-Dr. Ajay Nathani

Citations on the Hindu law

Hindu Law.-Ancestral debt.-Immoral character of debt.-To avoid ancestral debt, descendant challenging the same shall have to prove not only immoral character of debt but also its knowledge to the alignee. The doctrine of pious obligation under which sons are held liable to discharge their father's debts is based solely on religious considerations; it is thought that if a person's debts are not paid and he dies in a state of indebtedness his soul may have to face evil consequences, and it is the duty of his sons to save him from such evil consequences. The basis of the doctrines thus spiritual and its sole object is to confer spiritual benefit on the father. It is not intended in any sense for the benefit of the creditor. Where ancestral property has been alienated either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, the sons have to prove not only that the antecedent debts were immoral but also that the purchaser had notice that they were so contracted. A mortgage created by the father for the payment of his antecedent debt would bind his sons; so that, if the sons want to challenge the validity of the mortgage they would have to show not only that the antcedent debt was immoral but that the alienee had notice of the immoral character of the said debt. *Luhar Amrit Lal Nagji v. Doshi Jayantilal Jethalal and others,* AIR 1960 SC 964: 1962(1) SCJ 282: 1960(3) SCR 842

Hindu Law.-Ancestral debt.-Liability of son.-Where debt is not immoral, the sons are liable to discharge the debt of their father out of the joint property of the family. This doctrine, as is well-known, has its origin in the conception of Smriti writers who regard non-payment of debt as a positive sin, the evil consequences of which follow the undischarged debtor even in the after-world. It is for the purpose of rescuing the father from his torments in the next world that an obligation is imposed upon the sons to pay their father's debts. The doctrine, as formulated in the original texts, has indeed been modified in some respects by judicial decisions. Under the law, as it now stands, the obligation of the sons is not a personal obligation existing irrespective of the receipt of any assets; it is a liability confined to the assets received by him in his share of the joint family property or to his interest in the same. The obligation exists whether the sons are major or minor or whether the father is alive or dead. If the debts have been contracted by the father and they are not immoral or irreligious, the interest of the sons in the coparcenary property can always be made liable for such debts. We do not find any warrant for the view that to saddle the sons with this pious obligation to pay the debts of their father, it is necessary that the father should be the manager or `karta' of the joint family, or that the family must be composed of the father and his sons only and no other male member. No such limitation is deducible either from the original texts or the principles which have been engrafted upon the doctrine by judicial decisions. Where a debt is incurred for necessity or benefit of the family, the manager, whether he be the father or not, has the undoubted power to alienate any portion of the coparcenary property for the satisfaction of such debts, irrespective of the fact as to who actually contracted the debts. *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh and others,* AIR 1953 SC 487: 1953 SCJ 700: 1954 SCR 177

Hindu Law.-Ancestral property.-Determination of.-Property received by way of gift from the father.-The property is not ancestral property. When the father obtains the grandfather's property by way of gift, he receives it not because he is a son or has any legal right to such property but because his father chose to bestow a favour on him which he could have bestowed on any other person as well. The interest which he takes in such property must depend upon the will of the grantor. A good deal of confusion, we think, has arisen by not keeping this distinction in mind. To find out whether a property is or is not ancestral in the hands of a particular person, not merely the relationship between the original and the present holder but the mode of transmission also must be looked to; and the property can ordinarily be reckoned as ancestral only if the present holder has got it by virtue of his being a son or descendant of the original owner. We hold, therefore, that there is no

warrant for saying that according to the Mitakshara, an affectionate gift by the father to the son constitutes *ipso facto* ancestral property in the hands of the donee. *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and another,* AIR 1953 SC 495: 1953 SCJ 707: 1954 SCR 243

Hindu Law.-Ancestral property.-Determination of.-Land inherited from common ancestor.-Consolidation of ancestral land with non-ancestral land.-The land as a whole is ancestral property. It is an erroneous view to take that merely because the possession by the common ancestor itself is not shown in the revenue records but that of a more remote direct ancestor is, it is non-ancestral even though the history of the land gives no indication of its acquisition by the descendants except by inheritance. Where land has been consolidated and in lieu of ancestral lands and non-ancestral land a consolidated area is given to a proprietor then such of the portion of the consolidated area which corresponds to the area of land which was ancestral will be ancestral land. *Gurbachan Singh and others v. Puran Singh and others,* AIR 1961 SC 1263: 1961(1) Ker LR 518: 63 Pun LR 663: 1962(1) SCR 176

Hindu Law.-Ancestral property.-Gift of.-High Court did not come to conclusion that gift of items was within reasonable limits or in fulfilment of an ante-nuptial promise made on occasion of settlement of terms of marriage of daughter.-Gift deed not permissible under Hindu Law.

Hindu Law on the question of gifts of ancestral property is well settled. So far as moveable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral moveable property cannot be upheld as a gift through affection.

The Karta is competent or has the power to dispose of coparcenary property only if (a) the disposition is of a reasonable portion of the coparcenary property, and (b) the disposition is for a recognised "pious purpose". The High Court has not come to any conclusion as to whether the gift of items 3 to 6 by Hiri to the respondent No. 2 was within reasonable limits or in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of the respondent No. 2's marriage. It must be taken, therefore, that the findings of the lower Courts on both counts were accepted. That being so, Hiri could not have donated items 3 to 6 to respondent No. 2 and the deed of gift dated 9-6-1971 was impermissible under Hindu Law.# *Thimmaiah and others vs. Ningamma and another,* AIR 2000 SC 3529(2) : 2000(2) Marri LJ 571 : 2000(4) Rec Civ R 609 : 2000(7) SCC 409 : 2000(C) Cur CC 339

Hindu Law.-Ascetic.-Effect on rights.-It is a civil death of a person.-After entering the religious order the person becomes son of the Spiritual teacher with fellow disciples as his brothers. Entrance into a religious order generally operates as a civil death. The man who becomes an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his Guru are regarded as his brothers, while the co-disciples of the Guru are looked upon as uncles and in this way a spiritual family is established in the analogy of a natural family. *Sital Das v. Sant Ram and others,* AIR 1954 SC 606

Hindu Law.-Caste.-Upward movement.-Claim of higher status.-Unilateral acts on the part of the member of the Scheduled Caste cannot alleviate his status to upper caste.-The status has to be determined on the basis of the recognition received by him from the members of the caste into which he seeks his entry. *V.V. Giri v. D. Suri Dora and others,* AIR 1959 SC 1318: 1960 SCJ 1149: 1960 (1) SCR 426

Hindu Law.-Charitable endowment.-Dedication in favour of Tank.-Permissibility

From very ancient times the sacred writings of the Hindus divided works productive of religious merit into two divisions named ishta and purta a classification which has come down to our times. So much so that the entire objects of Hindu endowments will be found included within the enumeration of ishta and purta works. In the Rig Veda ishtapurttam (sacrifices and charities) are described as the

means of going to heaven. In commenting on the same passage Sayana explained ishtapurtta to denote "the gifts bestowed in srauta and smarka rites". In the Taittiriya Aranyaka, ishtapurtta occur in much the same sense and Sayana in commenting on the same explains ishta to denote "Vedic rites like Darsa, Purnamasa etc." and purta "to denote Smarkta works like tanks, wells etc."Tanks, wells with flights of steps, temples, the bestowing of foods, and groves.-these are called purttam. Under Hindu Law a tank can be an object of charity and when a dedication is made in favour of a tank, the same is considered as a charitable institution.

Kamaraju Venkata Krishna Rao v. Sub-Collector, Ongole and another, AIR 1969 SC 563: 1969 (1) An.WR (SC) 83: 1969 (1) MLJ (SC) 83: 1969(1) SCR 624

Hindu Law.-Charitable endowment.-Distinction with Religious Endowment.-Settlement of Trust for promotion of game of wrestling besides maintaining idols installed in the premises to be used for the purpose of wrestling.-Dedication held to be not a religious endowment.

A dedication of property for a religious or a charitable purpose can, according to Hindu Law, be validly made orally and no writing is necessary to create an endowment except where it is created by a will. It can be made by a gift inter vivos or by a bequest or by a ceremonial or relinquishment. An appropriation of property for specific religious or charitable purposes is all that is necessary for a valid dedication. Although Courts in India have for a long time adopted the technical meaning of charitable trusts and charitable purposes which the Courts in England have placed upon the term `charity' in the Statute of Elizabeth, and therefore, all purposes which according to English law are charitable will be charitable under Hindu law, the Hindu concept of charity is so comprehensive that there are other purposes in addition which are recognised as charitable purposes. Hence, what are purely religious purposes and what religious purposes will be charitable purposes must be decided according to Hindu notions and Hindu law. The dominant intention of the settlor was to set up and maintain an Akhara, the said two idols as also the tasweer of Hazrat Ali having been installed there only to attract wrestlers of the two communities. That being the position, reluctant though we are, particularly in view of the fact that the said Akhara has been maintained for nearly a century, we find it extremely difficult, in the absence of any authority, textual or by way of a precedent, to hold that the dedication in question was for either a religious or charitable purpose as recognised by Hindu Law. *Ramchandra Shukla v. Shree Mahadeoji and others,* AIR 1970 SC 458: 1970 (2) SCA 425: 1970(2) SCR 809: 1969 (3) SCC 700

Hindu Law.-Charitable endowment.-Succession of Trusteeship Member of.-The charity created by Will and found in the nature of private charity.-Trusteeship and charity is governed by ordinary rules under Hindu Law.

Chockalinga Sethurayar and another v. Arumanayakam, AIR 1969 SC 569: 1969 (2) Mad LJ (SC) 25: 1969(1) SCR 874

Hindu Law.-Coparcenery.-Distinction of Joint Hindu Family.

A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenery is a much narrower body than the Hindu joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenery property, these being the sons, grandsons and great- grandsons of the holders of the joint property for the time being.

N.V. Narendranath v. Commissioner of Wealth Tax, Andhra Pradesh, AIR 1970 SC 14: 1969 (2) Andh WR (SC) 99: 1969 (2) MLJ (SC) 99: 1969(3) SCR 882: 1969(1) SCC 748

Hindu Law.-Coparcenery.-Gift of share.-Permissibility.-Gift of undivided share by coparcener governed by Mitakshara school is void.-Gift made by one coparcener in favour of other without the consent of all other coparceners shall amount to relinquishment in favour of all.

An individual member of the joint Hindu family has no definite share in the corpacenary property.

By an alienation of his undivided interest in the coparcenary property, a coparcenary of their right to the property. The objects of this strict rule against alienation by way of gift is to maintain the

jointness of ownership and possession of the coparcenary property. It is true that there is alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joining Hindu family from being disintegrated.

A coparcener can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid.

We find that Rami Reddy made the gift for the common benefit of the donee as well as his sons.

The gift should be construed as relinquishment or renunciation of his undivided interest by the donor in favour of the other coparceners. Although the gift is ostensibly in favour of Veera Reddy, but really the donor meant to relinquish his interest in the coparcenary in favour of Veera Reddy and his sons. Such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made.

Thamma Venkata Subbamma (dead) by LR v. Thamma Rattamma and others, AIR 1987 SC 1775: 1987(3) SCC 294: 1987(3) SCR 236: 1987(1) Scale 1000: 1987(2) JT 440: 1987 BBCJ (SC) 155

Hindu Law.-Custom.-Divorce.-Custom applicable on *Shudra*s.-Divorce by abandonment.-A *Shudra* woman turned out of matrimonial house by her husband or she herself wilfully abandons her husband and is not pursued by the husband to come back.-In these circumstances the divorce takes place as a matter of fact.

Hindu law is clear on the subject that if a *Shudra* woman is turned out of the house by her husband, or she wilfully abandons him and is not pursued to be brought back as wife a divorce in fact takes place, sometimes regulated by custom, and then each spouse is entitled to re-arrange his/her life in marriage with other marrying partners. Walking out of Pappammal from the house of her first husband Koola Gounder was irretrievable and irreversible, for it is in evidence that neither of them took interest in each other thereafter. The divorce was thus complete.

M. Govindaraju v. K. Munisami Gounder (D) and others, AIR 1997 SC 10: 1996(5) SCC 467: 1996(6) Scale 15: 1997(1) Hindu LR 445: 1997(1) Mat. LR 19

Hindu Law.-Custom.-Divorce.-Dissolution of marriage by divorce by the husband to his wife.-Evidence of local custom.-Effect of such divorce.

All witnesses examined on behalf of the appellant himself thus proved the existence of a custom under which a Hindu Jat in the district of Jullundur could divorce his wife, though all of them added a qualification that, in case a wife is divorced by a Hindu husband, she is not entitled to a second marriage during the life-time of her first husband. They all admit that a custom permitting a Hindu Jat to divorce his wife does actually exist in the district of Jullundur.

While admitting the existence of custom permitting a Hindu husband to divorce his wife, have added a qualification that, if such a divorce is brought into effect by a husband, the wife cannot legally contract a second marriage during his life-time. This limited custom sought to be proved by these witnesses does not find support from the Riwaj-i-am, nor is it in line with the principles laid down by Rattigan in his book on `Customary Law'. All that he stated in paragraph 74 of his book was that "until the former marriage is validly set aside, a woman cannot marry a second husband in the life-time of her first husband." We have already held that, even according to the witnesses examined by the appellant, a custom exists which permits a valid divorce by a husband of his wife and that would dissolve the marriage. On the dissolution of such a marriage, there seems to be no reason why the divorced wife cannot marry a second husband in the life-time of her first husband. It also appears to us incongruous to accept the proposition put forward on behalf of the appellant that, though a wife can be divorced by her husband, she is not at liberty to enter into a second marriage and thus secure for herself means for proper living.

Gurdit Singh v. Mst. Angrez Kaur and others, AIR 1968 SC 142: 1967 (3) SCR 789

Hindu Law.-Custom.-Family custom.-Proof of.-Burden of proof.-Burden lies on the person relying on such customs.-It is invariably in practice for a long time.

Harihar Prasad Singh and others v. Balmiki Prasad Singh and others, AIR 1975 SC 733: 1975(2) SCR 932: 1975(1) SCC 212

Hindu Law.-Custom.-Marriage.-Second marriage.-Customary dissolution of marriage and re-marriage accepted in ancient treatise.-The wife continuing to live with her husband until his death and also enjoying family pension as his nominee wife.-the marriage cannot be declared illegal posthumously. *Shakuntalabai and another v. L.V. Kulkarni and another,* AIR 1989 SC 1359: 1989(2) SCC 526: 1989(2) SCR 70: 1989(1) Scale 737: 1989(1) JT 607: 1989(1) DMC 536

Hindu Law.-Custom.-Proof of.-Absence of instance of alienation of impartiable Estate cannot act as proof of custom of absence of such power of alienation.

Thakore Shri Vinayasinhji (dead) by LRs. v. Kumar Shri Natwarsinhji and others, AIR 1988 SC 247: 1988 Supp. SCC 133: 1988(1) SCR 1110: 1987(2) Scale 1193: 1987(4) JT 455: 1988(29) Guj LR 367

Hindu Law.-Custom.-Proof of.-In the absence of clear shastric text, the courts have authority to decide cases on the basis of justice, equity and good conscience.

Gurunath v. Oamalabai and others, AIR 1955 SC 206: 1955 All LJ 461: 57 Bom LR 694: 1955(1) SCR 1135

Hindu Law.-Custom.-Proof of.-The custom relating to adoption at any age judicially recognised in earlier decisions.-Proof of custom in subsequent cases is not required.

Kondiba Rama Papal alias Shirke (dead) by his heirs & LRs & another v. Narayan Kondiba Papal, AIR 1991 SC 1180: 1991(2) SCC 218: 1991(5) JT 121

Hindu Law.-Custom.-Marriage.-Marriage between members of Scheduled Tribe.-Governed by Santal customs and usage.-Hindu Marriage Act has no application.

In this appeal the parties are admittedly tribals, the appellant being a Oraon and the respondent a Santhal. In the absence of a notification or order under Article 342 of the Constitution they are deemed to be Hindus. Even if a notification is issued under the Constitution, the Act can be applied to Scheduled Tribes as well by a further notification in terms of sub-section (2) of Section 2 of the Act. it is not disputed before us that in the Constitution (Scheduled Tribes) Order 1950 as amended by Scheduled Castes and Scheduled Tribes Order (Amendment) Acts 63 of 1956, 108 of 1976, 18 of 1987 and 15 of 1990, both the tribes to which the parties belong are specified in Part XII. It is conceded even by the appellant that "the parties to the petition are two Tribals, who otherwise profess Hinduism, but their marriage being out of the purview of Hindu Marriage Act, 1955 in the light of Section 2(2) of the Act, are thus governed only by their Santhal Customs and usage." *Surajmani Stella Kujur (Dr.) vs. Durga Charan Hansdah,* AIR 2001 SC 938 : 2001(3) SCC 13 : 2001(2) JT 631

Hindu Law.-Custom.-Saving clause in statute.-"Custom and usage".-Importance of in relation to applicability of Hindu Marriage Act.

The importance of the custom in relation to the applicability of the Hindu Marriage Act has been acknowledged by the legislature by incorporating Section 29 saving the validity of a marriage solemnised prior to the commencement of the Act which may otherwise be invalid after passing of the Act. Nothing in the Act can affect any right, recognised by custom or conferred by any said enactment to obtain the dissolution of a Hindu Marriage whether solemnised before or after the commencement of the Act even without the proof of the conditions precedent for declaring the marriage invalid as incorporated in Section 10 to 13 of the Act. *Surajmani Stella Kujur (Dr.) vs. Durga Charan Hansdah,* AIR 2001 SC 938 : 2001(3) SCC 13 : 2001(2) JT 631

Hindu Law.-Debt.-Ancestral.-Immoral character of debt.-To avoid ancestral debt, descendant challenging the same shall have to prove not only immoral character of debt but also its knowledge to the alignee.

The doctrine of pious obligation under which sons are held liable to discharge their father's debts is based solely on religious considerations; it is thought that if a person's debts are not paid and he dies in a state of indebtedness his soul may have to face evil consequences, and it is the duty of his sons to save him from such evil consequences. The basis of the doctrines thus spiritual and its sole object

is to confer spiritual benefit on the father. It is not intended in any sense for the benefit of the creditor.

Where ancestral property has been alienated either under a conveyance executed by the father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, the sons have to prove not only that the antecedent debts were immoral but also that the purchaser had notice that they were so contracted.

A mortgage created by the father for the payment of his antecedent debt would bind his sons; so that, if the sons want to challenge the validity of the mortgage they would have to show not only that the antcedent debt was immoral but that the alienee had notice of the immoral character of the said debt.

Luhar Amrit Lal Nagji v. Doshi Jayantilal Jethalal, AIR 1960 SC 964: 1962(1) SCJ 282: 1960(3) SCR 842

Hindu Law.-Debt.-Ancestral.-Liability of son.-Where debt is not immoral, the sons are liable to discharge the debt of their father out of the joint property of the family.

This doctrine, as is well-known, has its origin in the conception of Smriti writers who regard non-payment of debt as a positive sin, the evil consequences of which follow the undischarged debtor even in the after-world. It is for the purpose of rescuing the father from his torments in the next world that an obligation is imposed upon the sons to pay their father's debts. The doctrine, as formulated in the original texts, has indeed been modified in some respects by judicial decisions. Under the law, as it now stands, the obligation of the sons is not a personal obligation existing irrespective of the receipt of any assets; it is a liability confined to the assets received by him in his share of the joint family property or to his interest in the same. The obligation exists whether the sons are major or minor or whether the father is alive or dead. If the debts have been contracted by the father and they are not immoral or irreligious, the interest of the sons in the coparcenary property can always be made liable for such debts.

We do not find any warrant for the view that to saddle the sons with this pious obligation to pay the debts of their father, it is necessary that the father should be the manager or `karta' of the joint family, or that the family must be composed of the father and his sons only and no other male member. No such limitation is deducible either from the original texts or the principles which have been engrafted upon the doctrine by judicial decisions. Where a debt is incurred for necessity or benefit of the family, the manager, whether he be the father or not, has the undoubted power to alienate any portion of the coparcenary property for the satisfaction of such debts, irrespective of the fact as to who actually contracted the debts.

Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh and others, AIR 1953 SC 487: 1953 SCJ 700: 1954 SCR 177

Hindu Law.-Debt.-Ancestral.-Liability of son to pay the debt of his father.-The son cannot resist execution of joint property against ancestral debt even if he is not a party to suit.

The son is not personally liable for the debt of his father even if the debt was not incurred for an immoral purpose and the obligation is limited to the assets received by him in his share of the joint family property or to his interest in such property and it does not attach to his self-acquisitions. The duty being religious or moral, it ceases to exist if the debt is tainted with immorality or vice.

It can now be taken to be fairly well settled that the pious liability of the son to pay the debts of his father exists whether the father is alive or dead.

Thus it is open to the father, during his lifetime, to effect a transfer of any joint family property including the interests of his sons in the same to pay off an antecedent debt not incurred for family necessity or benefit, provided it is not tainted with immorality. It is equally open to the creditor to obtain a decree against the father and in execution of the same put up to sale not merely the father's but also the son's interest in the joint estate. The creditor can make the sons parties to such suit and obtain an adjudication from the Court that the debt was a proper debt payable by the sons. But even if the sons are not made parties, they cannot resist the sale unless they succeed in establishing that

the debts were contracted for immoral purposes.

The sons are liable to pay these debts even after partition unless there was an arrangement for payment of these debts at the time when the partition took place.

Pannalal and another v. Mt. Naraini and others, AIR 1952 SC 170: 1952 SCJ 211: 1952 SCR 544

Hindu Law.-Debt.-Immoral debt.-Avyavaharika debt.-Meaning of.

Avyavaharika debt has been variously translated as being that which is not lawful or what is not just or what is not admissible under the law or under normal conditions. Colebrooke translated it as "a debt for a cause repugnant to good morals". There is another track of decision which has translated it as meaning "a debt which is not supported as valid by legal arguments".

The term as given by Colebrooke makes the nearest approach to the true conception of the term used in the `Smrithis' texts and may well be taken to represent its correct meaning and that it did not admit of a more precise definition.

S.M. Jakati and another v. S.M. Borkar and others, AIR 1959 SC 282: 61 Bom LR 688: 1959 Cal LJ 81: 1959 SCR 1384

Hindu Law.-Debt.-Joint family.-Deposit accepted by joint family before partition.-A receipt of deposit executed by the karta of family.-The members of joint family are liable to pay the debt.

V.E.A. Annamalai Chettiar and another v. S.V.V.S. Veerappa Chettiar and others, AIR 1956 SC 12:

Hindu Law.-Debt.-Liability of son.-Determination of legal necessity of debt.-Necessity of.

It is the existence of the father's debt that enables the creditor to sell the property in execution of a money decree against the father. Likewise, if a mortgage decree against the father directs the sale of the property for the payment of his debt the creditor may sell the property in execution of the decree. It is true that the procedure for the execution of a money decree is different from that for the enforcement of a mortgage decree. A money decree is executed by attachment and sale of the debtor's property. For the execution of the mortgage decree, an attachment of the property is not necessary and the property is sold by force of the decree. But this distinction in procedure does not affect the pious obligation of a Hindu son to pay his father's debt. As in the case of a money decree, under a mortgage decree also the property is sold for payment of the father's debt. The father could voluntarily sell the property for payment of his debt. If there is no voluntary sale by the father, the creditor can ask the Court to do compulsorily what the father could have done voluntarily. The theory is that as the father may, in order to pay a just debt, legally sell the whole estate without suit; so his creditor may bring about such a sale by the intervention of a suit.

Even where the mortgage is not for legal necessity or for payment of an antecedent debt, the creditor can, in execution of a mortgage decree for the realisation of a debt which the father is personally liable to repay, sell the estate without obtaining a personal decree against him. After the sale has taken place, the son is bound by the sale, unless he shows that the debt was non-existent or was tainted with immorality or illegality.

