



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

SUBJECT CODE: LLB -304

LECTURE : 2

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II - Coparcenery: Who is coparcener, Incidents of coparcenery

A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent. Ancestral property is a species of coparcenary property. As stated above if a Hindu inherits property from his father, it becomes ancestral in his hands as regards his son. In such a case, it is said that the son becomes a coparcener with the father as regards the property so inherited, and the coparcenary consists of the father and the son. However, this does not mean that coparcenary can consist only of the father and his sons. It is not only the sons but also the grandsons and great grandsons who acquire an interest by birth in the coparcenary property. Coparcenary begins with a common male ancestor with his lineal descendants in the male line within four degrees counting from and inclusive of such ancestor. The Mitakshara concept of coparcenary is based on the notion of son's birth right in the joint family property. Though every coparcenary must have a common ancestor to start with, it is not to be supposed that every extant coparcenary is limited to four degrees from the common ancestor. When a member of a joint family is removed more than four degrees from the last holder, he cannot demand a partition, and therefore he is not a coparcener. On the death, however, of the last holder, he would become a member of the coparcenary, if he was fifth in descent from him and would be entitled to a share on partition, unless his father, grandfather and great-grandfather had all predeceased the last holder. Whenever a break of more than three degrees occurs between any holder of property and the person who claims to enter the coparcenary after his death the line ceases in that direction and the survivorship is confined to those collaterals and descendants who are within the limit of four degrees. In *Ceylon- Attorney-General of Ceylon v. A. R. Arunachalam Chettiar* case a father and his son constituted a joint family governed by Mitakshara School of Hindu Law. The father and the son were domiciled in India and had trading and other interests in India. The undivided son died and father became the sole surviving coparcener in a Hindu Undivided family to which a number of female members belonged. In this the court said that the widows in the family including the widow of the predeceased son had the power to introduce coparceners in the family by adoption and that power was exercised after the death of son. In *Gowli Buddanna v. Commissioner of Income-Tax, Mysore* a family consisting of father, his wife, his two unmarried daughters and his adopted son.

After the death of father question arises whether the sole male surviving coparcener of the Hindu joint family, his widowed mother and sisters constitute a Hindu undivided family within the meaning of the Income tax Act? In this case it was held by the court property of a joint family does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner of property may possess. The property which yielded the income originally belonged to a Hindu undivided family. In *Moro Vishvanath v. Ganesh Vithal* plaintiffs and defendants are descendants of one Udhav. The defendants are all fourth in descent from him. The plaintiffs, however are, some fifth, and others sixth in descent from him. The question, however, whether, assuming them to be undivided, the plaintiffs are entitled to sue at all for a partition according to Hindu Law, is one of considerable importance and difficulty. It was urged that Plaintiffs cannot claim from the defendants any partition of property descended from that common ancestor. It was held that upon a consideration of the authorities cited, it seems to me that it would be difficult to uphold the appellants' contention that a partition could not, in any case be demanded by descendants of a common ancestor, more than four degrees removed, of property originally descended from him. Suppose a coparcenary consisted originally of A, B, C, D, E, F, G and H, with A as the common ancestor. Suppose A dies first, then B, then C, then D, and then E, and that G has then a son I, and H has a son J and J has a son K. On E's death the coparcenary will consist of F,G,H,I,J and K. Suppose that G,H and J die one after another, and the only survivors of the joint family are F,I and K. Are I and K coparceners with F? Yes, though I is fifth in descent from A, and K is sixth in descent from A. The reason is that either of them can demand a partition of the family property from Here the coparcenary consists of three Collaterals, namely, F,I and K. The essence of a coparcenary under Mitakshara law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share. His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in family. It is only on partition that he becomes entitled to a definite share. The most appropriate term to describe the interest of a coparcener in coparcenary property is 'undivided coparcenary interest'. If a Mitakshara coparcener dies immediately on his death his interest devolves on the surviving coparceners. The Supreme Court has summarized the position

and observed that the coparcenary property is held in collective ownership by all the coparceners in a quasi-corporate capacity.

The incidents of coparcenary are:

- 1 The lineal male descendants of a person upto the third generation, acquire on birth ownership in the ancestral properties of such person;
- 2 such descendants can at any time work out their rights by asking for partition;
- 3 till partition each member has got ownership extending over the entire property conjointly enjoyment of the properties is common;
- 4 as a result of such co-ownership the possession and enjoyment of the properties is common;
- 5 no alienation of the property is possible unless it is for necessity, without the concurrence of the coparceners and
- 6 the interest of a deceased member passes on his death to the surviving coparceners.

Every coparcener and every other member of the joint family has a right of maintenance out of the joint family property. The right of maintenance subsists through the life of the member so long as family remains joint. No female can be a coparcener under Mitakshara law. Even wife, though she is entitled to maintenance.

MCQ

1. Hindu law applicable to who comes in the definition of

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|----------|-----------|
| A) State | B) Person |
| C) Hindu | D) Muslim |

2. Hindu law is derived into part

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| A) Two | B) Three |
| C) Four | D) Five |

3. An important source of hindu law is

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|-------------------|-----------|
| A) Smriti | B) Court |
| C) Dharma Shastra | D) Custom |

4. It can not consider a source of hindu law

A) Custom

B) Tradition

C) Judicial Decisions

D) Public policy

5. Mumbai branch is distributed in sub branches of

A) Mitakshar & jesus

B) Banaras & Mithila

C) Madras & Dravid

D) A & B is right