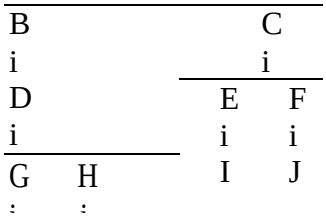

undivided family. It consists of the propositus 'A' and his 'sapindas' i.e., A to L. B to L are all male descendants. Hence, the H.U.F. consists of a large number of persons as per the illustration. It includes the wives and daughters of these persons also. However, Mithakshara coparcenary is a narrower body. This is the 'inner circle' consisting of males, that is sapindas to three degrees calculated from A. Hence, A,B,C,D and H on the one side and C,E,F,I and J, all males are members of the Mithakshara. K and L are not members as they are in the fourth degree. But, when A dies, both K and L enter the Mithakshara. Hence, the **number** will be increasing or decreasing like a chain detached at the top attached at the tail-end.

viii) **Kartha** : As head of the family, Kartha is absolute in management of the coparcenery. He is a sui generis. He may alienate the property, if for legal necessity (Ref. Chapter 8 : Karta)

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 has made drastic changes to Sn 6 to the Mithakshara Coparcenary. After its commencement, in a joint family governed by Mithakhara law,

the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had 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 coparcener shall be deemed to include a reference to a daughter of a coparcener:

Exception:Those partitions or disposition of property before the commencement of this Act are considered valid.

The female Hindu becomes entitled to disposed of by her by testamentary disposition. Her interest devolves by testamentary or intestate succession and not by

Survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place .-

Further,

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had

they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter;etc

Ch. 6.2 Joint Hindu Family:

1. This consists of all those persons who are the descendents of a common ancestor; it includes not only the males but also the females ie, wives, widows, unmarried daughters. The daughter ceases to be a member of her husband's family.

2. A joint and undivided status is the normal position of a Hindu family. The undivided Hindu family (H.U.F) is joint not only in estate but in food, worship etc. In the family, There may or may not be any property, but the status as H. U. F continues, mere severence in food and worship will riot be separation.

3. The status as member is by birth (by marriage to a male member)

4. The H. U. F may consist of a single male member (sole surviving coparcener) and widows of deceased male members.

Ch. 6.3. Kinds of Hindu joint family property :

Broadly divided into two :

i) Ancestral property

ii) Self Acquired property (separate property)

This division is relevant and important as the survivorship or succession is decided on the nature of the property.

Ch. 6.4. Ancestral property :

i) It is the property of a male Hindu in which son's son and son's son's son acquire an interest by birth. Hence, it extends from the com ;;mon ancestor P to three degrees. There is unobstructed line of heritage called as Apartibandadaya (means without a break)

e.g.:-

P

SI :

SSI

SSS1

ii) The property devolves by survivorship and not by succession. This of course subject to Sn. 6 and Sn. 30 of the Hindu Succession Act 1956 in such cases, where they are applicable.

E.g.: Ancestral property :

P

A (Son)

B (Son's son)

The propositus P dies intestate, P's property is ancestral and hence, A and B hold as Coparceners. (B acquires the right by birth).

If A dies intestate, then B gets property by survivorship and not by succession.

P dies intestate (i.e., without a will), property is ancestral in the hands of B, C D. When P dies B, C and D take by survivorship.

(This will not apply in the case of self acquired property of P. P may dispose of by will and may not give any property to B, C and D. But P cannot prevent B, C and D from getting ancestral property of P)'

iii) Accretion to ancestral property and all purchases made or profits earned from the income or sales are 'ancestral property'.

iv) Property inherited from Mother, Maternal Grandfather or collateral is **not ancestral.** It is Saprathibandadaya. **Venkayamma Vs. Venkataramanayyama (Supreme Court)**

Facts: Two brothers A and B, members of a joint Hindu family inherited certain properties from their maternal grandfather. A died leaving his widow W. Question was whether that property passed to W by succession, or to B by survivorship. The Privy Council had held that as both A and B had inherited together it was ancestral and B got by survivorship. But our Supreme Court held that this is not ancestral property (only Agnates property is Ancestral).

v) Share allotted on partition: A coparcener's share after partition is ancestral as regards his male descendants only. But, as regards others, it is separate property and if he dies intestate with out male issues, it passes on to his heirs by succession.

vi) Property obtained by gift or under a will from paternal ancestor. This was answered by the Supreme Court in **Arunachal Madaliar V. Muruganatha** as separate property.

