

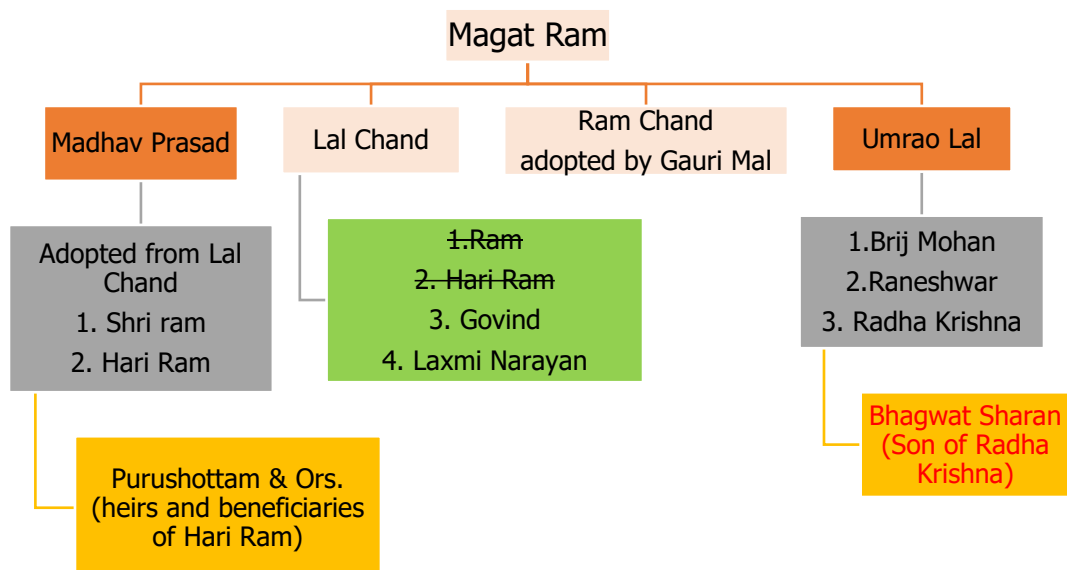
INFORMATION MEMORANDUM :

In a recent ruling, the Apex Court held that Person claiming joint property as Hindu Undivided Family (HUF) property will have to prove – existence of HUF and that such property is acquired from funds of HUF.

Bhagwat Sharan (Dead) thr. L.Rs. v. Purushottam and Ors.

Civil Appeal no. 6875 and 6876 - 6877

Property acquired from joint family business cannot necessarily be HUF Property

Facts of the case:

It has been stated by Appellants that, Madhav Prasad (“**MP**”) and Umrao Lal (“**UL**”) lived together and jointly carried out business away from their native place. Various properties were purchased and 6 houses were jointly built by MP and UL (the said “**Properties**”). MP being the elder brother was the ‘Karta’ and was running the joint family as karta and had recorded said properties in his own name. It was alleged by Appellants that MP being the Karta of HUF managed to get some of the joint family properties recorded in his own name. After the death of MP and UL, adopted son of MP i.e. Hari Ram managed to get his name recorded on said properties as the Karta of the joint Hindu Family. Hari Ram expired leaving behind his written ‘Will’ dated 06/02/1987 wherein he had described the status and occupation of the said properties and to whom said properties shall go.

The allegation of Appellants was that all the properties mentioned in para 9 of the plaint are properties of the HUF. Therefore, the Appellant sought partition of the same by metes and bounds as per his share. However, Respondents stated that the said properties are not of HUF properties as there was no HUF ever.

Appellants filed suit before trial Court for its share in said properties where matter was decided in favour of Appellants, but High Court set aside the decree of partition passed by trial court.

Issue before Supreme Court

- (i) Whether said properties are the properties of the joint family or whether the same are the self-acquired properties as per the averments made by the Respondents?
- (ii) Whether the Plaintiff in Civil Suit No. 94-A/86 filed in the Court of Civil Judge Class-II, Ashok Nagar, has mentioned the Will dated 6/2/1987 executed by Hari Ram as the basis of the suit?
- (iii) If yes, Whether the Appellants is stopped from alleging the said Will as null and void?
- (iv) Whether the Will dated 6/2/1987 executed by Hari Ram in connection with the disputed property is Null and void?

