

KARTA/MANAGER AND HIS LEGAL POSITION: A SOCIO LEGAL STUDY

Ankita Gupta*

The person who governs the proper functioning of a joint family is the head or Karta of that family. This paper seeks to analyze the position of the Karta and the extent of his duties and rights with respect to legal position, income, properties, business etc. The recent cases with regard to the position of the Karta have also been analyzed and in most of the cases the alienation of property made by the Karta was challenged and it was to be determined whether or not the alienations made were under the ambit of legal necessity.

1. Introduction

The head of the Hindu Joint Family also called the Karta or manager of the joint family occupies a unique position unlike any other member of the family. The senior most male member of the Hindu joint family is usually the Karta or head of the family. Often Karta is called Manager of the joint family, this is when there exists a family business or if it is a trading family, there has to be a manager to take care of the proper functioning and supervision of the business. The Karta has innumerable rights and powers. He can exercise these rights in any manner he thinks fit as long as it's for the greater good of the family. Along with such great power he has a number of liabilities such as maintenance of family members and keeping proper accounts.

2. Karta/Manager Of Hindu Joint Family

2.1 Who is a Karta?

The manager of the joint family is called the karta.¹ The senior most member male member of a joint Hindu family is considered as the karta of the family provided he is otherwise fit to act as such that he is not suffering from any physical or mental deficiency.² He is not an agent or trustee of the family but as the head of the family he is the custodian or guardian of the property and affairs of the family and of the interest of the family.³

The karta of the joint Hindu family is certainly the manager of the joint family property but undoubtedly possesses powers which the ordinary manager does not possess. The karta, therefore, cannot be just equated with the manager of property.⁴ The position of a karta which is acquired by birth and regulated by seniority, subject to his capacity to act, is terminable either by resignation or relinquishment and is not indefeasible.⁵

2.1.1 More than one karta

Two persons may look after the affairs of the family⁶; this authority is based not on any Hindu laws but on the members of the family who confer this authority on them. The most important qualification required to become a Karta is that the person should be a

* Student, 2nd year B.A., LL.B. (Hons.), NALSAR University of Law, Hyderabad.

¹ *Suraj Bansi Koer v. Sheo Parsad* (1880) 5 Cal 148.

² G.M. Diwekar, *Hindu Law- A Critical Commentary* 56 (Hindu Law House 2nd ed. 2002).

³ *Ibid*, p.57.

⁴ *Union of India v. Sri Ram Bohra*, MANU/SC/0004/1965: AIR 1965 SC 1531.

⁵ Ranganath Misra and Vijender Kumar, (rev.), Mayne, "Treatise on Hindu Law and Usage", 16th ed; 2008, p.759.

⁶ *Union of India v. Shriram* MANU/SC/0004/1965: AIR 1965 SC 1531

coparcener in the family. With the consent of the others, a junior member of the family may become the manager of the family property or there can be more than one managing member.⁷ There cannot be two kartas of a joint Hindu family but karta or members of the joint Hindu family can by express or implied terms confer authority on a junior member to look after the affairs of the joint Hindu family or its business and to take all necessary steps for the smooth and beneficial management of the business and to protect the interest of such joint family business.⁸

2.1.2 Minor as a karta

As regards, junior male members, as long as a senior member is present they cannot become Karta, unless all the coparceners agree to the junior member occupying managerial position. This was re-affirmed by the *Narendra Kumar v. CIT*.⁹ If it turns out that a minor is the only one left to be manager, he can as long as a capable guardian represents him. Section 21 of the Guardians and Wards Act, 1890 recognises the competence of minors to occupy managerial position in an undivided family.¹⁰

2.1.3 Father as karta

If the manager or the karta is the father, he has certain additional powers of alienation under the Hindu law and in exercise of those powers, he can alienate joint family property so as to bind the interests of his minor sons in such property.¹¹ Property belonging to a joint family is ordinarily managed by the father or other senior member of the family. In case of a father as the karta, the debts for which the property is alienated may not be for the benefits of the family provided they are antecedent debts not tainted by immorality or any illegality.¹²