The decree against the father does not of its own force create a mortgage binding on the son's interest. The security of the creditor is not enlarged by the passing of the decree. In spite of the passing of the preliminary or final decree for sale against the father, the mortgage will not, as before, bind the son's interest in the property, and the son will be entitled to ask for a declaration that his interest has not been alienated either by the mortgage or by the decree.

Faqir Chand v. Sardarni Harnam Kaur, AIR 1967 SC 727: 1963 All LJ 343: 1963 All WR 292: 1966 (68) Pun LR (D) 343: 1967(1) SCR_68

Hindu Law.-Debt.-Partition.-Effect of.-The right of decree holder is unaffected by the partition.-The decree holder can proceed against the coparcenary property of the sons to realise the debt incurred by the father.

The result of the partition in a joint family is nothing more than a change in the mode of enjoyment and what was held jointly is by the partition held in severalty and therefore attachment of the whole coparcenary estate would not be affected by the change in the mode of enjoyment, because the

liability of the share which the sons got on partition remains unaffected as also the attachment itself which is not ended by partition, (Section 64 C.P.C. is a useful guide in such circumstances).

It is true that the right of the father to alienate for payment of personal debt is ended by the partition, but it does not affect the pious duty of the sons to discharge the debt of their father. Therefore where after attachment and a proper notice of sale the whole estate including the sons' share, which was attached, is sold and the purchaser buys it intending it to be the whole coparcenary estate, the presence of the sons nominee is not necessary because they still have the right to challenge the sale on showing the immoral or illegal purpose of the debt. In our opinion where the pious obligation exists and partition takes place after the decree and pending execution proceedings as in the present case, the sale of the whole estate in execution of the decree cannot be challenged except on proof by the sons of the immoral or illegal purpose of the debt and partition cannot relieve the sons of their pious obligation or their shares of their liability to be sold or be a means of reducing the efficacy of the attachment or impair the rights of the creditor.

S.M. Jakati and another v. S.M. Borkar and others, AIR 1959 SC 282: 61 Bom LR 688: 1959 Cal LJ 81: 1959 SCR 1384

Hindu Law.-Debt.-Pious duty of discharge of antecedent debt.-Validity of alienation of property to discharge antecedent debt.-The liability to discharge is only on the son and grandson.-No other person can claim such privilege.

A natural guardian of a Hindu minor has power in the management of his estate to mortgage or sell any part thereof in case of necessity or for the benefit of the estate. If the alienee does not prove any legal necessity or that he does not make reasonable enquiries, the sale is invalid.

But the father in a joint Hindu family may sell or mortgage the joint family property including sons' interest therein to discharge a debt contracted by him for his own personal benefit and such alienation binds the sons provided (a) the debt was antecedent to the alienation, and (b) it was not incurred for an immoral purpose. The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the son to discharge his father's debt not tainted with immorality.

Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transactions impeached. The debt may be a debt incurred in connection with a trade started by the father. The father alone can alienate the sons' share in the case of a joint family. The privilege of alienating the whole of the joint family property for payment of an antecedent debt is the privilege only of the father, grandfather and great-grandfather qua the son or grandson only. No other person has any such privilege.

Prasad and others v. Govindaswami Mudaliar and others, AIR 1982 SC 84: 1982(1) SCC 185: 1982(2) SCR 109: 1981(3) Scale 1867

Hindu Law.-Debt.-Pious obligation of son to discharge ancestral debt.-Application of doctrine to non-Hindus as a local custom.- Permissibility.

The doctrine of pious obligation is not merely a religious doctrine but has passed into the realm of law. The doctrine is a necessary and logical corollary to the doctrine of the right of the son by birth to a share of the ancestral property and both these conceptions are correlated. The liability imposed on the son to pay the debt of his father is not a gratuitous obligation thrust on him by Hindu law but is a salutary counterbalance to the principle that the son from the moment of his birth acquires alongwith his father an interest in joint family property. It is, therefore, not possible to accept the argument addressed on behalf of the appellant that though the community is governed as a matter of custom by the Mitakshara School of Hindu law the doctrine of pious obligation was not applicable.

The doctrine is in consonance with justice, equity and good conscience and is not opposed to any principle of Christianity. It follows that the High Court is right in its conclusion that the doctrine of pious obligation is applicable to the community of Tamil Vanniya Christians of Chittur Taluk.

Anthonyswamy v. M.R. Chinaswamy Koundan and others, AIR 1970 SC 223: 1970 (2) SCR 648: 1969(3) SCC 15

Hindu Law.-Debt.-Pious obligation to discharge the debt.-Legal necessity for the debt.-Purpose of debt.-Partition of the family does not affect a debt incurred out of legal necessity.

The loan was borrowed for constructing wells for improvement in the potentiality of the lands.

If agriculture was one of the occupations of the joint family and if loan was borrowed for the purpose of improving the joint family lands, the loan would *ipso facto* be for legal necessity and it would be joint family debt for which all the joint family property would be liable.

If thus the partition makes no provision for repayment of just debts payable out of the joint family property, the joint family property in the hands of coparceners acquired on partition as well as the pious obligation of the sons to pay the debts of the father will still remain.

The only effect of partition is that after the disruption of joint family status by partition the father has no right to deal with the property by sale or mortgage even to discharge an antecedent debt nor is the son under a legal obligation to discharge the post-partition debts of the father.

Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni and others, AIR 1978 SC 1791: 1979(1) SCC 98: 1979(1) SCR_955

Hindu Law.-Divorce.-Custom applicable on *Shudra*s.-Divorce by abandonment.-A *Shudra* woman turned out of matrimonial house by her husband or she herself wilfully abandons her husband and is not pursued by the husband to come back.-In these circumstances the divorce takes place as a matter of fact.

Hindu law is clear on the subject that if a *Shudra* woman is turned out of the house by her husband, or she wilfully abandons him and is not pursued to be brought back as wife a divorce in fact takes place, sometimes regulated by custom, and then each spouse is entitled to re-arrange his/her life in marriage with other marrying partners. Walking out of Pappammal from the house of her first husband Koola Gounder was irretrievable and irreversible, for it is in evidence that neither of them took interest in each other thereafter. The divorce was thus complete.

M. Govindaraju v. K. Munisami Gounder (D) and others, AIR 1997 SC 10: 1996(5) SCC 467: 1996(6) Scale 15: 1997(1) Hindu LR 445: 1997(1) Mat LR 19

Hindu Law.-Divorce.-Local custom.-Dissolution of marriage by divorce by the husband to his wife.-Evidence of local custom.-Effect of such divorce. All witnesses examined on behalf of the appellant himself thus proved the existence of a custom under which a Hindu Jat in the district of Jullundur could divorce his wife, though all of them added a qualification that, in case a wife is divorced by a Hindu husband, she is not entitled to a second marriage during the life-time of her first husband. They all admit that a custom permitting a Hindu Jat to divorce his wife does actually exist in the district of Jullundur.

While admitting the existence of custom permitting a Hindu husband to divorce his wife, have added a qualification that, if such a divorce is brought into effect by a husband, the wife cannot legally contract a second marriage during his life-time. This limited custom sought to be proved by these witnesses does not find support from the Riwaj-i-am, nor is it in line with the principles laid down by Rattigan in his book on `Customary Law'. All that he stated in paragraph 74 of his book was that "until the former marriage is validly set aside, a woman cannot marry a second husband in the life-time of her first husband." We have already held that, even according to the witnesses examined by the appellant, a custom exists which permits a valid divorce by a husband of his wife and that would dissolve the marriage. On the dissolution of such a marriage, there seems to be no reason why the divorced wife cannot marry a second husband in the life-time of her first husband. It also appears to us incongruous to accept the proposition put forward on behalf of the appellant that, though a wife can be divorced by her husband, she is not at liberty to enter into a second marriage and thus secure for herself means for proper living.

Gurdit Singh v. Mst. Angrez Kaur and others, AIR 1968 SC 142: 1967 (3) SCR 789

Hindu Law.-Family arrangement.-Acceptance of.-Determination of. The arrangement under challenge has to be considered as a whole for ascertaining whether it was made to allay disputes,

existing or apprehended, in the interest of harmony in the family or the preservation of property. It is not necessary that there must exist a dispute, actual or possible in the future, in respect of each and every item of property and amongst all members arrayed one against the other. It would be sufficient if it is shown that there were actual or possible claims and counter-claims by parties in settlement whereof the arrangement as a whole had been arrived at, thereby acknowledging title in one to whom a particular property falls on the assumption (not actual existence in law) that he had an anterior title therein.

Shambhu Prasad Singh v. Most. Phool Kumari and others, AIR 1971 SC 1337: 1971 (2) SCC 28: 1971 Supp SCR 181

Hindu Law.-Family arrangement.-Distinction with Will.-Executant while creating a right and interest in favour of her daughter effective only after the death of the executant.-She also reserving a life interest in favour of herself during her lifetime.-The document held to be not a Will but a settlement deed.

A combined reading of the recitals in the document and also the schedule would clearly indicate that on the date when the document was executed she had created right, title and interest in the property in favour of her second daughter but only on her demise she was to acquire absolute right to enjoyment, alienation etc. In other words, she had created in herself a life interest in the property and vested remainder in favour of her second daughter. It is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the property would devolve on the settled with absolute rights on settlor's demise. A reading of the documents together with the Schedule would give an indication that she had created right and interest in prasenti in favour of her daughter Vimlavathy in respect of the properties mentioned in the schedule with a life estate for her enjoyment during her lifetime. Thus, it could be construed rightly as a settlement deed but not as a Will.

Namburi Basava Subrahmanyam v. Alapati Hymavathi and others, AIR 1996 SC 2220: 1996(9) SCC 388: 1996(4) Scale 278: 1996(5) JT 330: 1996(2) Civl Court C 143

Hindu Law.-Family arrangement.-Effect of.-The settlement acted upon by the parties.-The consideration having been passed to the parties, they cannot be permitted to impeach the same subsequently.

The plaintiff who has taken benefit under the transaction is not now entitled to turn round and say that that transaction was of a kind which Kadma Kuar could not enter into and was therefore invalid. Moreover acting on the terms of that document Gopinath paid monies to the Court of Wards for obtaining release from its management of the properties which were allotted to him. The rule of estopped embodied in Section 115 of the Indian Evidence Act, 1872 would, therefore, shut out such pleas of the plaintiff. Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word `family' in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right to succession or having a claim to a share in the property in dispute.

The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst prisons bearing relationship with one another. That consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

Ram Charan Das v. Girja Nandini Devi and others, AIR 1966 SC 323: 1966(1) SCJ 61: 1965(3) SCR 841

Hindu Law.-Family arrangement.-Election.-Estoppel by conduct.-Scope of.-The person electing to assent the family arrangement and electing not to exercise his right to avoid the same is bound by the arrangement.

Estoppel is rule of evidence which prevents a party from alleging and proving the truth. Here the plaintiff is not shut out from asserting anything. We are assuming in his favour that Pato had only a life estate and we are examining at length his assertion that he did not assent to the family arrangement. The principle we are applying is therefore not estoppel. It is a rule underlying many branches of the law which precludes a person who, will full knowledge of his rights, has once elected to assent to a transaction voidable at his instance and has thus elected not to exercise his right to avoid it, from going back on that and avoiding it at a later stage. Having made his election he is bound by it.

The plaintiff, who is `in titulo' now that the succession has opened out, unequivocally assented to the arrangement with full knowledge of the facts and accepted benefit under it, therefore, he is now precluded from avoiding it, and any attempts he made to go behind that assent when it suited his purpose cannot render the assent once given nugatory even though it was given when he was not `in titulo; and even though the assent was to a series of gifts.

Sahu Madho Das and others v. Mukand Ram and another, AIR 1955 SC 481: 1955(2) Mad LJ (SC) 1: 1955 SCJ 417: 1955(2) SCR 22

Hindu Law.-Family arrangement.-Enforcement of.-Ordinarily an arrangement entered into *bona fide* with fair terms will be more rightly assented by the Court.

Though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even *bona fide* disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into *bona fide* and the terms therefore are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.

Maturi Pullaiah and another v. Maturi Narasimham and others, AIR 1966 SC 1836: 1966(2) SCWR 350

Hindu Law.-Family arrangement.-Enforcement of.-Pre-conditions for. No doubt, a family arrangement which is for the benefit of the family generally can be enforced in a court of law. But before the court would do so, it must be shown that there was an occasion for effecting a family arrangement and that it was acted upon.

Potti Lakshmi Perumallu v. Potti Krishnavenamma, AIR 1965 SC 825: 1965(2) Mad LJ (Cri) 105: 1965(1) SCR 26

Hindu Law.-Family arrangement.-Implied arrangements.-Conduct of members of family can be considered to ascertain that family arrangement in fact existed.-Circumstances in which registration of family arrangement necessary, indicated.

A compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why do conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resides in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

But, in our opinion, the principle can be carried further and so strongly do the Courts bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is

present.

But in that event, the formalities of law about the passing of title by transfer would have to be observed, and now either registration or twelve years adverse possession would be necessary.

Sahu Madho Das and others v. Mukand Ram and another, AIR 1955 SC 481: 1955(2) Mad LJ (SC) 1: 1955 SCJ 417: 1955(2) SCR 22

Hindu Law.-Family arrangement.-Liability to pay debt.-Partition of assets.-Liability of elder brother to pay to younger.-Mother undertaking to pay to the younger son if the elder son failed to pay.-It constitutes family arrangement and is enforceable.

The Commissioner of Wealth Tax, Mysore v. Vijayaba, Dowger Maharani Saheb, Bhavnagar and others, AIR 1979 SC 982: 1979(2) SCC 213: 1979(3) SCR 545: 1979 UPTC 1101

Hindu Law.-Family arrangement.-Oral settlement.-Permissibility.-A settlement , if otherwise valid does not require to be compulsorily registered.

A family settlement in a concretised form, may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17 the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claim or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claim are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

Kale and others v. Deputy Director of Consolidation and others, AIR 1976 SC 807: 1976(3) SCC 119: 1976(3) SCR 202

Hindu Law.-Family arrangement.-Permissibility.-Oral family arrangement is permissible but its terms must be reduced into writing. Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.

Tek Bahadur Bhujil v. Debi Singh Bhujil and others, AIR 1966 SC 292: 1966(2) SCJ 290

Hindu Law.-Family arrangement.-Scope of.-Inclination of courts to give effect to family arrangement.

To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family.

The word "family" in the context of the family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement.

The Courts lean strongly in favour of the family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all.

Krishna Beharilal v. Gulabchand and others, AIR 1971 SC 1041: 1971 (1) SCC 837: 1971 Supp. SCR 27

Hindu Law.-Family arrangement.-Validity of.-Effect of suspicious circumstances.-Improbability of execution.-The family settlement held to be invalid.

The deed of settlement on the face of it was an unnatural and unconscionable document. Narasimha Bhatta made negligible provision for his wife who was his third wife, the first two having died before he married her. She was left mainly to the mercy of respondent No. 1. Admittedly there was a residential house and no provision was made regarding her right to reside in that house till her death. Apparently there was no reason why he should have left nothing to his two daughters or to his other grand-children and given his entire estate to only one grand-son namely respondent No. 1.

We are satisfied that Narasimha Bhatta who was of advanced age and was in a state of senility and who was suffering from diabetes and other ailments was taken by respondent No. 1 who had gone to reside in the house at Sodhankur village a little earlier in a taxi along with Lakshmiamma to the Nursing Home in Mangalore wehre he was got admitted as a patient. No draft was prepared with the approval or under the directions of Narasimha Bhatta nor were any instructions given by him to the Scribe in the matter of drawing up of the document Ext B-3. An application was also made to the Joint Sub-Registrar Mangalore for registering the document at the Nursing Home by someone whose name has not been disclosed nor has the application been produced to enable the Court to find out the reasons for which a prayer was made that the registration be done at the Nursing Home. Lakshmiamma the wife of Narasimha Bhatta who was the only other close relation present has stated in categorical terms that the document was got executed by using pressure on Narasimha Bhatta while he was of an infirm mind and was not in a fit condition to realize what he was doing. The hospital record was not produced nor did the doctor who attended on Narasimha Bhatta at the Nursing Home produce any authentic data or record to support their testimony.

All these facts and circumstances raised a grave suspicion as to the genuineness of the execution of the document Ext. B-3 and, it was for respondent No. 1 do dispel the same.

Lakshmi Amma and another v. Talengala Narayana Bhatta and another, AIR 1970 SC 1367: 1970 SCD 513: 1970(3) SCC 159

Hindu Law.-Family arrangement.-Validity of.-Principles for determination.-It has to be determined on the basis of facts existing at the time which are not affected by subsequent judicial pronouncements.

The validity of a compromise or family arrangement of disputed rights depends on the facts existing at the time, and will not be affected by subsequent judicial determinations, showing the rights of parties to be different from what was supposed, or that one party had nothing to give up.

Ponnammal v. R. Srinivasarangan and others, AIR 1956 SC 162:

Hindu Law.-Family arrangement.-Will.-In operation a Will may operate as valid family arrangement if conditions attached to the family arrangements are proved.

As a matter of fact, if the properties as claimed by him had been self-acquired, there is no doubt that the document would have absolutely operated as the last will and testament of Lechiah Setty. But unfortunately, under the Hindu Law, dispose of, by will, joint family property or any part thereof and

as a will, it was clearly inoperative on the various dispositions made by him.

It is true that, in some cases, the Privy Council had given effect to a "will" by a coparcener when the dispositions had been made with the consent of the other coparceners.

In the first place, there must be an agreement amongst the various members of the family intended to be generally and reasonably for the benefit of the family. Secondly, the agreement should be with the object either of compromising doubtful or disputed rights, or for preserving the family property, or the peace and security of the family by avoiding litigation, or for saving its honour. Thirdly, being an agreement, there is consideration for the same, the consideration being the expectation that such an agreement or settlement will result in establishing or ensuring amity and good-will amongst the relations.

M.N. Aryamurthi and another v. M.L. Subbaraya Setty, AIR 1972 SC 1279: 1972(4) SCC 1

Hindu Law.-Gift deed.-Ancestral property.-High Court did not come to conclusion that gift of items was within reasonable limits or in fulfilment of an ante-nuptial promise made on occasion of settlement of terms of marriage of daughter.-Gift deed not permissible under Hindu Law.

Hindu Law on the question of gifts of ancestral property is well settled. So far as moveable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral moveable property cannot be upheld as a gift through affection.

The Karta is competent or has the power to dispose of coparcenary property only if (a) the disposition is of a reasonable portion of the coparcenary property, and (b) the disposition is for a recognised “pious purpose”. The High Court has not come to any conclusion as to whether the gift of items 3 to 6 by Hiri to the respondent No. 2 was within reasonable limits or in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of the respondent No. 2's marriage. It must be taken, therefore, that the findings of the lower Courts on both counts were accepted. That being so, Hiri could not have donated items 3 to 6 to respondent No. 2 and the deed of gift dated 9-6-1971 was impermissible under Hindu Law.# *Thimmaiah and others vs. Ningamma and another,* AIR 2000 SC 3529(2) : 2000(2) Marri LJ 571 : 2000(4) Rec Civ R 609 : 2000(7) SCC 409 : 2000(C) Cur CC 339

Hindu Law.-Gift for pious purpose.-Meaning of.-Gift of ancestral property to wife is not a gift for pious purpose and therefore is not valid. Hindu law on the question of gifts of ancestral property is well settled. So far as moveable ancestral property is concerned, a gift out of affection may be made, to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral moveable property cannot be upheld as a gift through affection. But so far as immovable ancestral property is concerned, the power of gift is much more circumsribed than in the case of moveable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for "pious purposes".What is generally understood by "pious pruposes" is gift for charitable and or religious purposes. But this Court has extended the meaning of "pious purposes" to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of her marrige, and the same can also be done by the mother in case the father is dead. The contention of the donee-appellant that the gift in her favour by her husband of ancestral immovable property made out of affection should be upheld must, therefore, fail, for no such gift is permitted under Hindu law insofar as immovable ancestral property is concerned. *Ammathayee alias Perumalakkal and another*, AIR 1967 SC 569: 1967 All LJ 354: 1967 BLJR 356: 1967(1) SCR 353

Hindu Law.-Hindu religion.-Conversion.-Proof of caste after conversion.-Burden is on the person re-converted as Hindu to prove of caste after such re-conversion. When the appellant embraced Christianity in 1949, he lost the membership of the Adi Dravida Hindu caste. The Christian

religion does not recognize any caste classifications. All Christians are treated as equals and there is no distinction between the Christian and another of the type that is recognized between members of different castes belonging to Hindu religion. In fact, caste system prevails only amongst Hindus or possibly in some religious closely allied to the Hindu religion like Sikhism. Christianity is prevalent not only in India, but almost all over the world and nowhere does Christianity recognise caste division. The tenets of Christianity militate against persons professing Christian faith being divided or discriminated on the basis of any such classification as the caste system. It must, therefore, be held that, when the appellant got converted to Christianity in 1949, he ceased to belong to the Adi Dravida caste. The appellant on conversion to Christianity, ceased to belong to the Adi Dravida caste and, consequently, the burden lay on the appellant to establish that, on his reverting to the Hindu religion by professing it again, he also became once again a member of the Adi Dravida Hindu caste. *S. Rajagopal v. C.M. Armugam and others,* AIR 1969 SC 101: 1969 (1) SCJ 738: 1969(1) SCR 254

Hindu Law.-Hindu religion.-Hindu by conversion.-Necessity of formal ceremony of purification. A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a *bona fide* intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion. *Perumal Nadar v. Ponnuswami Nadar,* AIR 1971 SC 2352: 1970(2) Andh WR (SC) 121: 1970(1) SCC 605: 1971(1) SCR 49: 1970(2) Mad LJ (SC) 121

Hindu Law.-Hindu religion.-Religious worship.-Entry in temple.-Right of.-The right of entry into public temple is subject to regulation and restrictions to facilitate.-Traditional customs and worship. It is well known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof. It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is allowed. *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* AIR 1954 SC 282: 20 Cut LJ 250: 1954 SCJ 335: 1954 SCR 1005

Hindu Law.-Hindu religion.-Swaminarayan Sect held to be not a religion separate from Hindu religion. Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse; and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion (11-A). This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook. Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary."In a sense, attitude of the Satsang sect is consistent with the basic Hindu religious and philosophic theory that many roads lead to God. Didn't the Bhagvad-Gita say: "even those who profess other religions and worship their gods in the manner prescribed by their religion, ultimately worship me and reach me (17)". Therefore, we have no hesitation in holding that the High Court was right in coming to the conclusion that the Swaminarayan sect to which the appellants belong is not a religion distinct and separate from Hindu

religion, and consequently, the temples belonging to the said sect do fall within the ambit of Section 2 of the Act. *Shastri Yagnapurushdasji and others v. Muldas Bhundardas Vaishya and another,* AIR 1966 SC 1119: 1996 (1) SCJ 502: 1966(3) SCR_242

Hindu Law.-Hindu Undivided Family.-Partition.-Partial partition.-Permissibility.-In equal distribution of property amongst co-sharers.-Effect on validity of partition. The father, undoubtedly, enjoys the right to bring about a complete disruption of the joint family consisting of himself and his minor sons and to affect a complete partition of the joint family properties even against the Will of the minor sons. It is also now recognised that partial partition of joint family properties is permissible. When father can bring about a complete partition of joint family properties between himself and his minor sons even against the Will of the minor sons and when partial partition under the Hindu Law is not accepted and recognised as valid by judicial decision, we fail to appreciate on what logical grounds it can be said that the father who can bring about a complete partition of the join family properties between himself and his minor sons will not be entitled to effect a partial partition of joint family properties between himself and his minor sons, if the father in the interest of the joint family and its members feels that partial partition of the properties will be in the best interest of the joint family and its members including the minor sons. In appropriate cases even during minority, the minor sons through a proper guardian may impeach the validity of the partition brought about by the father either in entirety of the joint family properties or only in respect of part thereof, if the partition had been effected by the father to the detriment of the minor sons and to the prejudice of their interests. We must, therefore, hold that partial partition of properties brought about by the father between himself and his minor sons cannot be said to be invalid under Hindu Law and must be held to be valid and binding. It is not open to the Income-tax authorities to consider a partial partition to be invalid on the ground that shares have not been equally divided and to refuse to recognise the same. *Apoorva Shantilal Shah v. Commissioner of Income-tax, Gujarat I, Ahmedabad,* AIR 1983 SC 409: 1983(2) SCC 155: 1983(2) SCR 492: 1983(1) Scale 181

Hindu Law.-Hindu Undivided Family.-Residence of.-Considerations for determination of.-It can be determined only by analogy by making inquiry about the place where the head and seat of the person controlling the affairs of juristic person, resides. The conception of residence in the case of fictitious "person", such as a company, is as artificial as the company itself, and the locality of the residence can only be determined by analogy, by asking where is the head and seat and directing power of the affairs of the company. As a general rule, the control and management of a business remains in the hand of a person or a group of persons, and the question to be asked is wherefrom the person or group of persons controls or directs the business. (2) Mere activity by the company in a place does not create residence with the result that a company may be "residing" in one place and doing a great deal of business in another. (3) The central management and control of a company may be divided, and it may keep house and do business in more than one place, and, if so, it may have more than one residence. (4) In case of dual residence, it is necessary to show that the company performs some of the vital organic functions incidental to its existence as such in both the places, so that in fact there are two centres of management. On the one hand, we have the fact that the head and *karta* of the assessee's family who controls and manages its affairs permanently lives in Colombo and the family is domiciled in Ceylon. On the other hand, we have certain acts done by the *karta* himself in British India, which though not conclusive by themselves to establish the existence of more than one centre of control for the affairs of the family, are by no means irrelevant to the matter in issue and, therefore, cannot be completely ruled out of consideration in determining it. *V.VR. N.M. Subbayya Chettiar v. Commissioner of Income-tax, Madras,* AIR 1951 SC 101: 1951(1) MLJ 810: 1951 SCJ 145: 1950 SCR 961

Hindu Law.-Hindu undevided family.-Partition.-Dwelling house owned by undivided family.-Member not related by blood cannot be said to be member of undivided family.-Suit property owned by family member of branch from common ancestor.-Portion purchased by member of

other branch.-Person purchasing portion of property does not become member of undivided family owning property.