Facts : A had three sons B, C and D. Under his will, A gave certain properties to his wife and other relatives, and then in the schedule gave his separate properties PI, P2 and P3 to A, B and C respectively, which they may enjoy, absolutely. Held, this was not ancestral in the hands of B, C and D. It is their 'separate property'.

vii) **Doctrine of Blending** : Property thrown into common stock of the family is ancestral property. Even seperate property becomes Hindu undivided property when it is thrown into the hotchpot with intention to abandon all rights over it (malleshappa v. mallappa).

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 has made drastic changes to Sn 6 to the Mithakshara Coparcenary. After its commencement, in a joint family governed by Mithakhara law,

the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had 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 coparcener shall be deemed to include a reference to a daughter of a coparcener:

Exception:Those partitions or disposition of property before the commencement of this Act are considered valid.

The female Hindu becomes entitled to disposed of by her by testamentary disposition. Her interest devolves by testamentary or intestate succession and not by

Survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place .-

Further,

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had

they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; etc

Ch. 6.5. Separate property :

This is property acquired by a coparcener, without detriment to ancestral property. This is also called self-acquired property. The modes of acquiring are as follows : j) **Saprati-bandadaya**: By obstructed heritage. This is

erty acquired by a Hindu by any mode other than Apratibanda-daya.

ii) Gift or grant: Any gift received by the coparcener from his father or from any person. Also govt. grants received by the coparcener.

iii) Separate earnings of a coparcener.

iv) Income of separate earnings and purchases made therefrom, or business earnings.

Separate Business : Business running in the name of members of the family: One or more members can start business e.g.: partnership firm, acquire properties without the assistance of the join family property. Such business is separate. But if that business is thrown into the hotch pot, voluntarily then it becomes JF property.

The Supreme Court held in **Bhagvan Dayal Vs. RathiDevi** as follows :

Coparcenery is a creature of Hindu law. And it cannot be ere-, ated by agreement. It is a corporate body or a family unit. Properties can be acquired and disposed off. Hence the position is that one coparcener may carry on a separate partnership business. In the present case the uncle A and two nephews B and C did not belong to the same branch, hence it cannot become the joint family property.

The Madeva Prasad Vs. Commissioner of Income Tax, Manager of HUF entered into a partnership as representing his family of which he was the karta, for the benefit of the family. There was a dispute in respect of the properties of the joint family, being involved, in partnership business. The court held that allowances received by Madeva Prasad directly related to the investment made by the family. Hence, it was HUF property and *not separate property.*

v) Gains of learning : All properties acquired by a coparcener by his own exertion, and those coming within the Gains of learning Act 1930, are separate properties (Add. Ch. 14.2).

vi) Share : A share on partition is a separate property if the person has no male issues.

vii) Under the doctrine of blending, separate property becomes Hindu undivided property when it is thrown into the hotchpot with intention to abandon all rights over it (Malleshappa V. Mallappa).

(Add Blending : Ch. 7.4)

CHAPTER - 7

PARTITION

Ch. 7.1. Partition :

Partition according to Lord Westbury **in APPOVIER'S** Case means division of title and division of property. Title means the status of jomtness. The essence is the defining of the shares of the coparceners in the joint family ; there is numerical division of the property However, actual division of property by metes and bounds is not necessary. According to Mitakshara "Partition is the adjustment of specific portions of diverse rights over the aggregate commonwealth" It is the fixation of the fluctuating interests of a coparcener into a specific-share in the joint family property.

