Inheritance & Partition

HUF, Joint Hindu Family, Hindu Succession Act, Partition, Wills

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TOPICS FOR DISCUSSION

- HUF, Joint Hindu Family, Ancestral Property
- S.14 Hindu Succession Act - Limited and Absolute Rights
- Partition & Claims
- Requisites of a Will
- Recent Jurisprudence

HINDU UNDIVIDED FAMILY, JOINT HINDU FAMILY, ANCESTRAL PROPERTY

HINDU UNDIVIDED FAMILY

- ‘Person’ under s.2(31)(ii) Income Tax Act, 1961
- All persons, including Hindus, Jains, Sikhs or Buddhists and excluding Muslims or Christians, lineally descended from a common ancestor inclusive of their wives and unmarried daughters [*C. Krishna Prasad v. CIT, (1975) 1 SCC 160*]
- Headed and managed by the ‘Karta’ (usually the senior most male/female)
- HUF can exist with a sole surviving male coparcener, as long as female members remain
- Recognised primarily for taxation benefits:

JOINT HINDU FAMILY

- Broader personal law wherein a Hindu family is presumed to be joint in food, worship and estate, until partition is effected.

- Governed by two schools i.e. *Mitakshara* (interest by birth) and *Dayabhaga* (interest upon death of property owner); now codified by Hindu Succession Act, 1956

- JHF is neither a corporation nor a juristic person as they do not have a separate legal entity from that of its members.

- Comprises coparceners (members of a JHF with a right by birth), and other family members with no direct share

- s.6 HSA 2005: daughters coparceners by birth, at par with sons

- Distinct from HUF: JHF may exist without being registered or assessed under the Income Tax Act

ANCESTRAL PROPERTY

- Property inherited by Hindu from father, grandfather, or great-grandfather; up to three generations above him/her
- The coparcener(s) acquires interest in it by birth itself, not merely by inheritance on the ancestor's death
- Pre-2005 amendment, devolved by survivorship among coparceners within the JHF, and not the direct heirs; being wife or daughters. The 2005 amendment included daughters' shares
- Distinct from self-acquired property, which the owner may deal with or Will away freely; may become ancestral if added to the pool
- Neither properties inherited from mother, grandmother, uncle, brother, nor those inherited by Will or as a gift qualify as ancestral properties

S.14 HINDU SUCCESSION ACT: LIMITED AND ABSOLUTE RIGHTS

HINDU UNDIVIDED FAMILY

- S.14 HSA: enlarges a limited right to the estate in a property to an absolute right…
  - If the instrument limits pre-existing rights, such as a Hindu woman’s right to be maintained ⟶ Absolute right under s.14(1)
  - But NOT if the instrument creates a new limited right ⟶ Limited right under s.14(2)

- *Jogi Ram v Suresh Kumar & Ors. (2022)*, para 31: income from property served as means of maintenance, thus, estate in the property per se could remain a limited right under s.14(2)

- *V. Tulasamma & Ors. v Sesha Reddy (Dead) (1977)*, para 61: *"…Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the <u>female's limited interest would automatically be enlarged into an absolute one by force of s. 14(1)</u> and the restrictions placed, if any, under the document would have to be ignored…."*

PARTITION & CLAIMS

PARTITION

- Partition is a severance of joint status; converting undivided coparcenary into separate individual ownership
- Every adult coparcener (son, grandson, great-grandson, and now daughters - post the 2005 amendment) has an absolute right to demand partition at any time
- A Hindu father reserves the right to effect partition between himself and his children without their express consent or dissent
- Minor coparcener may seek partition through a guardian, subject to it being in his/her interest
- Alienee who purchases a coparcener's interest may sue for partition to work out the purchased share
- Relationship by marriage alone (affinity) does not confer coparcenary status or ownership rights of a wife / daughter-in-law in the family's property

REQUISITES OF A WILL

SUBJECT MATTER AND ONUS OF PROOF

- Any form of property can form the subject matter of a Will: s.2(h) Indian Succession Act

- Onus to prove a Will is on the propounder; must show:
  - Will signed by testator and had free will, testator was of sound mind and understood the nature and effect of the dispositions [*Leela & Ors. v Muruganantham & Ors. (2025) 4 SCC 289*, para 25]

- Must also show the absence of suspicious circumstances [*Leela & Ors. v Muruganantham & Ors. (2025) 4 SCC 289*, para 16]; makes initial onus 'very heavy' [*H. Venkatachala Iyengar v B.N. Thimmajamma and Ors. 1958 SCC OnLine SC 31*, para 20]

- Mode of proving similar to other documents, except:
  - s.63 Indian Succession Act: formalities such as signature, two witnesses, etc.
  - s.68 Indian Evidence Act: requiring at least one attesting witness to prove execution of the Will

PREMISE TO DOUBT A WILL

Will Not Validly Formed

- Person of either an unsound mind while making of the Will, or a minor: s.59 Indian Succession Act
- Will or part thereof caused by fraud or coercion ⟶ void under s.61 Indian Succession Act
- Formality requirements under s.63 Indian Succession Act are not met

Suspicious Circumstances

- s.63 formalities not sufficient to prove genuineness; additionally prove absence of suspicious circumstances [*Sardari Lal v Bishan Dass and Ors. 2026 SCC OnLine SC 1266*, para 27]
- What are suspicious circumstances? Anything not normal or not normally expected in a normal situation or is not expected of a normal person [*Shivakumar and Ors. v Sharanabasappa and Ors. (2021) 11 SCC 277*, para 12.6-7]
- Examples: shaky signature, unfair disposition, unjust exclusion of legal heirs, etc.

RECENT JURISPRUDENCE

RECENT JUDGEMENTS

- Vineeta Sharma v Rakesh Sharma (2020) 9 SCC 1: the Court held that both daughter and son become coparceners at birth

- Kamal Anant Khopkar v UOI 2024 SCC OnLine SC 5591: constitutionality of s.15 HSA was challenged

- Kamla Neti v LAO (2023) 3 SCC 528: The SC ruled that the HSA does not apply to Scheduled Tribes by virtue of s.2(2) but called for legislative reform and withdraw the exemption

- Arunchala Gounder v Ponnuswamy (2022) 11 SCC 520: Even prior to the HSA, 1956, self-acquired property owned by a Hindu man would devolve by inheritance rather than by survivorship in the event of an intestate death. Thus, such a Hindu male’s daughter would be eligible to inherit such self-acquired property.

- Rhutikumari v Zanmai Labs Pvt. Ltd.: Unequivocally recognized cryptocurrencies as property under Indian law, thus passing the eligibility to be willed