

BURNISHED LAW JOURNAL

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SUI GENERIS POSITION OF KARTA IN HINDU PERSONAL LAW

INTRODUCTION TO CONCEPT OF KARTA

In simple terms, the manager and caretaker of a Joint Hindu Family is called a Karta¹. Traditionally, the senior most male member of a Joint Hindu Family is deemed to be the Karta provided he is not suffering from any ailments, be it physical or mental in nature. A Karta must act with prudence; prudence implies caution and foresight and excludes any sort of hasty, reckless and arbitrary conduct². As the head of the family, the Karta is its guardian; it is his duty to manage the property and affairs of the family in such a manner so as to benefit the family³. Legal action can be initiated against the Karta by the family members on account of his failure to fulfill their reasonable needs as against the family income and property⁴. The Karta is certainly the manager of the joint family affairs but definitely has those powers which no ordinary manager possesses. Hence it is not right to equate the position of Karta with that of the manager of a property⁵. There exists a fiduciary relationship between the Karta and other members of the joint family but it is not of the nature of trusteeship. The Karta cannot be held liable for not completing his duties and liabilities on grounds of favoritism and partiality. The Karta is not liable and accountable to any family member except for in cases of fraud or misappropriation⁶. Thus, the Karta is almost unaccountable for any decision taken by him.

The position of Karta is acquired by virtue of birth in that particular family but is regulated on the basis of seniority of a person in the family. A Karta's position can be terminated either by his resignation or relinquishment from the position but is not indefeasible in nature⁷. When the Karta relinquishes his rights and duties, another member of the family can look after the joint family property with the consent of all other members of the family. In such a case it would not be

¹Suraj Bansi Koer v Sheo Prasad (1880) 5 Cal 148

²Dr Poonam Pradhan Saxena, Lexis Nexis Student Series, "FAMILY LAW LECTURES- FAMILY LAW II", Third Edition (2011)

³Diwekar G.M, Hindu Law- a Critical Commentary 56 (Hindu Law House 2nd ed. 2002) Pg 57

⁴Werner Menski, Hindu Law Beyond Tradition and Modernity 491 (Oxford University Press 1st ed. 2003)

⁵Union of India v Sri Ram Bohra, AIR 1965 SC 1531

⁶Paras Diwan, Family Law (2nd Edn. Orient Publishing Company, 2002)

⁷Raganath Misra and Vijender Kumar ,(rev.),Mayne, "Treatise on Hindu Law and Usage",16th ed,2008,Pg 759

necessary for such member to be the senior most in the family⁸. The case of Nopany Instruments Pvt Ltd v Santokh Singh⁹ is a landmark case in this regard . In this case , the Karta was staying abroad and thus could not handle the property . Hence , with the consent of his family members, he appointed his younger brother as the Karta even though there were other members in the family older than him. This was held to be valid by the court as under such situations, the younger member can be rightfully made the Karta .A person cannot be a Karta unless the previous Karta is dead notwithstanding certain exceptions¹⁰. The codification of Hindu Family Laws has made the Karta's position much more organized, equitable and accountable than the ancient times¹¹. Now, even the females and minors can act as Karta under certain situations which means that the concept of Karta has evolved over the centuries in lieu of the societal changes.

FEMALES, MINORS AND MULTIPLE PERSONS AS KARTA

India has largely been a patriarchal society since the ancient times. Hence, it was only the males who held the position of Karta in the family. The Apex Court in Commissioner of Income Tax v Govindram Sugar Mills¹² held that since women were not coparceners in a Hindu Joint Family, they could not act as a Karta in a joint family. This decision was reiterated in Sahdeo Singh v Ramchabila Singh¹³. In Gangoli Rao v Chinappa¹⁴, the family consisted of father, mother and their two sons. The father died leaving behind his interest and portion in the joint family property. His wife alienated the property which was later challenged by the sons on the grounds that since a woman cannot be a Karta, she cannot alienate the property. The Court accepted the contentions of the sons and thus held the alienation by their mother as being invalid in eyes of law.

An amendment was done in the Section 6 of Hindu Succession Act, 1956 which allowed women to be coparceners in a Hindu Joint Family. This made the females qualified to act as a Karta provided they are the senior most member of their family¹⁵. After a daughter's marriage, she becomes a member of her husband's family and continues to be a coparcener of her father's family. On the death of a female coparcener before the partition, her children shall be eligible for allotment of her share in the joint family property.

