

KARTA AND HIS POWERS: AN OVERVIEW

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ABSTRACT:

The joint family system underneath the Hindu Law may be a patriarchal organisation. the pinnacle of the joint family is thought as Karta (Manager); and therefore the senior-most male member of the family are the Karta. As a head or manager, he's the representative of the family, and acts for, or, on behalf of the family. Generally, wherever a family consists of father and his kids, father can act as Karta or within the absence of father; next senior-most member are Karta. However, it's receptive the senior member to offer up his right of being Karta, in such case, next senior member becomes Karta. But, a lady member isn't competent to act as Karta, as a result of a lady can't be a coparcener. However, a minor could act as manager, through his fiduciary until he attains majority. If all the sons area unit minors, mother, could act as guardian, however she can't be a Karta (manager).this particular research paper tries to trace out the origin of Karta followed by their functions this paper tries to clearly analyse the work of Karta from the ancient time and their source of income as well.

KEYWORDS: Joint family, Hindu law, senior male, coparcener, representative, income.

I.INTRODUCTION:

Hindu law holds varied distinctive options with relevancy family establishments and therefore the joint family system could be a vital side in understanding the practicality of this mechanism. The joint family has various members with every individual owning their totally different property rights. Despite the fact that the individuality exists, the cohesive structure of the family comes into the fore with relevancy the selections that area unit needed to be taken by the family as a full in varied legal and different matters. In such things, it becomes exigent that there's one individual UN agency shall head such matters and hold deciding powers. Such a private is termed becomes the Karta. ("Ethnicity and Expectations Concerning Family Law and Family Values in Bulgaria," n.d.) In the Hindu untitled Family, the Karta holds a really distinctive position. This single nature of the Karta is with relevancy (the varied the numerous the varied) powers he holds whereas discharging his functions because the chief in various respects of the family practicality. (Houlgate 1998; Scherpe, n.d.) The Karta is taken into account to be an individual with controlled capacities however at intervals this fringe define, he holds associate vastly vital position of responsibility. The connection that a Karta holds with different members of the family isn't that of trustee or that of a partner or principal. (Houlgate 1998; Scherpe, n.d., n.d.) His distinctive powers area unit "very wide and nearly sovereign" and therefore, its comparison to any partnership or a principal-agent relationship is naïve. The Karta will exchange a fiduciary accord with the remainder of the members of the family however the connection cannot be termed as that of district. Even on the answerability issue, he's not responsible to any member of the family till it's a matter of misappropriation or fraud. (Houlgate 1998)

II.AIM:

- 1.To study about the karta and his powers.
- 2.To study about the powers of karta in the family regarding property.

HYPOTHESIS:**ALTERNATIVE HYPOTHESIS:****ZERO HYPOTHESIS:****1. METHODOLOGY:-**

The research is followed descriptive, narrative methodologies for the Study on the karts and his powers.

DESCRIPTIVE METHOD: A descriptive approach to research is called as the foundation for research. The research is referred more descriptive information from books, articles, journals to gain more knowledge for the Study about the Karra and his power.

NARRATIVE APPROACH: Narrative inquiry uses field text such as stories, journals, field notes, conversation, interview and life experience as units of analysis to research.

III. WHO CAN BECOME A KARTA

With relevancy *A. Kunjipokkarukutty v. A Ravunni*, it had been noted that the within the absence of the father within the family, it's the dean i.e. the foremost senior member of the family WHO is over to be the Karta (Houlgate 1998; Scherpe, n.d., n.d.; Herring 2012). This conclusion relies upon seniority and also the opinion of the opposite members doesn't hold abundant significance. It should be noted that an individual cannot become the Karta till and unless the previous Karta is not any longer alive still few exceptions.

