



Effect of a Decree for Maintenance over Hindu Joint Family Property-A legal Study

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Introduction

Maintenance of the members of the joint family is the necessary concomitant of the concept of a joint family. So long as the family remains joint all its members have a right of maintenance against the joint family property. Even when partition takes place, thereby bringing the joint status to an end, there are certain persons for whose maintenance a provision has to be made. The persons who claim maintenance out of the joint family funds may be classified under the following three heads:

- (1) Coparceners, qualified as well as unqualified,
- (2) Wives, widows, and unmarried daughters of the coparceners, and
- (3) Other members of the family. Under this head are included:
 - a. Those male members who are not coparceners (just as a male descendant beyond the fourth degree,) and
 - b. Concubines and illegitimate children of the father.

The claim of maintenance of all the aforesaid persons is not dependant upon the age but upon the status: so long as a person, whatever be his age, is a member of the joint family, he can claim maintenance against the joint family property.

Coparceners:

In a joint Hindu family, the right of maintenance of all the coparceners out of the joint family funds is an inherent right and an essential quality of the coparcenary. As Mayne puts it: Those who would be entitled to share in the bulk of property are entitled to have all their necessary expenses paid out of its income.¹ Every coparcener, from the head of the family to the junior most member, is entitled to maintenance. Obviously, the right of maintenance is dependant on the possession of joint family property. The right exists because there is a common property and the status is joint. All coparceners are entitled to get all their legitimate expenses defrayed out of the joint family funds. This includes food, clothing, residence, education, medical care and marriage.

The disqualified coparceners who, on account of their disqualifications, cannot take a share on partition, have a right of maintenance. Even if a partition takes place, a provision for their maintenance has to be made before the joint family assets are partitioned².

Misbehaviour or excommunication of any coparcener does not, by itself, lead to the forfeiture of the claim of maintenance.

Wives, Widows and Unmarried Daughters:

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¹ Hindu Laws and Usages, (11th Ed.,) 813.

² 2. Rama Rao v. Raja of Pittapur, (1918) 45 I.A. 148.



The wives and unmarried daughters of a coparcener, including that of the karta, have a right, of maintenance against the joint family property. The daughters also have a right to have their marriage expenses defrayed out of the joint family funds.

A widow of a coparcener, including the widow of the karta, is entitled to maintenance out of the joint family property.³ But right of the widow to be intained does not give her any interest in the joint family property.⁴ When a widow succeeded to her husband's interest under the Hindu Women's Right to Property Act, 1937, her claim to maintenance was not lost. Thus, Hindu Adoptions and Maintenance Act, 1956, does not affect the right.⁵ Similarly, a widowed mother is also entitled to maintenance and the fact that she got a share at partition, does not bar her claim of maintenance⁶ Under the old Hindu law, the basis of the claim of coparcener's widow was that her husband's interest S had, by survivorship, passed to other coparceners and therefore the other coparceners who took the interest must maintain her. The Hindu Women's Right to Property Act, 1937, and now the Hindu Succession Act, 1956, S. 6, no longer allows this interest to devolve by survivorship, if a coparcener dies leaving behind a widow. The interposition of these status have not abrogated her right of maintenance,⁷ though the court in fixing the amount of maintenance, will take into account the share that a widow has taken from the coparcenary interest of her deceased husband. Some complications are bound to arise on account of buttressing of the Hindu Succession Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956, on the rules of traditional law of Hindus, some of which stand abrogated and some do not. One should hope that our judiciary is competent to sort out these complications.

Other Members of the family:

In ancient times, the rule that all members of the joint family are entitled to maintenance, extended to slaves and servants of the family. Slaves and servants no longer have any right of maintenance. In the modern Hindu law under this head fall those male descendants (being more than four degrees removed from the last holder) who are not coparceners (though a rare case of five generations existing and living) and some other members of joint family who, though have an inferior status, are, nonetheless, members of the joint family, such as concubine and the illegitimate sons.