⁸Mudit v. Ranglal, (1902) ILR 29 Cal 797; Narendra Kumar v. Commissioner of Income Tax, AIR 1976 SC 1953

⁹Case No.: Appeal (Civil) 5761 of 2007

¹⁰ Sidappa v. Linappa, 42 Mys HCR 669

¹¹ Saurabh Kumar , “ Features Of Karta Under Current Hindu Laws” , Indian Bar Association (23rd April 2020, 04:00 pm)

<https://www.indianbarassociation.org/wp-content/uploads/2013/02/Features-of-a-Karta-under-Current-Hindu-Laws>

¹²1966 AIR 24

¹³AIR 1978 Pat 258

¹⁴AIR 1983 K222

¹⁵Subhamoy Das,“Hindu Succession (Amendment) Act, 2005, Equality for Women”, Learn Religions(23rd April 2020, 3:30 pm) , <https://www.learnreligions.com/india-past-and-present-4684845>

In case of minors , if a position of such nature occurs in a Joint Hindu Family that only a minor is left to be the Karta , he can become so by virtue of Section 21 of the Guardian and Wards Act 1897 that too only when he has a guardian who acts as his guiding force in taking various decisions¹⁶. The same was reiterated in the case of Narendra Kumar v CIT¹⁷.

Another interesting point is that it is indeed possible to have more than one Karta in a Hindu Joint Family¹⁸ . The Hindu classical law does not explicitly mention any provision of having multiple Kartas in a family. However, multiple Kartas can rightly exist in the family in case the coparceners of the Hindu Joint Family agree to it¹⁹.

LIABILITIES OF A KARTA

A Karta has to fulfill the following liabilities:

1. **Maintenance:** A Hindu Undivided Family's Karta has to ensure that all members of the joint family like the coparceners, daughter-in-laws and minors are maintained out of the joint family income and property. In case a family member's maintenance rights are not met with by the Karta, he or she can approach the court and sue for his or her accrued maintenance arrears and future needs²⁰.
2. **Delivering Accounts at Time of Partition:** A Karta is under no obligation to provide for accounts of the joint family's income except for at the time of partition. This was established in the case of Girijanandini Devi V. Brijendra Narain²¹ . In Gopal v Trimbak²² , it was held that only the present accounts are to be rendered on the date of demand of partition by the family member.
3. **Right Of Representation:** A Karta is a Hindu Undivided Family's representative in all legal , social , religious and revenue related issues . Any suit against Karta with respect to Hindu Undivided Family's property and income is deemed to be against the members, coparceners and minors of the family as held in Rajayya v Singh Reddy²³.

¹⁶Ankita Gupta ,“Karta/Manager And His Legal Position:A SocioLegal Study”, Manupatra(24th April 2020, 4:45 pm) <http://www.manupatra.com/roundup/341/Articles/Karta%20and%20his%20Legal%20Position.pdf>

¹⁷AIR 1976 SC 1953

¹⁸Union of India v Shriman, AIR 1935 SC 1531

¹⁹Nemi Chand v Hira Chand 2000 (1) HLR 250 (Raj)

²⁰Roopa Gargava ,“ Position Of Karta and Effect of Amendment of Section 6 of Hindu Succession Act 1956”, Legal Services India, (24th April 2020, 3:25 pm), http://www.legalserviceindia.com/articles/karta_hsa.htm (Last visited on 1st May, 2013

²¹AIR 1967 SC 1187

²²AIR 1953 Nag 195

²³AIR 1956 Hyd 200

4. Liability to Spend Reasonably: It is the duty of a Karta to spend the income of the family in a just and reasonable manner. If a Karta spends the income unnecessarily, the only remedy which is available to the other members of the Joint Hindu Family is to demand partition²⁴.

5. Duty Not to Start New Business Without Consent of Other Coparceners: As laid down in the case of Sunil Kumar v Ram Prakash²⁵, the Karta can start a new business only after taking the consent of other coparceners in the family as the risk of a new business cannot be imposed on the minors as well as any adult coparceners of the family. In P.S Sairam v P.S. Ramarao Pisey²⁶, the Karta used the Hindu Joint Family property for starting his own business. This property was not used exclusively by the Karta but even the junior members of the family used that property. In this case, the Supreme Court held that the Karta's business cannot be considered a joint family business and any property obtained out of the income of the Karta's business was to be treated as self-acquisitions of Karta and not as the family's joint property.

