

Role of Karta in Hindu Undivided Family

By Sumit Mishra

Introduction:

The position of the "Karta" or "director" of the Hindu common family has its roots in the "Patriarch" of the old family units. The term "Karta" was defined in **Suraj Bansi Koer v. Sheo Persad, 1880 ILR 5 Cal 148.**

The Hindu law has a number of unique characteristics with regard to family institutions, and the common family system is a very important aspect in understanding the functionality of this mechanism. The common family has many members, each individual having his various property rights. Even if individuality exists, the coherent structure of the family makes sense in terms of the decisions that must be made by the family as a whole in various legal and other fields. In such situations, it becomes imperative that there be someone who directs these affairs and has decision-making powers. Such an individual is called Karta.

The Karta is considered to be a person with controlled capacities but within this fringe outline, he holds an immensely important position of responsibility. The relationship that a karta holds with other members of the family is not that of the trustee or that of a partner or principal. His unique powers are "very wide and almost sovereign" and thus, its comparison to any partnership or a principal-agent relationship is naïve. The Karta does stand in a fiduciary accord with the rest of the members of the family but the relationship cannot be termed as that of trusteeship. Even on the accountability factor, he is not accountable to any member of the family until it is a matter of misappropriation or fraud **Paras Diwan, Family Law (2nd Edn. Orient Publishing Company, 2002).**

"Manager - Property belonging to a common family is usually managed by the father or another family member: The head of a common family is called Karta." In **(Dev Kishan v. Ram Kishan, AIR 2002 Raj 370)** Absolute the powers of the "Patriarch" have evolved into higher powers with similar responsibilities. These powers and responsibilities are many and

varied. The power of alienation of a Karta is limited since the alienation can only be made in exceptional cases. The other powers of Karta, however, are almost absolute.

WHO IS A KARTA?

The head of the combined family is called the Partner or Managers of the joint family and occupies a position unlike any other member of the family. As long as the family members remain inadequate the senior family member is considered to be the Karta family of **Kunjipokkarukutty v. A Ravunni, AIR 1973 Ker 192.**

1. The most senior member of the male member a combined Hindu family is considered as a family's charter if he or she is fit to act as such that he/she does not suffer from any physical or mental deficiency.
2. He is not an agent or family overseer but as a family leader, he is the guardian or guardian of property and family activities and family interests.
3. The Hindu family's collective charity card is a dedicated overseer of family property but no doubt holds the powers that the ordinary ruler does not possess. The charter, therefore, cannot be just equivalent to the property manager.
4. The position of a credit obtained by birth and control of seniority, subject to his / her capacity to act, may be terminated either by resignation or relinquishment and irrevocably.

This assumption is based on old age and does not depend solely on the consent of other family members. As long as the charter is alive nobody owns the place of the Charter. If the person does not want to continue as a Karta he can openly leave this position and with family members agree with another coparcener, not necessarily the next in old age may designate as a charity.

When there is more than a Karta:

In **Union of India v. Sree Ram AIR 1965 SC 1531**, Supreme Court observed that the very idea of there being two Kartas did not appear, prima facie, consistent with the concept of the Karta. Two persons may look after the management of the property but the joint family is represented only by one Karta. Therefore there is no scope for two Kartas or two representatives.

Junior Member of Coparcenary as Karta:

It is a well-established principle of Hindu law that Karta's position goes to the highest member of the family. However, the senior may give up his management right and a junior member may be named Karta (**Narendra Kumar J. Modi v. Comm de IT, AIR 1976 SC 1953**). A junior member may act as a Karta if the senior member has waived his or her right expressly or impliedly or in the absence of the manager in exceptional circumstances (**Nopany Investments v. Santokh Singh, AIR 2008 SC 673**).

>> A minor can act as a Karta of the common family through his natural guardian, his mother, where one does not know where his father is at that time (**Jaggernath Singh v. Narayan, AIR 1965 AP 300**).

>> The Supreme Court ruled that only a coparcener may be the karta or the director of the joint family. Since a widow or mother is not the coparcenor, she cannot be the director of the common family

>> A woman cannot act as a Karta of the common family because of the absence of her husband. The Hindu Succession (Amendment) Act of 2005 conferred on girls equal status with the sons of Mitakshara coparcaters. Only a person who is a coparcener can become Karta. After this change, girls are also eligible to become a common family manager.

