

## **KARTA**

In the entire Hindu Joint Family 'Karta' or 'Manager' occupies a very important position. There is no office or institution in any other system of the world can be compared with it. He is a person with limited power but he possesses such vast power within the ambit of joint family which nobody enjoys.

The Joint Hindu family is a patriarchal body, and the head of the family is called Karta. Karta is the senior most male member of the family who acts as the representative of the family and acts on behalf of the family. There is a fiduciary relationship between the Karta and the other family members because every family needs a head member who can look after the welfare of minor members and females in a Joint Hindu Family. The position of Karta is unique in a joint Hindu family. Karta takes care of the whole family and its property and the decision given by the Karta is bound to be followed by the members of Hindu Joint Family. No one is equal to Karta in a Hindu Joint Family. The powers and position of a Karta are wider than any of the members of the Hindu Joint Family. No one can be compared with Karta among the other members of the joint family.

## **WHO IS A KARTA:-**

Karta means manager of joint family and joint family properties. He is the person who takes care of day to day expenses of the family, looks after the family and protects the joint family properties.

## **WHO CAN BE A KARTA?**

### **SENIOR MOST MALE MEMBER**

The senior most male member is entitled to become a Karta and it is his right. Karta is always from the members of the family; no outsiders or stranger can become a Karta. If the senior most male member of the family is alive then he will continue as Karta, if he dies then the second senior most member of the family will take the charge of Karta. Karta takes his position by consent or agreement of all the coparceners.

### **JUNIOR MALE MEMBER**

If the coparceners agree, then a junior can also become a Karta of the family. By making the

agreement with the coparceners, a junior male member can be a Karta of the family.

Narendrakumar J Modi v. CIT 1976 S.C. 1953

Facts: - BapalPurushottamdas Modi was the head of the HUF. Joint family possesses many immovable properties and carried business of various types such as money lending, etc. He executed a general power of attorney in favour of his 3rd son, Gulabchand on Oct 5, 1948. On Oct 22, 1954 Bapal relinquished his share. On Oct 24, 1954 the existing members of the family executed a memo of partition. However, the order accepting partition was not passed, the contention of the appellant was that Gulabchand couldn't be a Karta because he is a junior member and other members of the family did not accept him as a Karta.

Judgment: - It was held that Gulabchand was given the power to manage by Bapal because Gulabchand's elder brother was an aged man of 70 years. And also the father of appellant died in 1957. So, under such circumstances, Gulabchand appears to have acted as the Karta with the consent of all the other members and hence the appeal was dismissed.

#### FEMALE MEMBER AS KARTA

In 2000, the 174th report of the 15th Law Commission recommended many amendments to correct the discrimination against women, which was the key issue before the commission, and this was the foundation for the Hindu Succession (Amendment) Act, 2005. Hindu Succession (Amendment) Act, 2005 turned the daughters of a family, who are governed by Mitakshara Law, coparceners in the HUF property and further gave them the right of survivorship via amended Section 6 (1) (a) and (b) of Hindu Succession Act, 1956. This amendment gave them equal rights as the sons. Although the 2005 amendment provides equal rights to daughters in the coparcenary as compared to the sons, an important question was still left unanswered - Can women or daughters be allowed to become managers or karta of the Hindu Undivided Family?

The landmark Delhi High Court judgement in Mrs. Sujata Sharma v Shri Manu Gupta[10] has, after the 2005 amendment to Hindu Succession Act, 1956 (the "HSA"), brought the next step to realising equality of women in the Hindu Undivided Family. The court found that while females have equal rights to HUF property (post HSA), they also have the right to manage the same property as Karta. Also, the court found no restrictions regarding a female Karta in Section 6, HSA. Thus, after demise of the father in a HUF, if the eldest is a daughter then she becomes the Karta of that same HUF, with the mother and siblings (if any) as members of the HUF.

Hence, married or unmarried daughters may not only claim coparcenary in HUF property but may also claim rights to manage the same HUF property as Karta, provided they are the eldest.

This means that just as a son can be a Karta, by virtue of being born the eldest, a daughter can also be a Karta given that she was born eldest. Also, even after being married a daughter retains her right to coparcenary and also the right to be Karta.

In fact, a woman may even be a de facto Karta in the family where she marries and a de jure Karta in her family of origin, provided that she is a widow and is the only major in the family she married into and is the eldest in her family of origin. With this judgement the equal rights of daughters in their HUF have been fully realised. Daughters would have the same rights and liabilities as sons regarding the HUF property for all means and purposes.

