

CONCEPT OF COPARCENERS WITH SPECIAL EMPHASIS UNDER CLASSICAL LAW AND RECENT DEVELOPMENTS

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ABSTRACT

Under the Hindu Joint Family, coparceners as an institution have a significant role in preserving and protecting the ancestral property. Earlier the concept of coparceners was thought to be associated with the spiritual aspects but now it is linked with the legal perspectives of identifying rights and obligations of the coparceners in the property. The head of the coparcenary is called the Karta. Under Mitakshara law, Coparcenary is a creation of law where the coparcener acquires the interest in the property by birth, provided that the coparcener falls within the category of the three generations from the last holder of the property. Also, the share of the coparceners is not specific and is subject to fluctuations with the birth and death of other coparceners is not specific and is subject to fluctuation with the birth and death of other coparceners in the family. Under Dayabhaga law, the coparceners have no right to acquire property of birth and the doctrine of fluctuating interest is not applicable here. The aim of this article is to explain the various rights of the coparceners and to highlight the differences between the Dayabhaga Coparcenary which was prevalent in West Bengal, Assam and parts of Punjab and Orissa and Mitakshara Coparcenary which prevailed in the rest of India. To understand the concept of coparceners under the Hindu law, secondary research was being done. The key findings of this article include knowing about the concept of coparceners and coparcenary property, the rights of a coparcener and also about the status of coparceners under traditional law with recent changes. Overall we conclude that one of the essential features of the coparcenary is the Unity of Possession and the Community of Interest where all the members have a legal right over the ancestral property and the concept of coparcenary has come a long way and had undergone sea changes with the continuing progress in the society.

Keywords: Coparceners, Rights of Coparceners, Dayabhaga and Mitakshara Law Coparcenary, Recent Developments.

INTRODUCTION

The very moment a person is born in the world, he or she learns the significance of the term family. Basically, a Joint Family signifies a large family structure consisting of multiple generations where the origin of the family can be traced back to a common ancestor. Joint Family are perpetual in the sense, that it remains unaffected by birth or death of its family members. Hindu Joint family is the one which is governed by the principles of Hindu Law and within the Hindu Joint Family there is a smaller unit of persons known as Coparceners. The word “Coparceners” means joint heirs which are conferred with legal rights over property. Every coparcener will definitely be called as a member of joint family but every member of joint family cannot be termed as coparcener. A coparcenary is created by law and it cannot be created by mere agreement between family members. A person can become a coparcener in the family by birth or adoption.

DIFFERENCE BETWEEN JOINT HINDU FAMILY AND COPARCENARY

A Joint Family is a bigger institution and within the Joint family there is a smaller institution called Coparcenary. A joint family consists of both male and female members whereas in Mitakshara, the coparcenary comprises of only male members. In a Joint Family there is an expansion of the family with birth, death or marriage of a person but in the coparcenary, members can only be added by birth or adoption. In the joint family system, all the members do not possess equal rights over the joint family property whereas in coparcenary all the members have equal interest in the coparcenary property. The coparceners who are disqualified continues to retain the status of a joint family member but are not considered as part of coparcenary and therefore they cannot ask for partition.

RIGHTS OF COPARCENERS

The coparceners enjoys certain rights with respect to the coparcenary property. They are as follows:-

- 1. Right by Birth in the Property-** A coparcener has a right by birth in the coparcenary property and his interest over the property is similar to that possessed by his father. For example- Suppose “ A” is a head of a Joint Hindu family and possess one Bungalow in Delhi and he has three sons named B, C and D , then by virtue of being born in the family B, C and D have a valid right over the ancestral property that is Bungalow. In the case of *Mandli Prasad V. Ramcharanlal*,ⁱ in this case it was held that the moment a coparcener is born to the family, he enjoys same rights over the coparcenary property like that of his father.
- 2. Right of Common Ownership-** All the coparceners are the collective owners of the property that is they possess the title over the coparcenary property. It also indicates that they are jointly liable to pay the debts of the family and without the consent of the coparceners the property cannot be alienated.
- 3. Right of Common Enjoyment of the Coparcenary Property-** The right of common enjoyment means till the time physical division of the property takes place no coparcener can claim a specific portion of the property as his exact share is not known. Enjoyment also means right of residence and right of maintenance. For Example – Suppose if “A” builds a flat on a vacant joint family property then he cannot claim his exclusive right over that property as all the other coparceners have a common right to enjoy the property. In *State Bank of India V. Ghamandi Ram*ⁱⁱ – In this case it was decided that the coparceners have the right to common enjoyment of the coparcenary property which means that no coparcener can claim a specific share in the property until the time actual division of the property occurs.
- 4. Right of Survivorship-** The interest of the coparceners in the property is not fixed and it fluctuates with the birth and death of the family members. When one coparcener dies in a joint family, his interest in the property is automatically taken by the surviving coparceners and the person who dies have no share or right over the property.