Legal position of the Karta :

The Karta may file lawsuits or other legal proceedings to safeguard the interest of the family and its property and affairs **Sheoshankar v. Jaddokunwar, AIR 1914 (41) IA 216**.

He can represent the family effectively in a proceeding even if he has not been named as such **Amrit Sagar v. Sudesh Behari Lal, MANU / SC / 0484/1969: AIR 1970 SC 5**. When a transaction is supposed to have been concluded by two or more persons who are known as

Kartas or managers of the common family, they must all join as plaintiffs in the lawsuit **Ramsebuk v. Ramlall, (1881) 6 Cal 815.**

However, it is not necessary for all members of the common family to join the **Gendalal c. Nanalal, AIR 1956 MB 58.** There is no right in a minor or an adult member of the family to bring an action for annulment decree issued against the manager on the grounds that the manager acted with gross negligence in pursuing the **Krishnamurti v. Chidamabaram (1946) Mad 670.**

Order against the manager obliging him to deliver the property to another person, binds the other **Narayana v. Somaraju, (1937) Mad 880.** He may submit any dispute to arbitration or may settle or compromise such disputes. **Venkata Row v. Tulja Ram Row, AIR 1922 CP. 69.**

The reference may relate to disputes between the family and a stranger, or disputes between the family members themselves, e.g. as to the actions on **Partition 1 Mulla, Principles of Hindu Law 438 (S.A. Desai ed., Lexis Nexis Butterworths 20th Edition 2007).**

A compromise made by the good faith manager for the benefit of the family binds other family members, including minors. **Pitam Singh v. Ujgar Singh, (1878) 1 All 651.**

General Powers of a Karta in Hindu Undivided Family:

Karta's powers in the joint family property are no greater than a coparcener in neither family nor does Karta's right to enjoy the same as any other coparcener. He receives no remuneration for the services he renders in the family.

(1) Revenue and Expenditure Authority:

Karta has extensive control over the income and expenses of the common family. As his position is not like the trustee or agent, he is not obliged to save or save as a trustee or agent provided he spends the family income for the benefit of the members of the family. The

family, p., sraddha and other religious ceremonies of coparceners and their respective families.

(2) Power to manage a joint family business:

The Karta has the power to run the joint family business. In this respect, it can take all the right and necessary measures for the promotion of the company.

(3) Power to contract the debt for family purposes:

The Karta may contract debts for family and family purposes which will bind the other co-contractors only to the extent of their interest in the common family property. Such debt contracts could personally bind the adult co-partitioners also if they were parties to the contract expressly or implicitly or they subsequently ratify the contract and in the case of minors if they ratify by obtaining a majority. In the case of an advanced loan to the manager, if the lender properly investigates the need for the loan and lends the money, the debt binds the interests of all the members, although the reasonably justified need did not exist.

(4) Power to enter into a contract:

The Karta has the power to enter into contracts, issue receipts, enter into compromises, and pay contracts that are ordinarily incidental to family affairs.

(5) Power to refer to arbitration:

The Karta may refer to arbitration any case involving the interests of the common Hindu family and other family members, including minors are bound by the reference and, therefore, by the award made on it.

(6) Power to enter into a compromise:

Karta may enter into a compromise on any issue relating to joint homesteads. However, he does not have the power to surrender a debt due to the common family and to abandon an object of value without any return or consideration, although he has the right to settle the accounts with the debtors and to reduce reasonably either interest or principal in the interest of the family.

(7) Power to give discharge:

The Karta has the power to give a valid discharge to the debt due to the common family. When one of the members of the common family is a minor, he can not claim the benefit of section 7 of the Limitation Act.

(8) Power to pay debts

The Karta has the power to recognize a debt or make a partial payment, in order to extend the limitation period. But he cannot execute a new promissory note or bond in order to revive a time debt.

