



FACULTY OF JURIDICAL SCIENCES

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Unobstructed property

The property in which an individual secures and is intrigued by birth is called unobstructed property. It is called unobstructed since the accrual of the right to it isn't obstructed by the presence of the owner. Hence property inherited by a Hindu from his father, grandfather, and great grandfather is unobstructed heritage as regards his claim male issues, that is, his sons, son's and son's child. These rights arise on account of their birth in the family and the male descendants in whom the property vests, are called coparceners. Thus, the hereditary property in the hands of the final male owner is unobstructed.

Illustration

'A' acquired certain property from his father. Two children born to A, M and N are coparceners with A. M and N will procure an interest by birth within the hereditary property of A. Thus the property within the hands of A is unhindered legacy, as the presence of the father is no obstacle or obstacle to his children procuring an intrigued by birth within the property.

It is seen that the distinction between obstructed and unobstructed property is recognized by the Mitakshara School and according to Dayabhaga School all the properties should be considered as Obstructed property because no one can inherit the property just after the birth or no one can have interest in another's property by birth. This difference of thought of both the school demarcates Obstructed and Unobstructed Property.

Ancestral property

Ancestral Property is also known as Self-acquired Property after the partition in a Joint Hindu family. As the name suggests Ancestral Property this property is automatically inherited to next-generation people. This Ancestral property was inherited till 3 generations or it is also considered as a part of Coparcenary property as it also includes property descended from father, great grandfather. Self-acquired property and the ancestral property is part of Separate property as above discussed.

Separate Property is the second category of property under Hindu law in which the property is inherited by the other members of non-blood relations.

In the case, *Gurdip Kaur vs. Ghamand Singh Dewa Singh, 1965*, the dictionary meaning of Ancestral Property is "Property which has been inherited from the ancestors" was accepted by the Court. It was also held that a property inherited from a father, father's father or great grandfather is ancestral property.

A question arises that ‘who can acquire ancestral property?’ This was answered in the case of *Arshnoor Singh vs. Harpal Kaur, 2019*, it was held by the Hon’ble Supreme Court that “Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.”

After the amendment and enforcement of the Hindu Succession Act in 2005, women were also allowed to enjoy the Self-acquired property or Ancestral property with equal rights but this right on the ancestral property was not earlier provided to the Women. Now, women and men have equal rights over their ancestral property. There are some incidents of Ancestral property which are mentioned below:

The Ancestral Property should be for 4 generations old or we can say that ancestral property should be continued for four generations and should be inherited from generation to generation.

The Ancestral Property should not be divided by the members and when the division takes place, the property becomes the self-acquired property.

In the Ancestral Property, the person has the right or interest in the property right from birth.

The ancestral property rights are controlled by per strip and not through per capita.

The Shares in the ancestral property is first determined for each generation and then subdivided for the successive generation.

MCQ

1. _____ is very necessary to the parties of the remixture.
A) Property
B) Land
C) Intention
D) Status
2. In view of the form of property, it can be _____ -
A) Divisible
B) Indivisible
C) A & B both are correct
D) None of the above
3. Some of the properties are originally indivisible.
A) Old guarantees
B) Equipments
C) Estates
D) All of the above are true
4. In coparcenary property, each coparcener can acquire interest by _____
A) Partition
B) Birth
C) Attaining majority
D) All of the above
5. Indivisible property holder can transfer it by _____
A) Sale
B) Mortgage
C) Gift and will
D) Partition