

CASE COMMENT**SUJATA SHARMA v. MANU GUPTA**

(2016) 226 DLT 647

(Decided on December 22, 2015)

*Shiv Ranjan**

IN THE present case, the debate whether the daughter as the senior most member of the *Mitakshara* Hindu Undivided Family (HUF) can be a *Karta* or not which arose after the introduction of Hindu Succession (Amendment) Act, 2005 has been settled by the judgment of the High Court of Delhi.¹ Earlier, the Coram of three judges of the Supreme Court held that only a coparcener can be the *Karta* or manager of a joint family.² Since a widow or a mother is not a coparcener, she cannot be the manager of a joint family. As a brief background, the dispute was between the coparceners with the plaintiff claiming to be a *Karta* on the account of being the senior most coparcener in the family. The High Court of Delhi by giving the power to the daughter as a senior most member to be a *Karta* is a progressive approach and has tried to empower females by providing proprietary interest to them. At the same time the judgment has not covered all the aspects of *Karta* while granting the *Kartaship* to the daughter as the senior most member of the HUF.

The usual legal term *Karta* is not to be found in the *Smritis* or the commentaries. The frequent use of it by the legal fraternity and lawyers of our courts has substituted it for the proper word *Swami*.³ The *Karta* is a socio-religious position, that is, it relates to *pinddaan*, pious obligation, *mukhagni*, proprietary rights, management of property *etc.* The *Karta* of the HUF is certainly the manager of the family property but undoubtedly possesses powers which the ordinary manager does not possess.⁴ The *Karta* cannot, therefore, be just equated with the manager of property. Rather, the manager of a joint family is called *Karta*.⁵ The manager ship not only includes property of the HUF but also certain religious and social duties. Being undivided only one member of the family is entitled and obliged to perform them for the

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¹ *Sujata Sharma v. Manu Gupta* (2016) 226 DLT 647.

² *Commissioner of Income Tax, Nagpur v. Seth Govindram Sugar Mills* (1965) 3 SCR 488.

³ Jogendra Chunder Ghose, *Principles of Hindu Law* 321 (S C. Auddy & Co. Print., Calcutta, 1903).

⁴ *Union of India v. Shree Ram Bohra* (1965) 2 SCR 830.

⁵ Sir Dinshaw Fardunji Mulla, *Hindu Law* 324 (LexisNexis, Noida, 21st edn., 2010).

rest.⁶ Here, that one member is the senior most male member of the HUF who would perform the religious and social functions of the HUF. The position that the daughter could become the *Karta* after getting the status of a coparcener and subject to the riders and qualifications, is no longer *res controversia* but the answer is still awaited whether it is limited to proprietary rights only or the right of being a *Karta* is in entirety.

The decision here reflects the proprietary interest of the female but the Court is silent on the socio-religious aspect of *Karta*. The judgment provides that earlier (prior to 2005 amendment) the only impediment regarding assignment of the *Kartaship* power to a female on being the senior most member of HUF was that a female member of HUF was not a coparcener. However, with the incorporation of the said amendment in 2005 a daughter (female) has been declared to be a coparcener and consequently that impediment stands removed.

Now if the daughter being the eldest coparcener can very well become the *Karta* by referring to the Hindu Succession (Amendment) Act, 2005 which provides proprietary equality in favour of female. That equality will become incomplete if the daughter is not allowed to be *Karta*.

The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but in food and worship; therefore not only the concerns of the joint property, but whatever relates to their commensality and their religious duties and observances, must be regulated by its members, or by the manager to whom they have expressly or by implication delegated the task of regulation.⁷ *Kartaship* is related to the fact that the *Karta* is the eldest and closest to the ancestors and can perform the *pinddaan* for the ancestors. Being the eldest male member, he represents the entire family before the ancestors. Hence, he acquires the right to be the *Karta* and he enjoys some peculiar powers because of his peculiar position. He enjoys a fiduciary capacity and he can even discriminate between the members of the family in the matters of maintenance. He can make a gift of a reasonable portion of a movable property of the joint property in any coparcenary property out of love and affection. He is not liable to give accounts of dealings of property unless a partition is claimed and fraud is alleged upon him. The position of *Karta* is *sue generis*. He

⁶*Supra* note at 2.