Change of status :

After the shares are so defined they may divide by metes and bounds or live together and enjoy the property. There is a change in the status. Joint status comes to an end on partition. But, this will not affect their mutual love and affection. This is the essence of partition After partition, the parties hold the property, not jointly, but as tenants-m-common, if they live together. Of course, they may live separately by dividing by metes and bounds, if they so decide.

Position under the Hindu Succession Act 1956 : Sn. 6 of the Act provides that the interest of the Mithakshara coparcener in the undivided coparcenary property, devolves by survivorship and according to the Act. However,, explanation 1 to Sn.6 provides for a notional partition. The objective is to give effect to such a partition when the deceased has left female heirs etc Hence his interest is deemed to be the share in the property that would have been allotted to him if a partition had taken place immediately before death, (irrespective of whether he was entitled to claim partition or not). This deemed share may be the subject matter for the Will or Succession according to the Act.

Eg.: (1) X has left sons A and B and ancestral property Rs.16,000/-. A has three sons and a daughter. A dies. Under the deemed partition the daughter's share can be calculated. A and B get % each (Rs.8,000/- each). A has 3 sons and 1 daughter. Hence in the first round A with 3 sons i.e., 4 persons take ^{1}A of $^{l}/z$ (i.e. Rs.2,000/- each). Now, in the second round all the three sons + One daughter take from As share of Rs.2000/-. Hence, the daughter gets Rs.500/- (1/16th of share).

Eg.: (2) A and B are coparceners with ancestral property worth Rs.60,000/- A dies leaving a widow W, sons S_t and S_2 and a daughter. Under notionel partition, A gets 1/2 ie. Rs. 30,000. A and his two

sons as coparceners share equally ie, Rs. 10,000 each. Hence the deemed share of A is Rs. 10,000. This is to be given to all equality W D S , S2 i.e., Rs.2,500/- each.

Ch. 7.2. **Modes of effecting partition :**

The leading cases are : i) Rukma Bai V. Laxminarayan, 1960. ii) Girija Mandini V. Vijendro Narain, 1967. iii) Puttarangamma V. Ranganna, 1968. iv) Hanumanthappa V. Nagappa, 1972. v) Laxmichand V. Ishroo Devi, 1977.

The Supreme Court has in Rukma Bai V. Laxminarayan (1960), elaborately discussed the law relating to partition. According to it, there is the presumption of Hindu law that family is joint. There can be a division of status among the coparceners by defining the shares. Though not essential, there may be a division by metes and bounds.

Modes :

f) **By notice** : Means registered notice by a coparcener served on the Kartha or on all other coparceners. There must be an irrevocable intention expressed in unequivocal terms for separation of the status. Notice is not condition precedent. A declaration in a proceeding showing intention is enough.

Coparcener sent a telegram 'to partition' on 4.8.67. He wrote a will and died on 6.8.67. Held testator died with the divided interest and therefore the will was valid Raghavamma Vs..Kenchamma. (Sn.6 and Explanation 1 explained by the Court).

(ii) **By Suit:** Partition may be effected by filing a suit. Minor, insane person may sue through his next friend or guardian. But the court must be satisfied that the partition would be for minor's or insane person's benefit.

Case : Peddasubbaiah **Vs.** Akkamma. Minor's right at a partition are precisely those of a minor. With this decision the Supreme Court set at rest the controversy between various High Courts.

iii) **By Agreement**: The Agreement may be oral or in writing. Intention to separate must have been expressed. There must be an agreement among the coparceners. Registration is optional.

iv) **By Renunciation** : Instead of seeking a partition, a coparcener may renounce the interest in the coparcenery. That member gets outside but the coparcenery may continue without him. He is severed of his status.

v**) By reference to arbitration**: A reference to arbitration amounts to severance of status (Kabadi Vs. Kabadi SC. 1962).

vi) Other modes :

a) Conversion

b) Contracting a civil marriage (Special Marriage Act).

c) **Partition by operation of** law as provided in S.6. (Notional partition).

