HUF- Whether married daughter continues to be a member of her father's HUF?

HUF i.e., Hindu Undivided Family is a concept peculiar to members who follows Hindu religion. The relationship arises from status and not from a contract. It is the natural state of any Hindu family. In Tumki Sah Vs. CIT 212 ITR 632, the S.C. laid down that HUF once assessed as HUF continues to be so until a finding of partition is recorded by the A.O. u/s 171 of the IT Act and not withstanding the fact that an individual has acquired under Hindu succession Act 1956 an absolute right, to a part of the family property.

HUF consists of all lineally descended from a common ancestor and includes their wives and children. Hindu coparcenary has been considered as a much narrower body including only those persons who acquired, by birth, an interest in the coparcenary property. See Gowli Buddana Vs. CIT 60 ITR 293 S.C. In this case it was also stated that to form a HUF, there is no need to be more than one male member. The proposition can be stated in precise words.

"A family does not become a HUF merely because there is a son-and a HUF does not cease to be a HUF merely because there is no son."

See N.V. Narendranath Vs. CWT reported in 74 ITR 190 S.C.

See also CIT Vs. Veerappa Chettiar 76 ITR 467 (SC), where only surviving female members i.e. three wives of the deceased karta (*whose son also died*) who adopted son, was held to constitute a HUF.

This wide scope granted to the concept prompted clever tax consultant to use "Bigger HUF" and Smaller HUF's"- branch wise as a effective tools for tax planning by effecting multiple partial partition.

In an informal chat, I had the privilege to discuss with Shri. K.H. Kazi- a brilliant lawyers and a former Advocate General of Gujrat- in which he, in the above context, remarked.

"Because of these advisers, there are more HUFs, than Hindus in India."

Inheritance rights were linked under Shastrik Hindu Law to religious duties. Therefore, only those who could offer pindas to the departed ancestors, were entitled to the property. Manu stated the law in the following words.

दद्यात् पिण्डम् , धरेत धनम्

(Dadyat Pindam, dharet dhanan).

Since females were not expected to or allowed to go even to the crematorium, therese was no question of their offering pindas. They were thus deprived of any right to inherit. They were only entitled to marriage and maintenance expenses.

Separate property of father, inherited by the son on intestacy, was, however, treated as son's separate property.

First small inroad was made in 1937 by the Married Women's Right to Property Act,1937 under which widow of a Hindu, inherited his interest in family property. This was referred in as limited interest as it was limited in enjoyment during her lifetime only. She had no right to alienate the property or her rights in it. (I have ignored some Acts such as Hindu inheritance (Amendment) Act, 1929 where deceased' widow, sister, daughter etc. were treated as legal heirs).

Next major and revolutionary change in Hindu law was made when DR. B.R. Ambedkar was instrumental in drafting the Hindu Code Bill under which separate Acts were passed by the Parliament in 1956 such as Hindu Succession Act, Hindu Marriage Act, Hindu Adoption and Maintenance Act etc. This was a genuine attempt to recognize rights of female members of a Hindu Family as Legal heirs and bring them on par with sons, as far as possible. However, these laws still did not confer on daughter the status of a coparcener, or right to demand a partition. Widow's limited interest was converted into full estate. The expression 'undivided' indicated that the family was still a joint family in property and person's though not necessarily in residence. But, the law (including Income Tax Act) continued to recognize partition which could take place either of property or a person going away from the family.

Third major break-through came when Hindu Succession (Amendment) Act was passed, on 5th Sep 2005. Sec.6 of Hindu Succession Act 1956 was replaced by the

following section “6 (1) on and from the commencement of the Hindu succession (Amendment) Act 2005 a joint Hindu family governed by the Mitakshara law, the daughter of a co-parcener shall-

a) By birth become a coparcener in her own right in the same manner as the son.
b) Name the same rights in the coparcenary property as she would have, if she had been a son.
c) Be subject to the same liabilities in respect of the said coparcenary property as that of a son.

And any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener, ------- proviso --------(not relevant here)
2) Any property to which a female Hindu becomes entitled by virtue of sub-sec (1) shall be held by her with the incidents of a coparcenary ownership and shall be regarded, withstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.”

It must be conceded that the drafting leaves much to be desired. But the issue which I wish to take up for discussion in the article is limited. Whether a married daughter continues to remain as a member of her father’s joint family. On marriage, she becomes member of her husband’s family. Can a person be member of two families simultaneously?

This issue becomes important if it is regarded that the words coparcener and members have different meanings.

However, logic and fairness demands that when coparcenership in father’s HUF is conferred on a daughter (including married daughter as a right is from birth), she must be regarded as a member or to put it more precisely- she continues to be member of her father’s family.