⁷*Sri Vira Viradhi Vira Pratapa Sri Raghunadha Anunga Bhima Deo Kesari Maharaz v. Sri Brozo Kishoro Patta De*, 1876 SCC OnLine PC 6.

cannot be compared to a mere agent or trustee rather his powers are far superior and much different because of peculiar socio-religious position he occupies in the family.

After the 2005 Amendment, the daughter has also become a coparcener and therefore a question arises whether she is also liable for pious obligation. The purpose of 2005 Amendment Act does not seem to create any socio-religious obligation upon the daughter. This is also evident from section 6 (4) of the Hindu Succession Act, 1956 that the legislative tilt or the tilt of legislative wisdom is against pious obligation. The Supreme Court decision on this aspect - if she can become a *Karta* which is also a socio-religious act then she can also be made liable for the pious obligation- is still awaited. Pious obligation however relates to *pind daan* therefore if pious obligation is created on her then she should be given right to *pind daan* also.

The other interesting fact is that “a statute which affects the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment.”⁸In the present case, the court in general entitled the right of being *Karta* to female coparcener if she is the eldest of the coparceners but by expanding the rights of *Karta* in the present case the court has given retrospective effect to the Hindu Succession (Amendment) Act, 2005. However, the Coram has not made it clear whether the senior most coparcener being a female will be a *Karta* if the death of the father occurred before September 09, 2005. But the judgment makes it clear that the Hindu Succession (Amendment) Act, 2005 will apply retrospectively. The judgment of Supreme Court in *Prakash v. Phulavati* declared that:⁹

The provisions of the Hindu Succession (Amendment) Act, 2005, are applicable “prospectively” [on and from September 9, 2005, when the Act came into force], and not with “retrospective” effect as held by some High Courts in the country.

This verdict is significant as it provides that women has a right to become *Karta* only if the predecessor has died on or after September 9, 2005 which is against the judicial precedent binding on the High Court of Delhi according to article 141 of the Constitution of India. In

⁸*Sadhu Singh v. Dharam Dev* (1981) 1 SCC 510.

⁹AIR 2016 SC 769.

St. Xavier's College Society v. State of Gujrat,¹⁰ the Coram of nine judges of the Supreme Court as per Jaganmohan Reddy and Alagiriswami JJ:¹¹

In a concrete case coming before the Supreme Court by way of an appeal under Article 133, or by special leave under Article 136 or by petition under Article 32, the law declared by virtue of Article 141 is binding on all courts within the territory of India.

In the discussed judgment the single bench of the Delhi High Court given by Najmi Wajiri J declared the plaintiff to be the *Karta* of 'D.R. Gupta & Sons (HUF) and decided that the plaintiff's father's right in the HUF did not dissipate but was inherited by her. The *Karta*, that is, the father of the plaintiff (*Shri Krishan Mohan Gupta*) of the HUF (D.R. Gupta & Sons) died before the HSA Amendment Act, 2005. The Amendment, 2005 is a legislative introduction by the Parliament and a legislation does not have a retrospective effect.

Overall, the judgment fails to clarify on two grounds. The Coram declared the plaintiff being the senior most female coparcener of the HUF as *Karta* in general but has limited the judgment to the proprietary interest of the *Karta* by being silent on the concept of *Karta* in entirety. The court avoided the socio-religious concept of *Karta* which is needed to be answered. The proprietary justice had been done to the daughter by creating equal proprietary interest by this judgment which also interfere in the socio-religious practice of the religion. The justice on one hand is a progressive approach but the court needs to answer whether it includes the socio-religious practices within it.

Further, the Coram also made the plaintiff (senior most female coparcener of the HUF) as *Karta* in the present case whereas the death of the previous *Karta* (father of the plaintiff) took place before the Hindu Succession (Amendment) Act, 2005 which provided the daughters with the right of coparcener in the HUF. So, if the daughter cannot be a coparcener because the death of the father occurred before the 2005 Amendment and also as per the judgment of Supreme Court in *Prakash v. Phulavati*¹² which held that "the provisions of the Hindu Succession (Amendment) Act, 2005, are applicable prospectively", contradicts the ground on which the judgment is based. So, the senior female coparcener (in the present case, the daughter) cannot be a *Karta*.

¹⁰ (1974) 1 SCC 717.

¹¹ *Id.* at 736.

¹² *Supra* note at 8.