POWERS OF KARTA

1. Power to Manage Family Affairs: The power of Karta in managing the family affairs is practically unlimited and infinite. None of his decisions related to family affairs are either questionable or fallible. He is not supposed to be impartial nor can any family member drag him to the court on such ground.

2. Power to Receive and Spend Family Income: This power comes with certain allied purposes like maintaining coparceners, carrying out legal necessities, performing charitable and religious duties, etc. It was established in Bhowani v Jagannath²⁷ that a Karta cannot be expected to act as proficiently as a trustee or agent in managing money. In Chandan Kishore v Nanak Chand²⁸, the Karta's duty of paying for the marriages of the unmarried daughters was emphasized upon by the Supreme Court. It was held that in case the expenses of the unmarried daughters' marriage are met from any external sources, they ought to be reimbursed from the joint funds of the Hindu Undivided Family.

3. Power to Alienate Property: This is the most important power of Karta. He is supposed to take in all members' views while alienating the joint family property. He can be sued in case he had not

²⁴Lnanak Chand vs. Shri Chandra Kishore Agarwala & Ors., AIR 1970 SC 446

²⁵AIR 1988 SC 576

²⁶Civil Case No. Of 817 of 2002

²⁷(1909) 13 CWN 309

²⁸Supra Note. 24

taken the consent of any member or when the member was incapable of giving consent like minors when the alienation occurred. Alienation done by Karta is valid in cases of legal necessity (Apatkale) , performing religious and charitable activities (Dharamamarthe) and when such an alienation would be beneficial for the estate (Kutumbarthe) . Selling or mortgaging of property for illegal and immoral purposes cannot be said to be for the purposes of legal necessity as held in Dev Kishan v Ram Kishan²⁹. Anything done for the positive benefit of the property of the joint family is said to be done for the benefit of the estate .

4. Power of Acknowledging and Contracting Debt and Contracts: The Karta can acknowledge debts on behalf of the Hindu Undivided Family and thus pay interest on it as seen in Ananda Charan v Jhatee Charan³⁰ .

5. Power to Settle Family Disputes: It is a matter of Karta's sole discretion to refer any dispute of the Hindu Undivided Family for arbitration. A Karta cannot enter into compromise for his personal gains³¹. If a compromise is for the purpose of family's welfare, no member of such family can question its validity³².

CONCLUSION

As mentioned already, the position of Karta in a Hindu Undivided family is a position of extra-ordinary stature considering the concept and complexities involved. The Sui Generis position of Karta is due to the decision making powers³³. Despite this, Karta is not merely a position of power. The position also serves the practical purpose of managing and running a Hindu Undivided Family. The Sui Generis position of the Karta helps in understanding as to how a joint family functions with respect to various duties and works associated with it. His role is thus prime and stellar in nature as it may guide the family towards greater success or complete failure or breakdown leading to the family's partition³⁴.

The Karta acts as the centralizing and binding force of any Hindu Joint family. It is the Karta who is responsible for keeping the family together. The togetherness of a Hindu Joint Family signifies the efficiency of the Karta as the head of the family. While on the other hand, one of the main reasons

²⁹AIR 2002 Raj 370

³⁰AIR 1935 Cal 648

³¹Bhola Prasad v Ram Kumar, (1932) ILR 11 Pat 399

³²Nawal Kishore v Sardar Singh ,AIR 1935 Lah 667

³³Paras Diwan, Family Law (2nd Edn. Orient Publishing Company, 2002) Pg 290

³⁴ Supra Note.11

which lead to partition in any family is the inefficiency of the Karta in managing the family's income, property and various disputes .

The institution of Karta has been molded as per the changing societal norms. Now, even the females may act as a Karta if they are the senior most member of the family. This has given females a chance to proof their capabilities and skills with respect to their male counterparts. In the present times, families often consist of single mothers and their minor children. With the amendment of Section 6 of the Hindu Succession Act 1956 it has become easier for such women to manage the joint family property. The system now allows even the minors to act as a Karta under certain specified conditions. The codification of the Hindu classical laws has made the institution of Karta much more accommodating and functional in nature as it cleared the air around limits of the powers of Karta. Karta is no more thus a “patriarchal position” in a family. The manner in which Karta's concept has evolved over a period of time will make more Hindu families follow this system of managing their wealth and assets.



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