Concubine—Under the old Hindu law, a permanently and exclusively kept concubine (avarudha dasi) was entitled to maintenance against her paramour's estate. Her position in the household was recognized. She was placed just below the wife. It was a peculiar situation in Hindu law that during the life time of her paramour she could not claim maintenance against him,⁸ but after his death she could claim maintenance against his estate. The reasons seem to be that she was, during the life time of her paramour, free to leave him whenever she wanted to. But after his death, if she did not take another paramour, she was entitled to claim maintenance out of his interest in the joint family property. It was necessary that she should be a Hindu and an avarudha and should remain faithful to her husband. It was not necessary that she should reside in the house of her paramour.⁹ It was also immaterial that she was a married woman who had left

³ Pokur v. Pokur, 1970 A.P. 33 principles applicable to coparcener's widow's maintenance explained.

⁴ Bai Nagubai v. Bai Monghibai, 1926 P.C. 73.

⁵ Ramanarrsu v. Buchmma, 23 Mad. 383; Ningareddi Lakshamawu, 26 Bom. 163.

⁶ Bai Nagubai v. Bai Manghi Bai, 1926 RC. 73; Gopal v. Sithamma, 1965 S.C. 1970.

⁷ Hemni v. Malibal, (1980) C.L.R. 615.

⁸ Samu v. Magan Lal, 1961 Raj. 207; Vishwarmth v. Premnath, 1975 J. & K. 92.

⁹ Gowardhan v. Gangabai, 1964 M.P. 968; Dugginallakshmana v. Duggina, 1973 A.P. 302.



her husband and lived with her paramour. If she lived with him permanently and exclusively, she acquired the status of avarudha stree and could claim maintenance. It was also immaterial that she was a Brahman woman in the keep of a Sudra¹⁰ The Hindu Adoptions and Maintenance Act, 1956, has not destroyed her right of maintenance out of the estate of a deceased Hindu which had vested in her before the coming into force of the Act.¹¹ If the right accrues to her after the coming into force of the Hindu Adoptions and Maintenance Act, 1956, she cannot enforce it against the separate estate of her paramour or against her paramour's interest in the joint family property.

Illegitimate son and daughter.--We have already discussed the position of an illegitimate son. In old Hindu law, the position of a dasiputra of a Sudra was a little superior. So far as his position in the joint family is concerned, it is still retained and after the death of his father, he will still become a coparcener with the legitimate son of his father. Before 1956, he had the right of maintenance against the estate of his father.¹²

An illegitimate daughter has no right of maintenance under the old Hindu law. Under the modern Hindu law, she has the right of maintenance till minority or marriage.

Conclusion

the right of maintenance of all the coparceners out of the joint family funds is an inherent right and an essential quality of the coparcenary. As Mayne puts it: Those who would be entitled to share in the bulk of property are entitled to have all their necessary expenses paid out of its income. Every coparcener, from the head of the family to the junior most member, is entitled to maintenance. Obviously, the right of maintenance is dependant on the possession of joint family property. The right exists because there is a common property and the status is joint. All coparceners are entitled to get all their legitimate expenses defrayed out of the joint family funds. This includes food, clothing, residence, education, medical care and marriage.

References

1. Bandhayana :Max Muller's Sacred Books of the East, vol. XIV.
2. Das, P.K., Handbook on Hindu Succession (Property Rights of Women and Daughters) Universal Law Publishing Co. Pvt. Ltd., Delhi, 2007.
3. Gandhi, B.M., Hindu Law Eastern Book co., Lucknow, 1999.
4. Mayne's, Treatise on Hindu Law & Usage, (1996 14th Edition, edited By Alladi Kuppaswami).
5. Mitter, Dwarkanath, The Position of Women in Hindu Law, Inter India Publications, New Delhi, 1984.
6. Mulla Principles of Hindu Law, Lexis Nexis Butterworths, New Delhi, 2007.

¹⁰ Akku v. Ganesh, 1954' Bom. 217 (F.B.).

¹¹ Gopal v. Sitharamma, 1965 S.C. 1970, early case law has been discussed.

¹² Ruma Chakraborty v. Sudha Rani Banerjee and another, 2006 (62) ALR 144 (S.C.).

