

**DE JURE NEXUS LAW JOURNAL**

Author:  
Harsh Chotwani  
Amity Law School, Noida  
3<sup>rd</sup> Year, BBA LL.B. (Hons.)

**CONCEPTUALIZING JOINT FAMILY PROPERTY****INTRODUCTION**

Joint families are a typical component which is seen in Hindu society. Hence the idea of a coparcener is additionally extremely regular here. A coparcener corresponding to his father is an individual who has an option to offer the memorial service cake to his dad. So presenting such terms through Mitakshara coparcenary had sole profound nature yet later on, by adding legitimate point to it this otherworldly and strict nature was broken down and it's anything but a nearby idea of property. So at the current occasions, coparcenary is a term just connected with the familial property.

According to the Hindu Succession Act<sup>1</sup>, coparcener incorporates normal male predecessors and their direct relatives. After the alteration of year 2005 girl have likewise been added to it. The segment is an interaction of joint Hindu family through which the large family which were joined before isolates. Through the division of land, new separate families are conceived and family unit replaces joint families. For the interaction of parcel, there is a necessity of in any event two coparceners.

Since it is through them the jointness of families reach a conclusion. As per Hindu Succession Act, every single coparcener is qualified for the joint property of predecessors. They own the property mutually.

---

<sup>1</sup> THE HINDU SUCCESSION ACT, 1956

Consequently this term segment can be characterized as "of the crystallization of the fluctuating interest of a coparcenary property into a particular offer in the joint family domain."

### **CONCEPT OF JOINT HINDU FAMILY**

The importance of a joint family under the Oxford Dictionary is continued family consists of two or three generations and their spouses and children living together under a single household. To comprise a Joint Hindu family, every one of the individuals ought to be Hindu and comprises of a typical predecessor and male relatives with their moms, spouses, or widows and their unmarried little girls. It's anything but a persistent interaction as though upper individuals eliminated through death then, at that point lower individuals are added through marriage or by birth.

In Mitakshara law, the child has a directly over the property since birth whether it's anything but a genuine child or ill-conceived child. In prior occasions, little girls don't turn into an individual from her dad's joint family subsequent to getting hitched yet the present circumstance has changed.

Bereaved little girl or abandoned by her significant other can again turn into an individual from her dad's family yet her youngsters will consistently be an individual from their dad's joint family. The part can be added to the family through reception and will be skilled to approach rights and commitments given to a characteristic conceived kid.

In *Anant v. Shankar*<sup>2</sup> held death of sole surviving coparcener, a joint hindu family is not finally terminated so long as it possible in nature or law to add a male member to it. Thus there can also be joint families with only widows.

### **COPARCENARY AND THEIR PROPERTY**

The Coparcenary is a smaller foundation and included under Joint Family. It's anything but a male part who had brought into the world in the family and gets an interest in the Coparcenary

---

<sup>2</sup> ANANT BHIKAPPA PATIL V. SHANKAR RAMCHANDRA PATIL, july 26, 1943

property. To establish a Coparcenary as a base two male individuals ought to be expected to begin and proceeded for a more drawn out time frame.

Joint Hindu family has limitless individuals however Coparcenary is simply restricted to four ages of limitless male individuals. The property procured by a senior most male part is known as the last holder of the property.

Now and then all the coparceners passed on leaving behind just one, the enduring Coparcenaries known as Sole Enduring coparcener. On the off chance that it will be unrealistic to add another coparcener, the property in his grasp becomes isolated property. The right to upkeep needs to given to female individuals on the off chance that they have.

In prior occasions ladies can't become coparceners however after the revision in the Hindu Succession Act, 2005, girls likewise become coparceners very much like their sibling from birth. Under traditional law, in the event that a coparcener bites the dust, his offer in the property was moved to enduring coparceners however this Principle of Survivorship has annulled under the 2005 alteration. Furthermore, presently the property has isolated through the Teaching of Notional parcel and the property had given to the expired's lawful beneficiaries.

**V.D. Dhanwatey v. CIT**,<sup>3</sup> held:-

The Doctrine of Hindu law is that property gained by a karta or a coparcener with the guide or help of joint family resources is dazzled with the personality of joint family property. To put it in an unexpected way, it's anything but a fundamental component of self-procured property that it ought to have been gained without help or help of the joint family property. The trial of self-securing by the karta or coparcener is that it ought to be without weakness to the hereditary domain. It is accordingly certain that before a procurement can be professed to be a different property, it should be shown that it was made with no guide or help from the hereditary or joint family property."

## **FORMATION OF JOINT HINDU FAMILY**

---

<sup>3</sup> AIR 1968 SC 683

To frame or begin a family there should be a typical male predecessor to bring Joint Hindu Family into reality however to proceed with it's anything but important. After his passing, the remainder of the family will proceed. It's anything but a typical principle that the majority of individuals organizations Joint Hindu Family yet a majority of male individuals isn't essential.