Ch. 7.3. Re-opening of partition :

Manu said 'Once is a partition made'. However, reopening has been recognised under certain circumstances:

i) On the ground of fraud, mistake or subsequent recovery of property.

ii) On the ground that it is prejudicial to minor. In Ratnam v. Kuppuswami (1976) the Supreme court has laid down principles.

iii) On the ground of 'En vetre sa mere'

iv) Son begotten after partition, if the father has not reserved or taken a share.

Ch. 7.4 **Reunion (Blending):**

He who 'being once separated but dwells again through affection with his father, brother or his paternal uncle is termed reunited with him'. The reunion is restricted with these persons, only. (Ramanarayana Chowdri Vs. Panikkar) Reunion is effected by oral: agreement or subsequent conduct. This restores the undivided status. Bhagwan Dayal Vs. Revathi Devi SC. 1962. Puttarangamma Vs. Ranganna 1968. Reunion is a fact and is to be proved the court said. Reunion is Samsrita in Sanskrit. There is a junction of estate with intention to re-unite by the coparceners.

How made : It may be made without any writing, but if it is in writing it must be registered.

Effect : Status quo ante is the effect. It is called a re-united family. As this status is achieved by an agreement, the effect is not stated by commentators or by any court decision. Hence, the presumption is that the original status revives and the property devolves by survivorship.

Even separate property becomes Hindu undivided property when it is thrown in to the hotchpot with intention to abandon all rights over it (malleshappa v. mallappa).

CHAPTER - 8
KARTA

Ch. 8.1. Karta :

i) One of the cardinal principles of the Mithakshara": coparcenary is that the management is vested in the 'Karta'. As a general rule, the father of the family or if he is not alive, the eldest son, (the senior coparcener) is the karta. Even a junior member can become a karta, with the consent of all the coparceners.

ii) Male : Only a male member can be karta and a woman or a widow is disqualified. (C.I.T.V. Govindram Sugar Mills). Further, there cannot be two kartas in a coparcenary.

iii) Management:

The Karta is entitled to full possession of the property and is absolute in its management. He possesses the power and the right to represent the family in all its transactions. He is entitled to act without the consent of the other members or even inspite of dissent, when his act is within his legal authority and for family purpose. His act binds the others. Under him, the other coparceners have only the right to maintenance and residence. They cannot claim any specific share of the income.

iv) Legal position :

His position is Sui generis. He is not an agent of the other coparceners. He is not a trustee. He need not save or economise. If a Karta is wasting the property the only remedy is to effect partition. On partition the account is taken on the actual receipt and expenditure, not on what would have been saved prudently by the Karta.

v) Expenses :

The Kartha has absolute discretion in the manner of spending for family purpose like expenses of management, of realisation and protection of the family property, ordinary maintenance, residence, education, marriage, shradha and religious ceremonies etc. He cannot however mis-appropriate or apply the family income or property to any purpose other than family purpose. He is not accountable for past-transactions. He need not give accounts, but where the family transaction is such as to make it necessary to keep accounts, he must maintain true and accurate accounts.

vi) Suits :

Karta has legal right.to represent the entire family in all its transactions, legal or otherwise. He can bind the other coparceners

by his act. He may sue or be sued in his own name. Decree passed against the Karta is binding on all coparceners. One coparcener cannot sue another coparcener. Only the Karta may sue or be sued.

vii) **Family business :**

A joint family may carry on a joint trade or business. Karta has the implied authority to borrow money for family business purposes so as to bind the other co-parceners. He may sell movable or immovable property or pledge the properties for the purpose of the business. This is not a partnership firm.

viii) Alienation :

Karta has the power to alienate property for reasonable consideration so as to bind the other coparceners. This right is absolute. A Karta may alienate for legal necessity.

xi) Other powers:

A Karta may refer disputes to arbitration. The award will be binding on the coparceners. He may compromise with bonafide intention. He has no right to waive a time barred debt. He may give valid discharge on behalf of the family.