Admittedly, the undivided family which owns the dwelling house is the undivided family of Nirode. It is not appellant's case that he is a member of the undivided family of Nirode. In this case the appellant, not being a member of the family of Nirode cannot be said to be a member of the undivided family to whom the dwelling house belongs. Merely because he is related by blood through a common ancestor, i.e. Jonoranjan does not make him a member of the family within the meaning of the terms as used in Section 4. *Gautam Paul vs Debi Rani Paul and others,* AIR 2001 SC 61 : 2000(8) SCC 330 : 2000(S1) IT 614 : 2001(1) Civ CR 359

Hindu Law.-Hindu undivided family.-Remuneration and commission earned by Karta.-Whether part of income of H.U.F..-Remuneration and commission earned on account of personal qualifications and exertions and not on account of investment of family funds cannot be treated as income of H.U.F.

Having analysed the law, as it did correctly, the High Court should have taken note of the finding recorded by the Tribunal and noticed by it earlier, namely, that the remuneration and commission that were earned by the Karta were earned by him on account of his personal qualifications and exertions and not on account of the investment of the family funds and therefore should have held that the income could not be treated as the income of the H.U.F. *K.S. Subbiah Pillai vs. Commissioner of Income-Tax,* AIR 1999 SC 1220 : 1999(237) TR 11 : 1999(3) SCC 170 : 1999(149) Taxation 508 : 1999 Tax LR 363

Hindu Law.-Impartiable estate.-Local custom.-Venkatagiri Estate. The Estate of Venkatagiri was an ancient impartible Estate by custom and was not made impartible for the first time under the agreement of 1889 or by the Madras Acts of 1902 and 1904. *Sri Rajah Velugoti Kumara Krishna Yachendra Varu and others v. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachandra Varu and otters,* AIR 1970 SC 1795: 1970 (3) SCR 88: 1969(3) SCC 281

Hindu Law.-Impartiable estate.-Right of junior members.-The only right which can be claimed by members is the right of maintenance and of survivorship.-They can not claim partition. An estate which is impartible by custom cannot be said to be the separate or exclusive property of the holder of the estate. If the holder has got the estate as an ancestral estate and he has succeeded to it by primogeniture, it will be a part of the joint estate of the undivided Hindu family. In the case of an ordinary joint family property, the members of the family can claim four rights: (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; (4) the right of survivorship. It is obvious that from the very nature of the property which is impartible the first of these rights cannot exist. The second is also incompatible with the custom of impartibility. Even the right of maintenance as a matter of right is not applicable. The 4th right, *viz.*, the right of survivorship, however, still remains and it is by reference to this right that the property, though impartible, has, in the eyes of law, to be regarded as joint family property. The right of survivorship which can be claimed by the members of the undivided family which owns the impartible estate should not be confused with a mere spes succession is. Unlike spes succession is, the right of survivorship can be renounced or surrendered. It is, of course, true that none of the considerations which are relevant in respect of immovable property would apply to movable property, and so, the theory of incorporation cannot apply to such movable property. That, however, is not to say that by a family custom, movable property cannot be treated as impartible. If a family custom is proved in the manner in which family customs have to be proved that certain category of movable property is treated by the family as impartible, that custom will, no doubt be recognised. That, broadly stated, is the position of Hindu law in respect of impartible property. *Mirza Raja Pushpavathi Vijayaram and others v. Sri Pushavathi Visweswar and others,* AIR 1964 SC 118: 1964(2) SCR 403

Hindu Law.-Impartiable estate.-Succession by primogeniture.-Right of maintenance of sons and brothers does not change the nature of Estate.-Income of Estate is income of the holder.-

Concept of coparcenary has no application.-Junior members of family has only right to maintenance.-Partition of such property not permissible.-The compensation received towards abolition of zagir is also impartible. The income of an impartible estate, thus is not income of the undivided family but is the income of the present holder, notwithstanding that he has sons or brothers from whom he is not divided. The fact that the son's or brother's right to maintenance arises out of the eldest brother's possession of impartible estate and is a right to be maintained out of the estate does not make it a right of a unique or even exceptional character or involves the consequence at Hindu Law that the income of the estate is not the holder's income. Income is not jointly enjoyed by the party entitled to maintenance and the party chargeable nor can it be said that the respective chances of each son to success by survivorship make them all co-owners of the income with their father or make the holder of the estate a manager on behalf of a Hindu family of which he and they are the male members of the family. It is also thus well settled law that the right of joint enjoyment which is ordinary incident to a coparcenary, where the joint estate is partible is excluded by the rule of primogeniture and impartibility. The income of an impartible estate and the accumulation of such income are the absolute properties of the holder. The immovable properties would be incorporated with impartible estate. It must be proved that the holder had impressed the immovable properties as part of the estate. But the movable properties will not. Movables are not an accretion to the estate as in the case of an ordinary joint family estate. It is seen that 100 beghas of land in Chandurpura was granted as Jagir. What had remained after the Act is hardly 5.41 bighas. So the rest of the lands, obviously, was resumed by the Government, under the Act. By operation of Section 18 of the Act it is Jagirdar who is entitled to receive compensation money payable under the Act. Therefore, the money received towards compensation of Jagir lands also retains the character as impartible.*Dattatraya alias Prakash and others v. Krishna Rao alias Lala Saheb Baxi through LRs, etc. etc.,* AIR 1991 SC 1972: 1993 Supp (1) SCC 32: 1991(3) SCR 644: 1991(2) Scale 1991: 1991(6) JT 160

Hindu Law.-Impartiable estate.-Succession.-The holder of such Estate has power of alienation not only by trans-fer but also by Will. The holder of an imparatible estate has the power of alienation not only by transfer inter vivos, but also by a will, even though the disposition by will may altogether defeat the right of survivorship of the junior members of the family. When under certain circumstances the right of a coparcener to take by survisorship can be defeated, no exception can be taken, if the right of survivorship of junior members of an impartible estate to succeed to it is defeated by the holder thereof by disposition by a will. *Thakore Shri Vinayasinhji (dead) by LRs. v. Kumar Shri Natwarsinhji and others,* AIR 1988 SC 247: 1988 Supp. SCC 133: 1988(1) SCR 1110: 1987(2) Scale 1193: 1987(4) JT 455: 1988(29) Guj LR 367

Hindu Law.-Inpartiable estate.-Rights of members.-Scope of. The general law of Mitakshara applicable to joint family property has been modified by custom and an impartible estate, though it may be an ancestral joint family estate, is clothed with the incidents of self-acquired and separate property to that extent. The only vestige of the incidents of joint family property, which still attaches to the joint family impartible estate is the right of survivorship which, of course, is not inconsistent with the custom of impartibility. For the purpose of devolution of the property, the property is assumed to be joint family property and the only right which a member of the joint family acquires by birth is to take the property by survivorship but he dows not acquire any interest in the property itself. The right to take by survivorship continues only so long as the joint family does not cease to exist and the only manner by which this right of survivorship coule be put an end to is by establishing that the estate ceased to be joint family property for the purpose of succession by proving an intention, express or implied, on behalf of the junior members of the family to renounce or surrender the right to succeed to the estate. *Sri Rajah Velugoti Kumara Krishna Yachendra Varu and others v. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachandra Varu and others,* AIR 1970 SC 1795: 1970 (3) SCR 88: 1969(3) SCC 281

Hindu Law.-Interpretation of text.-Principle of.-The interpretation must advance the society by

bringing such texts in harmony with the prevailing conditions. Law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient tets, the courts must give them a liberal construction to further the interests of the society. Our great commentators in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. To an extent, that function has now to be discharged by our superior courts. That task is undoubtedly a delicate one. In discharging that function our courts have shown a great deal of circumspection. Under modern conditions legislative modification of laws is bound to be confined to major changes. Gradual and orderly development of law can only be accomplished by judicial interpretation. *V.D. Dhanwatey v. The Commissioner of Income-tax, Madhya Pradesh, Nagpur and Bhandara,* AIR 1968 SC 683: 1968 (1) SCJ 868: 1968(2) SCR 62

Hindu Law.-Joint family business.-Distinction with partnership business.-No member of joint family can claim to have a specified share in the family business. In a joint Hindu family business, no member of the family can say that he is the owner of one-half, one-third or one-fourth. The esence of joint Hindu family property is unity of ownership and community of interest, and the shares of the members are not defined. Similarly, the patterns of the accounts of a joint Hindu family business maintained by the Karta is different from those of a partnership. In the case of the former the shares of the individual members in the profits and losses are not worked out, while they have to be worked out in the case of partnership accounts. *Nanchand Gangaram Shetji v. Mallappa Mahalingappa Sadalge and others,* AIR 1976 SC 835: 1976(2) SCC 429: 1976(3) SCR 287

Hindu Law.-Joint family partition.-Re-union.-Re-union of partition of a joint family is permissible but burden of such re-union lie heavy a person who asserts re-union. If a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. To constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. *Bhagwan Dayal (since deceased) and thereafter his legal representatives Bansgopal Dubey and another v. Mst. Reoti Devi (deceased) and after her death, Mst. Dayavati, her daughter,* AIR 1962 SC 287: 1962(3) SCR 440.

Hindu Law.-Joint family property.-Alienation.-Gift to concubine.-Permissibility. Under the Madras School of Mitakshara law by which Venkatacharyulu was governed, he had no power to make a gift of even his undivided interest in the coparcenary properties to his concubine. The gifts were therefore invalid. The invalid gifts were not validated by the disruption of the joint family in 1947. After the disruption of the joint family, Venkatacharyulu was free to make a gift of his divided interest in the coparcenary properties to the appellant, but he did not make any such gift. The transfers under Exts. A-1 and A-2 were and are invalid. *Dwarampudi Nagaratnamba v. Kunuku Ramayya and another,* AIR 1968 SC 253: 1967 (2) Andh LT 420: 1968 (1) Andh WR (SC) 110: 1968 (1) Mad LJ (SC) 110: 1968(1) SCR 43

Hindu Law.-Joint family property.-Alienation.-Legal necessity.-Proof of.-Manner in which amount of consideration was applied.-Relevancy of. The alienee is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. The reason for

this is that the alinee can rarely have the means of controlling and directing the actual application of the money paid or advanced by him unless he enters into the management himself. For ascertaining whether in a particular transaction the manager purports to act on behalf of the family or in his individual capacity one has to see the nature of the transaction and the purpose for which the transaction has been entered into. A manager does not cease to be a manager merely because in the transaction entered into by him a junior members of the family, who was a major or believed to be a major, also joined. It is not unusual for alienees to require major members of the family to join in transactions entered into by managers for ensuring that later on no objections to the transaction are raised by such persons. *Radhakrishnadas and another v. Kaluram,* AIR 1967 SC 574: 1963(1) Andh LT 10: 1962 Ker LR 412

Hindu Law.-Joint family property.-Alienation.-Legal necessity.-Vendee taking all steps to verify legal necessity for sale by Karta.-Necessity of sale justified by sufficient evidence.-Sale transaction found to be for the benefit of joint family.-Validity of sale upheld. *Sunder Das and others v. Gajananrao and others,* AIR 1997 SC 1686: 19961996(9) Scale 336: 1996(11) JT 255: 1997(9) SCC 701

Hindu Law.-Joint family property.-Alienation by Karta.-Proof of legal necessity.-Absence of specific plea about want of necessity.-Legal necessity need not be proved. *Pandurang Mahadeo Kavade v. Annaji Balwant Bokil and others,* AIR 1971 SC 2228: 1971(3) SCC 530

Hindu Law.-Joint family property.-Alienation by limited owner.-Absence of consideration.-Burden of proving that consideration was not received is on the person alleging the same. *Smt. Rani and another v. Smt. Santa Bala Debnath and others,* AIR 1971 SC 1028: 1970(3) SCC 722: 1971(2) SCR 603

Hindu Law.-Joint family property.-Alienation by limited owner.-Proof of legal necessity.-Effect of recital of legal necessity in Sale Deed. Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and *bona fide* enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession. *Smt. Rani and another v. Smt. Santa Bala Debnath and others,* AIR 1971 SC 1028: 1970(3) SCC 722: 1971(2) SCR_603

Hindu Law.-Joint family property.-Alienation by Manager.-Challenged by subsequently adopted son.-Permissibility.-A co-parcener adopted into a family acquires the same right as other co-parceners.-Alienation is voidable if it is in the circumstances if the same were made for the purpose not binding on the estate. *Guramma Bhratar Chanbasappa Deshmukh and others v. Mallappa Chanbasappa and another,* AIR 1964 SC 510: 66 Bom LR 284: 1964 MPLJ 133: 1964(4) SCR 497

Hindu Law.-Joint family property.-Alienation of property.-Power of Karta.-Alienation without legal necessity is voidable and not void. *Raghubanchmani Prasad Narain Singh v. Ambica Prasad Singh,* AIR 1971 SC 776: 1970(3) SCC 350

Hindu Law.-Joint family property.-Alienation of property.-Legal necessity.-Property in dilapidated condition sold and the sale proceeds spent on constructing additional

accommodation in the joint family dwelling house.-The alienation is nor legal necessity. *K.C. Kapoor v. Smt. Radhika Devi (dead) by LRs. and others,* AIR 1981 SC 2128: 1981(4) SCC 487: 1982(1) SCR 902: 1981(3) Scale 1565

Hindu Law.-Joint family property.-Alienation of property.-Suit for permanent injunction against Karta by coparcener challenging the alienation and seeking to permanently restraint him from alienating the property, is not maintainable. In case of waste or ouster an injunction may be granted against the Manager of the joint Hindu family at the instance of the coparcener. But nonetheless a blanket injunction restraining permanently from alienating the property of the joint Hindu family even in the case of legal necessity, cannot be granted. *Sunil Kumar and another v. Ram Prakash and others,* AIR 1988 SC 576: 1988(2) SCR 77: 1988(2) SCR 623: 1988(1) Scale 80: 1988(1) JT 387: 1988(94) Pun LR 159

Hindu Law.-Joint family property.-Alienation of.-Legal necessity to alienate.-Validity of permanent lease granted by shebait, called into question, after a long time.-The circumstances in which grant was made not possible to fully ascertain.-The court should assume that the grant was made for necessity. *Sree Sree Iswar Gopal Jieu Thakur v. Pratapmal Bagaria and others,* AIR 1951 SC 214: 1951 ALJ SC 74: 64 MLW 525: 1951 SCJ 285: 1951 SCR 332

Hindu Law.-Joint family property.-Ancestral Property.-Right of alienation.-Scope of A holder of an ancestral impartible Estate could alienate the same in favour of a third party by a deed inter vivos or under a will: in either case the alienee or legatee, as the case may be, got an absolute interest therein. The holders son could not interdict the said alienation or bequest as hehad no right by birth therein. The son had only a right to take the ancestral Estate by survivorship in case the father died intestate. The exercise of the right by a father to alienate destroyed his son's right to take it by survivorship. *V.T.S. Thyagasundaradoss Thevar and others v. V.T.S. Sevuga Pandia Thevar and another,* AIR 1965 SC 1730: 1965(2) Andh WR (SC) 50: 1965(2) Mad LJ 50

Hindu Law.-Joint family property.-Ancestral property.-Presumption against blending of self-acquired property with joint family property. A Hindu can have interest in ancestral property as well as acquire his separate or self-acquired property. If he acquires by inheritance separate property a birth of a son or adoption of a son will not deprive him of the power he has to dispose of his separate property by gift or Will. That means that a Hindu can own separate property besides having a share in ancestral property. Therefore, when the appellant inherited the land left by his uncle (natural father) that property came to him as a separate property and he had an absolute and unfettered right to dispose of that property in the manner he liked.Property inherited by a person from any other relation becomes his separate property and his male issue does not take any interest therein by birth. Thus property inherited by a person from collaterals such as a brother, uncle, etc., cannot be said to be ancestral property and his son cannot claim a share therein as if it were ancestral property. There can, therefore, be no doubt that the property which the appellant inherited from his uncle (natural father) was his separate property in which his major son could not claim any share whatsoever. *Madanlal Phulchand Jain v. State of Maharashtra and others,* AIR 1992 SC 1254: 1992(2) SCC 717: 1992(1) Scale 799: 1992(2) JT 530

Hindu Law.-Joint family property.-Benefit of family.-Determination of.-Sale of joint family property without any difficulty in management of family nor for the reasons of prudence.-In the circumstances suit for specific performance rightly rejected by the Trial Court. For a transaction to be regarded as one which is of benefit to the family it need not necessarily be only of a defensive character. But what transaction would be for the benefit of the family must necessarily depend upon the facts of such case. In the present case there is unfortunately nothing in the plaint to suggest that Pindidas agreed to sell the property because he found it difficult to mangage it or because he found that the family was incurring loss by retaining the property. Nor again is there anything to suggest that the idea was to invest the sale proceeds in some profitable manner. Indeed there are no allegations in the plaint to the effect that the sale was being contemplated by any

considerations of prudence. All that is said is that the fraction of the family's share of the land owned by the family bore a very small proportion to the land which the plaintiff held at the date of the transaction. But that was indeed the case even before the purchase by the plaintiff of the 23/120th share from Devisahai. There is nothing to indicate that the position of the family *vis-a-vis* their share in the land had in any way been altered by reason of the circumstance that the remaining 17/20th interest in the land came to be owned by the plaintiff alone. The expression "benefit of the estate" has a wider meaning than mere compelling necessity and is not limited to transactions of a purely defensive nature. *Balmukand v. Kamla Wati and others,* AIR 1964 SC 1385: 66 PunLR 897: 1964(6) SCR 321

Hindu Law.-Joint family property.-Blending of personal property.-Application of Doctrine on female member of joint family.-A Hindu female is not a coparcener and therefore is not entitled to blend her personal property with the joint family property. The theory of blending under the Hindu Law involves the process of a wider sharing of one's own properties by permitting the members of one's joint family the privilege of common ownership and common enjoyment of such properties. But while introducing new sharers in one's exclusive property, one does not by the process of blending efface oneself by renouncing one's own interest in favour of others. To blend is to share along with others and not to surrender to the exclusion of oneself. If a Hindu female, who is a member of as undivided family, impresses her absolute, exclusive property with the character of joint family property, she creates new claimants to her property to the exclusion of herself because not being a coparcener, she has no right to demand a share in the joint family property by asking for a partition. She has no right of survivorship and is entitled only to be maintained out of the joint family property. Her right to demand a share in the joint family property is contingent, inter alia, on a partition taking place between her husband and his sons. A Hindu female therefore is not a coparcener. Even the right to reunite is limited under the Hindu Law to males (Mulla, p. 430, para 342). It does not therefore militate against the fundamental notions governing a Hindu joint family that a female member of the joint family cannot blend her separate property, even if she is an absolute owner thereof, with the joint family property. *Smt. Pushpa Devi v. The Commissioner of Income-tax, New Delhi,* AIR 1977 SC 2230: 1977(4) SCC 184: 1978(1) SCR 329: 1977 Hindu LR 598

Hindu Law.-Joint family property.-Blending with personal property.-Scope of application.-Limited estate inherited by Hindu female from her father cannot be blended with the joint family property of her husband. Where a member of a joint Hindu family blends his self acquired property with property of the joint family, either by bringing his self acquired property into a joint family account, or by bringing joint family property into his separate account, the effect is that all the property so blended becomes a joint family property. Under Hindu law it is open to a limited owner like a Hindu female succeeding to her mother's estate as in Madras or a Hindu widow succeeding to her husband's estate, to efface herself and accelerate the reversion by surrender; but, as is well known, surrender has to be effected according to the rules recognised in that behalf. A Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint property belonging to the said family. On first principles such a result would be inconsistent with the basic notion of blending and the basic character of a limited owner's title to the property held by her. *Mallesappa Bandeppa Desai and another v. Desai Mallappa alias Mallesappa and another,* AIR 1961 SC 1268: 1962(2) Mad LJ (SC) 154: 1961(3) SCR 779

Hindu Law.-Joint family property.-Burden of proof.-Circumstances giving rise to presumption of joint family.--Appreciation of. There is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenery property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is

however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But 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 affimatively that the property was acquired without the aid of the joint family property. *Mudigowda Gowdappa Sankh and others v. Ramchandra Revgowda Sankh and another,* AIR 1969 SC 1076: 1969 (2) SCJ 668: 1969(3) SCR 245: 1969(1) SCC 386

Hindu Law.-Joint family property.-Burden of proof.-Existence of joint family does not lead to presumption of joint family property.-The burden of proving initially that the nucleus of the property owned was joint family funds is on the plaintiff whereafter the burden shifts to the person claiming independent right to property. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But 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. Whether the evidence adduced by the plaintiff was sufficient to snift the burden which initially rested on him of establishing that there was adequate nucleus out of which the acquisitions could have been made is one of fact depending on the nature and the extent of the nucleus. The important thing to consider is the income which the nucleus yields. A building in the occupation of the members of a family and yielding no income could not be a nucleus out of which acquisition could be made, even though it might be of considerable value. On the other hand, a running business in which the capital invested is comparatively small might conceivably produce substantial income, which may well form the foundation of the subsequent acquisitions. These are not abstract questions of law, but questions of fact to be determined on the evidence in the case. *Srinivas Krishnarao Kango v. Narayan Devji Kango and others,* AIR 1954 SC 379: 57 Bom LR 678: 1954 SCA 878: 1954 SCJ 408: 1955(1) SCR_1