A single male part after partition doesn't establish Joint Hindu Family regardless of whether he has all the tribal property in his grasp. As there required at least two individuals to begin a joint family. He can frame a joint family with his significant other however to shape Coparcenary he required at least two male individuals.

In the case of *Commissioner of Income Tax vs. Laxmi Narayan*<sup>4</sup> the court held that if the male died leaving behind the child, his better half and his mom would stay in a similar status i.e., a single male with a female member can establish Joint Hindu Family.

The joint family can proceed by just female individuals. After the passing of the last male individual from the Hindu unified family, the remainder of the individuals either non-coparceners or females were permitted to proceed with the situation with Joint Hindu Family. That status will proceed until they can add male individuals either by selection or by birth in any case Joint Hindu Family finished.

In the case of *Attorney General of Ceylon vs. Arunachalam Chettiar*,<sup>5</sup> said after the death of all male members of the family, the joint family will continue only if the women of the family are capable of bringing new male members either by adoption or by being pregnant.

“A single member did not constitute a Hindu undivided family and possesses absolute right over property even after his marriage but his property becomes ancestral when his wife begot a son.”

The Supreme Court in the case of *Surjit Lal vs. Commissioner of Income Tax*,<sup>6</sup> held the partitioned property hold by son had obligation to maintain his wife after marriage, and they will constitute joint family but the property possesses by him maybe his separate property.

---

<sup>4</sup> AIR 1968 16 ITR 313 nag

<sup>5</sup> [1957] 3 WLR 293

<sup>6</sup> 1976 AIR 109

## **CLASSIFICATION OF PROPERTY**

Classification of Property implies Property is partitioned into various structures which are known by various names and every one of the various properties have their own attributes, highlights, and method of directing its property. As per Article 220 of Hindu Law, Property is grouped into two kinds:

1. Joint Hindu Family Property
2. Separate Property.

Joint-family Property is otherwise called 'Coparcenary Property and this property comprises of (a) Genealogical Property (b) Property together gained by the individuals from the Joint family. (c) Separate property of a part "tossed into the regular stock." (d) Property gained by all or any of the coparcener with the guide of joint family reserves.

There is a great deal of division and characterization in Property. Prior to the establishment of Hindu law, there were two chief schools for example Mitakshara and Dayabhaga. Mitakshara School separates the property into two classifications and the first is Unhampered Property and the subsequent one is Discouraged Property. Further, after the order of Hindu law and the decay of both chief school, the Property is separated into two sections for example Joint Family Property and Separate Property under Hindu law.

## **JOINT FAMILY PROPERTY**

Under the Mitakshara school, the joint family property devolves by survivorship

According to section 6 of Hindu Succession Act

When a male dies after the commencement of this act, having at the time of his death an interest in a mitakshara coparcenary property, his interest in the property shall delegate by the survivorship upon the surviving members of the coparcenary and not in accordance with the act.<sup>7</sup>

If a member of joint family, acquired property in his own name in the presence ancestral nucleus, it shall be presumed to be joint family property

---

<sup>7</sup> THE HINDU SUCCESSION (AMENDMENT) ACT , 2005

## **DOCTRINE OF BLENDING**

**“Mallesappa Bandeppa Desai and another vs. Desai Mallappa and Others”**<sup>8</sup>

It was held for this situation that the property when once mixed with the joint family property can never be guaranteed back when the joint family property is cut off. What's more, this is known as the Doctrine of Blending.

There exist notable standards of Hindu family that all the Hindu families are together in sharing food, love symbols and bequest procure without any verification that the property is isolated and this assumption proceeds to exist and will proceed later on also. The weight to demonstrate that there exist self-procured properties in the current familial property lies on the individual who gained that property and never guaranteed a directly over that property.

As per the judgment made by Bombay high court, a property which is gained by joint work of part without utilizing any of joint family finances will likewise be considered joint family property if no opposite goal is shown.

In one of the case laws "Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe"<sup>9</sup>, the Honourable Supreme court gave the judgment that the idea of a joint family property never shows signs of change even after it is cut off. It's anything but a joint family property as long as the family stays joint. No individual from a joint family can change over any of the joint family property into his own property.

---

<sup>8</sup> 1961 AIR 1268, 1961 SCR (3) 779

<sup>9</sup> 1986 AIR 79, 1985 SCR suppl. (3) 169

## **CONCLUSION**

Property related issues are a genuine concern or issue that is looked by the Indians. A great deal of rules and revisions were made to decrease the quantity of debates identified with property matters and the public authority has additionally settled numerous administrative bodies which control the issue of property and characterization of property under Hindu law and Hindu progression act.

Land question or property debate isn't something new question or struggle which emerges in this age. It has been predominant since the early period however there were no arrangements of law that can manage the contention of property.

Another conclusion which can be derived from this entire article is that with the progression of time the situation with female individuals or we can say that the privileges of female individuals are gotten in the various types of property which were thoroughly missing or ignored in the early period when there is no Indian progression Act, Hindu law and numerous others.

De Jure Nexus  
LAW JOURNAL