common ownership & unity of possession is recognised.

The major source of HUF property are ancestral property, property obtained by partition, property acquired by the aid joint family property, gift etc.

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