

MITAKSHARA LAW – A PROPERTY INHERITED BY MALE**-ANUSHA AGARWAL¹****BACKGROUND:**

The background facts in which the present Civil Appeal had been filed are as follows -:

Lal Singh who was the great grandfather of Arshnoor Singh(Appellant) was the owner of large tracts of agricultural land in Village Khangarh, District Ferozepur, Punjab.

After the death of Lal Singh, his entire property was inherited by his son Inder Singh. He later did the partition of his entire property among his three sons, Guruchand Singh, Dharam Singh and Swaran Singh.

The three sons transferred one-fourth share of the entire property back to their father for his sustenance.

After the death of Inder Singh, his one-fourth share was inherited by his widow, three sons and his daughter.

INTRODUCTION:**Mitakshara Law Of Joint Family**

The Mitakshara is legally treated on inheritance. It was written by Vyneshwar, a scholar. It became one of the most influential texts in Hindu law, and its principles of property inherited distribution, property rights, and succession are still in practice across most of India except for West Bengal and Assam.

The mitakshara profound the doctrine of son's right by birth in the joint family property.

The joint family property does not pass by inheritance but it goes to those who among the groups are known as coparceners survive others.

Interest in property is fluctuating. Under the mitakshara school neither the father nor any other coparcener can ordinary alienate the joint family property.

- Coparceners

A coparcenary is a joint family constituting a common male ancestor with his lenient descendants in the male lines four-degree counting from an inclusive of such ancestor.

¹ 2nd year BA LLB (H), Amity University Lucknow

No coparcenary can commence without a common male ancestor. The female is excluded from the coparcenary.

- Rights of Mitakshara
- The lineal male descendants of a person to the third generation acquire by birth ownership.
- Descendants can at any time work out their right by asking for a partition.
- each coparcener has got ownership extending over the entire property jointly until partition.
- all coparceners have common ownership and right of possession.
- the property of coparceners can be alienated only by the consent of other coparceners.

ISSUES:

The present matter pertains to the property which came to the share of one of his sons that is Dharam Singh.

1. Dharam Singh had only one son through his first wife.
 2. Dharam Singh got married to Harpal Kaur and registered the sale deed to her.
 3. Dharam Singh's son became a major and filed a suit for declaration against his father stating that suit property was coparcenary property and hence the two sale deeds executed by his father in favour of respondent number one were illegal, null and void.
 4. The appellant further prayed for a permanent injunction restraining respondent number one from transferring or creating a charge on the suit property.
 5. During this process respondent number one entered into a transaction whereby she sold suit property jointly to respondent number two and three.
 6. The trial court held that the suit property was ancestral coparcenary property of Dharam Singh and the appellant. Even respondent number one could not prove that Dharam Singh had sold the suit property inherited for either legal necessity of the family or for the benefit of the estate.
 7. The appellant was held entitled to joint possession of the suit property with his father.
 8. The respondents were not satisfied with the decision and they filed the suit in High Court and there was a long process that continued where both the parties kept their issues in front of the court.
- The issues that arise for consideration before were two-fold:

1. Whether the property inherited was coparcenary property or self-acquired the property of Dharam Singh?

2. The validity of the sale deed in favour of respondent number 1 and the subsequent sale deed executed by respondent number one in favour of respondent number 2 and 3.

- In Shyam Narayan Prasad versus Krishna Prasad and others.

The court has recently held that "the share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship".

- In Yudhister versus Ashok Kumar

The court held that under the Hindu law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, it's separated property or not, his son should have a share in that and it will become part of the joint Hindu family of a son and grandson and other members who form a joint Hindu family with him.

CONCLUSION:

The plaintiff being a male coparcener in the suit property was vitally affected by the purported sale of the suit property by his father Dharam Singh. The plain the, therefore, the locus to file the suit for declaration that the suit property being coparcenary property, could not have been sold by his father Dharam Singh without legal necessity.

- In view of the passed by the learnt single judge of the High Court

The sale deed executed by Dharam Singh in favour of respondent number one was cancelled and set aside. The subsequent sales deed executed by respondent number one in favor of respondent number 2 and 3 during the pendency of proceeding is a legal and hereby cancelled and set aside.

The name of the appellant is to be recorded in the Jamabandis is as the owner of the suit property.

The Civil Appeal is allowed.

JUDGEMENT LINK

<https://www.livelaw.in/amp/top-stories/succession-act-ancestral-property-mitakshara-coparcenary-146024>