Hindu Law.-Joint family property.-Coparcenary interest.-Right of Hindu widow.-Effect of Act of 1937 placing her at par with other members of coparcenary. The window after the introduction in the coparcenary could not be held to have become a coparcener, because one of the essential characteristics of a coparcener, namely, acquisition of interest by birth, is wholly wanting in her case, yet when the Legislature which was fully aware of the status of a Hindu widow under the Shastric Law chose to improve her status by conferring a new right on her under the Act of 1937, and with this avowed object clothed her with all the rights and concomitants of a coparcener's interest, it is futile to contend that the window could not be treated either as a member of the Hindu coparcenary or as having been conferred coparcenary interest in the property. Even though the widow is not a coparcener in the strictly legal sense of the term, the interest which she has is the same interest as her husband and that is the coparcenary interest with the only limitation placed on her by Section 3(3) of the Act of 1937, namely, that her interest would be the limited interest of a Hindu widow. *Controller of Estate Duty, Madras v. Alladi Kuppuswamy,* AIR 1977 SC 2069: 1977(3) SCC 385: 1977(3) SCR 721

Hindu Law.-Joint family property.-Debt.-Obligation of son.-Effect of partition. (1) A father can by incurring a debt, even though the same be not for any purpose necessary or beneficial to the family so long as it is not for illegal or immoral purposes, lay the entire joint family property including

the interests of his sons open to be taken in execution proceedings upon a decree for the payment of that debt. (2) The father can, so long as the family continues undivided alienate the entirety of the family property for the discharge of his antecedent personal debts subject to their not being illegal or immoral. In other words, the power of the father to alienate for satisfying his debts, is co-extensive with the right of the creditors to obtain satisfaction out of family property including the share of the sons in such property. (3) Where a father purports to burden the estate by a mortgage for purposes not necessary and beneficial to the family, the mortgage qua mortgage would not be binding on the sons unless the same was for the discharge of an antecedent debt. Where there is no antecedency, a mortgage by the father would stand in the same position as an out and out sale by the father of family property for a purpose not binding on the family under which he receives the sale price which is utilised for his personal needs. It need hardly be added that after the joint status of the family is disrupted by a partition, the father has no right to deal with the family property by sale or mortgage even to discharge property by sale or mortgage even to discharge an antecedent debt, nor is the son under any legal or moral obligation to discharge the post-partition debts of the father. (4) Antecedent debt in this context means a debt antecedent in fact as well as in time, i.e., the debt must be truly independent and not part of the mortgage which is impeached. In other words, the prior debt must be independent of the debt for which the mortgage is created and the two transactions must be dissociated infact so that they cannot be regarded as part of the same transaction. *Virdhachalam Pillai v. Chaldean Syrian Bank Ltd., Trichur and another,* AIR 1964 SC 1425: 1964 KerLJ 478: 1964(5) SCR 647

Hindu Law.-Joint family property.-Determination of.-Business in the name of one member.-Effect of. There is no presumption under Hindu Law that business standing in the name of any member of the joint family is a joint family business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate. The question therefore whether the business was begun or carried on with the assistance of joint family property or joint family funds or as a family business is a question of fact. *G. Narayana Raju v. G. Chamaraju and others,* AIR 1968 SC 1276: 1968 (2) SCJ 749: 1968(3) SCR 464

Hindu Law.-Joint family property.-Determination of.-Contribution by sons to the family property purchased by their father.-One son looking after the property along with other tenanted properties.-The status of property is joint. *Kondiram Bhiku Kirdat v. Krishna Bhiku Kirdat (Deceased by L.Rs.),* AIR 1995 SC 297: 1994 Supp (3) SCC 548: 1994(4) Scale 599: 1994(7) JT 149: 1995 Civ. CR (SC) 178: 1994(2) Hindu LR 453

Hindu Law.-Joint family property.-Determination of.-No evidence of independent source of income.-Property not acquired in the name of an individual.-Presumption of joint family not rebutted.-The property acquired is presumed to be joint family property. *Mallappa Girimallappa Betgeri and others v. R. Yellappa-gouda Patil and others,* AIR 1959 SC 906

Hindu Law.-Joint family property.-Determination of.-No source of payment for the property acquired disclosed.-Presumption that the property was not the personal property, but was joint family property, affirmed. *Kochadai Naidu and others v. Ayyalu Naidu and others,* AIR 1980 SC 2026: 1980 Supp. SCC 506

Hindu Law.-Joint family property.-Determination of.-Succession to the property of Hindu male by his legal heirs who was governed by Dayabhaga school.-The legal heirs succeed in well defined share and therefore the property become fractional individual property of the heirs and not joint proper-ty. *Commissioner of Wealth Tax, West Bengal, v. M/s. Bishwa-nath Chatterjee and others,* AIR 1976 SC 1492: 1976(3) SCC 385: 1976(3) SCR 1096

Hindu Law.-Joint family property.-Disposal by father.-Permissibility.-A father under Mitakshara Law has absolute right of disposition of self-acquired property by way of sale or gift to any

person including one of his own sons. *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and another,* AIR 1953 SC 495: 1953 SCJ 707: 1954 SCR 243

Hindu Law.-Joint family property.-Impartible Estate.-Effect of impartible status.-It does not destroy the joint family status of the property. It is a trite proposition that property though impartible may be the ancestral property of the joint Hindu family. The impartibility of property does not per se destroy its nature as joint family property or render it the separate property of the last holder, so as to destroy the right of survivorship, hence the estate retains its character of joint family property and devolves by the general law upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line. *Nagesh Bisto Desai etc. etc. v. Khando Tirmal Desai etc. etc,* AIR 1982 SC 887: 1982(2) SCC 79: 1982(3) SCR 341: 1982(1) Scale 418

Hindu Law.-Joint family property.-Income from hereditary profession of Priesthood.-Such income is not joint family property. *Lakshmi Chand Khajuria and others v. Smt. Ishroo Devi,* AIR 1977 SC 1694: 1977(2) SCC 501: 1977(3) SCR 400

Hindu Law.-Joint family property.-Insurance Policy in Law insurance policy cannot per se concluded as separate property of the coparceners.-Insurance policy belong to the Joint family. *Smt. Parbati Kuer v. Sarangdhar Sinha and others,* AIR 1960 SC 403: 1960 Pat LR (SC) 27

Hindu Law.-Joint family property.-Legal necessity.-Proof of.-Purchaser acting in good faith and after due inquiry able to show that the sale was justified by legal necessity.-Purchaser is under no further obligation to make inquiry into the application of any amount left surplus after meeting the necessity. Adequacy of sale consideration, substantial portion having gone into the discharge of antecedent debts and enquiries made by the purchaser regarding legal necessity coupled with the fact that the alienation was challenged after 12 years from the date of alienation, we find no difficulty in coming to the conclusion that the High Court went wrong in upsetting the judgments of the Trial Court as well as the First Appellate Court. *Gangadharan v. Janardhana Mallan and others,* AIR 1996 SC 2127: 1996(9) SCC 53: 1996(4) Scale 537: 1996(5) JT 82: 1996 Civ. CR (SC) 750: 1996(2) KLT 84

Hindu Law.-Joint family property .-Merger of self-acquired property .-Determination and effect of.-The transfer of property if constitutes a gift. The doctrine of throwing into common stock inevitably postulates that the owner of a separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener can throw into the common stock his self-acquired properties. The separate property of a member of a joint Hindu family may be impressed with the character of join family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property to the common stock is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treat his self-acquired property as that of the joint family property, the property assumes the character of joint family property. The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara School of Hindu law. Whan a coparcener throws his separate property into the common stock, he makes no gift under Chapter VII of the Transfer of Property Act. *Goli Eswariah v. Commissioner of Gift Tax, Andhra Pradesh,* AIR 1970 SC 1722: 1970 (2) SCC 390: 1971(1) SCR 522

Hindu Law.-Joint family property.-Necessity for sale.-Discharge of mortgage by selling the property to the mortgagee.-Most of the consideration went in discharge of mortgage.-Enquiry into the necessity for sale is not necessary. When the mortgagee is himself the purchaser and when the greater portion of the consideration went in discharge of the mortgages we do not see how

any question of enquiry regarding pressure on the estate would arise at all. Where ancestral property is sold for the purpose of discharging debts incurred by the father and the bulk of the proceeds of the sale is so accounted, the fact that a small part of the consideration is not accounted for will not invalidate the sale. *Arvind & Abasaheb Ganesh Kulkarni and others v. Anna & Dhanpal Parisa Chougule and others,* AIR 1980 SC 645: 1980(2) SCC 387: 1980(2) SCR 816: 1980(3) Mah LR 188

Hindu Law.-Joint family property .-Partition.-*Locus standi*.-Purchaser of joint family property from a member of family has the right to file a general suit for partition against all members of the family. *Smt. Kailash Pati Devi v. Smt. Bhubneshwari Devi and others,* AIR 1984 SC 1802: 1985(1) SCC 405

Hindu Law.-Joint family property .-Partition.-Acceptance of lesser value of property, is in the nature of gift to the other coparceners. The proposition is trite that in an undivided Hindu family coparceners have no predictable or defined shares but each has an antecedent title in every parcel of property and is jointly the owner and in enjoyment with the others. But surely it is well-established that at the very moment members decide upon a partition *eo instanti*, a division in status takes place whereupon the share of the demanding member gets crystallised into a definite fraction and if there is division by metes and bounds the allotment of properties vivifies and specifies such shares in separate ownership. These two processes or stages may often get telescoped when by consensus the coparceners jointly divide the properties. Unequal divisions of properties knowingly made may not spell invalidity and mathematical equality may not be maintained always in a partition while, ordinarily, substantial fairness in division is shown. Argument that in a partition, equal or unequal, there is no element whatsoever of consideration, partial or full, since in a partition there is only an adjustment of rights and substitution of joint enjoyment by enjoyment in severalty. In his view it is a confusion to mix up unequal partition with inadequate consideration and it is a worse confusion to talk in terms of *bona fide* and *mala fide* partition where the shares are merely unequal by choice. What is forgotten in this chain of reasoning is the office of Explanation 2 which is deliberately designed to take into its embrace what otherwise may not be `disposition'. Once we reconcile ourselves to the enlargement of sense imported by the Explanation, we part company with the traditional concept. *The Controller of Estate Duty, Gujarat v. Whri Kantilal Trikamlal,* AIR 1976 SC 1935: 1976(4) SCC 643: 1977(1) SCR 9

Hindu Law.-Joint family property .-Partition.-Admission of prior partition in earlier proceedings.-No explanation offered for the admission.-Suit for partition is not maintainable. *Prakash Chand Sharma and others v. Narendra Nath Sharma,* AIR 1976 SC 2456: 1976(3) SCC 215

Hindu Law.-Joint family property .-Partition.-Burden of proof.-co-widows succeeding husband's property as joint tenants with right of survivorship.-Extinguishment of right of survivorship cannot be proved by mere partition of property .-The party claiming partition must prove factum of partition by cogent evidence. *Karpagathachi and others v. Nagarathinathachi,* AIR 1965 SC 1752: 1965(2) SCWR 284: 1965(3) SCR 335

Hindu Law.-Joint family property .-Partition.-Challenge by minor.-Scope of. (1) A partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.(2) When the partition is effected between the members of the Hindu Undivided Family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in *bona fide* manner keeping into account the interests of the minors. (3) Where, however, a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof that the partition was just and fair is on the party supporting the

partition.(4) Where there is a partition of immovable and moveable properties but the two transactions are distinct and separable or have taken place at different times, if it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair. *Ratnam Chettiar and others v. S.M. Kuppuswami Chettiar and others,* AIR 1976 SC 1: 1976(1) SCC 214: 1976(1) SCR 863: 1976 Hindu LR 175

Hindu Law.-Joint family property .-Partition.-Conduct of parties.-Signed memorandum between the parties referring the matter to a third person.-Subsequent conduct of the parties treating themselves separate as per the arrangement effected by Arbitrator.-Suit seeking declaration that he is sole owner of the property is not maintainable. *Munna Lal (Dead) by LRs. v. Suraj Bhan and others,* AIR 1975 SC 1119: 1975(1) SCWR 691: 1975(1) SCC 556

Hindu Law.-Joint family property .-Partition.-Consent of male members to the Will of Karta.-Effect of.-The Will may operate as family arrange-ment. An ineffective will sometimes though not always, if otherwise consented by all adult members, may be effective as a family arrangement but as the father of a joint Hindu family has no poem to impose a family arrangement under the guise of exercising the power of partition, the power which undoubtedly he has but which he has failed to effectively exercise, cannot in the absence of consent of all male members bind them as a family arrangement. *Kalyani (dead) by LRs. v. Narayanan and others,* AIR 1980 SC 1173: 1980 Supp. SCC 298: 1980(2) SCR 1130

Hindu Law.-Joint family property .-Partition.-Continued joint possession.-The members of family become tenant in common. On partition by severance of the joint status, the members of the family become tenants-in-common of the family property. If one of the members remains in possession of the entire properties of the family, there is no presumption that the property, which is acquired by him after severance of the status, must be regarded as acquired for the family. *M.N. Aryamurthi and another v. M.L. Subbaraya Setty,* AIR 1972 SC 1279: 1972(4) SCC 1

Hindu Law.-Joint family property .-Partition.-Considerations for. If the consent of the parties was not procured by fraud, misrepresentation or any other ground which may vitiate a partition under the general law, the division made by the Panchas and accepted by the parties would be binding upon them. It is always open to the members of a joint Hindu family to divide some properties of the family and to keep the remaining undivided. By the reference to the Panchas, the parties ceased to be members of the joint Hindu family. If thereafter the assets of the family were divided and that division was accepted by the parties, the properties reduced by the parties to their possession must be deemed to be of the individual ownership of the parties to whom they were allotted, and the remaining properties as of their tenancy-in- common. *Kashinathsa Yamosa Kabadi, etc. v. Narasingsa Bhaskara Kabadi,* AIR 1961 SC 1077: 63 Bom LR 659: 1961(3) SCR 792: 63 Bom.L.R. 659

Hindu Law.-Joint family property .-Partition.-Decree of.-Re-blending of properties.-Relevance of conduct of parties.-No evidence that after grant of partition decree, the parties had re-united and therefore continued as joint family.-Subsequent suit for partition, not maintainable. *Anil Kumar Mitra & others v. Ganendra Nath Mitra & others,* AIR 1997 SC 3767: 1997(9) SCC 725

Hindu Law.-Joint family property .-Partition.-Determination of.-Actual division of property by metes and bound if necessary.-Severance of relationship by one member of the family from the other. In a Hindu undivided family governed by the Mitakshara law, no individual member of that family, while it remains undivided, can predicate that he has a certain definite share in the property of the family. The rights of the coparceners are defined when there is partition. Partition consists in defining the shares of the coparceners in the joint property, actual division of the property by metes and bounds is not necessary to constitute partition. Once the shares are defined, whether by agreement between the parties or otherwise, partition is complete. The parties may thereafter choose to divide the property by metes and bounds, or may continue to live together and enjoy the property

in common as before. If they live together, the mode of enjoyment alone remains joint, but not the tenure of the property. Partition may ordinarily be effected by institution of a suit, by submitting the dispute as to division of the properties to arbitrators, by a demand for a share in the properties, or by conduct which evinces an intention to server the joint family; it may also be effected by agreement to divide the property. But in each case the conduct must evidence unequivocally intention to sever the joint family status. Merely because one member of a family severs his relation, there is no presumption that there is severance between the other members: the question whether there is severance between the other members is one of fact to be determined on a review of all the attendant circumstances. Severance between the members of the branches *inter se* may not in the absence of expression of unequivocal intention be inferred. *Girijanandini Devi and others v. Bijendra Narain Choudhary,* AIR 1967 SC 1124: 1967 All LJ 475: 1967 BLJR 513: 1967(1) SCR 93

Hindu Law.-Joint family property .-Partition.-Determination of.-The presumption in Law is in favour of the Joint Family.-Division in Statue of the family can only be determined by unambiguous declaration.-Property held by different members of a family is presumed to be individual property.-Burden of proving the property is held jointly is on the person who asserted the joint family. There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein; his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members *vis-a-vis* the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though *prima facie* a document clearly expressing the intention to dividement clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether movable or immoveable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the members of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property. *Mst. Rukhmabai v. Lala Laxminarayan and others,* AIR 1960 SC 335: 1960 SCJ 433: 1960 2 SCR 253

Hindu Law.-Joint family property .-Partition.-Determination of shares.-Unequal division.-Permissibility.-Right of eldest son to receive special share. "Unequal division though found in the sastras (e.g., Manu IX, 105, 112, 116, 117, Yaj. II. 114) should not be practised because it has come to be condemned (or has become hateful to) by the people, since there is the prohibition (in Yaj. I. 156) that an action, though prescribed in the sastras, should not be performed when it has come to be condemned by the people, since such an action does not lead to the attainment of Heaven. For example, though Yaj. I. 109 prescribes the offering of a big ox or a goat to a learned brahmana guest, it is not now practised because people have come to hate it; or just as, although there is a Vedic text laying down the sacrificing of a cow `one should sacrifice a barren cow called anubandhya for Mitra and Varuna' still it is not done because people condemn it. And it has been said `just as the practice of niyoga or the killing of the anubandhya cow is not now in vogue, so also division after giving a special share (to the eldest son) does not now exist. *Siromani v. Hemkumar and others,* AIR 1968 SC 1299: 1968 All CJ 1025: 1968 BLJR 969: 1968 MPLJ 792: 1968 Mah LJ 791: 1968(3) SCR 639

Hindu Law.-Joint family property .-Partition.-Distinction with family settlement.-Consideration for determination in the face of registered deed of partition.-The circumstances

must indicate complete disruption of the family to conclude outright partition. In 1900, when this deed was executed, one or more members of a joint family governed by the Aliyasanthana law of inheritance had no right to claim a partition of the joint family properties, but by a family arrangement entered into with the consent of all its members, the properties could be divided and separately enjoyed. In such families an arrangement for separate possession and enjoyment without actual disruption of the family was common. An arrangement for separate enjoyment did not effect a disruption of the family, unless it completely extinguished the community of interest in the family properties. The character of the deed dated September 4, 1900, must be judged in this background. The properties were divided into two shares. Each branch was to enjoy its share in perpetuity from generation to generation without any interference from the other branch. There would be separate mutations and separate pattas in respect of the properties allotted to each branch. The assessments were to be paid separately. Each branch would have a separate manager. The share of the common debt allotted to each branch and the interest thereon would be paid separately. All these features coupled with other circumstances may indicate a complete disruption of the family. But there are other features of the deed which indicate that it did not effect an out-right partition. The object of the deed was to prevent disputes and waste of properties and to preserve the dignity of the family. In terms, the deed did not declare that there was a complete disruption of the family. *Gummanna Shetty and others v. Nagaveniamma,* AIR 1967 SC 1595: 1967 (2) Mys LJ 290: 1967(3) SCR 932

Hindu Law.-Joint family property .-Partition.-Division of property by metes and bound not made.-Decree granted for division and separate possession in specified shares. *Bai Nani and others v. Manilal Lallubhai and others,* AIR 1977 SC 970: 1977(2) SCC 536: 1977(2) SCR 920

Hindu Law.-Joint family property .-Partition.-Dwelling house.-Intestate succession to a Hindu, by a sole surviving male heir along with female heirs.-The female heirs' right to seek partition is deferred till the male heir chooses to exercise his right to seek partition. *Narashimaha Murthy v. Smt. Susheelabai and others,* AIR 1996 SC 1826: 1996(3) SCC 644: 1996(3) Scale 625: 1996(4) JT 300: 1996 Civ. CR (SC) 580: 1996(113) Pun. LR 376

Hindu Law.-Joint family property .-Partition.-Effect on ancestral debt.-A son is liable to pay pre-partition debt of his father unless a provision has been made for discharge of debt at the time of partition. *Pannalal and another v. Mt. Naraini and others,* AIR 1952 SC 170: 1952 SCJ 211: 1952 SCR 544

Hindu Law.-Joint family property .-Partition.-Effect on debt.-Pious obligation to discharge the debt.-Legal necessity for the debt.-Purpose of debt.-Partition of the family does not affect a debt incurred out of legal necessity. *Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni and others,* AIR 1978 SC 1791: 1979(1) SCC 98: 1979(1) SCR 955

Hindu Law.-Joint family property.-Partition.-Effect on debt.-The onus to show that partition was fair and *bona fide*, is upon the son.-The son is also required to prove from the nature of arrangement between him and his father that such debt stood discharged from the liability. At the moment the liability was incurred by the father the creditor had a right to proceed against the entirety of the joint family estate including the share of the son since, the debt not being avyavaharika, the son was under a pious obligation to discharge it out of family property. Subsequent thereto a partition takes place by which the share of the son in the property is separated and vested in him, free from the rights and powers of the father. It is the plea of the son that by reason of an arrangements which he has entered into or which has been entered into on his behalf, he has discharged himself from liability to the creditor.-an arrangement to which the creditor is not a party but which under the law is binding on the creditor provided the arrangement fulfils certain conditions. From this it would seem to follow logically that the onus would be upon the son to establish that the nature of the arrangement under the partition was such as made proper and adequate provision for the discharge of the debt, for that is the basis upon which his own discharge from liability depends. *Virdhachalam Pillai v. Chaldean Syrian Bank Ltd., Trichur and another,* AIR

1964 SC 1425: 1964 KerLJ 478: 1964(5) SCR 647

Hindu Law.-Joint family property .-Partition.-Effect on encumbrances.-Partition not possible by mates and bounds.-Partition likely to be made effective by equalisation of shares or owelty.-A member cannot claim to have property allocated free of lien or charge created thereon. While effecting such a partition it would not be possible to divide the properties by metes and bounds there being of necessity an allocation of properties of unequal values amongst the members of the joint family. Properties of a larger value might go to one member and properties of a smaller value to another and therefore there would have to be an adjustment of the values by providing for the payment by the former to the latter by way of equalisation of their shares. This position has been recognized in law and a provision for such payment is termed "a provision for owelty or equality of partition." It therefore follows that when an owelty is awarded to a member on partition for equalization of the shares on an excessive allotment of immovable properties to another member of the joint family, such a provision of owelty ordinarily creates a lien or a charge on the land taken under the partition. A lien or a charge may be created in express terms by the provisions of the partition decree itself. There would thus be the creation of a legal charge in favour of the member to whom such owelty is awarded. If, however, no such charge is created in express terms, even so the lien may exist because it is implied by the very terms of the partition in the absence of an express provision in that behalf. The member to whom excessive allotment of property has been made on such partition cannot claim to acquire properties falling to his share irrespective of or discharged from the obligation to pay owelty to the other members. What he gets for his share is therefore the properties allotted to him subject to the obligation to pay such owelty and there is imported by necessary implication an obligation on his part to pay owelty out of the properties allotted to his share and a corresponding lien in favour of the members to whom such owelty is awarded on the properties which have fallen to his share. Not only is this the normal position on a partition decree where there is an unequal distribution of properties among the members of the joint family but even where an encumbrance has been created on a member's share before the partition is effected, the encumbrancer is postponed to the member to whom such owelty is awarded under the partition decree. A lien or a charge created in favour of a member in regard to such owelty obtains precedent over an encumbrance and there are authorities to show that such lien or charge has priority over an earlier mortgage. The moment there is a provision for such owelty made in a partition decree, the member in whose favour that provision has been made is entitled to a lien or a charge over the property which has fallen to the share of the member to whom property of a higher value has been allotted. If such a lien or a charge is expressly declared, so far as good but even if it is not so expressly declared, there is by necessary implication the creation of a lien or a charge in his favour for the amount of such owelty.*T.S. Swaminatha Odayar v. Official Receiver of West Tanjore*, AIR 1957 SC 577: 1957(2) And WR (SC) 53: 1957(2) Mad LJ (SC) 53: 1957 SCR 775