Rules laid by Supreme Court

- (i) Mere existences of Joint Hindu Family cannot lead to presumption that the property is also a joint family property -

*D S Lakshmaiah & Ors vs L Balasubramanyam & Ors*¹ ;

(ii) Burden is on the person who alleges to prove that the property is a joint property of an HUF- *Bhagwan Dayal vs. Reoti Devi*² ;

(iii) Hindu Family is presumed to be joint unless the contrary is proved - *Bhagwan Prasad Sah & Ors vs. Dulhin Rameshwari Kuer & Ors*³ ;

(iv) Where one of the coparcener separates himself from other member of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family; Also at same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family ;

(v) In *Appalawami vs. Suryanarayanmurti*⁴ has held that Proof of existence of a joint family does not lead to a presumption that property held by any member of family is joint; and

(vi) Where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.

Supreme Court Reasoning

The apex court relied upon the recitals of the Mortgage Deed signed by Hari Ram and Brij Mohan, Rameshwar Das & Radha Krishna (Grandfather of appellant) and held that the admission in words, "*we are the absolute owners of the same and there is no co-parcener and co-share*" in respect of said 5 house out of 6 properties is an important piece of admission dispelling any HUF character. Therefore, on basis of Rules and Key Principles there is no material to show that joint property belongs to HUF.

In one of the suit Hari Ram and his brothers have filed 'WS' in court, wherein they have admitted that, they constituted trading Joint

¹ (2003) 10 SCC 310

² AIR 1962 SC 287

³ (1951) 2 SCR 603

⁴ I.L.R. 1948 Mad. 440 Madras High Court

Hindu Family. However, court observed that, merely because the business is joint would not raise the presumption that there is a joint Hindu family and at the relevant time the property was treated to be a joint property and not a family property.

Hari Ram had sold 3 out of 5 house which were mortgaged to mortgagee vide 'Sale Deed' which states that, Hari Ram is sole proprietor of business of trading firm Madhav Prasad Agarwal. These sale deeds and recitals were never challenged by the Plaintiff/Appellants or his predecessors. This would indicate that the jointness of the property if any had ceased because of some family arrangement or partition which may have happened much earlier.

The Appellants filed suit for eviction of an occupants in which he claimed that the property had been bequeathed to him by Hari Ram through 'Will'. However if Appellants has accepted the 'Will' and has taken benefit of same, it cannot turn around and urge it be void.

The Appellant further failed to prove that there is an HUF and that the said properties were brought from the funds of HUF.

On the above facts the apex court relied upon the decision of Rajasthan State Industrial Development and Investment Corporation and

Anr vs. Diamond and Gem Development Corporation Ltd and Anr. AIR 2013 SC 1241 and held that any party which takes advantage of any instrument must accept all that is mentioned in the said documents-doctrine of election is facet of law of estoppel. Therefore, the appellant was estopped from now saying that there was an HUF and that the suit properties were HUF properties.

Key Principles :

1. Burden to prove existence of HUF and HUF property is on the person who avers such facts.
2. Merely because property was in joint name of members of family doesn't make it family property.
3. If in the past it has been averred that such property is not a family property, then exactly opposite cannot be now agitated.

Acelegal Analysis :

The apex court has relied upon the past precedence to reiterate the law that the existence of HUF has to be proven by the person who avers such a fact. However, mere existence of HUF is not enough to treat the property as the HUF property. The person must also prove that the said property is a family party *dehors* from self-acquired property or co-owned property. The person has to prove that the said properties were either acquired from the nucleus or the funds of HUF or that the said properties were contributed in the common hotchpot of the HUF through unequivocal and clear declaration of intent. Until then even if the said properties are in the name of the members of the HUF it cannot be treated as HUF

property. In the case of *Chattanatha Karayalar v. Ramachandra Iyer*, AIR 1955 SC 799 it was held that under the Hindu law, there is no presumption that a business standing in the name of any member is a joint family one even when that member is the manager of the family, and it makes no difference in this respect that the manager is the father of the coparceners.

The present decision further lay down that the unrebutted and uncontroverted contents of the past documents are an important piece of admission. A party cannot blow hot and cold at the same time. Where the said party had accepted certain averments in the said documents in the past cannot now 'U' - turn and agitate exactly opposite of that.

Acelegal

Email id : bharat@acelegal.net

Telephone :022-27812781 / 82

Website : www.acelegal.net.in

Mumbai : D-201, 2nd Floor, Vashi Station Complex, Navi Mumbai – 400 703

Delhi : B-27, Front Block, Sagar Apartments, 6-Tilak Marg, New Delhi – 110 001.

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