3. Position Of The Karta

It is the duty of the karta to see that all reasonable wants of the members are satisfied. If the karta fails to fulfill his duty, the members could enforce it by legal action.¹³ An undivided Hindu family is ordinarily joint not only in estate, but also in food or worship; therefore, not only the concerns of the joint property, but whatever relates to their commensality and their religious duties and observances, must be regulated by its members or the business manager to whom they have expressly, or by implication, delegated the task of regulation.¹⁴ The Karta represents his joint family on all matters, whether they are religious, social or legal in character. He acts on behalf of the family and his acts are absolutely binding on them. The joint family has no corporate existence¹⁵; it acts on all issues through its Karta. In *Radhakrishna v. Kuluram*,¹⁶ the Supreme Court held that the Karta can enter into any transaction on behalf of the family and it will be ordinarily binding on the members.¹⁷

⁷ Ibid.

⁸ *Nemi Chand v. Hira Chand*, 2000 (1) HLR 250 (Raj).

⁹ MANU/SC/0523/1976: AIR 1976 SC 1953.

¹⁰ *Sarda Prasad v. Umeshwar Prasad* (1963) Pat 274.

¹¹ *Subramaniam v. Krishnaswami* MANU/TN/0324/1972: AIR 1972 Mad 377.

¹² *Sarangpani v. K.V.Pradhan* 1993 (1) Hindu L.R. 17 (Mad.).

¹³ Werner Menski, *Hindu Law Beyond Tradition and Modernity* 491 (Oxford University Press 1st ed. 2003).

¹⁴ *Raghunanda v. Brozo Kishoro*, (1876) 1 Mad 69.

¹⁵ *Lalitha Kumari v. Rajah of Veziyanagaram*, MANU/TN/0008/1950: AIR 1950 Mad 19.

¹⁶ MANU/SC/0393/1962: AIR 1967 SC 574.

¹⁷ *Radhakrishna v. Kuluram*, MANU/SC/0393/1962: AIR 1967 SC 574.

3.1 Legal position of the karta

The karta can file suits or take other legal proceedings to safeguard the interest of the family and its properties and business.¹⁸ He can represent the family effectively in a proceeding even if he has not been named as such.¹⁹ Where a transaction purports to have been entered into by two or more persons described as kartas or managers of the joint family, they must all join as Plaintiffss in the suit.²⁰ However, it is not necessary that all members of the joint family should join in the suit.²¹

There is no right in a minor or an adult member of the family to bring a suit to set aside a decree passed against the manager on the ground that the manager acted with gross negligence in the conduct of the suit.²² An adverse order passed against the manager requiring him to deliver the possession of the property to another person, binds the other members of the family, though they are not parties there.²³

He can refer any disputes to arbitration or can effect settlement or compromise of such disputes.²⁴ The reference may be in respect of disputes between the family and an outsider, or disputes between the members of the family themselves, e.g. as to shares on partition.²⁵ A compromise entered into by the manager bona fide for the benefit of the family, binds the other members of the family including minors.²⁶

3.2 Position of the karta regarding income

The manager as the head of the family has control over the income and expenditure, and he is the custodian of the surplus, if any.²⁷ Besides the expenses of management, realization and protection of the family estate, the family purposes are ordinarily maintenance, residence, education, marriage, sraddha and religious ceremonies of the coparceners and their families.²⁸ The expenses of each coparcener or his branch cannot in law, in the absence of usage, be debited to the particular coparcener.²⁹ If he spends more than the other members approve, their remedy is to demand a partition.³⁰

So long as the manager of the joint family administers the funds for the purpose of the family, he is not under the same obligation to economize or to save, as would be the case with an agent or trustee.³¹ On the other hand, he is liable to make good to them their shares of all sums, which he has misappropriated, or which he has spent for purposes other than those in which the joint family was interested.³²

¹⁸ *Sheoshankar v. Jaddokunwar*, AIR 1914 (41) IA 216.

¹⁹ *Amrit Sagar v. Sudesh Behari Lal*, MANU/SC/0484/1969: AIR 1970 SC 5.

²⁰ *Ramsebuk v. Ramlall*, (1881) 6 Cal 815.

²¹ *Gendalal v. Nanalal*, AIR 1956 MB 58.