(9) Power to represent in costume:

The Karta can represent the common family in the case of a complaint by or against the family so that the other members are not the necessary parties to the same thing. The Karta itself issued or it can bring an action with respect to any property or other issues of the common family. Whenever a decree is issued against him, it binds all the other members of the family, if, as far as the minor members are concerned, he has acted in the dispute in their interest, and in the case of important members he acted with their consent

The Karta also represents the interests of the common family property. In the case of **Fathiunnisa Begum v. Tamirasa Raja Gopala Charyulu**, the Court noted that a Hindu widow inheriting from her husband under the Indian Women's Rights Act of 1937 does not per se disturb the common family status.

After such an inheritance, she continues to be a member of the common family and the Karta of the common family can represent her in all the lawsuits. The expansion of her limited succession in full succession under section 14 of the Hindu Succession Act does not result in a change in Karta's power to represent the joint family, including her.

(10) Power of alienation

The Karta may alienate to the value of the common family property in order to bind the interests of the other coparceners provided that it is done:

- a) With the consent of all existing co-partitioners; they are all adults;
- (b) For legal reasons; or
- (c) For the benefit of the estate

Thus, when the Karta alienates the common property of the family because of legal necessity or for the benefit of the estate, the consent of the other co-owners for this purpose is not necessary. In such cases, he may proceed with the alienation of the common family, even without the consent of the other coparceners.

He does not have the absolute power to alienate joint family property. Strict restrictions have been placed on his powers in this regard. The phrase "for pious purposes" has been so often used in different contexts of Hindu law. Karta's powers cannot extend in this context.

In the case of **G. Shiva Kumari v. Indian Overseas Bank**, High Court of Andhra Pradesh has found that the Karta of the common family can encumber the estate by mortgaging the property in favour of the estate. However, in doing so, he must act as a prudent owner with the knowledge he has at the time of the transaction. A manager's transaction that is neither risky nor speculative, but intended to confer a positive benefit on the family, can be considered to benefit the estate

The law also sanctions gifts to foreigners by a director of a small joint family for pious purposes. But a gift to a stranger, however, many the giver was indebted to him, cannot be sustained on the grounds that he was made out of charity. The extent of power cannot be extended on the basis of a broad interpretation given to the words "pious goals" in Hindu law in a different context.

The father as Karta of the common family may dispose or mortgage the common property of the family which includes the actions of his sons. This sale or mortgage can be made by him for the payment of the debts he had contracted for his personal gains. Alienations in such cases would bind his sons provided that the debt was incurred prior to the disposition and that it was not for immoral purposes.

In **Pavitri Devi v. Darbari Singh**, the Court held that the Karta has the absolute power to alienate its undivided interest in the common family. In such cases, the assignee acquires the right to divide the part of the property and to claim possession of it to the same extent and in the same manner as the one available to Karta.

In **Radha Krishna Das v. Kaluram**, Supreme Court ruled that "when a disposition by way of sale of the family property made by a Hindu father is challenged by his sons for lack of

legal necessity, it is now well established that what the lunatic is held to establish is a legal necessity for the transaction and it is not necessary for it to demonstrate that every element of the consideration it has advanced has actually been applied to meet the family need. The insane can seldom have the means to control and direct the effective application of the money paid or advanced by him unless he intervenes himself in the management. "

The legal necessity does not mean the real constraint; it is a pressure on succession which, in law, can be considered serious and sufficient. The burden of proof of legal necessity may be discharged by the insane person by proof of actual necessity or by proof that he has made serious and serious inquiries into the existence of the necessity and that he has made all that was reasonable to ensure the existence of the necessity.

When the father as Karta disposes of the property for legal necessity, the burden of proof lies with the lunatic. When the legal necessity is not proven, the alienation would bind the father's share in the common family property. Similarly, when the father entrusted the ancestral property to his daughter, the Madras High Court ruled that the gift was not voidable. When a co-owner gives up his share in the property in favour of his wife, he is considered invalid.

In the case of **Sunil Kumar v. Ram Prasad, the Supreme Court** ruled that when the father, as Karta, was selling a joint family property for legal reasons, no third party could restrain him by an injunction. If the seller believes that the sale is bad, he can challenge its validity after the sale. When the sales considerations were spent by Karta who was a farmer, the purchase of farm implements and also the granddaughter's wedding, it was held that the sale was for legal necessity so the court refused to cancel the sale simply because the consideration was lean.