When the Karta relinquishes his right to manage the affairs of the family thanks to reasons of his health or thanks to him being away, another member of the family is allowed to seem once the joint family property with the consent of all different members of the family, not essentially being in an exceedingly list of seniority of age. A landmark case during this regard is that the case of *Nopany Investments (Pvt) Ltd. v. Santokh Singh* whereby the Karta of the family was staying in U.K and will not handle the property, the rationale of distance and so, with the consent of all his members of the family, appointed his younger brother because the Karta despite the fact that there have been different members were older than him. This was command to be valid by the court because it command that below such things, the younger member is truly created the Karta. A Karta will solely be a male member and females cannot be the karta of a joint family as a result of their non-coparceners and aren't allowed to represent the family general situations. It had been command in *Commissioner of taxation v. Hindu deity Narang* is that a feminine member is allowed to be the Karta below some things however this judgment is command to be incorrect thanks to the non-coparcener side. With relevance the problem if minors is a Karta, it had been established once more in *Narendra Kumar v. CIT* that if the minor left because the just one to manage, if below the superintendence of a guardian. It should be noted that *Guardians and Wards Act, 1890 (Section 21)* will accede to the validity of a minor being in an exceedingly "managerial position" of a Hindu Undivided family. (Dewar and Parker 2003)

IV. POWERS OF THE KARTA

FAMILY AFFAIRS MANAGEMENT:

Being the supreme head of the family, a Karta holds the facility to appear when the family matters and also the property that belongs to the family. With regard to the case of *Bhaskaran v. Bhaskaran*, it's been command that despite the fact that a Karta's extent regarding property alienation is restricted, his powers in management of the family affairs is very absolute. The karta will hold the

capability to possess the property in totality and be the recipient of the financial gain. Also, he holds some special rights like that of the facility of eviction within which if there's some specific member demands some specific portion of the family property while not the Karta acceding to such a requirement, he are often evicted type that portion. His powers of management area unit deemed to be inherent and no interference is to be accepted even once he shows attributes of favouritism and bias towards sure relations with regard to maintenance etc. this is often upon the discretion of the Karta and this can't be challenged.(Dewar and Parker 2003; Himonga 2011)

V.POWER TO REPRESENT:

The Karta is known to be the only representative of the family structure once it considerations any legal or maybe social matters. Once a particular suit is filed by the family in any court, the actual suit is filed within the name of the Karta and conjointly once there's a suit against the family, the precise name is that of the Karta within the court. (Dewar and Parker 2003; Himonga 2011; Gallo 2004)This means that the Karta is clearly a representative of the total family and also the family, in itself, don't have a specific identity in company terms. So, once there's one specific judgment passed against the Karta, it in totality binds all the present members of the family although they will not be on an individual basis accountable within the relevant act. The expectation from the Karta is that in matters of judicial proceeding, he should show extreme levels of sincerity and energy.(Dewar and Parker 2003; Himonga 2011; Gallo 2004; Lowe and Douglas 2015) If thanks to any such lack, the judicial proceeding matter is lost, the family cannot take up this as AN excuse for the decree to not be binding upon them. The Karta doesn't have any larger interest in a very manner of ownership in comparison to the other member of the family ,the Karta, he holds a capability to dispose property. With relevance minor within the joint family, it should be understood that once the manager makes a contract with an out of doors party and through that point, one in all the members of the family has not earned majority, the contract cannot be deemed to be binding on the minor. This rule is from the Indian Contract Act, 1872 and is applicable here also for the minor for the contracts about shopping for of immovable property also on contracts created by the Karta for requirements. (The Right Honourable Lady Justice Jill Black DBE et al. 2012)

VI. POWER OVER INCOME:

The social control side of the Karta mandates the Karta, the side of dominant his financial gain and expenditure and if there exists any surplus within the family accounts, he has management over those accounts too. If the Karta has expenses that the opposite relations don't comply with, then these members have the choice of tightened a partition and also the Karta needs to acceptable their share together with the quantity they thought of two own been unsuitably spent. It absolutely was noted in *Tara chand v. Reeb Ram* that whereas taking accounts throughout the division of property, no coparcener should have a charge against him with the explanation that because of his larger family necessities, a larger share of the joint family quantity was spent on his family. (Hrušáková and Westphalova 2011)

