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TYPES OF PROPERTY UNDER HINDU LAW

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Introduction

“We” do not inherit the earth from “our ancestors; we borrow it from our children” – Jhon medison.

The above phrase may have different meaning compare to what we are going to discuss in this paper. But it somehow conveys a message that the property which are enjoying we are have interest of other people as well. The term “property” has been outcome of the Latin word “proprietary” and the French equivalent “proprius,” both of them refer to a thing owned. The concepts of the property and the ownership are inextricably linked. There is often no property without possession and no possession without property. Property has very important place in human life because it is difficult to check the extent of properties ownership if there is no property .

The fact is that the word property has a significantly broad meaning. It includes money and other tangible items, along with intangible rights that are taken as a sources of income or wealth. The interesting thing is that if a person has in land chattels to the exclusion of others, and it is right to enjoy and lose certain things which he pleases, provided he does not use them in a way that is prohibited by law.

One can have admiration for the sea and the air, but no one can legitimately claim ownership over them. The sea and the air cannot be appropriated. When things are fully ours, or when all other people are forbidden from intruding on them or interfering with them, nobody else besides the proprietor, who has this exclusive right, can have whatever claim to use them, nor can they prevent the proprietor from disposing of them as he sees fit. When things are fully ours, or when all other people are forbidden from intruding on them or interfering with them.

And the reason for this is due to the fact that property, which is an entirely separate right to things, includes the right to use those things, and also the right to a variety of them, whether by exchanging them for other things and perhaps even giving them away to any other individual without any consideration being given. The reason for this is due to the fact that property is an exclusive right to things. or perhaps just discarding them entirely.

In this paper we are going to just understand the types of property under hindu law.

Types of property

Property classification means that property is subdivided into different- different types that are known by different name, and each property has its own characteristics, features, and way of conducting its property. Property is classified into two types –

(1) “Joint Hindu Family Property”

(2) “Separate Property”

The Joint-family property is also known as ‘Coparcenary Property and this property consists of (a) Ancestral Property

(b) Property which is jointly acquired by the members of the Joint family”

(c) Separate property of a member that is thrown into the common stock.

(d) Property that is acquired by all or any of the coparcener with the aid of joint family funds.

Property is divided and classified extensively. Prior to the establishment of Hindu law, the Mitakshara and the Dayabhaga were two very important and major schools of thought. Mitakshara School divides property into two categories: unobstructed property and obstructed property. Furthermore, following the coming of Hindu law and the decline of both primary schools, the property was subdivided into 2 parts under Hindu law, namely Joint Family Property and Separate Property.

In the cases of *Rukhmabai v. Lala LaxmiNarayan*⁴⁶⁶ and *Rajagopal v. Padmini*⁴⁶⁷, the courts ruled that a family is considered to be a joint family if its members have common responsibilities with regard to matters of food, worship, and estate. Even if members of a family do not live together and do not share meals or religious practises – for example, if they have their own homes – the family is still regarded to be a Joint Hindu family if they have joint ownership of the property. It was determined in the case of *Chhotey Lal and Others v. Jhandey Lal and Anr.* that a Joint Hindu Family does not qualify as either a business or a juristic person since it lacked an independent legal entity from its members. This was the conclusion reached by the court. It is a unit that is represented in all situations by the Karta that is associated with the family.

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*Others v. Jhandey Lal and Anr*⁴⁶⁸, that a Joint Hindu Family does not qualify as either a business or a juristic person since it lacked an independent legal entity from its members. This was the conclusion reached by the court. It is a unit that is represented in all situations by the Karta that is associated with the family. Let's start understanding them one by one starting with types of property mention under mitakshra school of thought.

Obstructed property

Obstructed property is property to which the right does not accrue through birth but rather through the death of the final owner. The existence of the ultimate owner prohibits the accrual of the right to it, earning the designation "obstructed." Therefore, property that would otherwise pass to the deceased owner's parents, siblings, nephews, nieces, etc. is considered obstructed property. Family like that just isn't into having kids. Only upon the demise of the current owner will their claim to it become effective.

In this context, obstructed heritage refers to any inheritance a male Hindu receives from a male relative who is neither his father, his father's father, or his father's father's father. The owner's ownership of this property is absolute and sole; it cannot be combined with any other properties.

Ownership of an obstructed property usually passes on to the heirs of the last owner, but in rare situations it might be passed on by survivorship. Listed below are the special circumstances:

- Joint tenancy with right of survivorship applies when two or more male lineal descendants inheriting a paternal ancestor's separate property.
- If there are two or more grandsons, the maternal grandfather becomes a joint tenant with the right of survivorship with all of the grandchildren.

⁴⁶⁶ 1960 AIR 335, 1960 SCR (2) 253

⁴⁶⁷ 1996 AIR 238, 1995 SCC (2) 630

⁴⁶⁸ AIR 1972 All 424

- When two or more wives take over as their husband's heirs, they do so as joint tenants with the right of survivorship.

As joint tenants, two or more daughters succeeding as heirs of their father.

There are only these four rare situations in which someone other than the prior owner can become the successor to the obstructed property.⁴⁶⁹

Illustration

An inherited a specific property from his brother, who died without issue. The acquired property in A's possession will be a discouraging legacy for A's children. A's children will inherit the property from him as if he had died.

Unobstructed property

A person's right to their unobstructed property is guaranteed and fascinating from the moment of their birth. Unobstructed means that the right to it can be obtained without the owner's presence being a barrier. Therefore, a Hindu's claim to the property he inherits from his father, grandfather, and great-grandfather is unobstructed heritage so long as he has male issues, that is, sons or male descendants of his sons. The male descendants to whom the property is transferred are called "coparceners" since they inherit these rights by virtue of their paternity. This leaves the final male heir with complete control of the family's inherited property..