Hindu Law.-Joint family property.-Partition.-Enforcement of.-Acquisition of joint family property.-Right to receive compensation.-Some members of joint family found to have overdrawn amounts from the funds of joint family.-Compromise between the parties on the partition with stipulation that the amount overdrawn shall been payable within three years.-Acquisition of some of the joint properties.-The members who owed sum to the joint family are not entitled to payment of compensation without adjustment of their debt to the joint family. *Sanat Kumar Auddy and another v. Prodyot Kumar Auddy and others,* AIR 1977 SC 1054: 1977(1) SCC 362

Hindu Law.-Joint family property .-Partition.-Enforcement of compromise decree of partition.-Procedure.-Some of the parties found to be in possession of more properties than their entitlement.-Due adjustment should be given.-If it was not possible to so affect the partition, a Commissioner should be appointed by the Court to divide the property by metes and bounds in accordance with the agreement. *Doddi Atchayyamma v. Doddi Venkata Ramanna and another,*

AIR 1983 SC 583: 1983(2) SCC 509: 1983(1) Scale_417

Hindu Law.-Joint family property.-Partition.-Family settlement.-The claimants not given any share under the arbitration award in terms of family settlement.-Suit for partition and possession after the death of the owner, is not maintainable. *Gian Chand Kapur (dead) by LRs. v. Rabindra Mohan Kapur and others,* AIR 1987 SC 240: 1987(1) SCC 80: 1987(1) SCR 398: 1986(2) Scale 948: 1986 JT 958: 1987 Rajdhani LR 83

Hindu Law.-Joint family property.-Partition.-Impartiable estate.-Inference of partition.-No express or implied intention expressed by the junior members of the joint family to renounce or relinquish their right of succession in respect of joint property.-Partition of joint family property cannot be inferred in the circumstances. To establish that an impartiable estate has ceased to be joint family property for purposes of succession it is necessary to prove an intention, express or implied, on the part of the junior members of the family to give up their chance of succeeding to the estate. In each case, it is incumbent on the plaintiff to adduce satisfactory grounds for holding that the joint ownership of the defendant's branch in the estate was determined so that it became the separate property of the last holder's branch. The test to be applied is whether the facts show a clear intention to renounce or surrender any interest in the impartible estate or a relinquishment of the right of succession and an intention to impress upon the zamindari the character of separate property. The evidence in the present case is trivial and inconclusive and from the documents above mentioned no intention can be deduced on the part of the junior members or on the part of any other member of the family of disrupting and dividing the family and renouncing their expectancy of succession. On the other hand, the statements made in 1889 and 1890 by the members of the family clearly indicate that none of them had the family clearly indicate that none of them had any intention of giving up his rights of heirship to the zamindari. *Chinnathayi v. Kulasekara Pandiya Naicker and others,* AIR 1952 SC 29: 1052 SCJ 1: 1952 SCR 241

Hindu Law.-Joint family property .-Partition.-Impartiable Estate.-Separation of food and residence not sufficient to prove the partition of an impartiable estate. *Annasaheb Bapusaheb Patil and others v. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc.,* AIR 1995 SC 895: 1995(2) SCC 543: 1995(1) Scale 100: 1995(1) JT 370: 1995 Civ CR (SC)_380

Hindu Law.-Joint family property .-Partition.-Ingredients of.-Necessity of definite and unequivocal indication of intention to separate. Partition in one sense is a severance of joint status and coparcener of a coparcenery is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenery with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of share of such member. It goes to his heirs displacing survivorship. Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both a division of right and division of property. A disruption of joint family status by a definite and unequivocal indication to separate implies separation in interest and in right, although not immediately followed by a *de facto* actual division of the subject-matter. This may at any time, be claimed by virtue of the separate right. *Kalyani (dead) by LRs. v. Narayanan and others,* AIR 1980 SC 1173: 1980 Supp. SCC 298: 1980(2) SCR 1130

Hindu Law.-Joint family property .-Partition.-Intention to separate.-Determination of.-Such intention need not be in writing.-Evidence proving the intention to separate from the joint family status is admissible. *Smt. Krishnabai Ganpatrao Deshmukh v. Appasaheb Tuljaramrao Nimbalkar and others,* AIR 1979 SC 1880: 1979(4) SCC 60

Hindu Law.-Joint family property .-Partition.-Intention of severance.-Determination of.-

Declaration of intention to separate.-Necessity of. A member of a joint Hindu family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severally. It is not necessary that there should be an agreement between all the coparceners for the disruption of the joint status. It is immaterial in such a case whether the other coparceners give their assent to the separation or not. It is, however, necessary that the member of the joint Hindu family seeking to separate himself must make known his intention to other members of the family from whom he seeks to separate. The process if communication may, however, vary in the circumstances of each particular case. It is not necessary that there should be a formal dispatch to or receipt by other members of the family of the communication announcing the intention to divide on the part of one member of the joint family. The proof of such a despatch or receipt of the communication is not essential, nor its absence fatal to the severance of the status. It is, of course, necessary that the declaration to be effective should reach the person or persons affected by some process appropriate to the given situation and circumstances of the particular case. *Puttrangamma and others v. M.S. Ranganna and others,* AIR 1968 SC 1018: 1968 (2) SCJ 668: 1968(3) SCR 119

Hindu Law.-Joint family property .-Partition.-It does not constitute the transfer of property. *V.N. Sarin v. Ajit Kumar Poplai and another,* AIR 1966 SC 432: 1966(68 Pun LR 164(D): 1966(1) SCR 349

Hindu Law.-Joint family property .-Partition.-Liability to discharge debt.-The responsibility to discharge debt specifically fixed on a coparcener as per Deed of settlement.-Legal heir of such coparcener are liable for such debt. We find that by the aforesaid arrangement both Subramanyam Chettiar and the defendant-appellant were absolved of the responsibility to discharge the family debts and liability was cast on Kota Venkatachala Pathy alone to discharge the same irrespective of the fact whether the properties mentioned in Schedule D-1 to Exhibit A-1 ultimately turned out to be sufficient or insufficient to meet the burden. *K.V. Narayanan v. K.V. Ranganadhan and others,* AIR 1976 SC 1715: 1977(1) SCC 244: 1976(3) SCR 637

Hindu Law.-Joint family property .-Partition.-Liability of manager of joint family.-In the absence of fraud or other improper conduct, a karta is liable to account for the existing state of property.-In a suit for partition, the court may however inquire into the fact as to which property consisted of the joint family property, on the date of partition. *K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and others,* AIR 1965 SC 289: 1965(1) AndhWR 78: 1965(1) Mad LJ (SC) 78: 1964(7) SCR 490

Hindu Law.-Joint family property .-Partition.-Metes and bounds.-Necessity of.-Separate living and separate mess.-Division of agricultural produce in equal shares between the brothers.-The finding of separation of brothers, affirmed. *Gur Narain Das and another v. Gur Tahal Das and others,* AIR 1952 SC 225: 1952 SCJ 305: 1952 SCR 869

Hindu Law.-Joint family property .-Partition.-Necessity of registration.-Oral partition of joint family is permissible.-In the absence of a partition by mates and bound, registration of document evidencing such partition is not necessary. Partition in the *Mitakshara* sense may be only a severance of the joint status of the members of the coparcenary, that is to say, what was once a joint title has become a divided title though there has been no division of any properties by metes and bounds. Partition may also mean what ordinarily is understood by partition amongst co-sharers who may not be members of a Hindu coparcenary. For partition in the former sense, it is not necessary that all the members of the joint family should agree, because it is a matter of individual volition. If a coparcener expresses his individual intention in unequivocal language to separate himself from the rest of the family, that effects a partition, so far as he is concerned, from the rest of the family. By this process, what was a joint tenancy has been converted into a tenancy in common. For partition in the latter sense of allotting specific properties or parcels to individual coparceners, agreement amongst all the coparceners is absolutely necessary. Such a partition may be effected

orally, but if the parties reduce the transaction to a formal document which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition, and is, thus, within the mischief of Section 17(1)(b). But partition in the former sense of defining the shares only without specific allotments of property, has no reference to immovable property. Such a transaction only affects the status of the member or the members who have separated themselves from the rest of the coparcenary. The change of status from a joint member of a coparcenary to a separated member having a defined share in the ancestral property, may be effected orally or it may be brought about by a document. If the document does not evidence any partition by metes and bounds, that is to say, the partition in the latter sense, it does not come within the purview of Section 17(1)(b), because so long as there has been no partition in that sense, the interest of the separated member continues to extend over the whole joint property as before. *Nani Bai v. Gita Bai Kom Rama Gunge,* AIR 1958 SC 706: 1959 SCR 479: 1958 SCJ 925

Hindu Law.-Joint family property .-Partition.-Oral evidence.-consideration of.-Person making statement some time happened to serve their own purpose.-It is not their statement but their relation with the Estate which should be taken into consideration. *Mst. Rukhmabai v. Lala Laxminarayan and others,* AIR 1960 SC 335: 1960 SCJ 433: 1960 2 SCR 253

Hindu Law.-Joint family property .-Partition.-Pre-emption.-Right of pre-emption conferred by deed appeared to have been drafted by a professional.-The right of pre-emption conferred in case of sale of property to stranger.-Bequeath of property to adopted child does not constitute transfer of property.-Right of pre-emption is not available against such transfer. *Smt. Vijayalakshmi v. B. Himantharaja Chetty and another,* AIR 1996 SC 2146: 1996(9) SCC 376: 1996(4) Scale 300: 1996(4) JT 747: 1996(2) Hindu LR 219

Hindu Law.-Joint family property .-Partition.-Preliminary decree.-Effect of.-The status of HUF cannot be terminated unless it is shown that joint family property was physically divided in accordance with the agreement or decree of the Court. *Income Tax Officer v. Smt. N.K. Sarada Thampatty,* AIR 1991 SC 2035: 1991 Supp (2) SCC 737: 1990 Supp (1) SCR 473: 1990 (2) Scale 701: 1990 (4) JT 358

Hindu Law.-Joint family property .-Partition.-Principle of.-Partition not found to be detrimental to the interest of minors.-Valuation of property either on the basis of purchase price or on the basis of rent fetched by it.-Division of immovable properties in just fair and equal manner.-Validity of partition, upheld. *Ratnam Chettiar and others v. S.M. Kuppuswami Chettiar and others,* AIR 1976 SC 1: 1976(1) SCC 214: 1976(1) SCR 863: 1976 Hindu LR 175

Hindu Law.-Joint family property .-Partition.-Proof of.-Necessity of unequivocal expression of intention to sever from the family. An agreement between all the coparceners is not essential to the disruption of the joint family status, but a definite and unambiguous indication of intention by one member to separate himself from the family and to enjoy his share in severally will amount in law to a division of status, it is immaterial in such a case whether the other members assent or not. Once the decision is unequivocally expressed, and clearly intimated to his co-sharers, the right of the coparcener to obtain and possess the share to which he admittedly is entitled, is unimpeachable. But in order to operate as a severance of joint status, it is necessary that the expression of intention by the member separating himself from the joint family must be definite and unequivocal. If however the expression of intention is a mere pretence or a sham, there is in the eye of law no separation of the joint family status. *Mudigowda Gowdappa Sankh and others v. Ramchandra Revgowda Sankh and another,* AIR 1969 SC 1076: 1969 (2) SCJ 668: 1969(3) SCR 245: 1969(1) SCC 386

Hindu Law.-Joint family property .-Partition.-Proof of.-The presumption is in favour of joint status.-The presumption can be rebutted by leading the evidence about disruption of joint status. *Shankarrao Dajisaheb Shinde)since deceased) by heirs v. Vithalrao Ganpatrao Shinde and others,* AIR 1989 SC 879: 1989 Supp. (2) SCC 162: 1989(1) Scale 477: 1989(1) JT 375: 1989(1) Hindu LR 345

Hindu Law.-Joint family property .-Partition.-Proof of.-Presumption is in favour of Joint Hindu Family.-Mutation of property in favour of widow of one of the brothers while other brothers were minor is not sufficient to infer that the family was not joint. There is a strong presumption in favour of Hindu brothers constituting a joint family. It is for the person alleging severance of the joint Hindu family to establish it. It is to be noticed in the present case that the defendants did not state in the written statement as to when disruption took place in the joint family. The plaintiffs, who were minors, may not have attended the Public Assembly. They being minors could not have understood the significance of any general notice, if any, issued in that connection and the gathering of people. It is not for the Revenue Authorities to make any regular enquiry about the revolution of title. They make entries for revenue purposes about the person who is considered *prima facie* successor of the deceased. A widow would be considered an ostensible successor to her husband unless it be known that her husband was a member of a joint Hindu family and the property over which mutation was to be made was joint family property. *Bharat Singh and others v. Mst. Bhagirathi,* AIR 1966 SC 405: 1966(1) SCWR 222: 1966(1) SCR 606

Hindu Law.-Joint family property .-Partition.-Re-union.-Conditions for.-Communication of intention to separate resulting in division of status.-Mere withdrawal or revocation of declaration of intention to separate, does not automatically lead to inference of re-union.-Re-union is a question of fact to be proved by evidence. It is, of course, possible for the members of the family by a subsequent agreement to reunite but the mere withdrawal of the unilateral declaration of the intention to separate which already had resulted in the division in status cannot amount to an agreement to reunite. It should also be stated that the question whether there was a subsequent agreement between the members to reunite is a question of fact to be proved as such. *Puttrangamma and others v. M.S. Ranganna and others,* AIR 1968 SC 1018: 1968 (2) SCJ 668: 1968(3) SCR 119

Hindu Law.-Joint family property.-Partition.-Re-union.-Inference of.-Coparceners living together after the partition and dealing with their property like members of Joint Hindu Family.-No case of re-union set up by the parties.-Presumption of Joint Hindu Family has no application. If, as the plaintiff avers, there was a disruption of the joint status in regard to all the three-brothers, it would really be immaterial if, subsequent to separation, Ram Narain and Ram Saran lived together in commensality or dealt with their properties in such manner as is ordinarily done by members of a joint Hindu family. Except in the case of reunion, which is not set up in the present case, the mere fact that separated coparceners choose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law. As no case of re-union has been attempted to be made on behalf of the defendants, the facts that Ram Narain and Ram Saran lived in commensality, carried on business together and acquired properties in their joint names, or that their names were recorded as joint holders of properties in the settlement records might at best create a tenancy in common between them, but not a joint tenancy under the Mitakshara law which would attract the law of survivorship. *Bhagwati Prasad Sah and others v. Dulhin Rameshwari Kuer and another,* AIR 1952 SC 72: 1952 SCJ 115: 1951 SCR 603

Hindu Law.-Joint family property.-Partition.-Relinquishment of share.-Relinquishment Deed found to be fictitious.-The relinquishment of share in property cannot be inferred.-The suit for partition rightly allowed. *Sri Chand and another v. Om Prakash and others,* AIR 1977 SC 1823: 1977(1) SCC 491

Hindu Law.-Joint family property.-Partition.-Right of minor.-Effect of death of minor on the suit filed on his behalf seeking partition of the joint family.-The interest of the minor devolves on the legal representatives and the suit does not abate upon his death. Action by a minor for a decree for partition and separate possession of his share in the family property is not founded on a cause of action personal to him. The right claimed is in property, and devolves on his death even

during minority upon his legal representative. The Court, it is true, will direct partition only if partition is in the interest of the minor but that limitation arises not because of any peculiarity in the estate of the minor but is imposed for the protection of his interest. The effect of the decision of the Court granting a decree for partition in a suit instituted by a minor is not to create a new right which the minor did not possess, but merely to recognise the right which accrued to him when the action was commenced. It is the institution of the suit, subject to the decision of the Court, and not the decree of the Court that brings about the severance. A suit filed on behalf of a Hindu minor for partition of joint family properties does not on the death of the minor during the pendency of the suit abate, and may be continued by his legal representative and decree obtained therein if the Court holds that the institution of the suit was for the benefit of the minor. It is true that normally the family estate is better managed in union than in division, nevertheless the interest of the minor is the prime consideration in adjudging whether the estate should be divided at the instance of a minor suitor. If the conduct of the adult coparceners, or the claim made by them is prejudicial to the interest of the minor, the Court will readily presume that it is for his benefit to divide the estate. *Lakkireddi Chinna Venkata Reddi and others v. Lakkireddi Lakshmama,* AIR 1963 SC 1601: 1964(2) SCR 172

Hindu Law.-Joint family property .-Partition.-Severance of status of joint family has no effect on the property which remain joint until partitioned. The character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. By an unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property. *Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe and others,* AIR 1986 SC 79: 1986(1) SCC 366: 1985 Supp. (3) SCR 1690: 1985(2) Scale 819: 1986(88) Bom LR_24

Hindu Law.-Joint family property .-Partition.-Transfer of property by all members of family in favour of Company from which all the members were allotted equal shares.-The transaction of transfer done individually by all the branches individually proves prior division of status.-Even otherwise the transaction being for the benefit of family held to be not open to challenge by any other coparcener. The facts disclose that the transactions were entered into not only by all the eight sons but also by all the adult coparcener of the eight branches. It cannot be denied that the transactions were the result of joint deliberations and unanimous decision of all the adult members. The evidence of the solicitor who prepared the documents is that it was for necessity and with the object of preserving the property, the entire properties of the family were transferred to the company consisting of eight sons and their families alone. Eight branches secured equal number of shares in the transferee company. We hold that the family of Ramniranjandas Murarka became divided in status before 1932 and that in any event a division in status was effected from that date of the document Ex. L etc. in 1932, and that even if there was a joint family in existence as the transactions were for the benefit of the family, the other coparcener cannot challenge its validity. *Murarka Properties (P) Ltd. and another v. Begarilal Murarka and others,* AIR 1978 SC 300: 1978(1) SCC 109: 1978(2) SCR 261: 1978 Hindu LR 88

Hindu Law.-Joint family property .-Partition.-Union of separate property with the joint property.-Considerations for. Law relating to blending of separate property with joint family property is well-settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein: but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accoutns, abandonment cannot be

inferred, for an act of generosity of kindness will not ordinarily be regarded as an admission of a legal obligation. *Lakkireddi Chinna Venkata Reddi and others v. Lakkireddi Lakshmama,* AIR 1963 SC 1601: 1964(2) SCR 172

Hindu Law.-Joint family property .-Partition.-Will.-Reliance in suit for partition.-Truth and validity of Will must be established in appropriate proceedings and not in suit for partition.-Modification of respective shares, in suit for partition, on the basis of Will, set aside. *Baliram Atmaram Kelapure v. Smt. Indirabai and others,* AIR 1996 SC 2024: 1996(8) SCC 400: 1996(3) Scale 784: 1996(5) JT 18

Hindu Law.-Joint family property.-Partnership business.-Rights of members.-The business carried on with strangers through the Karta of the family.-The members of the family are not entitled to take part in the management though they may be liable to the creditor of the firm. It is well settled that when the karta of a joint Hindu family enters into a partnership with strangers, the members of the family do not *ipso fact* becomes partners in that firm. They have no right to take part in its management or to sue for its dissolution. The creditor of the firm would no doubt be entitled to proceed against the join to family assets including the shares f the non-partner coparcencers for realisation of their debts. But that is because under the Hindu Law, the karta has the right when properly carrying on business to pledge the credit of the joint family to the extent of its assets, and not because the junior members become partners in the business. If members of a coparcenary are to be regarded as having become partner in a firm with strangers, they would also become under the partnership law partners *inter se*, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners. *Firm Bhagat Ram Mohanlal v. Commissioner of Excess Profits Tax Nagpur and another,* AIR 1956 SC 374: 1956(1) Mad LJ 160: 1956 SCR 143

Hindu Law.-Joint family property.-Partnership business.-The managers of joint family entering into partnership business.-The other members of the family do not automatically become partner in the business. A joint Hindu family as such cannot be a partner in a firm, but it may, through its karta enter into a valid partnership with a stranger or with the karta of another family. When two kartas of different families constituted a partnership the other members of the families did not become partners, though the kartas might be accountable to them. *Commissioner of Income-tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur v. Seth Govindram Sugar Mills,* AIR 1966 SC 24: 1965 MPLJ 913: 1965(3) SCR 488

Hindu Law.-Joint family property.-Pleading of.-Properties claimed as joint properties in the pleadings is sufficient to enable the court to look into the evidence of blending of individual property with the joint family property. *Binod Bihari Lal and others v. Rameshwar Prasad Sinha and others,* AIR 1978 SC 1201: 1978(1) SCC 632: 1978 BLJR 572

Hindu Law.-Joint family property.-Presumption of.-Acquisition of property by a member of joint family.-The joint family having sufficient nucleus to acquire the property.-The property in the name of any member should be presumed to have been acquired from the funds of joint family. *K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and others,* AIR 1965 SC 289: 1965(1) AndhWR 78: 1965(1) MadLJ (SC) 78: 1964(7) SCR 490

Hindu Law.-Joint family property.-Reversion.-Right of distant reversioners.-Alienation of property by distant reversioner.-Right of distant reversioner get revived on the death of immediate reversioner.-Suit for possession of alienated property by the distant reversioners is maintainable. *Bakshi Ram and others v. Brij Lal,* AIR 1995 SC 395: 1994 Supp (3) SCC 198: 1994(3) Scale 352: 1994(5) JT 422: 1994(2) DMC 345

Hindu Law.-Joint family property.-Right of individual member.-Existence of joint family not disputed.-The property held by the family assumed the character of a co-parcenary property and every member of the family entitled by birth to share in property. Once the existence of joint family was not in dispute, necessarily the property held by the family assumed the character of

a coparcenary property and every member of the family would be entitled by birth to a share in the coparcenary property unless any one of the coparceners pleads, by separate pleadings, and proves that some of the properties or all the properties are his self-acquired properties and could not be blended in the coparcenary property.Even the self-acquired property can also be blended into the joint family hotchpotch enveloping the character of coparcenary property. *Sher Singh and others v. Gamdoor Singh,* AIR 1997 SC 1333: 1997(2) SCC 485: 1997(1) Scale 214: 1997(1) JT 396: 1997(2) Raj. LW_208

Hindu Law.-Joint family property.-Sale by Karta.-Validity of.-Legal necessity.-Matter disposed off without going into the question of validity of sale and its legal necessity.-The matter remanded to High Court for fresh disposal in accordance with law. *Narayana Prabhu and another v. Janardhana Mallan and others,* AIR 1996 SC 3276: 1996(8) SCC 661: 1996(4) Scale 437: 1996(5) JT 617: 1997 Marr. LJ 117

Hindu Law.-Joint family property.-Sale in execution of decree.-Right to challenge the sale.-The persons who were not born on the date of sale are also entitled to challenge it. *N.A. Krishnaiah Setty v. Gopalakrishna and others,* AIR 1974 SC 1911: 1979 (2) SCC 624: 1975(1) SCR 970

Hindu Law.-Joint family property.-Self acquired property.-Merger with joint property.-Permissibility. Property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into joint stock with the intention of abandoning all separate claims upon it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred merely from acts which may have been done from kindness or affection. *G. Narayana Raju v. G. Chamaraju and others,* AIR 1968 SC 1276: 1968 (2) SCJ 749: 1968(3) SCR 464