5. **Right to Accounts-** As the position of the Karta who is the seniormost member of the family is considered sacred and he is deemed to work in the best interest of the family, so he is generally not bound to maintain the accounts of the family. But there are certain exceptional situations in which he is bound to do so:
- Conducting a family business in which maintaining accounts is a necessity.
 - Charges of fraud or misappropriation of income
 - When any coparcener asks for a partition.
6. **Right to Make Acquisitions-** A coparcener along with exercising his right over ancestral property can also possess his own separate property at the same time. He can earn money through his special skills or by performing a job in a corporate firm. If the coparcener so desires, he can also blend his separate property into the joint family property but he cannot convert any portion of the joint family property into his own separate share.
7. **Right to ask for Partition-** If the coparcener does not want to have common ownership of the property due to any reasons like deteriorating relations between family members, wants to
8. utilize the property according to their own whims and fancies then he has a valid right to ask for partition which will convert the fluctuating share of the coparcener into a fixed share.
9. **Right to Renounce His Interest-** Renunciation does not signify partition but it can be understood simply as reduction of shares. A coparcener is given a right that he can renounce his undivided share in the joint family property in favour of the other remaining coparceners. But for the same two conditions need to be fulfilled:
- Renunciation of the whole share
 - Renunciation should be in the favour of the other coparceners
- A coparcener who had once renounced his share in the property is not entitled to get his share back even during the time of partition.
10. **Right of Alienation-** As a general rule coparceners are not allowed to sell their portion in the ancestral property without the consent of other coparceners because of the principle of Community of Interest and Unity in Possession.

11. Right to Challenge an Unauthorised Alienation- In the joint family the power of alienation rests with the Karta and he can exercise this power without the consent of other coparceners only in three situations that is legal necessity, benefit of estate and performance of some religious duties. In the scenario where the Karta sells the joint family property for an unauthorized purpose, the remaining coparceners have the following remedies:

- If the coparcener is aware that the Karta is going to alienate his share, he can ask for a partition.
- Injunction order from a court obtained by other coparceners
- In the case where the alienation is already being done it can be challenged by the other coparceners as invalid and it is not binding on them but the burden of proof in such cases lie on alienee that is (the person to whom the property being transferred), to prove that Karta was really authorized to sell the property.

12. Right to Restrain Improper Acts- An action of injunction can be brought against a coparcener if he commits an act which is either illegal, improper or which is detrimental to the interest of the family and the coparcenary property. For example- If “X” does not allow his brothers “Y” and “Z” to use the common stairs, which was needed by the brothers as they both had rooms in the second floor of the house.

ALIENATION OF THE COPARCENARY PROPERTY

Karta’s power of Alienation is qualified which means he cannot sell the property without the consent of all the coparceners. However, in three exceptions situations the Karta is given the power to sell the property without consent:

- ❖ Legal Necessity- Legal necessity means any kind of necessity which is justified in law. For example- Providing education to the family members.
- ❖ Benefit Of Estate- Any kind of transaction that will bring an advantage to the landed property of the family will be termed as benefit of estate. For example- When the property is sold by the Karta due to the fact that doing cultivation is not easily possible.

- ❖ **Religious and Pious Obligations-** Religious and pious obligation includes all the rites and ceremonies which start even before the birth of the person, during their lifetime and which continues even after the death of the person. For example- The annual ceremony of “ Shraddha” is important for paying homage to the departed ancestors.

Meaning of Sole Surviving Coparcener- When only when one coparcener is left in the family and there is death of all the remaining coparceners in the family, the surviving coparcener is called sole surviving coparcener. To form a coparcenary a minimum of two members is required and therefore sole surviving coparcener cannot form a coparcenary. Coparcenary is said to be revived as soon as other coparcener comes into existence but until that time the sole surviving is permitted to treat the coparcenary property as his own separate property. For example- If there are five persons in the family namely A, B ,C, D and E and the coparcenary comprises of A, B, C and D(four generations) and suppose if B,C and D dies so “A” will hold the property as a sole surviving coparcener.

CLASSICAL LAW -

Mitakshara and Dayabhaga are two important schools which had given us the information about the present legislated laws. Mitakshara is a conservative system but Dayabhaga system is modern and liberal in approach.