It is a well settled principle of interpretation that once fiction is created, it must be carried to its logical conclusion and cannot be curtailed or limited on the basis of logic or intention. It will be wholly illogical to treat a married daughter as a coparcener

from her birth, but not regard her as a member of that very family merely because she has married into a new family.

In the legal column which appeared in the 'Bombay Times' under the heading "Legal Rights" A legal guide for women, law has been stated in the following words: "Rights to ancestral property: - As a daughter, you have an undisputed and natural right to claim your share of any ancestral property. So, whether you are married or not you are within your rights to claim your share of the property."

Earlier in Gurupad Vs. Hirbai 129 ITR 440 S.C. recognized the rights of a female as per law then existing but now after the 2005 amendment Act there should be no doubt.

In CIT Vs. Pratapchand 36 ITR 262 (Punj. HC), it was held that a Hindu who declares for the purpose of the Special Marriage Act, 1872 or 1954 that he did not profess the Hindu Religion, did not thereby cease to be Hindu: the Hindu law still applied to him.

A married daughter therefore is a member of the family of her. Relying on the ratio laid down by the single Judge of the Guj H.C. in Nayanaben Firozkhan Pathan Vs. Nasimbanu Firozkhan Pathan, and a single Judge of the Bombay H.C held in Balachand Jairamdas Lalwani Vs. Nazneen Khalid Qureshi in a judgment dated 6th March 2018 held in Para 18. "The right to inheritance is not a choice, but it is by birth and in some case by marriage, it is acquired. Therefore, renouncing a particular religion and to get converted is a matter of choice and cannot cease relationships which are established and exist by birth. Therefore, Hindu convert is entitled to his/ her father's property, if father dies intestate."

Next question that arises is: if the daughter of a Hindu Father marries a man following /belonging to a different religion – say Muslim or Christian - whether the amendments made in 2005 will apply. The above can happen in two circumstances - either when she marries after converting into husband's religion or marries without conversion by marrying under Special Marriage Act 1954. If she marries without

conversion and remains a Hindu, there should be no doubt, that she will continue to get the benefit of the 2005 amendment. 36 ITR 262 can be cited in support.

If she converts into another religion, the issue will be highly debatable. It is for better that there is a legislative amendment / enactment clearly specifying the provision addressing such a situation which may avoid litigation on this aspect. If intention is to give married daughter equal rights as that of a son, the fact that she no longer professes Hindu Religion, should not come in the way as such a narrow interpretation will deny her fundamental right of freedom of religion granted by the constitution of India and defeats the purpose of the 2005 amendment. It is for consideration of the readers to decide this issue.

The last point that remains to be considered is whether HUF can make a gift to a married daughter. Surprisingly, S.56 (2) (vii) talks of gifts received, by the HUF from a member and exempts such gifts from operation of S.56(2) (vii), by treating the member as a 'relative' of the HUf, but not vice-versa! Strange logic and stranger the definition of a 'relative' of an HUF! Though I respectfully, maintain that it is fallacious to say that a member is a relative of HUF, but for member HUF is not relative. The difference is without distinction.

However, one need not go to S.56(2) to read it narrowly, as in the following decisions it has been held that, Gift by HUF is not void, but voidable – and that too only by the other members and not by a stranger.

1. CIT Vs. Braham 46 ITR 387 (Raj. HC)
2. Hirday Vs. CIT 57 ITR 363 (All. HC)
3. CIT Vs. Motilal 76 ITR 43 (Raj. HC)
4. Thamna Vs. Thamna 168 ITR 760 S.C

and other cases cited on P.176 of Kanga and Palkhiwala, Eleventh edition. Therefore, if the Gift Deed is signed by all the members of the HUf, it should solve this problem. It will be a gift to the coparcener and also by relatives jointly. It is said that "marriages are made in heaven. But complex, irrational and half-baked laws governing marriages and marital rights can turn them into hell on earth".

Allahabad H.C. held long, long ago in Maharaj Kumar of Vizagapatam 2 ITR 186 @194 that of the sum is considered pure and simple gift, by the father and brother, it must be considered to as have been received, as member of the family within the meaning of S.10 (2) of the Act.

In the above case and in Radha Vs. CIT *(15 ITR 409 P C),* it was also held that, the fact that a member of the joint family and living apart from the other members of the family, does not affect her position in law and does not defeat her right to claim exemption u/s 10 (2).

I am aware that my above attempt to analyze the latest Hindu Law is a battle between devil and the deep sea! But my aim is only to generate a debate and not to make any authoritative statement of law!

Amen!

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