Ch. 8.2. Karta's power of alienation :

i) Kartha, as the manager of the Hindu joint family is empowered to transfer or alienate the joint family property. His act binds the other coparceners. However, his alienation is subject to certain restrictions. According to Mithakshara : 'Apatkale, Kutmbarte and Dharmarthe'. This means times of distress, for the sake of the family, and pious purposes. In other words, legal necessity, benefit of the family (or estate) and dharma or pious purposes. (Kane's Commentaries on Dharmasastras).

ii) Legal necessity:

It means

a) Payment of Govt. revenues

b) Maintenance of coparceners and their family

c) Marriage expenses of coparcener and daughters

d) Family ceremonies and funeral expenses

e) Legal expenses spent for legal litigation to preserve the estate

f) Expending towards family debts

g) Family business expenses and discharge of family

business debts
etc.

iii) Benefit of the estate :

The touchstone to test the legal necessity is whether the alienation is for the benefit of the estate. The leading case is: Human Prasad V. Musamat Baboe. The question in this case was whether a mother acting as the manager (not karta, as a woman is incompetent) of an infant heir has the power to mortgage. The Privy Council held that her power was limited and qualified. It can be exercised only in case of need and for the benefit of the estate. The creditor or alienee is expected to enquire into the (a) Legal necessities and b) The bonafides. This test applies in the case of Karta also.

iv) Void alienation :

If transfers or alienations, are not for legal necessity the alienation become voidable ; (voidable at the option of the other coparceners).

The most authoritative explanation to 'the benefit of the estate' was given *inPalaniappa V. Devasikamani.* (This was the right of the mahunt over debuttor property). The protection, preservation from injury and deterioration and a host of such things to save the property come within this.

Alienation includes sale, mortgage, lease ; and also for pious purpose. Leading case: *Guramma V. Mallappa* 1964. A gift made by a Karta (father), to his daughter after marriage for her maintenance ^vas held valid.

CHAPTER - 9

SUCCESSION-1

Ch. 9.1. General Rules of Succession to Males

i) Sn. 8 of the Hindu Succession Act deals with succession to the property of a Hindu male dying intestate (i.e., without a will).

Firstly upon the heirs specified in Class I of the schedule.

Secondly on the heirs in class II.

Thirdly if there is no class I and II heir, on the agnates of the deceased.

• , -

Lastly, if there is no agnate, the Cognates of the deceased. **Class I heirs:**

Son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son etc.....

Class II heirs:

1. Father
2. Son's daughter's son

." Son's daughter's daughter Brother, sister

3. Daughter's son's son
4. to 9 categories of person specified.

ii) Rules regarding order of succession :

a) Class I heirs take simultaneously

b) Class II heirs take in the order:: I is preferred to 2,*2 to 3, 3* to 4 etc.

iii) Agnates: Males ascendants and male descendants. Degrees are counted. The fewer degree of relationship is preferred. Father's father, Son's son's son, etc.

iv) **Cognates** : related through females :

There are descendant cognates and ascedant cognates :

Son's daughter's son's son

Father's mother's father 1

s

Ch.9.2. General rules of succession to females

Sn. 15 of the Hindu Succession Act states the general rules of succession to female Hindu dying intestate :

. a) First, sons and daughters and the husband

b) Second : Heirs of the husband

c) Third : Mother and father

d) Fourth : Heirs of the father

e) Lastly on the heirs of the mother

Exceptions:

i) If the female has inherited any property from her father or mother, and dies without a son or daughter, then that property goes to the heirs of the father.

ii) If a female has inherited any property from her husband, or father-in-law and dies without a son or daughter that property goes to the heirs of the husband.

Property : It includes all property movable and immovable, stridhana or any estate received from any source. Sn. 14. of the Hindu Succession Act has abolished the Widow's estate. Hence, she is the absolute owner of that property held or possessed by her, whether acquired before or after 1956.