Illustration

Property belonging to 'A' was passed down to him by his father. M and N, two of A's children, are coparceners with their father. M and N will automatically become entitled to a share of A's inheritance upon their birth. A's children will have no trouble inheriting the property from him

because his presence won't prevent them from becoming legally entitled to it.

The Mitakshara School recognises the distinction between obstructed and unobstructed property, whereas the Dayabhaga School believes that all properties should be considered obstructed because no one can inherit property immediately after birth or have an interest in another's property by birth. Both the school's and the student's point of view distinguishes Obstructed and Unobstructed Property.⁴⁷⁰

Ancestral property

After the partition of a Joint Hindu family, Ancestral Property is also known as Self-acquired Property. As the name suggests, Ancestral Property is passed down from generation to generation. This Ancestral property was passed down through three generations and is also considered Coparcenary property because it includes property descended from the father and great grandfather. Separate property includes "self-acquired and ancestral property", as previously discussed.

Separate Property is the second type of property under Hindu law, in which the property is inherited by non-blood relatives.

The dictionary meaning of "property inherited from ancestors" was adopted by the court in the case Gurdip Kaur vs. Ghamand Singh Dewa Singh, 1965⁴⁷¹. It was also decided that anything inherited from a grandpa, great-grandfather, or father counts as ancestral property.

The question of 'who can acquire ancestral property?' arises. The Hon'ble Supreme Court held in the case of Arshnoor Singh vs. Harpal Kaur, 2019⁴⁷², that "Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three

⁴⁶⁹ <https://www.legalserviceindia.com/legal/article-7810-hindu-joint-family-and-mitakshara-coparcenary.html#:~:text=Mitakshara%20coparcenary%20is%20one%20of,the%20family%20property%20through%20birth.>

⁴⁷⁰ Short Note on Hindu Joint Family- Under Mitakshara and Dayabhaga by Saimy Eliza Abraham Assistant Professor KMCT Law College, Kuttippuram, Kerala, India

⁴⁷¹ AIR 1965 P H 238

⁴⁷² MANU/SC/0864/2019

degrees above him, then his male legal heirs up to three degrees below him would get an equal right as coparceners in that property."

After the Hindu Succession Act was amended and put into effect in 2005, women were given equal rights to self-acquired or ancestral property for the first time. Men and women now share equal access to inheritances. Some inheritance from ancestors includes the following:

- In order to qualify as "Ancestral Property," a property must be at least four generations old or must have been continuously owned by the same family for at least four generations.
- The members should not divide the Ancestral Property since doing so would constitute a self-acquired acquisition of the property.
- A person's right or interest in Ancestral Property is presumed to have been established at birth.
- Rather than relying on a person's total population, the rights to their ancestral property are distributed evenly among each strip.
- Each generation's part of the ancestral estate is calculated, and then that amount is further split among the future generations..⁴⁷³

Joint family property

The term "joint family property" or "Coparcenary property" refers to assets in which all coparceners own an equal share and have equal control.. Alternatively, joint family property is defined as property acquired jointly by members of the family using ancestral property.

Joint family property is defined as any property acquired in the name of a joint family member in the presence of an ancestral nucleus. According to the decision in V.D. Dhanwatey v. CIT, 1968⁴⁷⁴, "the general doctrine of Hindu law is that property acquired by a Karta or a

coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property." To put it another way, a self-acquired property must have been obtained independently of the community estate. Therefore, it is evident that one must prove that their purchase was done independently of their ancestors' or the family's common property in order to argue that it is their distinct property.

Property possessed by members of a joint family is often incorrectly thought to be the property of each individual member. Specifically, "Hindu law on this part of the issue is well settled" according to a ruling from the case Srinivas Krishna Rao Kango vs. Narayan Devji Kango⁴⁷⁵ from 1954. The existence of a joint family does not provide evidence that any property held by any family member is held jointly, and the burden of proof rests on the person making the claim that property was held jointly. Some people confused Coparcenary property and Joint family property, but both are the same under Hindu law.

It's important to note that under a shared family property arrangement, both males and females count as members, but in a coparcenary arrangement, only males count. Whereas all members of a Coparcenary family have an equal right or interest in the property by birth, in a Joint family only males do.

Because of these minor distinctions, people believe that coparcenary and the joint family property are two distinct theory; however, under Hindu law, they are considered synonymous.⁴⁷⁶

Conclusion

Property issues are a major cause of concern or difficulty for Indians. Many rules and amendments have been made to reduce the number of property disputes, To address the issue of property and the classification of property under Hindu law and the Hindu

⁴⁷³ <https://www.indianbarassociation.org/concepts-of-ancestral-property/>
⁴⁷⁴ 1968 AIR 682

⁴⁷⁵ 1954 AIR 379, 1955 SCR 1

⁴⁷⁶ <https://www.legalserviceindia.com/legal/article-3297-joint-family-ancestral-and-coparcenary-property.html>

succession act, the government has formed numerous regulatory agencies.

Disputes over ownership of land or property are not a new phenomenon in today's world. There has been a debate about ownership of property from the beginning of time, but no legal measures exist to address this issue.

The research also reaches the conclusion that, over time, numerous kinds of property have been created to protect the status of female members or their rights, which were either nonexistent or ignored in the early period when there was no Indian succession act, Hindu law, and many others.

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