²² *Krishnamurti v. Chidamabaram* (1946) Mad 670.

²³ *Venkatanarayana v. Somaraju*, (1937) Mad 880.

²⁴ *Venkata Row v. Tulja Ram Row*, AIR 1922 P.C. 69.

²⁵ 1 Mulla, Principles of Hindu Law 438 (S.A. Desai ed., Lexis Nexis Butterworths 20th ed. 2007).

²⁶ *Pitam Singh v. Ujgar Singh*, (1878) 1 All 651.

²⁷ *Supra* n.25, p.415.

²⁸ *Kameswara Sastri v. Veeracharlu*, (1911) 34 Mad 422.

²⁹ *Ramnath v. Gotturam*, (1920) 44 Bom 179.

³⁰ *Bhogani v. Jaggernath*, (1909) 13 CWN 309.

³¹ *Ibid.*

³² *Abhaychandra v. Pyari Mohan*, (1870) 5 Beng LR 347.

3.2.1 Position regarding debts

He can acknowledge liability to pay debts due and payable by the family, to give discharge for debt; to pay interest on money borrowed etc. due and payable by the family.³³ If the manager revives a time barred debt by passing a promissory note, he alone is liable for the debt.³⁴

If a decree is passed against the karta or manager of the joint Hindu family in respect of a liability properly incurred for the necessities of the family, the binding character of this decree upon the interest of the other members depends, not upon their having or not having been parties to the suit but on the authority of the manager to incur the liability.³⁵

Where the manager borrows money to save the family property and to remove the fear of disturbance likely to be caused in the family business, the existence of necessity may be presumed, where there is nothing to show that the lender acted otherwise than in good faith.³⁶

A creditor advancing money to the manager must satisfy himself that the money was required for family purposes.³⁷ The necessity for a manager to borrow money confers upon him authority to borrow upon reasonable commercial terms and no further.³⁸

3.2.2 Position regarding accounts

In the absence of any proof of misappropriation or fraudulent and improper conversion by the manager of a joint family estate, he is liable to account on partition only for assets which he has received, not for what he ought or might have received if the family money had been profitably dealt with.³⁹

3.3 Position regarding business

If the family has ancestral business the karta has a right to carry on the business with or without the help of the other family members and for that purpose to do all acts and things required to be done to carry on the business such as buying and selling or manufacturing goods, engaging employees, to enter into contracts for sale and purchase of goods, to borrow money, etc.

He can also enter into partnerships with any other person or persons when the family itself is carrying on any ancestral business. The power of a manager to carry on a family business necessarily implies a power to mortgage or sell the family property for a legitimate and proper purpose of the business. The manager can make contracts, give receipts and compromise or discharge claims incidental to the business.⁴⁰

³³ *Annamalai Chettiar v. Veerappa Chettiar*, MANU/SC/0084/1952: AIR 1956 SC 12.

³⁴ *Thakar Das v. Mst. Putli* (1924) 5 Lah 317.

³⁵ (1907) 6 CLJ 362 (DB).

³⁶ AIR 1920 Oudh 111.

³⁷ Acharya Shuklendra, Hindu Law 631 (Modern Law House 1st ed. 2002).

³⁸ *Ibid*, p.632.

³⁹ *Laxminarayanan v. Dinker*, (1943) 3 Nag 390.

⁴⁰ *Supra* n.37, p.618.

3.4 Position regarding property

3.4.1 Immovable property

If the family has immovable property or properties he has the power to manage the same by recovering rents, paying expenses by way of taxes, maintenance and carrying out repairs.⁴¹ The karta can bring a suit for recovery of the joint family property on behalf of the joint family members.⁴²

Partition - The power of the father of a joint family to divide family property at any time during his life provided he gives his sons equal share with himself, is well established. The consent of the sons is not necessary for the exercise of that power, the right of the father to sever himself and the sons inter se being part of the *partriae potestas* that was recognized by the Hindu law.⁴³ If the partition is unequal and unfair it is open to the sons, if they are majors, to repudiate the partition but in case they are minors, they can take action only when they become majors. Till then the partition remains valid.⁴⁴