VII. POWER OF ALIENATION:

Neither the karta nor the other co-parcener has the power to alienate the joint property of the family however in exceptional things whereby the alienation becomes binding upon all the members of the family. The Dharmashastra acknowledges this power of the Karta to alienate the property however beneath some specific things solely. They need to been declared below:

- Apatkale (Necessity in legal terms)
- Kutumbarthe (Estate's benefit)
- Dharmamarthe (Obligations of non-secular nature) (Hrušáková and Westphalova 2011; Harris-Short, Miles, and George 2015)

Necessity in legal terms

The term legal necessity doesn't hold any precise definition because of the various no. of cases that area unit seen and it being very troublesome to clarify it in actual terms. Still, beneath interpretation it may be declared that the legal necessity of a family is with reference to the wants of a family and also the alienation being in demand of that require.

This is additionally a broad criterion for the alienation to require place. In it, the advantages that the estate gains through any such specified alienation by the Karta is to be thought of as valid. Such useful contracts of property alienation area unit inspired and also the Karta will hold the correct to travel forward underneath his prudent discretion.

Broadly speaking, advantage of estate suggests that something, that is finished for the advantage of the joint family property. There are a unit 2 views on it. One read is that solely construction that is of defensive character may be an advantage of estate. This read looks to be now not valid. The opposite read is that something done that is of positive profit, can quantity to profit of estate. ("The Orthodox Christian

Family in Present-Day Society,” n.d.) The take a look at is that something that a prudent person will neutralise respect of his own property. It absolutely was re-iterated through varied case laws that if the property in hand by the particular joint family is sold-out by the Karta attributable to a sound legal necessity and additionally that the worth reciprocally was additionally affordable, simply the actual fact that a little of the worth wasn't thought of to possess been not applied for the aim automatically, cannot render the total mechanism invalid. (“The Orthodox Christian Family in Present-Day Society,” n.d.; Raymond 1933) Considering a limitation within the matter, through this paper, it's been analysed that even supposing the Karta holds supreme social control and alienation powers within the family however if he gets into a contract wherever it's apparent that the family cannot complete its obligations in financial terms, the liability cannot be shifted to ancestral property sale. (“The Orthodox Christian Family in Present-Day Society,” n.d.; Raymond 1933; Goody 1983) Even so, if there's a sale created by the Karta on behalf of the joint family even through the loss of a little of associate degree ancestral property, it's binding upon the minor members of the family too and that they cannot impeach this contract that the profit has been enjoyed, upon attaining majority. Also, it's a cardinal rule that the actions of the Karta got to be even with the clause automatically or profit to the family for these members to be sure by the actions of the Karta. Such alienation cannot be thought of to be for the aim of a legal necessity “if the legal remedy to recover the debt has become time-barred.” He will alienate the property along with his own discretion attributable to some necessity or through the traditional method of getting a totality in family assent towards such alienation. Thus, it may be safely all over through the analysis that Karta will solely have one specified limitation that is that “A Karta should act with prudence; prudence implies caution further as foresight and excludes hasty, reckless and whimsical conduct and such alienation on a part of the Karta while not the family purpose or necessity clause, is void” For this question of prudence, the consideration sufficiency is a vital condition for such judgment. As analysed although precedents, it cannot be expressed that whenever a Karta needs financial sums so as to pay the pre-emption needs and for the costs of recent property, it's continuously with none demand in legal contrivance and so, outside the scope of the daddy within the family. (“The Orthodox Christian Family in Present-Day Society,” n.d.; Raymond 1933; Goody 1983; Bittman and Bryson 1989) Also, it cannot be expressed that the Karta is meant to borrow amounts for such contemporary acquisition by pre-emption. These matters got to be dealt in keeping with the special existing circumstances anytime. Also, throughout times once the cash borrowed by the Karta is for his individual functions, he's not allowed to mortgage or use the family property in any manner to meet his own liabilities. (Cornell 2007; Skolnick and Skolnick 1974)