Leading cases:

Eramma V. Veerupanna; Kotturswami V. Veeravva

CHAPTER -10
STRIDHANA

a) Meaning:

According to Sn. 14 : 'Property' means property' acquired by a .female Hindu by inheritance, partition, maintenance, gift from any person before, at or after her marriage. It includes whatever she gets by her own skill or exertion or by purchase, prescription, etc. It also includes any property held by her as **Stridhana** before 1956.

b) Origin and development:

Stridhana is from *"sin"*, woman and [vv]dhana" property Hence, it is literally woman's property. The history of Stridhana is as old as Hindu law itself. A clear enumeration of it is in Manu Smriti:

Gifts before nuptial fire, gifts made at bridal procession, gifts made in token of love, gifts made by father, mother and brother.

Later commentators accepted these but added a few more i.e, gifts made subsequent to marriage, sulka, ornaments etc.

Vijnaneswara expanded Yagnavalkya's Text, to include property acquired by inheritance. The Privy Council deviated from Vijnaneswara and held.

(1) Property inherited by a woman from a male or a female was not Stridhana. (Bhagavan Dev Vs. Mina Bai, Shivshankar Vs. Devi Sahid).

(2) The share obtained on partition was not Stridhana (Mangala Prasad Vs. Mahadeva Prasad). However, the other 3 items were ac cepted by the courts.

> Whether a property was Stridhana or not depended on

1) The source of acquisition

2) Her status : maiden, wife or widow at the time of acquisition

and

3) The school to which she belonged

c) **Importance:**

In stridhana the female has (1) absolute power of alienation to any person and (2) by succession the property goes to the stridhana heirs, after her death. This is called **Soudayika.**

Property of female Hindu : Sn. 14 :

The property of a female Hindu is held by her as absolute owner according to Sn. 14 of the Hindu Succession Act 1956. This abolishes the old Hindu Law doctrine of Widow's limited estate and makes her the absolute owner with retrospective effect. Further, the concept of 'Stridhana' is enlarged to include all properties which she acquires,

and she is the absolute owner of this property also. Hence, Sn. 14 has defined the total property of the female in which she has absolute rights.

i) **Widows limited estate abolished.**

Sn. 14 provides that any property possessed by a female Hindu whether acquired by her before or after 1956, shall be held by her as full owner and not as a limited owner.

Exception: The female Hindu will not be a full owner if she has acquired property by gift or under a will or a court decree which has imposed certain restrictions on the property or estate.

In this section 'any property possessed' by a female Hindu is given wide meaning by the Supreme Court. The woman must have ownership with a right to possession, possession thus need not be actual, it may be constructive. It is enough if it is juridical possession. Possession should be claimed as a right and not as a trespasser. Where she is in possession in law, it would be deemed to be in possession. Hence if she is dispossessed, she has a right to recover, [of course, if her right is barred by limitation (i.e., 12 years), she cannot recover the immovable property].

The wide meaning to 'possession' was given by the Supreme Court in Kotturuswami V. Veeravva (1959).

A by a will authorised his wife W, to take a boy in adoption and died. W adopted 'C'. D, relative of A and a reversioner claimed the property stating that the adoption was invalid. The Supreme Court rejected and held that (i) W became the absolute owner by virtue of Sn. 14 (ii) Even if the adoption was invalid, W was in constructive possession of A's property which is permissive. Hence, it was held that 'W was the full owner of the property. Adoption was held valid and C succeeded.

This interpretation has been affirmed by the Supreme Court in other cases :

Eramma V. Virupanna 1959.

Mangal Singh V. Ratno 1960

Dina Dayal V. Rajaram 1970

Hence, under Sn. 14, the female Hindu becomes an absolute owner if the conditions are fulfilled. Further, Sn. 14 is retrospective in operation and hence dates back to the date of her possession.

Under old Hind law, the widows limited estate called **"non-saudhayika"** was a typical form of estate. The Hindu widow, was entitled to the full beneficial enjoyment of her husband's property for her life. On her death, the property reverted back to her husbands

heirs called reversioners. The widow had only a right to enjoy the property, but had no power to alienate, except for legal necessity. This had given birth to ruinous litigation.