Alienation - The Karta or manager can alienate the coparcenary property by sale or mortgage for legal necessity or benefit of the estate or otherwise. The Karta is not required to obtain the consent of the other coparceners for alienation and if the alienation is for legal necessity, it will bind the other coparceners.⁴⁵ Any alienation made subsequent to the relinquishment of the office will not bind the other coparceners.⁴⁶ But an alienation by the manager for no family purpose or necessity and made without the assent of the others is void and a subsequent ratification by the other members cannot validate it.⁴⁷

When a junior member is allowed to deal with family properties as if he was the manager, any alienation by him for family necessity is binding on all the members of the family, including the real manager.⁴⁸ Where the joint family property is alienated by the karta but legal necessity is not proved, still the sale is binding on the undivided share of the karta.⁴⁹ The only reasonable limitation that can be imposed on the karta is that he must act with prudence, and prudence implies caution as well as foresight and excludes hasty, reckless and arbitrary conduct.⁵⁰ The situation is to be assessed on the basis of the facts of the situation.⁵¹ However, an alienation made for a grossly inadequate amount even if for a legal necessity cannot be held to be valid.⁵² But if legal necessity is proved, mere inadequacy of consideration is no ground for setting aside the sale by the manager.⁵³

It cannot be however said to be beneficial to a Hindu joint family for the manager to purchase property for which the family is unable to pay and when the family is unable to pay, it is certainly not for the benefit of the family that a liability should be cast upon the joint family ancestral property.⁵⁴ Alienation by the managing member of the family cannot

⁴¹ *Bhowani v. Jagannath*, (1909) 13 Cal. W.N. 309.

⁴² *Gangadhar Rao v. Ganga Rao*, MANU/AP/0117/1968: AIR 1968 AP 291.

⁴³ A.G. Gupte, Hindu Law 1408 (Premier Publishing Company 1st ed. 2003).

⁴⁴ *P.N. Venkatasubramania Iyer v. P.N. Easwara Iyer*, MANU/TN/0226/1966: AIR 1966 Mad 266.

⁴⁵ *Ramesh Damodar Deshmukh v. Damodar D. Deshmukh*, (1999) 1 Mah. L.J. 153.

⁴⁶ *Abdul Basith Sahib v. Shanmugha Sundaram* 1956 Mad WN 277.

⁴⁷ Supra n.37, pp.619-620.

⁴⁸ (1902) C 797 (DB).

⁴⁹ *Jawwala Singh v. Lachman Das*, MANU/PH/0148/1974: AIR 1974 P & H 188.

⁵⁰ Supra n.37, p.620.

⁵¹ Supra n.2, p. 64.

⁵² Ibid, p.65.

⁵³ *Dharma Singh v. Sadhu Singh*, MANU/PH/0026/1997: AIR 1997 P. & H. 198.

⁵⁴ MANU/UP/0044/1939: AIR 1939 All 486.

be said to be for legal necessity, if the legal remedy to recover the debt has become time barred.⁵⁵

The alienee therefore has to prove one of the following two things:

- (1) the transaction was in fact justified by legal necessity or for the benefit of the estate.
- (2) he has made reasonable or *bona fide* enquiries as to the existence of the necessity and satisfied himself that the manager was acting for the benefit of the estate.⁵⁶

Gifts - It is competent for a father to make a gift of immovable property to a daughter if the gift is of a reasonable extent having regard to the properties held by the family⁵⁷ because a Hindu father is under legal obligation to make a gift of a reasonable portion of the family property as a provision to his daughters on the occasion of their marriages. However, a similar gift from a husband to his wife⁵⁸ or from a father-in-law to his daughter-in-law⁵⁹ cannot be said to be for pious purposes. The position in Hindu law is that whereas the father has the power to gift ancestral movable property within reasonable limits, he has no such power regarding the immovable property except for pious purposes.⁶⁰ Gifts of coparcenary immovable⁶¹ or movable property⁶² to strangers are void.

3.4.2 Movable property

The father has the power of making within reasonable limits gifts of ancestral moveable property without the consent of his sons for the purpose of performing "indispensable acts of duty, and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress and so forth."⁶³ A gift of affection may be made to a wife, a daughter and even to a son.