According to Dharmatra, if there is an absence of the male member in a family then in that situation female can act as a Karta. If in case male members are present but they are minors, at that time also, females can act as a Karta.

*Sushila Devi Rampura v. Income tax Officer AIR 1959 Cal*

It was held that where the male members are minors, their natural guardian is their mother. The mother can represent the HUF for the purpose of assessment and recovery of income tax.

*Commissioner of Income Tax v. Seth Govind Ram AIR 1966 S.C. 2*

After reviving the authorities it was held that the mother or any other female could not be the Karta of the Joint Family. According to the Hindu sages, only a coparcener can be a karta and since females cannot be coparceners, they cannot be the Karta of a Joint Hindu Family.

The amendment made in 2005 gives women equal rights in the inheritance of ancestral wealth, something reserved only for male heirs earlier. It indeed, is a significant step in bringing the Hindu Law of inheritance in accord with the constitutional principle of equality. Now, as per the amendment, Section 6 of the Hindu Succession Act, 1956 gives equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. The amendment was made because there was an urgent need for certainty in law.

## **CHARACTERISTICS OF KARTA**

The characteristics of a Karta are:

- Karta's position is unique (sui generis). His position is independent and no one can be compared with him among the family members.
- He had unlimited power but even if he acts on behalf of other members, he can't be treated as a partner or agent.
- He controls all the affairs of the family and has wide powers.
- He is responsible to no one. The only exception to this rule is, in case of fraud, misappropriation or conversion, he is held responsible.
- He is not bound to invest, save or economise. He has the power to use the resources as he likes, unless he is not responsible for the above mentioned charges.
- He is not bound to divide the income generated from the joint property equally among the family members. He can discriminate one with another and is not bound to be impartial. The only thing is he should pay everyone so that they can avail some basic necessities like food, clothing, education, shelter etc.

## **POWERS OF A KARTA**

### **Powers of Management**

Karta's power of management is absolute. No one can question the duties of the Karta like, he can manage or mismanage the property, family, business any way he likes. Karta cannot deny the maintenance and occupation of property to any member. Karta is not liable for the positive failures.

### **Rights to Income or Remuneration and Expenditure**

The income of the Joint Hindu family property in a whole must be given to the Karta. Then it is the responsibility of the Karta to allot the funds to the members for fulfilment of their needs. Karta controls the expenditure of the funds. The scope of his power is only to spend such funds on family purposes like management, maintenance, marriage, education etc.

### **Rights to Represent Joint Family**

The Karta represents the family in legal, religious and social matters. The acts and decisions of the Karta are binding on the members. Karta can enter into any transaction on behalf of the family.

Dr. Gopal v. Trimbak AIR 1953 Nag 195

In this case, it was held that a manager/karta can contract debts for carrying on a family business/ thereby render the whole family property including the shares of the other family members liable for the debt. Merely because one of the members of the joint family also joins him, it does not alter his position as a karta.

### **Right to Compromise**

Karta has the power to compromise the disputes relating to management or family property. He can compromise family debts, pending suits and other transactions. The compromises made by the Karta, can be challenged in court by heirs only on the ground of *malafide*.

### **Power to refer a Dispute to Arbitration**

Karta can refer the disputes relating to management, family property to the arbitration. If the award by the arbitration is valid then it will be binding on the members of the joint family.

### **Power to Contract Debts**

The Karta exercises an implied authority to contract debts and pledge the credits and property of the family. Such acts are bound to be followed by the members of the family. Even, Karta when taking a loan for the family purpose or for family businesses then joint family is liable to pay such a loan.

The karta of a non-business joint family also has the power to contract debts for family purposes. When a creditor seeks to make the entire joint family liable for such debts, it is necessary for him to prove that the loan was taken for family purposes, or in the ordinary course of business or that he made proper and bona fide enquiries as to the existence of need. The expression family purpose has almost the same meaning as legal necessity, benefit of estate, or performance of indispensable and pious duties.<sup>9</sup>The karta has an implied authority

to contract debts and pledge the credit of the family for ordinary purpose of family business. Such debts incurred in the ordinary course of business are binding on the entire family

# Loan on Promissory note: - When the karta of a joint family takes a loan or executes a promissory note for family purposes or for family business, the other members of the family may be sued on the note itself even if they are not parties to the note. Their liability is limited to the share in the joint family property, though the karta is personally liable on the note.

