



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

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LECTURE : 4

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Doctrine of survivorship - The shares of the coparceners are not specific and are subject to change with the births and deaths of the coparceners, in the family. Under the traditional or the classical law, on the death of the coparcener in a joint family, his interest in the family property is immediately taken by those coparceners who survive him, and thus, he leaves nothing behind out of his interest in the coparcenary property for his female dependants. This phenomenon is called the doctrine of survivorship. On birth, he takes an interest, enjoys it during his life time, but leaves nothing for his female dependants on his death. In Dayabhaga system, one is entitled to succeed the property after the death of the male holder. Till then, he is just an heir.

Notional Partition – The 1956 Act brought some changes in the coparcener system. Notional partition was taken into consideration to compute and demarcate the shares. i.e. Father and 2 sons 1/3rd each, though not specified as to what the specific exact division is.

Commencement of coparcenary – One of the primary differences between Mitakshara and Dayabhaga Law is the commencement or the starting of coparcenary itself. Under the Mitakshara law, the starting point of the coparcenary is the birth of the son in the family of a person, who after inheriting the property from his father, or paternal grandfather, or paternal great-grandfather or obtaining property on partition hold it as a sole surviving coparcener. For example, in a coparcenary consisting of a father F, and his two sons A and B, A demands a partition, takes his share and then gets married, when a son is born to him, he will form a coparcenary with his son. Thus, the birth of a son is the starting point or reviving point of Mitakshara coparcenary. In complete contrast to it, under the Dayabhaga Law, the father so long as he is alive, holds the property as a sole or exclusive owner of it. On his death, if he is survived by two or more sons, they inherit the property, and form a coparcenary. It is the death of the father that becomes the starting point of the formation of coparcenary, under the Dayabhaga Law.

Notional Partition – It was generally felt that radical reform was required in Mitakshara Law of coparcenary and that where one of the coparceners died, it was necessary that in respect of his undivided interest in the coparcenary property, there should be equal distribution of that share between his male and female heirs, and particularly between his son and daughter. The Hindu Women's (Right to Property) Act, 1937 conferred new rights on the widows of coparceners.

The initial part of section 6 of the 1956 Act does not interfere with the special rights of those who are members of Mitakshara coparcenary, except to the extent that it seems to ensure the

female heirs and daughter's son, specified in Class I of the schedule, a share in the interest of a coparcener in the event of his death by introducing the concept of a notional partition immediately before his death, and carving out his share in the coparcenary property, as of that date. The section proceeds first by making provision for the retention of the right of survivorship and then engrafts on that rule the important qualification enacted by the provision. The proviso operates only where the deceased has left surviving him a daughter's son, or any female heir specified in Class I of the schedule.

MCQ

1. Membership in HUF can be of
 - A) 5
 - B) 15
 - C) 10
 - D) 1

2. Generally hindu family is presume to be a family
 - A) Divided
 - B) Undivided
 - C) Divided & Undivided
 - D) None of these

3. Coparcenary of HUF is a
 - A) Small part of HUF
 - B) Not a small part of HUF
 - C) H.U.F.
 - D) None of these

4. In hindu coparcenary family who hold position
 - A) only female
 - B) Only male
 - C) A & B is correct
 - D) None of these

5. In the hindu coparcenary property by birth hindu child
- A) Is not beneficiary
 - B) Is beneficiary
 - C) A & B is correct
 - D) None of these