4. Case Analysis

Some of the most recent cases involving the law regarding the rights and duties of the karta of the Hindu Joint family have been analysed.

In *Shankarlal Ladha v. Vasanth Deshmukh and Ors.*,⁶⁴ it was held that the purchaser of the joint Hindu family property is under obligation to discharge burden of proof to prove existence of the legal necessity. It was also held that the marriage expenses of the male coparcener can be regarded as incidents of legal necessity and mere vague recitals in the sale deed that it was for the purpose of improvement of agricultural lands would not be sufficient.

In *Bhagyamma v. Ningaramma*,⁶⁵ it has been held the rights and interests of the people affected need to be taken into consideration by the alienee. A similar view was given in the

⁵⁵ *Jhabbu Ram v. Bahoran Singh and Ors.* MANU/UP/0324/1925: AIR 1926 All 243.

⁵⁶ *B. Ranga Rao v. G. Venkata Rao*, 1996 (1) HLR 337.

⁵⁷ *Guramma v. Malappa*, MANU/SC/0252/1963: AIR 1964 SC 510.

⁵⁸ *Supra* n.37, p.633.

⁵⁹ *Perumalekkal v. Kumaresan*, MANU/SC/0289/1966: AIR 1967 SC 569.

⁶⁰ *Supra* n.37, p.634.

⁶¹ *Gauramma v. Mallappa*, MANU/SC/0252/1963: AIR 1964 SC 510.

⁶² *Gangadhar Agarwal v. CIT*, (1989) 162 ITR 320 (Bom).

⁶³ *Supra* n.61.

⁶⁴ MANU/MH/0005/2009: 2009 (111) BomLR 393.

⁶⁵ MANU/KA/0497/2008: ILR 2009 Kar 118.

case of *Chanumuri Subhaveni and Ors. v. Sappa Srinivasa Rao and Ors.*⁶⁶ where it was held that in case there was no pressing need for the payment of debts, the alienation made at a low consideration, could not be said to be for legal necessity.

In *Dev Kishan v. Ram Kishan*,⁶⁷ it was held that any property alienated for an unlawful purpose cannot be termed as legal necessity. In this case the alienation had been made to carry out child marriage.

In *Jagdish Parshad v. Laxmi Narayan and Ors.*⁶⁸ it was held that any suit instituted for an injunction to restrain the karta from alienating property, was not maintainable. Further, it was also held that legal necessity cannot remain static and it is for the karta to decide the existence of legal necessity or use property as an act of good management. A similar ruling was given in the case of *Krishnamoorthy Gounder v. Sitarama Gounder and Ors.*⁶⁹ These decisions were based on the decision given by the Supreme Court in the case of *Sunil Kumar v. Ram Prakash*.⁷⁰

In *S. Rangaswamy v. A.P. Transco and Ors.*⁷¹ it was held that the karta would be individually liable for any debts that he incurred after the partition of the property.

5. Conclusion

The concept of Karta in the Hindu joint family is not just a position of power but also serves a very practical purpose. A Hindu joint family is a very complex entity and it is imperative that in order that all the functions and duties are carried out conveniently, there be a centralizing force, which is readily provided by the karta. Whether it is regarding the legal issues or regarding property issues, the karta represents the entire joint family and this saves the trouble of multiple claims of action. Centralization is the key to good management and this is provided by the karta.

Along with numerous powers, a lot of checks have also been imposed on the karta to prevent any misuse of power. This ensures that the karta works for the benefit of the joint Hindu family. Law has provided enough remedies to the members of the joint family to protect their interest in case of any despotic behaviour by the karta.

⁶⁶ MANU/AP/0479/2004: 2004 (4) ALD 745.

⁶⁷ MANU/RH/0717/2002: AIR 2002 Raj 370.

⁶⁸ MANU/PH/0705/2003: 2003 (135) PLR 481.

⁶⁹ MANU/TN/1496/2002: (2002) 3 MLJ 284.

⁷⁰ MANU/SC/0521/1988: AIR 1988 SC 576.

⁷¹ MANU/AP/1551/2002: 2002 (4) ALT 108