# Power to enter into contracts: - The karta has the power to enter into contracts and such contracts are binding on the family. It is also now settled that a contract, otherwise specifically enforceable, is also specifically enforceable against the family.

### **Power to enter into Contracts**

The Karta can enter into contracts and where contracts are enforceable against the family. The contracts are binding on the members of the joint family.

### **Power of Alienation**

No one among the family members can alienate joint family property. But Karta has the power to alienate the property under three circumstances.

1. Legal Necessity
2. Benefit of estate
3. Indispensable duties

### **Legal Necessity**

This term has not expressly defined in any judgement or in any law. It includes all the things which are deemed necessary for the members of the family.

Dev Kishan Vs. Ram Kishan AIR 2002

In this case, the plaintiff filed a suit against the defendant. Both plaintiff and defendant are members of the Joint Hindu Family. Defendant 2 is the Karta, who is under the influence of Defendant 1, sold and mortgaged the property for an illegal and immoral purpose which is for the marriage of minor daughters Vimla and Pushpa. The defendant contended that he took the loan for the legal necessity.

The court held that the debt was used for the unlawful purpose. Since it contravened the Child Marriage Restraint Act, 1929, therefore, it can be called as lawful alienation.

### **Benefit of estate**

Benefit of Estate means anything which is done for the benefit of the joint family property. Karta as a manager can do all those things which are helpful for family advancement.

### **Indispensable Duties**

These terms refer to the performance of those acts which are religious, pious or charitable. Examples of indispensable duties are marriage, grihapravesham etc. A Karta can alienate the portion of the property for the charitable purpose. In this case, the power of the Karta is limited i.e he can alienate only a small portion of the family property, whether movable or immovable.

### **LIABILITIES OF A KARTA**

- **Liability to maintain-** Karta is to maintain all the members of the Joint Family. If he does not maintain any member then he can be sued for maintenance and also can be asked for compensation.
- **Liability of render accounts-** As far as the family remains joint, Karta is not supposed to keep accounts of the family, but when partition takes place at that time he will be liable to account for family property. If any of the heir is not

satisfied with his accounts, then he can constitute a suit against Karta to bring the truth and to know any misappropriation is done by Karta or not.

- **Liability of recovery debts due to the Family-** He has the liability to realize the debts due to the family.
- **Liability to spend reasonably-** He has the liability to spend the joint family funds only for the family purposes.
- **Liability not to eliminate coparcenary property-** It is the liability of the Karta not to alienate the coparcenary property without any legal necessity or benefit to the state.
- **Liability not to start new Business-** It is the liability of the Karta not to start a new business without the consent of other coparceners.

### **Concept of Pious Obligation under the Hindu Law**

‘Pious obligation’ means the moral liability of sons to pay off or discharge their father’s non-avyavaharik debts. The debts borrowed may not be of legal necessity or for benefit of estate. Thus, if the father is the Karta of a Hindu joint family, he may alienate the coparcenary property for discharging the antecedent debts. The sons are under the obligation to recover such alienated property by repaying the debts.

The ancient doctrine of pious obligation was governed by Smriti law. There is a pious obligation on the sons and grandsons to pay the debts contracted by the father and grandfather. According to Privy Council this obligation extends to great grandsons also because all the male descendants upto three generations constitute coparcenary and every coparcener is under a religious obligation to pay the debt contracted by their ancestor, provided such debt was not taken for an immoral or unlawful purpose.

The concept of pious obligation has its origin in Dharmashastras, according to which non-payment of debt is a sin which results in unbearable sufferings in the next world. Hence the debts must be paid off in all circumstances provided it was not for immoral and illegal purposes. Vrihaspati has said, “If the father is no longer alive the debt must be paid by his sons. The father’s debt must be paid first of all, and after that a man’s own debts, but a debt contracted by the paternal grandfather must always be paid before these two events.

The Mitakshara has presented the entire proposition in stronger words. According to it when the father has gone abroad or is suffering from some incurable disease, the liability to pay the



debt contracted by him would lie on the sons and grandsons irrespective of the fact that the father had no property. There are reasons for fixing this liability on sons and grandsons. The liability to pay the debt is in the order, viz., in absence of father the son and in absence of son the grandson.