Hindu Law.-Joint family property.-Separate property of a member.-Permissibility.-An undivided member of joint family can carry on his separate business. *Prakash Chand Sharma and others v. Narendra Nath Sharma,* AIR 1976 SC 2456: 1976(3) SCC 215

Hindu Law.-Joint family property.-Share of minor.-Permission of Court.-Necessity of.-The Joint Hindu Family is itself a legal entity acting through its Karta.-Provision of Section 8 has no application. *Sri Narayan Bal and others v. Sridhar Sutar and others,* AIR 1996 SC 2371: 1996(8) SCC 54: 1996(1) Scale 570: 1996(1) JT 711: 1996 Mat. LR 119

Hindu Law.-Joint family property.-Succession.-Construction of Will.-Bequeath in favour of two foster children for their life and thereafter to their children absolutely.-The children of foster children would succeed to the property per stripes and not per capita. It is hardly likely that the testatrix would know the difference between joint tenants and tenants in common and she would naturally be eager to treat the foster children as her own children so that the heirs of the foster children would take share and share alike the properties being divided per stripes among them. We do not think that from this one can spell, out a joint tenancy which is unknown to Hindu law except as above stated. The testatrix did not expressly mention that on the death of one all the properties would pass to the other by right of survivorship. We have no doubt on a construction of the will that the testatix never intended the foster children to take the property as joint tenants. The foster children who became tenatns in common partitioned the property in exercise of their right. *Boddu Venkatakrishna Rao and others v. Smt. Boddu Satyavathi and others,* AIR 1968 SC 751: 1968 (2) Andh WR (SC) 61: 1968 (2) Mad LJ (SC) 61: 1968(2) SCR 395

Hindu Law.-Joint family.-Distinction with coparcenary. A Hindu undivided family is a taxable unit for the purposes of income-tax and super-tax. The expression `Hindu undivided family' finds reference in these and other provisions of the Act but that expression is not defined in the Act. The reason of the omission evidently is that the expression has a well-known connotation under the Hindu law and being aware of it, the legislature did not want to define the expression separately in the Act. Therefore, the expression `Hindu undivided family' must be construed in the sense in which

it is understood under the Hindu Law. A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property and these are the sons, grandsons and great- grandsons of the holder of the joint property for the time being, that is to say, the three generations next to the holder in unbroken male descent. Since under the Mitakshara Law, the right to joint family property by birth is vested in the male issue only, females who come in only as heirs to obstructed heritage (sapratibandha day), cannot be coparceners. But we are concerned under the Income-tax Act with the question whether the appellant's wife and unmarried daughter can with him be members of a Hindu undivided family and not of a coparcenary. *Surjit Lal Chhabda v. Commissioner of Income-tax, Bombay,* AIR 1976 SC 109: 1976(3) SCC 142: 1976(2) SCR 164: 1976 Hindu LR 144

Hindu Law.-Joint family.-Distinction with coparcenery. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenery is a much narrower body than the Hindu joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenery property, these being the sons, grandsons and great- grandsons of the holders of the joint property for the time being. *N.V. Narendranath v. Commissioner of Wealth Tax, Andhra Pradesh,* AIR 1970 SC 14: 1969 (2) Andh WR (SC) 99: 1969 (2) MLJ (SC) 99: 1969(3) SCR 882: 1969(1) SCC 748

Hindu Law.-Joint family.-Individual income.-Remuneration of the Karta of the family from the company flouted out of joint family funds, the income of the Karta should be assessed in the hands of the family and not as individual income. *Commissioner of Income-tax, West Bengal v. Kalu Baby Lal Chand,* AIR 1959 SC 1289: 1960 SCJ 311: 1960 (1) SCR 320

Hindu Law.-Joint family.-Marumakkattayam Law.-Effect of. The principal incident of Marumakkattayam law is that it is matriarchate: members of the family constituting a Marumakkattayam tarwad are descended through a common ancestress in the female line with equal rights in the property of the family. Under the customary Marumakkattayam law no partition of the family estate may be made, but items of the family property may by agreement be separately enjoyed by the Members. On death the interest of a member devolved by survivorship. Management of the family property remained in the hands of the eldest male member, and in the absence of a male member a female member. A tarwad may consist of two or more branches known as thavazhies; each tavazhi or branch consisting of one of the female members of the tarwad and her children and all her descendants in the female line. Every tarwad consisted of a mother and her children.-male and female.-living in commensality, with joint rights in property. *V. Venugopala Ravi Varma Rajah v. Union of India and another,* AIR 1969 SC 1094: 1969 (2) SCJ 721: 1969(3) SCR 827: 1969(1) SCC 681

Hindu Law.-Joint family.-Mitakshara Law.-Effect of. The Mitakshara law of joint family is founded upon agnatic relationship: the undivided family is characterised by community of interest and unity of possession among persons descended from a common ancestor in the male line. *V. Venugopala Ravi Varma Rajah v. Union of India and another,* AIR 1969 SC 1094: 1969 (2) SCJ 721: 1969(3) SCR 827: 1969(1) SCC 681

Hindu Law.-Joint family.-Number of persons.-Necessity of.-Reduction in number of members to a single person.-Effect on coparcenery. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as `joint property' of the undivided family. The property which was the joint family property of the Hindu undivided family did not cease to be so because of the "temporary reduction of the coparcenary unit to a single individual." *Smt. Sitabai and another v. Ramchandra,* AIR 1970 SC 343: 1969 Jab LJ 1028: 1969 Mah LJ 926: 1970(2) SCR 1: 1969(2) SCC 544

Hindu Law.-Joint family.-Power of Manager.-Acknowledgement of debt by the Karta, after partition of the family.-The partition ends the status of the Manager.-Acknowledgement made after partition, does not bind the members of family and therefore cannot extend the period of

limitation. At the time when the acknowledgement is made and signed, the person making and signing it, must be the manager of a subsisting joint Hindu family. It at the relevant time the joint Hindu family as such was no longer in existence because of division or disruption of its joint status, any acknowledgement made by the erstwhile karta of such family cannot keep the debt alive and extend limitation as against all the members of the family, his representative capacity as karta being conterminous with the joint status of the family. It is therefore the duty of the creditor to ascertain after due enquiry whether the person making the acknowledgement still holds his representative capacity as karta of the family. The law does not cast any duty upon the members of the family who do not figure in the endorsement or writing admitting the debt to inform the creditor by a general notice about the disruption of the family. If the creditor fails to make an enquiry and satisfy himself about the capacity of the executant to represent the family at the time of making the acknowledgement, he does so at his own peril. Disruption of the joint family status as already noticed, puts an end to the representative capacity of the karta and any acknowledgement of a debt made by him after such disruption cannot save the creditors' claim from becoming time-barred against the other members. *Nanchand Gangaram Shetji v. Mallappa Mahalingappa Sadalge and others,* AIR 1976 SC 835: 1976(2) SCC 429: 1976(3) SCR 287

Hindu Law.-Joint family.-Presumption.-Joint Family business existing in the name of a member of family is under the general presumption that the business is the property of joint family. 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. It is no doubt true that with reference to a trade newly started there is this difference between the position of a father and a manager that while the debts contracted therefor by the former would be binding on the sons on the theory of pious obligation, those incurred by a manager would not be binding on the members, unless at least there was necessity for the starting of the trade. *Chattanatha Karayalar v. Ramachandra Iyer and another,* AIR 1955 SC 799: 1956 Ker LJ 371: 58 Pun LR 314: 1956 SCJ 1: 1995(2) SCR 477

Hindu Law.-Joint family.-Presumption of.-A Hindu family is presumed to be joint unless proved to the contrary.-The burden of proving the status of the family is on the person claiming the relief on the basis of such status.-It is a question to be determined in each case. The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but, as it is admitted here, that Imrit, one of the coparceners, did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparcerners continued to be joint. There is no presumption on the plaintiff's side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other co-parcerners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief. *Bhagwati Prasad Sah and others v. Dulhin Rameshwari Kuer and another,* AIR 1952 SC 72: 1952 SCJ 115: 1951 SCR_603

Hindu Law.-Joint family.-Presumption of.-Disagreement between father and son.-Effect of.-Threat to separate does not amount to separation. The law presumes that the members of a Hindu family are joint. That presumption will be stronger in the case of a father and his sons. It is for the party who pleads that a member of a family has separated himself from the family to prove it satisfactorily. There is not an iota of evidence in this case to show that the plaintiff had at any time made any unequivocal declaration that he had separated himself from his family much less there is any evidence that he communicated his intention to separate himself from the family either to the karta or to any of the members of the family. There is no doubt that there was great deal of

disagreement between Dr. Pandit and the plaintiff. It is also true that as far back as 1936 Dr. Pandit had threatended to dis-inherit the plaintiff but these facts by themselves do not prove the factum of separation. The fact that the plaintiff was now and then expressing that he was not interested in his father's estate do not amount to a declaration of his intention to separate from the family. *Indranarayan v. Roop Narayan and another,* AIR 1971 SC 1962: 1971 Jab LJ 715: 1971 (2) SCC 438: 1971 Supp. SCR 796

Hindu Law.-Joint family.-Presumption of.-Scope of.-There may be presumption of joint Hindu family but there is no presumption that joint family possesses joint family property. *Kuppala Obul Reddy v. Bonala Venkata Narayana Reddy (dead) through LRs.,* AIR 1984 SC 1171: 1984(3) SCC 447: 1984(1) Scale 848: 1984(2) Land LR 255

Hindu Law.-Joint family.-Presumption of.-Scope of.-This principle is not applied to acquisition of property in the name of junior member of a Tarwad governed under the Marumakkathayam Law. Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law. But the said principle has not been accepted or applied to acquisition of properties in the name of a junior member of a tarwad (anandravan). If a property is acquired in the name of the karnavan, there is a strong presumption that it is a tarwad property and that the presumption must hold good unless and until it is rebutted by acceptable evidence. *Achuthan Nair, v. Chinnammu Amma and others,* AIR 1966 SC 411: 1966(1) Audh WR (SC) 85: 1966(1) Mad LJ (SC) 85: 1966(1) SCR 454

Hindu Law.-Joint family.-Presumption of.-Undivided tharward.-Burden of proof is on the person asserting to the contrary. A Hindu family is presumed to be joint unless the contrary is established. There is no evidence on record to rebut that presumption. We agree with the learned Judge of the High Court that there was no basis for the first appellate Court for doubting the fact that the original first plaintiff was the Karnavan of the Tharwad at the relevant time. *The State Bank of Travancore v. Arvindan Kunju Panicker and others,* AIR 1971 SC 996: 1972 (4) SCC 274

Hindu Law.-Joint family.-Right of Hindu woman.-Prior to the enactment of local law of Mysore, *viz.* Women's Rights Act, 1933, no female in Mysore had a right to share in joint Hindu family property.-Their right was confined to maintenance, residence and marriage expenses. *Nagendra Prasad and another v. Kempananjamma,* AIR 1968 SC 209: 1968 (1) SCR 124

Hindu Law.-Joint family.-Rights of members other than Karta.-Partnership between a member and Karta is permissible to contribute the skill and labour in consideration of a share in the profits of the firm. The mental and physical capacity generated by skill and labour of an individual and indeed the skill and labour by themselves would be the properties of the individual possessing them. They are certainly assets of that individual and there seems to be no reason why they cannot be contributed as a consideration for earning profit in the business of a partnership firm. They certainly are not the properties of the HUF but are the separate properties of the individual concerned. We no longer live in an age when every member of a HUF considered it his duty to place his personal skill and labour at the services of the family with no *quid pro quo* except the right to share ultimately, on a partition, in its general prosperity. Today, where an undivided member of a family qualifies in technical fields.-may be at the expense of the family.-he is free to employ his technical expertise elsewhere and the earnings will be his absolute property; he will, therefore, not agree to utilise them in the family business, unless the latter is agreeable to remunerate him therefor immediately in the form of a salary or share of profits. Suppose a family is running a business in the manufacture of cloth and one of its members becomes a textile expert, there is nothing wrong in the family remunerating him by a share of profits for his expert services over and above his general share

in the family properties. *Chandrakant Manilal Shah and another v. Commissioner of Income-tax, Bombay,* AIR 1992 SC 66: 1991 Supp (1) SCr 546: 1992(1) SCC 76: 1991(2) Scale 827: 1991(4) JT 171

Hindu Law.-Joint family.-Status and effect of.-Coparcenary under Mithakhra Law is creature of law and it cannot be treated as individual.-It is a body of individuals though not incorporated. *State Bank of India v. Ghamandi Ram,* AIR 1969 SC 1330: 1969(3) SCR 681: 1969(2) SCC 33

Hindu Law.-Joint family.-Succession.-Death of Karta.-Succession to the share of Karta by other members of family according to Hindu Succession Act.-The members continuing to live together enjoying the property as before.-In the absence of any separation the family continues to remain joint even though the individual interest of some members had become fixed. *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and others,* AIR 1985 SC 716: 1985(2) SCC 321: 1985(3) SCR 358: 1985(1) Scale 601: 1985(87) Bom LR 191

Hindu Law.-Joint family.-Two Managers.-Permissibility.-Scope of the Authority of such Managers. Two persons may look after the affairs of a joint Hindu family on the basis of the members of the joint Hindu family clothing them with authority to represent the family. They would be two persons entitled to represent the family and their power to represent would depend on the terms of the authority conferred on them by the members of the joint Hindu family. Their authority to act for the family is not derived under any principle of Hindu Law, but is based on the members of the Joint Hindu family conferring certain authority on them. It cannot, therefore, be said that when two such representatives of a joint Hindu family sue and obtain a decree in their favour for the benefit of the joint Hindu family, and an appeal is filed against both of them as respondents representing the joint Hindu family, the other representative would continue to represent the joint family on the death of one of the representatives, he could not possibly do so when the authority given by the joint Hindu family be to the effect that both of them were to act jointly. In the absence of any knowledge about the terms of authority of the two representatives, it is not possible to urge successfully that on the death of one of the representatives, the other representative still continued to represent the joint Hindu family. On the death of one of the representatives, the *karta* of the family, in accordance with the principles of Hindu Law, will automatically be the person entitled to represent the joint Hindu family till such time that the family again decides to confer the authority on specified members of the joint Hindu family to represent it. There is no material on the record to indicate the terms and scope of the authority conferred on the two plaintiff by the joint Hindu family. *Union of India v. Shree Ram Bohra and others,* AIR 1965 SC 1531: 1965 BLJR 589: 1965(2) SCR 830

Hindu Law.-Joint family.-Unmarried male Hindu cannot seek to be treated as Hindu Undivided Family."Family" always signifies a group, Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual, a lonely wayfarer till perchance he or she finds a mate. A family consisting of a single individual is a contradiction in terms. *C. Krishna Prasad v. C.I.T. Bangalore,* AIR 1975 SC 498: 1975(1) All LR 17: 1975(1) SCC 160: 1975(2) SCR 709

Hindu Law.-Joint family.-Right of Hindu woman.-Right to claim maintenance against property of joint Hindu family.-Cannot be equated with holding land.

The word 'held' used in the definition of stridhan land is used in the sense that the female must be in possession of the land as owner or with some element of title on the date of commencement of the Act. A right to claim maintenance against property of joint Hindu family cannot be equated with holding the land. A wife or a mother in a Hindu joint family does not basically have share in the joint family property and she has only a right to maintenance and the mere existence of such a right against the joint family property as on 15-2-1970 could not, in law, be treated as being equivalent to 'holding' a share in the joint family property, as on that date. Further fact that this right to maintenance against property later got crystallised into allotment of property in her favour on 24-9-1970 would not be sufficient. *A.G. Varadarajulu and another vs. State of Tamil Nadu and others,* AIR

1998 SC 1388 : 1998(2) Mad LW 47 : 1998(2) Rec Civ R 268 : 1998(4) SCC 231

Hindu Law.-Joint Family.-Status of widow.-Hindu females forming joint family by agreement amongst themselves contrary to basic tenets of Hindu personal law.-It bars constitution of Hindu Undivided Family in respect of properties inherited by heirs.-Assessee widow and two daughters inherited self-acquired properties of deceased in equal shares.-Widow acquires status of individual.-One-third property inherited by widow was assessable to Income Tax.

Commissioner of Income Tax, Ranchi vs. Sandhya Rani Dutta, AIR 2001 SC 1155 : 2001(3) SCC 420 : 2001(3) JT 163

Hindu Law.-Joint family property.-Proof of.-Without there being any documentary evidence, oral assertions are not sufficient to prove the property as joint family property.

There is no material to show that the property was joint or the family possessed joint funds. There was no nucleus to augment or add by way of accretion to the same. There is no material to show that the appellant had contributed any sums of money in the purchase of the house or any contribution thereof. Evidence on record out weight the proof sought to be placed by the appellant in this regard. Firstly, the title deed stood in the name of respondent alone. Respondent placed material before the Court that he had purchased the building material at different stages to raise the construction. He was in possession of the house exclusively right from the date of the construction. The appellant if he had given any money to the respondent could have placed some evidence on record in support of the same. There is nothing forthcoming either in the shape of a documentary evidence or oral evidence except his own self-serving statements which are self-contradictory. *Dr. Gurmukh Ram Madan vs. Bhagwan Das Madan*, AIR 1998 SC 2776 : 1998(94) Com Cas 74 : 1998(6) SCC 288 : 1998(4) Scale 328 : 1998(4) All Mah LR 389

Hindu Law.-Joint family property.-Sale of.-Agreement to sell property signed by Karta for and on behalf of Hindu Undivided Family.-Concurrent finding that sale was for benefit of joint family.-No interference called for.

The finding recorded by the trial Court in this regard is that Suresh Kumar was Karta of the Hindu Undivided Family comprising Defendants Nos. 1 to 4. The execution of sale deed by Suresh Kumar was not only as a Power of Attorney holder but also as Karta of the Hindu Undivided Family. In the circumstances, we hardly find any significance of the Power of Attorney when the agreement was signed by Suresh Kumar as Karta on behalf of the members of the Hindu Undivided Family. In fact the concurrent finding recorded by the Courts below is that the agreement to sell the property was for and on behalf of the joint family and for its benefit. The question raised is pure question of fact and we do not propose to reappraise the evidence to reach a contrary conclusion. *Mukesh Kumar and others vs. Harbans Waraiah and others,* AIR 2000 SC 172 : 2000(1) Hindu LR 95 : 2000(1) Mad LJ 110 : 2000(124) Pun LR 179 : 1999(9) SCC 380 : 1999(4) Rec Civ R 687 : 2000(1) All Mah LR 367 : 2000(1) Raj LW 34 : 1999(4) Cur CC 352 : 2000(2) Cal LT 33

Hindu Law.-Joint family property.-Sale of.-Legal necessity.-Property attached for payment of income tax dues.-Sale made for benefit of joint family.-No infirmity in concurrent finding recorded by courts below that sale was for legal necessity.

The learned Counsel for the appellant raised three specific contentions for our consideration. Firstly that the finding recorded by the Courts below in regard to legal necessity is not correct. On this aspect the contention put forward is that the High Court had found that the firm of defendants was known as M/s. Amin Chand Bhola Nath. In the said firm all the defendants were not partners and therefore, the High Court was wrong in having come to the conclusion that the sale of the property belonging to a joint family was for the benefit of the family when, in fact, not all the defendants were partners thereof. But it is brought to our notice that though all the defendants may not have been partners thereof, all male members of the joint family who were major at that time were partners of the firm and therefore, it could not be said that the business carried on by M/s. Amin Chand Bhola Nath is not a family business of the defendants. The fact that the joint family properties have been

attached for payment of the income tax extending to over Rs. 3 lakhs itself was sufficient to hold that the sale of the property was for the purpose of benefit of the joint family. In that view of the matter, we find no infirmity in the finding recorded by the Courts below as to legal necessity. *Mukesh Kumar and others vs. Harbans Waraiah and others,* AIR 2000 SC 172 : 2000(1) Hindu LR 95 : 2000(1) Mad LJ 110 : 2000(124) Pun LR 179 : 1999(9) SCC 380 : 1999(4) Rec Civ R 687 : 2000(1) All Mah LR 367 : 2000(1) Raj LW 34 : 1999(4) Cur CC 352 : 2000(2) Cal LT 33

Hindu Law.-Limited estate.-Adverse possession.-Permissibility.-The right of reversioner is not subject to do widow's interest in the estate.-No equitable consideration arising in the circumstances of the case.-The trespasser who enjoyed the property cannot claim the adverse possession qua the reversioners. In our opinion, there is no warrant in Hindu Law for the proposition that in case of alienation by a Hindu widow of her husband's property without any justifying necessity, or in the case of a stranger acquiring title by adverse possession against her, the interest created is to be deemed to be severed from the inheritance and if a surrender is made subsequently by the widow, the surrenderee must take it subject to such prior interest. It is certainly true that a surrender is a voluntary act on the part of the widow and she is under no legal or moral obligation to surrender her estate. Instances do arise where an alienee has paid valuable and substantial consideration for a property on the expectation of enjoying it so long as the widow would remain alive and his expectations have been cut short by a surrender on the part of the widow, which no doubt benefits the reversioner in the sense that he gets the inheritance even during the widow's life-time. On the other hand, a person, who takes transfer from a Hindu widow, acts with his eyes open. If the transfer is without any legal necessity, there is a risk always attached to the transaction, and there is no law, as we have already explained, which secures to him necessarily an estate for life. A man making a purchase of this character is not expected to pay the same value which he would pay if the purchase were made from a full owner. Be that as it may, even assuming that the court is not incompetent to impose conditions on the reversioner's rights of recovering possession of the property during the widow's life-time on grounds of equity, justice and good conscience in proper cases, it is clear that in the case before us no equitable considerations at all arise. The appellants are not alienees from the widow; they came upon the land as trespassers without any right and it is the law of limitation that has legalised what was originally a clear act of unsurpation. They have enjoyed their property since 1925, and as the title which they have acquired is not available against the reversionary interest, we do not see any reason sanctioned by law or equity for not allowing the reversioners their full legal rights. *Natvarlal Punjabhai and another v. Dadubhai Manubhai and others,* AIR 1954 SC 61: 1954 All LJ 81: 56 Bom LR 447: 1954 SCJ 34: 1954 SCR 339

Hindu Law.-Limited estate.-Alienation.-Legal necessity.-Determination of. Out of a total consideration of about Rs. 10,000 the amount of Rs. 776 can be taken to represent the debts due by the deceased Mudaliar; the rest of the items of consideration cannot be treated as constituting a legal necessity at all. The amount of Rs. 558 was the expense incurred for executing the document; similarly the amount of Rs. 409 representing the funeral expense of the deceased Mudaliar, had apparently been spent by the widow who wanted to reimburse herself and that cannot be a legal necessity. The other items of consideration do not even purport to be for legal necessity. *T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar and others,* AIR 1961 SC 794: 1961(3) SCR 624

Hindu Law.-Limited estate.-Alienation.-Partial surrender in favour of next reversioner does not accelerate succession in favour of next reversioner. It is quite clear from the terms of the document that Jotkunwar did not surrender the whole of the estate which came to her from her husband. She had reserved to herself cultivating rights in the sir lands to the extent of 91.5 acres. Such an area was a substantial area. The surrender, therefore, was not complete. The self-effacement by Jotkunwar and her daughter Jira Bai to be of any consequence had to be complee self-effacement and with respect to the whole of the estate of Raghurai. A partial self-effacement was not a surrender in the true sense and did not accelerate the succession to the estate of Raghurai. *Mt. Kamlabai*

and other v. Sheo Shankar Dayal and another, AIR 1958 SC 914: 1958 MPLJ 457

Hindu Law.-Limited estate.-Alienation.-Permissibility.-The alienation made without legal necessity is invalid.-Such alienation can be challenged by the reversioners after the death of the widow. In the case of an alienation by a Hindu widow without legal necessity, the reversioners were not bound to institute a declaratory suit during the life-time of the widow. They could wait until her death and then sue the alienee for possession of the alienated property treating the alienation as a nullity without the intervention of any Court.To such a suit by the reversioners for possession of the property after the death of the widow, the heirs of the widow were not necessary parties. The reversioners could claim no relief against the heirs of the widow and could effectively obtain the relief claimed against the alience in their absence. Instead of waiting until her death, the next reversioner as representing all the reversioners of the last full owner could institute a suit against the alienee for a declaration that the alienation was without legal necessity and was void beyond her life-time. *Radha Rani Bhargava v. Hanuman Prasad Bhargava,* AIR 1966 SC 216: 1966(2) SCJ 587: 1966(2) SCR_1