VIII. POWER TO CONTRACT DEBTS

The Karta has the ability to contract debts for the family in accordance with their wants and these debts square measure binding upon all the members. The members cannot escape liability from these debts even upon acts of partition from the joint estate. However, it's been established that the Karta can't be allowed to boost loans by giving in as security, the estate of a minor friend thus on begin some trade of ancestral nature. Now, the paper shall cope with the liability magnitude relation of the members for the shrunken debt. (Cornell 2007)

LIABILITY OF ALTERNATIVE MEMBERS

During the case whereby the Karta shrunken a debt on the family property, a member isn't liable in an exceedingly demeanour however rather, solely to the limit of its interest. however in some circumstances whereby the contract is truly purporting to parties or after they is treated as parties owing to their conduct or if they need united to the arrangement, their restricted doesn't stay restricted. Therefore the deeming of the members to be actual parties is crucial to establishing the liability magnitude relation.

BURDEN OF PROOF DEMAND

Any debt that has been shrunk by a Karta on behalf of the family isn't inherently assumed to be one wherever the interest of the family is concerned.

As explicit in Mullah, Principles of Hindu Law (Cornell 2007; Skolnick and Skolnick 1974; McKie, Cunningham-Burley, and Camping 2005)

“When the loaner is aware of all the circumstances of the family to that the cash is season and he is aware of whether or not the borrowing arose or not, the sole approach during which the family can be created liable in such a case would be by proof that the need did exist”. The loan-provider is mandatorily needed to appear into the need of the loan for the joint family because the purpose of the loan isn't speculated to be inherently plausible. Caution throughout the inquiry is enough to justify the loan however if it's a matter once the joint family has been taking loans since a no. of years, the loan-provider doesn't need to prove the need for each penny concerned (“The Orthodox Christian Family in Present-Day Society,” n.d.; Raymond 1933; Goody 1983; Bittman and Bryson 1989; Skolnick and Skolnick 1974)

IX. POWER OF THE KARTA TO GIFT PROPERTY

It is a usually identified indisputable fact that a Karta could have a superior social control authority however he cannot gift away family property unless there's a legal compulsion concerned or for spiritual functions etc.

- Movable Property as gifts

The father or the Karta has the authority to gift ancestral joint family property to sons, daughters etc. as a matter of affectionateness whereby the gift is in furtherance of “indispensable acts of duty, and family, relief from distress then forth”. Such gifts do have limitation sort of a gift cannot entail the full property to lean to 1 explicit member because it can't be then upheld as “gift of affection”.•

- Immovable Property as gifts

The Karta will possess the capability to gift a private, as a result of few restrictions, for pious functions. it had been set down in *Guramma v. Mallapa* that a father will gift his girl a little of associate stable property if it conforms to the reasonability criteria, viewing the properties that square measure owned by the family. Though, it's not acceptable for a husband to gift any such property to his mate underneath the clause of “Pious Purposes”.

- Gift to Strangers

The Karta solely holds the proper to gift properties to relations underneath some conditions and strangers can't be a recipient of such a present underneath no circumstances. Such a present, if made, shall be deemed to be void ab initio.

X. CONCLUSION

As already mentioned, the Karta in an exceedingly Hindu joint family holds quite a extraordinary position with relevancy its understanding and complexness. This single nature of the system holds a vital position in understanding however a joint family functions with relevancy the many duties and varied works the individual members of a family square measure concerned, being clubbed along in an exceedingly single family. The construct of Karta has associate origin that dates centuries back and it still holds its ground due its varied useful components. One family that entails a no. of members UN agency live along and hold joint property, essentially need a Karta to spice up the cohesive side of such a family with relevancy its dealings and ventures. The idea of a Karta has been diluted in gift times to take care of reasonability within the selections and judgments that a Karta binds the joint family to. There are not any absolute powers as that of the previous “patriarch” as varied legal remedies square measure out

there and therefore, the social control system of getting a central head works in varied mannerisms.

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