Sn. 14 has abolished this limited estate and has made her the full owner and hence, the reversioners have disappeared.

CHAPTER -11

SUCCESSION-2

Ch. 11.General Rules of Succession common to Males & Females.

The general provisions relating to succession common to male and female under the Hindu Succession Act 1956 are stated in Sections 18 to 23.

i) Full blood and Half blood :

Sec. 18 provides that other things being equal full blood is to be preferred to half blood in determining the order of succession. Two persons are said to be related to each other by full blood when they are the descendants of a common ancestor by the same wife. They are related by half blood when they are descendants of a common ancestor by different wives.

ii) **Per Capita, Not per stirpes** :

Sn. 19 provides that the general rule governing the distribution of an inheritance among several equal heirs shall be per capita, i.e., per head and not per stirps (i.e., not according to stock or branch). The Act has provided in some specified circumstances for per stirpes distribution.

iii) **Tenants in common and not joint tenants :**

Several heirs who succeed together to an inheritance after the commencement of the Act will take the inheritance as tenants in common i.e., with their share defined and ascertained. They do not take as joint tenants.

iv) **Child in the womb :**

One principle of Hindu law is that a son in the mother's womb at the time of partition or death of the owner (father) is considered as 'En Vetre sa Mere' (i.e., a child in existence). But the child must be subsequently born alive. As a child in existence, the Act gives vested interest in such inheritance.

v) **Simultaneous Deaths:**

When two persons, an intestate and his next heir, happen to die simultaneously, it becomes important to judge who died first. The Act provides that the elder of the two persons shall be presumed to have died first. This is a rebuttable presumption.

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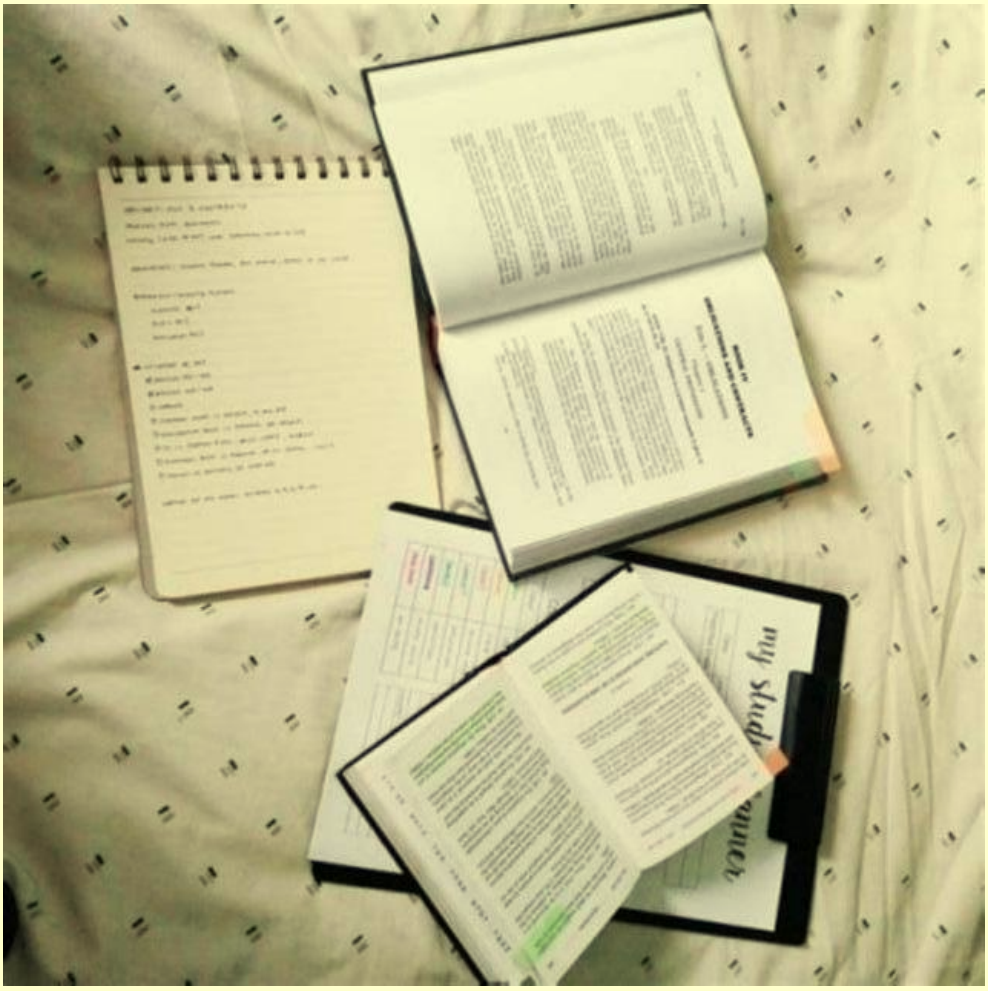
vi) **Pre emption:**