Hindu Law.-Limited estate.-Alienation.-Permissibility.-Suit by reversioner challenging alienation made by Hindu widow prior to enforcement of Hindu succession Act, is maintainable. *Radhey Krishan Singh v. Shiva Shankar Singh,* AIR 1973 SC 2405: 1973(2) SCC 742

Hindu Law.-Limited estate.-Alienation.-Right of *bona fide* purchaser.-The alienee claiming to be the *bona fide* transferee after due inquiry into the legal necessity as best as he could in the circumstances, the actual existence of legal necessity is not necessary. The interest of a Hindu widow in the properties inherited by her bears no analogy or resemblance to what may be described as an equitable estate in English law and which cannot be followed in the hands of a *bona fide* purchaser for value without notice. From very early times the Hindu widow's estate has been described as qualified proprietorship with powers of alienation only when there is justifying necessity, and the restrictions on the powers of alienation are inseparable from her estate. If there is no legal necessity, the transferee gets only the widow's estate which is not even an indefeasible life estate for it can come to an end not merely on her death but on the happening of other contingencies like re-marriage, adoption, etc. If an alienee from a Hindu widow succeeds in establishing that there was legal necessity for transfer, he is completely protected and it is immaterial that the necessity was brought, about by the mismanagement of the limited owner herself. Even if there is no necessity in fact, but it is proved that there was representation of necessity and the alienee after making *bona fide* enquiries satisfied himself as best as he could that such necessity existed, then the actual existence of a legal necessity is not a condition precedent to the validity of the sale. *Kalishanker Das and another v. Dhirendra Nath and others,* AIR 1954 SC 505: 1954 Mad WN 769: 1954 SCJ 670: 1955 SCR 467

Hindu Law.-Limited estate.-Alienation by gift.-Permissibility.-The alienation made to fulfil the promise made by her at the time of marriage of her daughter.-Such gift is binding on reversioner. The following principles clearly emerge: (1) It is the imperative religious duty and a moral obligation of a father, mother or other guardian to give a girl in marriage to a suitable husband; it is a duty which must be fulfilled to prevent degradation, and direct spiritual benefit is conferred upon the father by such a marriage. (2) A Hindu widow in possession of the estate of her deceased husband can make an alienation for religious acts which are not essential or obligatory but are still pious observances which conduce to the bliss of the deceased husband's soul. (3) In the case of essential or obligatory acts, if the income of the property or the property itself is not sufficient to cover the expenses, she is entitled to sell the whole of it; but for acts which are pious and which conduce to the bliss of the deceased husband's soul, she can alienate a reasonable portion of the property. (4) Gifts by a widow of landed property to her daughter or son-in-law on the occasion of the marriage or any ceremonies connected with the marriage, are well recognised in Hindu law. (5) If a promise is made of such a gift for or at the time of the marriage, that promise may be fulfilled

afterwards and it is not essential to make a gift at the time of the marriage but it may be made afterwards in fulfilment of the promise, (6) Some decisions go to the length of holding that there is a moral or religious obligation of giving a portion of the joint family property for the benefit of the daughter and the son-in-law, and a gift made long after the marriage may be supported upon the ground that the gift when made fulfils that moral or religious obligation. The finding of the final Court of fact is that there was an ante-nuptial agreement by Mst. Sumitra Devi that she would give four houses at Asansol, of the value of Rs. 20,000 to her daughter as marriage dowry. It was open to Mst. Sumitra Devi to fulfil that promise as a religious act which conferred spiritual benefit upon her deceased husband, irrespective of the consideration whether she made a "sankalpa" at the time of the marriage or not. *Smt. Kamla Devi and another v. Bachulal Gupta and others,* AIR 1957 SC 434: 1957 And LT 315: 1957 SCR_452

Hindu Law.-Limited estate.-Alienation by mortgage.-Permissibility.-The restriction on power of Hindu widow to alienate is subject to legal necessity in which case she is entitled to act as its absolute owner without being answerable to any one.-Sale of property to discharge subsisting mortgage, is binding on reversioners. When a widow succeeds as heir to her husband, the ownership in the properties both legal and beneficial vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law. Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. When there is a mortgage subsisting on the property, the question whether the widow could sell it in discharge of it is a question which must be determined on the facts of each case, there being no absolute prohibition against her effecting a sale in a proper case. What has to be determined is whether the act is one which can be justified as that of a prudent owner managing his or her own properties. If the income from the property has increased in value it would be a reasonable step to take to dispose of some of the properties in discharge of the debt and redeem the rest so that the estate can have the benefit of the income. *Jaisri Sahu v. Rajdewan Dubey and others,* AIR 1962 SC 83: 1962 (1) An WR (SC) 258: 1962 BLJR 153: 1962(2) SCR 558

Hindu Law.-Limited estate.-Alienation due to legal necessity.-Permissibility.-Acquiescence by reversioner.-Effect of.-The presumption of legal necessity is a rebuttable presumption which can be rebutted by the reversioner by leading necessary evidence. The alienation here was by way of mortgage and so no question of surrender could possibly arise. Mohini being the immediate reversioner who joined in the execution of the security bond must be deemed to have consented to the transaction. Such consent may raise a presumption that the transaction was for legal necessity or that the mortgagor had acted therein after proper and *bona fide* enquiry and has satisfied himself as to the existence of such necessity. But this presumption is rebuttable and it is open to the actual reversioner to establish that there was in fact no legal necessity and there has been no proper and *bona fide* enquiry by the mortgagee. *Kalishanker Das and another v. Dhirendra Nath and others,* AIR 1954 SC 505: 1954 Mad WN 769: 1954 SCJ 670: 1955(1) SCR 467

Hindu Law.-Limited estate.-Alienation of husband property.-Scope of power of widow.-Alienation for spiritual welfare of husband is permissible. A Hindu widow possessing a widow's estate cannot alienate the property which has devolved on her except for special purposes. To support an alienation for purely worldly purposes she must show necessity but she has a larger power of disposition for religious and charitable purposes or for those purposes which are supposed to conduce to the spiritual welfare of her husband. The Hindu system recognises two sets of religious acts: those which are considered as essential for the salvation of the soul of the deceased and others

which, though not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. The powers of a Hindu female to alienate property are wider in respect of acts which conduce to the spiritual benefit of her deceased husband. The widow is entitled to sell the property, even the whole of it, if the income of the property is not sufficient to cover the expenses for such acts. In regard to alienations for pious observances, which are not esential or obligatory, her powers are limited to alienating only a small portion of the property. *Mst. Sheo Kuer v. Nathuni Prasad Singh and others,* AIR 1976 SC 709: 1976(1) SCC 590: 1976(2) SCR 1002

Hindu Law.-Limited estate.-Alienation of.-Permissibility.-The alienation of property by a widow is void at the option of reversionary heirs. The alienation by a Hindu widow does not become *ipso facto* void as soon as the widow dies; for, if that were so, it could not have been ratified by the reversioner at all. The alienation, though not absolutely void, is *prima facie* voidable at the election of the reversionary heir. He may, if he thinks fit, affirm it or he may at his pleasure `treat it as a nullity without the intervention of any Court and he can show his election to do the latter by commencing an action to recover possession of the property. There is in fact nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. *Mummareddi Nagi Reddi and others v. Pitti Durairaja Naidu and others,* AIR 1952 SC 109: 1952 SCJ 192: 1951 SCR 655

Hindu Law.-Limited estate.-Alienation of.-Validity of.-A co-owner is not entitled to transfer his part of estate to prejudice the claim of the survivor to enjoy full fruit of the property.-Failure of survivor to challenge the transfer for a long time.-They are estopped from challenging the same subsequently. If a Hindu dies leaving behind two widows they succeed as joint tenants with a right of surivivorship. They are entitled to obtain partition of the separate portions of property so that each may enjoy her equal share of the income accruing therefrom. Each can deal as she pleases with her own life interest but she cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the right of survivorship or a future reversioner. If they act together they can burden the reversion with any debts owing to legal necessity but one of them acting without the authority of the other cannot prejudice the right of survivorship by alienating any part of the estate. The mere fact of partition between the two while it gives each a right to fruits of separate estate assigned to her, it does not imply a right to prejudice the claim of the survivor to enjoy full fruits of the property during her lifetime. The transfer made by one daughter without the consent of the other is only voidable at the instance of the other co-limited owners or at the instance of the reversioners. In any case Smt. Mewa Kaur after the death of her two sisters came into exclusive possession of the entire estate left by Smt. Amrit Kuer, widow of Lala Gurdin. Therefore, the transfers would be entitled to the protection of Section 43 of the Transfer of Property Act which substantially amounts to satisfying the equitable principle of `feeding the grant by estoppel. This question however loses its importance if once we presume the consent of the other sisters in the circumstances of the present case. *Brahmvart Sanathan Dharam Mahamandal, Kanpur and others v. Prem Kumar and others,* AIR 1985 SC 1102: 1985(3) SCC 350: 1985 Supp. (1) SCR 718: 1985(1) Scale 1058

Hindu Law.-Limited estate.-Alienation under family arrangement.-Ratification by reversioner.-Effect of.-Implied ratification.-Considerations for. If a presumptive reversioner is a party to an arrangement which may properly be called a family arrangement and takes benefit under it, he would be precluded from disputing the validity of the said arrangement when reversion falls open and he becomes the actual reversioner. The doctrine of ratification may also be invoked against a presumptive reversioner who, though not a party to the transaction, subsequently ratifies it with full knowledge of his rights by assessing to it and taking benefit under it. It is, however, clear that mere receipt of benefit under an arrangement by which a Hindu widow alienates the property of her deceased husband would not preclude a presumptive reversioner from disputing the validity of the said alienation when he becomes the actual reversioner. It must always be a question of fact as to whether the conduct of the said reversioner on which the plea of ratification properly so-called. *T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar and others,* AIR 1961 SC 797: 1961(3) SCR

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Hindu Law.-Limited estate.-Compromise with reversioners.-Permissibility. A Hindu widow cannot enlarge her estate by entering into a compromise with third parties to the prejudice of the ultimate reversioners. But the same will not be true if the compromise is entered into with persons who ultimately become the reversioners. *Krishna Beharilal v. Gulabchand and others,* AIR 1971 SC 1041: 1971 (1) SCC 837: 1971 Supp. SCR 27

Hindu Law.-Limited estate.-Determination of.-The gift made in terms of the oral Will made by the owner of property.-The deceased intending to confer full rights of property to the grantee.-The grantee is not a limited owner but has all the rights over the property including the right of alienation. What is admitted by a party to be true must be presumed to be true unless the contrary is shown. There is no evidence to the contrary in the case. The gift deed fully supports the testimony of the plaintiff on this point. It definitely states that according to the will, the gift deed was executed in favour of Laxmi and it further recites that Laxmi was entitled to deal with the house in any manner she liked. Those who were directed to execute the oral will made by Ramchandra must be presumed to have carried out his directions in accordance with his wishes. It seems clear that the intention of the testor was to benefit his daughter Laxmi and to confer upon her the same title as he himself possessed. She was the sole object of his bounty and on the attendant circumstances of this case it is plaint that he intended to confer on her whatever title he himself had. Laxmi therefore became the absolute owner of the property under the terms of the oral will of her father and the plaintiff is no heir to the property which under the law devolved on Laxmi's husband who had full right to alienate it. *Nathoo Lal v. Durga Prasad,* AIR 1954 SC 355: 1954 SCA 921: 1954 SCJ 557: 1954 SCR 51

Hindu Law.-Limited estate.-Effect of partition.-Under Mitakshara Law, there is no substantial difference in property acquired by inheritance or by partition qua Hindu widow.-She has no absolute right and interest in the property. *Smt. Kamla Devi and another v. Bachulal Gupta and others,* AIR 1957 SC 434: 1957 And LT 315: 1957 SCR 452

Hindu Law.-Limited estate.-Management of estate.-The mere fact that the Estate was managed by the son of widow that she had surrendered her right. *P.R. Subramania v. Lakshmi Ammal Lakshmi Ammal,* AIR 1974 SC 1930: 1973(2) SCC 54

Hindu Law.-Limited estate.-Negligence in conduct.-Effect on right of reversioner. A Hindu widow is entitled to the full beneficial enjoyment of the estate. So long as she is not guilty of wilful waste, she is answerable to no one. Her estate is not a life-estate, because in certain circumstances she can give an absolute and complete title. Nor is it in any sense an estate held in trust for reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment and is accountable to one. She fully represents the estate, and, so long as she is alive, no one has any vested interests in the succession. The limitations upon her estate are the very substance of its nature and not merely imposed upon her for the benefit of reversioners. She is in no sense a trustee for those who may come after her. She is not bound to save the income, nor to invest the principal. If she makes savings, she can give them away as she likes. During her lifetime she represents the whole inheritance and a decision in a suit by or against the widow as representing the estate is binding on the reversionary heirs. It is the death of the female owner that opens the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime however, the reversionary right is a mere possibility or *spes successionis*. It cannot be predicted who would be the nearest reversioner at the time of her death. It is, therefore, impossible for a reversioner to contend that for any loss which the estate might have sustained due to the negligence on the part of the widow he should be compensated from out of the widow's separate properties. He is entitled to get only the property left on the date of the death of the widow. The widow could have, during her lifetime, for necessity, including her maintenance alienated the whole estate. The reversioner's right to institute a suit to prevent waste is a different

matter. If it could have been established that in having allowed some part of the properties to be sold in revenue sale she was guilty of wilful waste it would have been a different matter. It would still have been necessary for the reversioner to have instituted a suit on that basis. *Gogula Gurmurthy and others v. Kurimeti Ayyappa,* AIR 1974 SC 1702: 1974 SCD 566: 1974(3) SCR 595: 1975(4) SCC 458

Hindu Law.-Limited estate.-Relinquishment of.-Effect of.-The relinquishment is not transfer of estate but merely accelerate the process of reversion whereby the next heir step in place of the widow.-The relinquishment in favour of any person except next heir of the husband is not permissible. The doctrine of surrender or relinquishment by the widow of her interest in the husband's estate which has the effect of accelerating the inheritance in favour of the next heir of her husband is now a well-settled doctrine of Hindu Law. That the basis of the doctrine is the effacement of the widow's estate and not the *ex facie* transfer by which such effacement is brought about. The result merely is that the next heir of the husband steps into the succession in the widow's place. No surrender and consequent acceleration of estate can possibly be made in favour of anybody except the next heir of the husband. It is true that no acceptance or act of consent on the part of the reversioner is necessary in order that the estate might vest in him; vesting takes place under operation of law. But it is not possible for the widow to say that she is withdrawing herself from her husband's estate in order that it might vest in somebody other than the next heir of the husband. In favour of a stranger there can be an act of transfer but not one of renunciation. *Mummareddi Nagi Reddi and others v. Pitti Durairaja Naidu and others,* AIR 1952 SC 109: 1952 SCJ 192: 1951 SCR_655

Hindu Law.-Limited estate.-Scope of right.-Widow in possession of property in lieu of maintenance.-The right of widow prevail upon the right of a trespasser who cannot dispossess widow.-Father-in-law of widow has no jurisdiction to dispossess widow. The appellant who is the widow of a predeceased son of Jangi Jogi was entitled to receive maintenance so long as she did not re-marry out of the estate of her father-in-law. Although her claim for maintenance was not a charge upon the estate until it had been fixed and specifically charged thereupon her right was not liable to be defeated except by transfer to a *bona fide* purchaser for value without notice of a claim or even with notice of the claim unless the transfer was made with the intention of defeating her right. The Courts in India have taken the view that where a widow is in possession of a specific property for the purpose of her maintenance a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper maintenance for her. In the present case it is difficult to understand how the appellant could be deprived of the possession of properties by a trespasser. Moreover she was presumably in possession of these properties inlieu of her right of maintenance and could not be deprived of them even by Jugli Bai without first securing proper maintenance for her out of the aforesaid properties. *Smt. Rani Bai v. Yadunandan Ram and another,* AIR 1969 SC 1118: 1969 All LJ 988: 1969(1) SCC 604: 1969(3) SCR_789

Hindu Law.-Limited estate.-Surrender.-Conditions for.-Acceleration of reversion can only be affected by surrendering the entire interest of limited owner in the entire property.-Gift of non-ancestral property, only to the daughters is not valid. The doctrine of Hindu law according to which, a limited owner can accelerate the reversion, by surrending her interest, to the next reversioner, is based on a theory of self-effacement of the limited owner. That is why it has been laid down that in order that a surrender by a limited owner to a reversioner may be effective the surrender must be of the entire interest of the limited owner in the entire property. The exception made in favour of the retention of a small portion of the property for her maintenance, does not affect the strictness of the requirement that but for this exception, a surrender to be effective, must be of the entire interest in the entire property.The Hindu Law doctrine of surrender does not therefore make the gift of the non-ancestral property to the daughters valid beyond the widow's life-time. *Jai Kaur and others v. Sher Singh and others,* AIR 1960 SC 1118

Hindu Law.-Limited estate.-Surrender.-Effect of.-It merely accelerates the process of reversion but it does not create any new rights and, therefore, surrender in favour of a stranger except in

case of legal necessity, is not valid. Surrender conveys nothing in law and merely causes extinction of the widow's rights in her husband's estate, there is no reason why it should be necessary that the estate must remain with the widow before she could exercise her power of surrender. The widow might have allenated the property, to a stranger or some one might have been in adverse possession of the same for more than the statutory period. If the alienation is for legal necessity, it would certainly be binding upon the estate and it could not be impeached by any person under any circumstance. But if the alienation is not for legal necessity, or if a squatter has acquired title by adverse possession against the widow, neither the alienation for the rights of the adverse possessor could affect the reversioners' estate at all. These rights have their origin in acts or omissions of the widow which are not binding on the husband's estate. They are in reality dependent upon the widow's estate and if the widow's estate is extinguished by any means known in law, e.g., by her adopting a son or marrying again, these rights must also cease to exist. The same consequences should follow when the widow withdraws herself from her husband's estate by an act of renunciation on her part. Whether any equitable principle can be invoked in favour of a third party who has acquired rights over the property by any act or omission of the widow may be a matter for consideration. But the learned counsel for the appellants is not right when he says that as adverse possession extinguished the rights of the widow, no fresh extinction by an act of surrender was possible. As the rights acquired by adverse possession are available only against the widow and not against the husband's heirs, the husband's estate still remains undestroyed and the widow may withdraw herself from the estate leaving it open to the reversioners to take possession of it at once as heirs of the last male holder unless there is any other rule of law or equity which prevents them from doing so. *Natvarlal Punjabhai and another v. Dadubhai Manubhai and others,* AIR 1954 SC 61: 1954 All LJ 81: 56 Bom LR 447: 1954 SCJ 34: 1954 SCR 339

Hindu Law.-Limited estate.-Scope of right.-Widow's right.-Classification of heirs.-Husband having limited and restricted right to property under Will.-Conditional bequeath that in case son was born to him, son would become absolute owner with right to alienate.-Husband died issueless.-Widow does not succeed to property in lieu of pre-existing right to maintenance because her husband had limited and restricted right under Will.-Widow cannot be treated as Class-I heir.

We have no hesitation to hold that the limited right of Guruswamy cannot be interested by any stretch of language that testatrix intended to give absolute right to Guruswamy or to his widow. They were to hold the property for delivery to the son, in case, born out of their wedlock. In no case Sevamma's right over the property would mature into absolute right by virtue of Section 14(1) of the Hindu Succession Act. Her right could only mature as such, if her claim could be based on any of her pre-existing right of maintenance out of her husband's property. But in no case it would mature where the property is held by her husband either in trust for the benefit of other or as limited and restricted owner with no right to alienate. Hence even if Sevamma continued to enjoy the property after the death of her husband, she held the property at the most, in the same capacity as her husband but not to claim it towards her right of maintenance. She cannot be treated to be Class-I heir under the Hindu Succession Act. *Munianjappa and others vs. R. Manual and others,* AIR 2001 SC 1754 : 2001(5) SCC 363

Hindu Law.-Mahantship.-Succession.-Only a person who was the disciple of last mahant, can become a mahant. Although the authority to appoint the successor of a Mahant rests with the `Bhek' and the `Sewaks', the appointment could be made only of a person who was the disciple of the last Mahant and, failing that, was one spiritually connected with him. *Sital Das v. Sant Ram and others,* AIR 1954 SC 606

Hindu Law.-Maintenance.-Effect of Caste.-Right of concubine.-A Brahmin woman and her illegitimate son of Sudra father are entitled to maintenance from the Estate after the death of father.-The claim of maintenance cannot be defeated on account of caste of the woman.-This

position remained unaffected by provisions of Hindu Adoptions and Maintenance Act, 1956. *Amireddy Raja Gopala Rao and others v. Amireddi Sitharamamma and others,* AIR 1965 SC 1970: 1965(2) SCWR 889: 1965(3) SCR 122

Hindu Law.-Maintenance.-Liability of.-Obligation to maintain is not only personal but is also linked to possession of property. Under the Hindu law the liability to maintain others arises in a two-fold manner: (a) from the existence of a particular relationship independent of the possession of any property, (b) on possession of property. In the first category fall the cases of the liability to maintain a person's wife, minor sons, and unmarried daughters and aged parents. Here the obligation is personal and is brought into existence by the relationship. In the other category are those where the liability is dependent on the possession of coparcenery property. Assuredly the liability to provide for the maintenance of the disqualified heir under the Hindu law would fall under the latter category also, *i.e.,* it is not confined to the particular relationships which cast the obligation to maintain. Thus a brother would have to be maintained out of the joint property where he is disqualified from claiming partition. No doubt, the texts deny him the right to partition but that is not the subject matter of the discussion here. If the right to be maintained is traceable to his right to the property in which he is excluded from participating in full, it would not be a violent inference to hold that he has an incipient and vestigial interest in that property which is not capable of being asserted against other coparceners, but when there is none entitled to enjoy it as coparcener, blossoms into a full right. *Kamalammal and others v. Venkatalakshmi Ammal and another,* AIR 1965 SC 1349: 1965(2) Mad LJ (SC) 122: 1965(2) SCJ 638

Hindu Law.-Maintenance.-Right of illegitimate son.-Under Mitakshara Law an illegitimate son is entitled to maintenance as long as he lives in recognition of the status as a member of family and by reason of his exclusion from inheritance among the regenerate classes. *Mothey Anja Ratna Raja Kumar v. Koney Narayana Rao and others,* AIR 1953 SC 433: 1952 SCJ 507

Hindu Law.-Maintenance.-Child.-Both father and mother of child employed.-Law does not require that only father has obligation to maintain minor.-Both parents are obliged to pay maintenance to child in proportion of their salary.