Two important aspects on which the Coparcenary is Formed-

- **Unobstructed Heritage-** It can only be founded in the Mitakshara school. The right of a person by birth to a share in the property is not obstructed by the existence of any person.
- **Obstructed Heritage-** The right of a person to get a share in the property is obstructed by the existence of any person.ⁱⁱⁱ

DISTINCTION BETWEEN MITAKSHARA COPARCENARY AND DAYABHAGA COPARCENARY

- 1. Formation of Coparcenary-** A Mitakshara coparcenary is a creation of law and it is not formed by agreement between the parties whereas in case of Dayabhaga the formation of coparcenary takes place when the coparceners express their desire to live together.
- 2. Incident of Coparcenary-** Under the Mitakshara Law, the principle of Community of interest and Unity of Possession whereas under the Dayabhaga law, only the principle of Unity of Possession is followed.
- 3. Commencement of Coparcenary-** In the Mitakshara Law the coparcenary starts from the moment a son is born in the family whereas in case of Dayabhaga the father has the absolute right over the property till the time he is alive and his son gets right in the property only after the death of the father.
- 4. Power of Disposal of Shares-** Under the Mitakshara law the father does not have an absolute right of disposal of property but under Dayabhaga law, as long as father is alive he has absolute power of disposal of the property.
- 5. Applicability of Principle-** Under the Mitakshara law, the doctrine of survivorship is applicable that is, interest of a particular coparcener in the property does not cease to exist but it gets transferred to the remaining coparceners whereas in Dayabhaga the rules of inheritance is followed that is the property is transferred to the legal heirs of the deceased person.
- 6. Females as Representing Coparceners (Pre-1937)-** In the Dayabhaga Coparcenary, the female was included as representatives of the shares held by the deceased coparceners because under the Dayabhaga system rule of inheritance is followed thereby making widows and daughters eligible to hold the property whereas under the Mitakshara Coparcenary women are absolutely incapable of holding any share in the property because under this system doctrine of survivorship is followed so the deceased person share is taken by the remaining coparceners excluding widows and daughters.

7. **Right to Ask for Partition-** Under the Mitakshara school, the coparcener has right to ask for partition by birth but under the Dayabhaga law , the coparcener cannot ask for partition till the time when father is alive.
8. **Share of Coparcener-** Under the Mitakshara law, the share of a coparcener fluctuates with birth and death of other coparceners and this continues until the actual partition takes place in the family. For example- If “X” is a father and he has a son named “Y” and both of them possess $\frac{1}{2}$ share, now if “Z” is born to X the share of all the coparceners will become $\frac{1}{3}$. In the Dayabhaga system, the share of a coparcener is fixed and is not subjected to any fluctuation. For example- If “X” is the father and he has four sons namely A, B, C and D; so in this case all the four coparceners will have equal $\frac{1}{4}$ share in the property.

RECENT DEVELOPMENTS UNDER THE CONCEPT OF COPARCENARY

The idea of coparcenary was first presented in ancient India. In order to meet the expectations and aspirations of the people in the society, it was believed that the Hindu Succession Act,1956 needs to be amended in light of the changing circumstances. As the act deals with the succession and inheritance of the property and is based on the principle of propinquity, which is preference of heirs on the based on closeness of relationship. Now according to Section 6 of Hindu Succession Act,1956^{iv} the Hindu Joint Family which is governed by Mitakshara law , the daughter of such family as a coparcener shall

- (a) By birth she can become a coparcener in her own right
- (b) Subjected to same rights in the coparcenary property like that of a son
- (c) Subjected to same liabilities with respect to the coparcenary property as that of a son.

The 174th Law Commission Report of 2000 had suggested changes in Hindu Succession Law. The report mentioned that all the property law had been exclusively for benefit of men and it also advocated a change in the law, as it bars women from being coparceners.

CAN A DAUGHTER BECOME A KARTA OF THE FAMILY?

In the case of *Sujata Sharma V. Manu Gupta*,

Facts – There was a joint family property which comprised of the Karta “K” and his five sons and had a bungalow which was situated in Delhi which was kept on lease and some other movable properties. K died and soon after his death KM become the Karta and he has a daughter who was the eldest amongst all the cousins. With time all the five sons died and the son “S” of the younger brother of KM declares himself as the Karta.

The issue involved in this case was whether daughter is entitled to become the Karta of the family if she is the eldest member of the family.

JUDGEMENT- In this case the court held that keeping in mind the provisions contained in Section 6 of the Hindu Succession Act,1956 the daughter is also entitled to become the Karta of the family as she is the coparcener in the same manner as that of a son, provided that she is the seniormost competent member of the family.

- The daughter also has a right to demand partition in the family.
- It puts the women on same footing as that of a men with respect to inheriting the family property.

Daughter as Karta would represent the family and she can acquire the status of the head of the family.