The right of sons and daughters to equal shares effected by the Act may ,cause great practical difficulties without provisions for pre-emption. Sn. 22 provides for that. If a daughter is entitled to a share and after her marriage disposes of her share in the immovable property to a stranger, it may make the matter worse. Hence, a provision for pre-emption was made.

The right to pre-emption is the right to fore-stall a sale to a stranger (Aud Bihari Vs. Gajadhar SC. 1954). Where any co-her wishes to sell or transfer his share or interest therein he should not transfer to a stranger, when the other co-heir is willing to acquire the share. For the fixation of the price the Act provides that in disputed cases the Court may determine. This means that Civil court is empowered to , ' fix the price. In case of cr mpetition among co-heirs the co-heirs who offer the highest amount will have the right to pre-emption.

vii) **Dwelling House:**

S.23 intends at curtailing the right of the preferential female heir of Class I over the family dwelling house when that is wholly occupied by the member of the family and the intestate. No female heir in Class I e.g. (daughter) would be entitled to claim a partition. Such female heirs are given only the right of residence in the family dwelling house.



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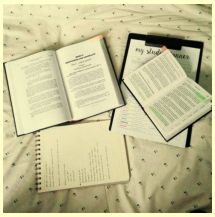

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CHAPTER -12

ENDOWMENTS

Ch. 12.1. Gift for Hindu Religious and Charitable

Endowments 1. meaning and nature :

Gifts for Hindu religious and charitable purposes are impelled by the desire to acquire 'religious merit'. There are two divisions according to Manu:

i) 'Ishta' means sacrifice. This if done by a Hindu takes him to Swarga (heaven).

ii) Turta' means charities. This if done by a Hindu takes him to Moksha. This is higher than Swarga. Hence, charities are placed on a higher footing.

Manu commends both; He says: 'Let a man practice according to his ability with a cheerful heart, the duty of Dana-Dharma, both by sacrifice and charities, if he finds worthy recipients for the gift.

Eg.: for 'Ishta': i) Vedic Sacrifices ii) Gifts to the priests iii) 6. -- Preserving the Vedas iv) Religious austerity v) Rectitude vi) Visvadeva sacrifices vii) Hospitality etc.

Eg. : to Purta (charities ;)

i) Constructing tanks, wells, temples, Dharmasalas, Goshalas, annachatras etc.

ii) Providing for places of drinking water supply (i.e., near temples etc)

iii) Relief of the sick and the poor

iv) Gift for education (Vidya-Dhana). This is specially meritorious.

4. Creation of an

Endowment:

a) **Founder:**

He must be a Hindu and must be of sound mind and not a minor. He must be willing to establish an endowment. He may express ms purposes and create the endowment, b) Intention:

It must be clear and unambiguous. He must specify whether the endowment is for religious or for charitable purposes. The purposes must have a Hindu Shastric Basis. The endowment must nTbe colourable or illusory. It must not be to defraud creditors, c) Formalities: