

contempt alleged to have been committed in respect of a Courts subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

In the light of the statutory provisions as discussed supra we can understand that the Judges and subordinate Courts are equally liable for the offence of contempt of Court like other individual persons/civilians/general public and they are not exempted. And the subordinate Courts have no powers to take cognizance for the offence of contempt of Court and the subordinate Courts can only refer the matter to the High Court to take the cognizance.

Judiciary means not mere judicial officers which includes advocates too. BENCH and BAR are two wheels to the chariot.

Desirability of effective inspection of subordinate Courts:

Inspection of subordinate Courts by the Hon'ble High Court is of vital importance for satisfactory judicial system. Inspection to be effective it ought to be well regulated. Necessity of devising a proper and uniform system of inspection of subordinate Courts is desirable.

I may conclude this article with my humble submission/appeal/request to the Hon'ble High Court for the State of Andhra Pradesh and for the State of Telangana to put minimum standing at the BAR, for the Advocates to appoint as judicial officers thereby we may expect some good environment in the subordinate Courts.

(Views expressed are personal, not intended to criticise any Court of law/judicial officer or any advocate).

DAUGHTER/WOMAN AS KARTA OF HINDU UNDIVIDED FAMILY – CONSTITUTIONAL AND LEGAL PERSPECTIVES – A CRITICAL STUDY

By

—B. SRINIVASA RAO, Lecturer
Smt. Velagapudi Durgamba Siddhartha Law College,
VIJAYAWADA, A.P.

The recent decision of the Delhi High Court in *Sujatha Sarma v. Manu Gupta*¹, (hereinafter referred to as the case) has settled the position as to the right of a daughter-coparcener becoming Karta (Manager) of a Hindu Undivided Family (HUF). The rule of primogeniture, which preferred eldest son as Karta, applied for centuries in determining succession to the position of Karta stands modified accommodating the eldest daughter of the deceased Karta. The Delhi High Court in unequivocal terms has held that a female-coparcener can be the Karta. The Court held that “the impediment which prevented a female member of a HUF from becoming its Karta was that she did not possess the necessary qualification of coparcenership. Section 6 of the Hindu

Succession Act is a socially beneficial legislation; it gives equal rights of inheritance to Hindu males and females. Its objective is to recognize the rights of female Hindus as co-parceners and to enhance their right to equality apropos succession. Therefore, Courts would be extremely vigilant apropos any endeavor to curtail or fetter the statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu Women should be denied the position of a Karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a Karta, so can be a female member. The Court finds no restriction in the law preventing the eldest female co-parcener of an HUF, from being its Karta. The plaintiff's father's right in the HUF did not dissipate but was inherited by

1. Delhi High Court site

her. Nor did her marriage alter the right to inherit the co-parcenary to which she succeeded after her father's demise in terms of Section 6. The said provision only emphasizes the statutory rights of females²". The judgment has reiterated the well established Constitutional, legal and social position as to the position of woman. An attempt is made in this Article to throw some light on the Constitutional, legal and social perspectives of woman's rights as to the management of Hindu Undivided Family.

Right to property includes right of its management also. Their Lordships of the Privy Council way back 1863 observed that 'there is community of interest and unity of possession between all the members of the family³. No coparcener is entitled to any special interest in the coparcenary property nor is he entitled to exclusive possession of any part of the property⁴. In spite of such 'community of interest and unity of possession' of all the members of the family, for proper and efficient management of the property and family, under primogeniture, elder son of the deceased Karta has been preferred against other members of the family.

The senior member may give up his right of management and a junior member may be appointed as manager⁵. Similarly, a junior member can act as Karta if the senior member has relinquished his right expressly or impliedly or in the absence of the manager under exceptional circumstances⁶. In the light of these judgments it can safely be concluded that other male members of the family can be the Karta of the joint family.

A coparcener of a Hindu Joint Family can only be the Karta. Since a widow or a mother is not a coparcener, she cannot be the manager of a joint family⁷. Prior to Hindu Succession (Amendment) Act, 2005 and other well known State Amendments, a daughter was not a coparcener and hence could not be a Karta. But, now after the amendments, under Section 6 of the Act, the daughter of a coparcener shall, by birth become a coparcener in her own right in the same manner as the son; have the same rights in the coparcenary property as she would have had if she had been a son. For that after the State Amendments and 2005 amendment, there cannot be any impediment to the daughter who is a coparcener becoming a Karta. On behalf of the defendant in the case it was argued that the Act never intended to extend the right of a female coparcener to the management of a HUF which according to ancient Hindu texts, vests in the eldest male member of the coparcenary. The Court rightly answered and held that "it is rather an odd proposition that while females would have equal rights of inheritance in an HUF property, this right could nonetheless be curtailed when it comes to the management of the same. The clear language of Section 6 of the Hindu Succession Act does not stipulate any such restriction. Therefore, the submissions on behalf of defendant which are to the contrary are untenable⁸."

Eldest daughter now can be the Karta. When it is so, what is the effect of her marriage on her coparcenary rights and whether she can continue as Karta of the parental family after her marriage? In other words, the question is whether she loses her relation with the natal family on marriage and as consequence loses her right to the position of Karta. Under the Shastric law daughter severs her relation with parental family and becomes the member of husband's family. But, the traditional law underwent significant change through the amendments

2. Para 27 supra

3. *Katama Narbiar v. Rajab of Shivagunga*, (1863) 9 MIA 539 at Pp 543, 615 as referred to in Mulla Hindu Law, 21st Edition at page 366

4. *Naranbhai v. Ranchod*, (1902) 26 Bom. 141 at p.144 as referred to in Mulla Hindu Law, 21st Edition at pp.365, 366

5. *Mudit v. Ranglal*, (1902) 29 Cal. 797 as referred to in Mulla Hindu Law, 21st Edition at page 369

6. *Nopany Investments v. Santosh Singh*, AIR 2008 SC 673 as referred to in Mulla Hindu Law, 21st Edition at page 369

7. *Commissioner of Income Tax v. Govindram Sugar Mills*, AIR 1966 SC 24

8. Para 25 of the judgment

to Hindu Succession Act and the present position was narrated by Law Commission of India in its 174th Report. "Under the Amending Acts the eldest daughter like a son will be entitled to be a karta of the Joint family, and will by virtue of that position exercise the right to spend the income for joint family purposes and alienate the joint family properties for legal necessity or benefit of the estate. However, under the Shastric Law, a daughter on marriage ceases to be a member of the parental family, but the Amending Acts have changed her position, which is quite alien to Hindu patriarchal notions. Though her position as *de facto* manager was recognized when mothers acted as guardians of their minor sons after the death of their husbands, the *de jure* conferment of the right eluded her.⁹" "Once a daughter becomes a coparcener she continues to be member of the natal joint family even after her marriage. This has introduced a far reaching change in the law of a joint family¹⁰." In the present case, the matter was in issue and the Court without much elaboration has found the issue in favour of plaintiff. The matter has already been well established through the Amendments that the daughter continues to be the coparcener even after marriage. Regarding the question whether she can be the Karta or continue to be the Karta after marriage, the Case has unequivocally declared that she can be the Karta even after marriage and continue to be the same.

As the daughter's position is well recognized, the next important question to be addressed is the position of other woman *i.e.*, widow or mother of the deceased Karta as the 'Karta' of Hindu Undivided family. The question assumes more prominence as the widow or mother is not made the coparcener under the Amendments to Hindu Succession Act. When the daughter's claim for the position of Karta is based on the status of coparcener, how the claim of the mother or widow be justified ?

Even before the commencement of Constitution, it was held by the Nagpur High Court that a mother, though not a coparcener in the joint family, was, in the absence of adult male members, competent to act as manager of the family. Her acts as the manager, if they are for legal necessity or of benefit to estate, would be binding on the joint family¹¹. But, other High Courts were divided on the issue. Madras High Court and Bombay High Court did not agree with the view that the mother can be regarded as Karta. Whereas Orissa High Court has held that under certain circumstances, a mother can exercise the powers of a manager¹². The Supreme Court, as stated above, has held that only a coparcener can be the Karta or manager of a joint family. It was further held that since a woman cannot act as a Karta, any alienation by the widow of coparcenary property is not permissible. These decisions are based on Hindu Law Texts and Customs.

The phrase "Law in force" under Article 13 of the Constitution includes Hindu Law as contained in the Texts as well as Hindu Law based on custom. Several principles of Hindu Law that infringed the Fundamental Rights enshrined in Part III of the Constitution have been held in valid. For example, the rule of Damdupat was held to be violative of Article 15(1) of the Constitution and was void under Article 13(1)¹³. Woman whether it is mother or widow or daughter cannot be discriminated at all on the mere ground of sex. In the appointment of Karta no discrimination as to sex is made. It is neither male nor female, neither elder nor junior that is to be considered. The paramount consideration in appointment of Karta should be the interests of the joint family and its property. When the Court felt that the interests of the family are better protected in the hands of a mother or widow, the considerations as to gender and status as coparcener should not be considered at all.

9. 174th Report of Law Commission of India

10. Supra

11. *Pandurang v. Pandurang*, (1947) Nag. 299

12. *Budbi Jena v. Dhabai Naik*, AIR 1958 Ori. 7

13. *Swaraj Garg v. Garg*, 1978 HLR 332