Similarly, in **Sunder Das et al. Gajananrao and others**, the ancestral property was alienated by the Karta for legal reasons. It has been mentioned in the sale-deed of sale is for the legal and family necessity. Father served as Superior Clerk at the Court. He has not been shown to have been addicted to the immoral behaviour. The sale was therefore treated as having been taken for family reasons. Thus, the father was found competent to have disposed of the minor sons. As a result, the minor sons were bound by the sale made by the father for the need of the family.

In **Naresh and Babulal and others**, the High Court ruled that Karta of the family cannot be prevented from alienating the family's common property.

Responsibilities of Karta:

The most basic duty of a Karta is to provide food, shelter, clothing, etc. To the members of the joint family. His many responsibilities include:

Maintenance: all coparceners, from the head of the family to the younger members, have the intrinsic right to maintenance. It is the responsibility of Karta to keep all members of the family. "Those who would have the right to share most of the properties have the right to have all their necessary expenses paid with their income." Maynes, Treatise on Law and Hindu Use. If he unjustly excludes a member from maintenance or if he does not properly maintain a member, he can be sued for both, maintenance and maintenance stops.

Marriage: Karta is responsible for every marriage of unmarried members, especially for the marriage of daughters because it qualifies as a sacrosanct duty in the Hindu law. Marriage spending is removed from joint family ownership. If the expenses are externally incurred, they must be reimbursed by the joint funds of the **Chandra Kishore family v. Nanak Chand AIR 1975 Of the 175.**

Accounts at the time of partition: the partition leads to the end of the joint family status. Under Mitakshara Law, it means Severance of status and interest: it is an individual decision; in which a member wishes to separate from the joint family and enjoy an indefinite and unspecified quota separately.

The actual division of ownership: the specified shares do this. It is a consequence of the declaration of serious desire. It is, however, a bilateral action. The opening of the accounts refers to the investigation of the activities of the joint family assets. An inventory is prepared. This includes all the objects of the family property. The Karta under the Mitakshara law is required to disclose the accounts only if there are allegations of embezzlement, fraud or conversion of property or property of the family in common against him. In the absence of

evidence of embezzlement, fraud or conversion against Karta, the coparcener who pursues the partition cannot request the disclosure of past relations of Karta with the joint property and property of the family (**Ghuia Devi v. Shyam Lal Mandal AIR 1974 Pat 68**).

However, if the coparcener who is suing for the partition is completely excluded from the enjoyment of the property, he may ask to examine the accounts. After the termination of the status, Karta must account for expenses and income in a manner similar to that in which a trustee or an agent is accountable. This implies that Karta must report and report all profits.

Representation: Karta is the only representative of the family towards the government and all the other outsiders. It is because of this position that he has to perform different responsibilities and responsibilities because of the family. He must pay taxes and all other fees. He can also be sued on behalf of the family for his reports.

Conclusion:

The position of manager in a joint family cannot be compared with a trustee or an agent or a partner in a company under any legal system in the world. In this regard, the Privy Council observed: "The relationship of that person is not that of a principal or an agent or a member, it is more like a trustee and a cestui who trust.

But it is not a trustee in the sense that it is not required to account for past relationships with family ownership, nor does it have the same obligations to economize and save as would be the case with a paid agent or a trustee. "

Under the law of Dayabhag there is a closer approximation in the status of a Karta and a trustee. Cowell in Tagore Law Lectures noted: It is a kind of representative owner, its independent rights are limited on all sides by the relative rights of others and burdened by a responsibility extended to the possession of family maintenance.

Any service offered by Karta for the joint family is devoid of any remuneration, even if for its hard and hard services the other members of the joint family can mutually agree to pay certain remuneration to him. Whatever the remuneration, so paid to him will become his separate property.

Usually, the right to family management rests with the oldest member of the joint family, but may, with the consent of other criminals, renounce this right in favor of the next family member.

Along with numerous powers, many controls on Karta have been imposed to prevent any abuse of power. This ensures that Karta works for the benefit of the united Hindu family. The law has provided sufficient remedies to the members of the joint family to protect their interests in case of despotic behavior by the Karta.