- As now the daughter is made the coparcener in the same manner as that of a son, it means that her subsequent marriage will not affect her status as a coparcener and she will continue to remain a coparcener in her father’s joint family property.

A daughter will continue to be a member of the father’s joint family even on her marriage, after the 2005 Amendment which means that now she will be treated as the member of both the joint families.

- The amended act abolishes the doctrine of survivorship and introduces the concept of notional partition by providing for the demarcation of the shares of the deceased coparceners.

- Under the traditional Mitakshara Coparcenary, coparceners were not having the right to make a will of their undivided share in the coparcenary property. But after the amendment, both male and female coparceners have a right to make a will of their undivided share in the coparcenary property.

- **Ouster From Coparcenary**

Ouster or expulsion from coparcenary simply means that the status and rights of being a coparcener in a family is taken away from a coparcener under the below mentioned circumstances:-

1. **Conversion** – The moment the coparcener gets converted to another religion, he ceases to be a member of the joint family but his rights in the joint family property cannot be forfeited. Before The Caste Disabilities Removal Act, 1850^{vi} conversion generally leads to not only removal from joint family but also the person who got converted enjoys no right on family property. A person has freedom of converting into the religion of one's own choice but the family law which would be applicable to him after such conversion will definitely change. According to Section 26 of Hindu Succession Act, 1956 the children or their descendants of the person who is actually getting converted are disqualified from inheriting any property of their Hindu relatives.
2. **Marriage of a Coparcener to a Non-Hindu under The Special Marriage Act, 1954-** According to Section 19 of Special Marriage Act, 1954^{vii} “Any member of a Hindu joint family who is professing the Hindu, Buddhist, Sikh or Jain religion and gets married to a Non-Hindu shall be deemed to effect his severance from such family”. The right of the coparcener with respect to his share in the property would not be forfeited, in case if he is marrying to a Non-Hindu.
3. **Murder-** A person who abets the murder or commission of murder shall be disqualified from inheriting the property of the intestate and if the murder is committed not of the intestate but of an intermediary between him and the intestate and if on the death of the intestate he would become eligible to inherit, then it would be called a murder committed in furtherance of succession.

In *Janak Rani Chadha V. State of NCT of Delhi*,^{viii} the husband was held guilty of committing the murder of the wife within a few years of the marriage. There was a flat (general property) which was purchased by the wife before her marriage and as she

does not have any children so normally the husband would have succeeded to her property. But as in the case the husband has murdered his wife so according to Section 25 he would be disqualified from inheriting her property.

THE FUTURE OF COPARCENARY: RISE IN NUCLEAR FAMILIES

The structure of the Indian families is changing over time whether in terms of size, role of the Karta or duties and responsibilities of the family members etc. There are various reasons for the increasing rise in the nuclear families like increasing urbanization, desire to have more privacy, change in mindset and attitudes of the family. When partition of the family takes place, the joint family converts into a nuclear family with each family member occupying a separate share in the property with exclusive rights over the property. As the Joint Family system is declining these days, so the relevance of the concept of “Coparceners” is shredding down. To protect the institution of coparcenary, what is required is the creation of more adaptable laws which can simplify the working of the legal system and the laws in which easier mechanism is laid down for governing the different types of families in India.

CONCLUSION

Thus, to conclude in India the word “Family” holds much relevance as a person has special love and affection towards the people with whom they are living continuously for a longer period of time. And even within the family, the concept of coparceners holds due relevance as coparcenary is a smaller unit of the family that has a right to collectively own property.

The concept of coparcenary has evolved significantly which is easily visible from the changes introduced in the Hindu Succession Amendment Act, 2005. To make the changes brought in the concept of coparcenary successful what is required is that these changes should not exist merely on papers but it should work practically as well. The people need to broaden their mindsets and should try to accept that daughters also have a valid right to become coparceners and daughters should also stand up for their rights in the property.

Therefore, for the preservation of the institution of family what becomes quintessential is to protect the narrow institution of family that is coparcenary. As bringing reforms are necessary with the evolving nature of the society, so in the similar manner the institution of coparcenary should not remain static but changes can be brought into it according to the needs and changing circumstances. Thus, for the betterment of the coparcenary awareness through campaigns involving legal literacy can be done and legal aid can also be provided to the coparceners for claiming their valid right over the ancestral property. Both Males and Females should be aware about their basic rights related to the property which can be done through imparting legal education. As it is rightly said that “United We Stand and Divided We Fall”, so the efforts on the parts of both the government and citizens are required for making the progress in the concept of coparcenary a reality and not a distant illusion. The future of the country lies in our hands, so it becomes our duty and responsibility to have basic knowledge about our rights and also we should not hesitate for claiming legal remedy when any of our legal rights are violated.

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ENDNOTES

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