In the present case both the parents are employed. If we refer to the first application under Section 26 of the Act by the wife she mentioned that she is getting a salary of Rs. 3,100/- per month and husband is getting a salary of Rs. 5,850/- per month. She is, therefore, also obliged to contribute in the maintenance of the children. Salaries of both the parents have since increased with the course of time. We believe that in the same proportion may be perhaps in the case of an employee of Reserve Bank of India at somewhat higher rate. If we take approximate salary of husband is twice as much as that of the wife, they are bound to contribute for maintenance of their children in that proportion. *Padmja Sharma vs. Ratan Lal Sharma,* AIR 2000 SC 1398 : 2000(2) Cur CC 79 : 2000(2) Marri LJ 167 2000(2) Orissa LR 85 : 2000(2) Raj LW 317 : 2000(4) SCC 266 : 2000(126) Pun LR 588 : 2000(3) Bom CR 10

Hindu Law.-Maintenance.-Destitute widowed daughter.-Has legitimate right to claim maintenance from her father.-Both during his life time and against his estate after his death.-Property bequeathed to widowed daughter by her father.-Would be in lieu of her pre-existing right of maintenance.-Once legal right is visualised, it would obviously be her pre-existing right of maintenance in her favour qua estate of testator father.-Which though circumscribed as life interest in Will would mature into full ownership.

On the facts of the present case, therefore, it has to be held that appellant No. 1 who was a destitute widowed daughter of the testator and who was staying with him and was being maintained by him in his lifetime, had nothing to fall back upon so far as her deceased husband's estate was concerned and she had no estate of her own. Consequently, as per Section 19(1)(a) of Hindu Adoption and Maintenance Act she could claim maintenance from the estate of her father even during her father's lifetime. This was a pre-existing right of the widowed daughter qua testator's estate in his own

lifetime and this right which was tried to be crystallised in the will in her favour after his demise fell squarely within the provisions of Section 22(2) of the Maintenance Act. Thus, on a conjoint operation of Sections 19(1)(a) and 22(2) read with Section 21(vi) there is no escape from the conclusion that appellant No. 1 had a pre-existing right of being maintained from the estate of the testator during the testator's lifetime and also had got a subsisting right of maintenance from the said estate even after the testator's death when the estate would pass in favour of his testamentary heirs and the same situation would have occurred even if the testator had died intestate and if appellant No. 1 could have become a Class-I heir. As we have already seen earlier, if the testator had died intestate, instead of 1/3rd interest she would have got full interest, in the suit land and it is that interest which was curtailed up to 1/3rd in lieu of her claim for maintenance against the estate of the testator pursuant to the will in question. It, therefore, cannot be said that the provision in the will in her favour was not in lieu of a pre-existing right and was conferred only for the first time under the will so as to attract Section 14(2) of the Succession Act as, with respect, wrongly assumed by the High Court. *Balwant Kaur and another vs. Chanan Singh and others,* AIR 2000 SC 1908 : 2000(2) Hindu LR 1 : 2000(3) Mad LJ 59 : 2000(2) Cur CC 201 : 2000(6) SCC 310 : 2000(4) Andh LD 36 : 2000(126) Pun LR 469 : 2000(4) Civ LJ 408

Hindu Law.-Maintenance.-Parents.-Right and entitlement.-Distinction between.-Obligation of son/daughter to maintain his/her infirm parents.-Does not mean that old/infirm parents have a right to be maintained.-Mother residing with son for about 30 years.-Son morally obliged to take care of his aged mother by accommodating her in his house.-Obligation cannot be enlarged into legal duty to provide old mother a residence.

The first respondent being aged mother undoubtedly has a right to be maintained by Respondents 2 and 3 but that does not mean that she is entitled to live along with her sons' families. The expression 'acquired vacant possession', in the context in our view, means acquisition of vacant possession of a suitable accommodation in which one has a right to reside. It must be a legally enforceable right. The first respondent does not have any such legal right to reside in the house of Respondents 2 and 3. Though it cannot be disputed that Respondents 2 and 3 had for a period of 30 years before building their own house lived with the first respondent as her sons and morally they are obliged to take care of the aged mother by accommodating her in their house, yet in law we cannot enlarge that obligation to legal duty to provide her residence in the house along with their family. *Anandji Jadhav (dead) by LRs vs. Nirmala Ramchandra Kore and others,* AIR 2000 SC 1386 : 2000(3) Guj LR 2754 : 2000(2) Cur CC 125 : 2000(3) SCC 703 : 2000(2) Bom LR 491 : 2000(3) Andh LD 125 : 2000(2) All CJ 1100

Hindu Law.-Maintenance.-Widow's right.-Flows from social and temporal relationship between husband and wife.-Widow's right 'a pre-exiting right' having existence under Shastric Hindu Law.-Hindu widow in possession of property of husband has a right to be maintained out of that property.

The right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of widow is “a pre-existing right”, which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. These Acts merely recognised the position as was existing under the Shastric Hindu Law and gave it a “statutory” backing. Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of the right to maintenance. *Raghubar Singh and others vs. Gulab Singh and others,* AIR 1998 SC 2401 : 1998(3) Rec Civ R 330 : 1998(4) Scale 62 : 1998(6) SCC 314 : 1998(3) Civ CC 49

Hindu Law.-Marriage.-Asura marriage.-Form of.-Marriage by sale of bride.-The amount paid to the father of the bride not in consideration of marriage but as a gift to bride.-The marriage cannot be said to be asura marriage. The essential characteristic of the Asura form of marriage appeas to be the giving of money or presents by the bridegroom or his family to the father or parental kinsmen of the bride, or, in fact, a sale of the girl by her father or other relation having the disposal of

her in marriage in consideration of money or money's worth paid to them by the intended husband or his family.Of the several Shastris called by the plaintiffs and the defendants in this case, all agree that the giving and receiving of money for the bride is the distinctive mark of the Asura form of marriage. Under Hindu Law marriage is a sacrament and it is the religious duty of the father to give his daughter in marriage to a suitable person but if he receives a payment in cash or in kind as a consideration for giving his daugher in marriage he would be converting a sacrament into commercial transaction. Brahma marriage satisfies the said test laid down by Hindu Law. But from Vedic times seven other forms of marriage were recognized based on custom and convenience. Asura form is one of the eight forms of marriage. The essence of the said marriage is the sale of a bride for a price and it is one of the unapproved forms of marriage prohibited by Manu for all the four castes of Hindu society. The vice of the said marriage lies in the receipt of the price by the bride's father or other persons entitled to give away the bride as a consideration for the bride. If the amount paid or the ornaments given is not the consideration for taking the bride but only given to the bride or even to the bride's father out of affection or in token of respect to them or to comply with a traditional or ritualistic form, such payment, does not make the marriage an Asura marriage. There is also nothing in the texts to indicate that the bearing of the expenditure wholly or in part by the bridegroom or his parents is a condition or a criterion of such a marriage, for in such a case the bride's father or others entitled to give her in marriage do not take any consideration for the marriage, or any way benefit thereunder. The fact that the bridegroom's party bears the expenditure may be due to varied circumstances. Prestige, vanity, social custom, the povery or the distinclination of the bride's father or some of them may be the reasons for the incurring of expenditure by bridegroom's father on the marriage but the money so spent is not the price or consideration for the bride. Even in a case where the bride's father though rich is disinclined to spend a large amount on the marriage functions and allows the bridegroom to incur the whole or part of it, it cannot be said that he has received any consideration or price for the bride. Though in such a case if the bridegroom's father had not incurred the said expenditure in whole or in part, the bride's father might have to spend some money on that account such an indirect results could not be described as price or consideration for giving the bride. Shortly stated Asura marriage is a marriage where the bride's father, or any other person entitled to give away the bride takes Sulka or price for giving the bride in marriage. The test is two-fold: three shall not only be benefit to the father, but that benefit shall form a consideration for the sale of the bride. When this element of consideration is absent, such a marriage cannot be described as Asura marriage. As the Asura marriage does not comply with the strict standards of Hindu Law it is not only termed as an unapproved marriage, but it has been consistently held that whenever a question arises whether a marriage is a Brahma or Asura, the presumption is that the marriage is a Brahma form and the burden is upon the person who assess the contrary to prove that the marriage was either an Asura or any other form. *A.L.V.R.S.T. Veerappa Chettiar v. S. Michael,* AIR 1963 SC 933: 1963 Supp. (2) SCR 244

Hindu Law.-Marriage.-Customary marriage.-Proof of.-Living together as husband and wife not sufficient.-Custom of marriage and performance of necessary ceremonies must be proved. *Surjit Kaur v. Garja Singh and others,* AIR 1994 SC 135: 1994(1) SCC 407: 1993(4) Scale 302: 1993(2) Hindu LR 519: 1994(2) BLJR 1056

Hindu Law.-Marriage.-Sarvaswadanam marriage.-Nature, effect and proof of. In a sarvaswadanam marriage the daughter retained all the rights in the family properties inspite of her marriage, in the same way as a son did and if there was an agreement to that effect the son-in-law also would become a member of the family. It was recited in the document that the said amount of Rs. 2,500 was required for dowry, ornaments and expenditure for marrying Nangayyakutty, the daughter of Vasudevan Namboori. It is said that if the members of the family intended that the marriage should take place in saravaswadanam form, they would have mentioned that fact specifically in the document. We do not think that any such irresistible inference can be drawn from

the non-mention of that fact in that document. One would not expect in a mortgage deed a recital to that effect for the simple reason that it was not germane for borrowing money from third parties. Nor can we draw an inference from the execution of the mortgage deed that the brothers were re-united in the sense that all the younger brothers began to repose implicit confidence in their elder brother, Vasudevan Namboori, so as to enable him to execute documents bringing in new members within the family fold behind their back. What must have happened was nothing more than all the members of the family joining together in borrowing the money to discharge the family obligation and even after the marriage, Vasudevan Namboori continued to live in Sivolli Illom, as he was doing before and Narayanan Namboori continued to be in de facto management of the entire family properties as he was doing before. But what is material is that if the marriage was intended to be performed in sarvaswadanam form, was it likely that the family would have borrowed a large sum of Rs. 2,500 to be given as dowry or streedhanam, when the bride and the bride-groom would become sharers in the family property. *Neelakantan Damodaran Namboori and another v. Velayudhan Pillai Narayana Pillai and another,* AIR 1958 SC 832: 1959 SCJ 545

Hindu Law.-Marriage.-Second marriage.-Polygamy.-Permissibility.-The polygamy is not permissible, though the second marriage during the life time of first wife was permissible in restricted circumstances.-Abuse of this restricted practice resulted in restriction on remarriage imposed by the legislature. *Smt. Parayankandiyal Eravath Kanapravan Kalliani Amma and others v. K. Devi and others,* AIR 1996 SC 1963: 1996(4) SCC 76: 1996(4) Scale 131: 1996(4) JT 656: 1996 Mat LR 325

Hindu Law.-Marriage.-Second marriage.-Entitlement to property.-Payment of family pension and death-cum-retirement gratuity.-Children born form second wife during subsistence of first marriage are legitimate and entitled to property of deceased employee in equal shares along with first wife and sons born from first marriage.-Family pension admissible to minor children from second wife till they attain majority.

Under Section 16 of the Hindu Marriage Act, children of void marriage are legitimate, under the Hindu Succession Act, 1956 property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares. The second wife taken by deceased/ government employee during subsistence cannot be described a widow of deceased employee, their marriage void. Sons of the marriage between deceased employee and second wife being the legitimate sons of deceased would be entitled to the property of deceased employee in equal shares along with that of first wife and the sons born from the first marriage. That being the legal position when Hindu male dies intestate, the children of the deceased employee born out of the second wedlock would be entitled to share in the family pension and death-cum-retirement gratuity. The second wife was not entitled to anything and family pension would be admissible to minor children only till they attained majority. *Rameshwari Devi vs. State of Bihar and others,* AIR 2000 SC 735 : 2000(4) All Mah LR 237 : 2000(2) Andh LD 42 : 2000(2) SCC 431 : 2000(1) Raj LW 101 : 2000(1) Marri LJ 323 : 2000(2) Mad LJ 135 : 2000(1) Hindu LR 284 : 2000(1) Cal HN 93

Hindu Law.-Natural Guardian.-Power of.-The minor though not legally competent to enter into contract but natural guardian can bind him to the contract entered on his behalf to purchase the property. *Manik Chand and another v. Ramchandra,* AIR 1981 SC 519: 1980(4) SCC 22: 1980(3) SCR 1104: 1981 Mah LJ 196: 1981 Jab LJ 228

Hindu Law.-Partition deed.-Family arrangement.-Deed containing recital that over claim of share of property amongst members and decision was given by Panchayat and parties were put in possession of properties in question.-Partition deed held to be valid deed of family arrangement.

If has been mentioned in the deed that over the claim of share of the property amongst the parties to the said deed, disputes were raised by the members of the family and in respect of such dispute a decision was given by the Panchayat and parties were put in possession of the properties in question.

Mr. Chaudhary has submitted that the learned trial judge has referred to the decision of this Court to the effect that for the purpose of family arrangement, a bona fide claim by some of the members of the family who may not be lawful owners of the property must exist so that in order to settle the dispute family arrangement is made. It is not necessary that parties being members of the family and claiming right in the property are in law entitled to some share. As the basic features of family arrangement were fulfilled, the said deed must be held to be a valid family arrangement. The High Court has gone wrong in proceeding on the footing that it was a deed of partition and not a deed of family arrangement. *Lakshmi Ammal and others vs. Chakravahthi and others,* AIR 1999 SC 3363 : 1999(3) Land LR 113 : 1999 HRR 481 : 1999(1) SCC 235 : 1999(2) Civ LJ 8 : 1999(1) All CJ 563

Hindu Law.-Pre-emption.-Meaning of.-It is a right to seek substitution entitling the pre-emptor to stand in the shoes of vendee in respect of the rights and obligations arising from the sale. *Smt. Vijayalakshmi v. B. Himantharaja Chetty and another,* AIR 1996 SC 2146: 1996(9) SCC 376: 1996(4) Scale 300: 1996(4) JT 747: 1996(2) Hindu LR 219

Hindu Law.-Pre-emption.-Meaning of.-It is a right to seek substitution entitling the pre-emptor to stand in the shoes of vendee in respect of the rights and obligations arising from the sale. *Smt. Vijayalakshmi v. B. Himantharaja Chetty and another,* AIR 1996 SC 2146: 1996(9) SCC 376: 1996(4) Scale 300: 1996(4) JT 747: 1996(2) Hindu LR 219

Hindu Law.-Religion.-Conversion to another religion.-Proof of.-Subsequent conduct of the person concerned is relevant in determining the conversion. *Punjabrao v. Dr. D.P. Meshram and others,* AIR 1965 SC 1179: 1965 MPLJ 257: 1965(1) SCR 849

Hindu Law.-Religious endowment.-*De facto* manager.-Rights of.-A person in possession and management of the properties of Trust validly or invalidly has an interest in the property and therefore is entitled to protect his status as *de facto* manager of the Trust, though it shall be the duty of the Court to ensure proper management of the Trust.

Now the ordinary rule that persons without title and who are mere intermeddlers cannot sue as of right is clear. But where public trusts are concerned, courts have a duty to see that their interests and the interests of those for whose benefit they exist are safeguarded. Therefore, courts must possess the power to sustain proper proceedings by them in appropriate cases and grant relief in the interests of and for the express benefit of the trust imposing such conditions as may be called for.

We consider that, in view of Ram Sarup Das's long management and possession as Mahant and in view of the fact that he is purporting to act on its behalf and for its interests, it is proper that he should be allowed to continue to act on behalf of the trust until his title is investigated in appropriate proceedings and that this Court should grant a decree in his favour in these proceedings for the benefit of the trust.

Vikrama Das Mahant v. Daulat Ram Asthana and others, AIR 1956 SC 382: 1956 All LJ 434: 1956 BLJR 416

Hindu Law.-Religious endowment.-Alienation by shabit.-Worshipper are entitled to seek declaratory decree.-Alienation is not binding upon deity.

The worshipper of a Hindu temple is entitled, in certain circumstances, to bring a suit for declaration that the allenation of the temple properties by the de jure Shebait is invalid and not binding upon the temple. If a Shebait has improperly alienated trust property a suit can be brought by any person interested for a declaration that such alienation is not binding upon the deity but no decree for recovery of possession can be made in such a suit unless the plaintiff is the suit has the present right to the possession. Worshippers of temples are in the position of cestui que trustenant (sic) or beneficiaries in a spiritual sense.

Since the worshippers do not exercise the deity's power of suing to protect its own interests, they are not entitled to recover possession of the property improperly alienated by the Shebait, but they can be granted a declaratory decree that the alienation is not, binding on the deity.

Vemareddi Ramaraghava Reddy and others v. Konduru Seshu Reddy and others, AIR 1967 SC 436:

1967(2) Andh WR SC 1: 1966 Supp SCR 270

Hindu Law.-Religious endowment.-Alienation for legal necessity.-Legal proceedings to recover the property of the trust from trespassers.-Alienation of property to meet the expenses on account of such legal proceedings.-Alienation of property, affirmed.

The very object of a Math is to maintain a competent line of religious teachers for propagating and disseminating the religious doctrines of a particular order or sect. In the eye of law there cannot be a Math without a lawfully appointed Mathadhipati as its spiritual head. For the proper functioning of a Math, it is also essential that the rightful Mahant should be in control and possession of the property belonging to the Math. Where, therefore, a lawful Mathadhipati is kept out of the possession of the endowed property by a trespasser asserting a hostile claim, there is a hostile title asserted in the litigation against the Math itself.

In testing, therefore, the question of legal necessity for the impugned transaction regard must be paid to the actual pressure on the estate, the immediate danger to be averted or the benefit to be conferred upon the trust estate. Applying the test in the present case, we are satisfied that the transaction of sale dated June 14, 1945 in favour of respondents 3 and 4 was beneficial to the gaddi of Shanter Shah and the finding of the lower courts on this point is correct.

Biram Prakash and others v. Narendra Dass and others, AIR 1966 SC 1011: 1966(2) Andh WR (SC) 30: 1966(2) Mad LJ (SC) 30

Hindu Law.-Religious endowment.-Contribution to endowment.-The contributor or donor is not a founder of the trust.

It is not a correct proposition of law to State that every donor contributing at the time of foundation of a trust becomes a founder of the trust. It may be that in a particular case all the contributors of a trust fund become the founds of the trust itself, but the question when a contributor would become in law a joint founder of the trust would depend not merely upon the fact of his contribution but also upon the surrounding circumstances proved in the particular case and the subsequent conduct of the parties.

Kt. N. Rm. Thenappa Chettiar and others v. N.S. Kr. Karuppan Chettiar and others, AIR 1968 SC 915: 1968 (2) Andh WR (SC) 95: 1968(2) SCR 897

Hindu Law.-Religious endowment.-*Cy pres*.-Doctrine of.-Application on charitable trust.-It is the duty of the court to ensure that the trust property is applied for the purpose for which the settler had created the trust.-Where the scheme provided by the settler falls short of the object, the court may frame scheme and give suitable directions for the purpose.

When the particular purpose for which a charitable trust is created fails or by reason of certain circumstances the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settlor, the court would not, when there is a general charitable intention expressed by the settlor, allow the trust to fail but would execute it `cy pres', that is to say, in some way as nearly as possible to that which the author of the trust intended. In such cases, it cannot be disputed that the court can frame a scheme and give suitable directions regarding the objects upon which the trust money can be spent.

It is well established, however, that where the donors' intention can be given effect to the court has no authority to sanction any deviation from the intentions expressed by the settlor on the grounds of expediency and the court cannot exercise the power of applying the trust property or its income to other purposes simply because it considers them to be more expedient or more beneficial than what the settlor had directed.

Ratilal Panachand Gandhi and others v. State of Bombay and others, AIR 1954 SC 388: 56 Bom LR 1184: 1954 SCJ 480: 1954 SCR 1055

Hindu Law.-Religious endowment.-Dedication of large property for religious ceremonies which could not exhaust the entire income, a portion of beneficial interest may be construed as undisposed of and shall vest as the secular property with heirs of the settler.-In such case the

dedicated property does not vest in the daitee but remains with grantee or his legal heirs.

Jadu Gopal Chakravarty (dead) after him his Legal Representatives v. Pannalal Bhowmick and others, AIR 1978 SC 1329: 1978(3) SCC 215: 1978(3) SCR 855

Hindu Law.-Religious endowment.-Dedication to deity.-Scope of dedication.-Determination of.-Effect of creation of charge in favour of other persons.

A reasonable provision for remuneration, maintenance and residence of the Shehaits does not make an endowment bad, for even when property is dedicated absolutely in an idol, and no beneficial interest is reserved to the settler, the property is held by the deity in an ideal sense. The possession and management of the property must, in the very nature of things, be entrusted to a She bait or manager, and nomination of the settler himself and his heirs with reasonable remuneration and of the endowed property with right of residence in the property will not invalidate the endowment. A provision for the benefit of persons other than the Shebait may not be valid, if it infringes the rule against perpetuities or accumulations, or rules against impermissible restrictions, but that does not affect the validity of the endowment. The beneficial interest in the provision found invalid reverts to the deity or the settlor according as the endowment is absolute or partial. If the endowment is absolute, and a charge created in favour of other persons is invalid, th benefit will ensure to the deity, and not revert to the settlor or his heirs.

If provision for residence of the Shebait can be made under a deed of endowment without affecting its validity, a provision whereby the Shebait will be entitled to use the land belonging to the deity at specially low rates may not by itself amount to an impermissible reservation by the settlor. The plea that this was a simulate endowment has been abandoned by Balai. Assuming therefore that the charge for rent to be levied from the Shebaits as monthly rental was nominal, the validity of the deed of dedication will not on that ground be affected.

If there is an absolute dedication, but the direction for accumulation is invalid, the benefit of the income will ensure for the benefit of the deity without restriction: the income will not revert to the settlor.

Nirmala Bala Ghose and another v. Balai Chand Ghose and others, AIR 1965 SC 1874: 1965(2) SCWR 988: 1965(3) SCR 550

Hindu Law.-Religious endowment.-Determination of.-Absence of express dedication.-Construction of a temple and installation of deity.-The donor continuing with the management of property as a shebait.-Claim of shebaitship by the pujari and his descendants is not maintainable.

Smt. Shahzad Kunwar (deceased and after her legal representative Smt. Lalli Bibi alias Ballo Bibi) v. Raja Ram Karan Bahadur and others, AIR 1965 SC 254: 1965(1) SCJ 200

Hindu Law.-Religious endowment.-Determination of.-Small amount dedicated for the purpose other than religious purposes does not change the nature of endowment.

C.I.T., West Bengal, III, Calcutta v. Sri Jagannath Jew (through Shebaits), AIR 1977 SC 1523: 1977(2) SCC 519: 1977(2) SCR 483

Hindu Law.-Religious Endowment.-Distinction between Manager and Trustee.-Effect of.

When property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person.

Kalanka Devi Sansthan v. The Maharashtra Revenue, Tribunal Nagpur and others, AIR 1970 SC 439: 72 Bom LR 651: 1970 Mah LJ 1: 1970(1) SCR 936: 1969(2) SCC 616

Hindu Law.-Religious endowment.-Distinction between Private Trust and Public Trust.-Determination of.-Tests for determining the nature of endowment indicated.

The following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature: (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;
(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;
(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.
Radhakanta Deb and another v. The Commissioner of Hindu Religious Endowments, Orrisa, AIR 1981 SC 798: 1981(2) SCC 226: 1981(2) SCR 826: 1981(51) Cut LT 495

Hindu Law.-Religious endowment.-Distinction between Public and Private Trust.-Difference of beneficiaries.-Principle for determination of nature of endowment.

The essence of a public endowment consists in its being dedicated to the public; and in the absence of any document creating the endowment, long user is the material factor from which an inference of dedication may arise. The distinction between a private and public endowment is that whereas in the former the beneficiaries are specific individuals, in the latter they are general public or a class thereof.
When property is dedicated for the workshop of a family idol, it is a private and not a public endowment, as the members who are entitled to worship at the shrine of the deity can only be the members of the family i.e. an ascertained group of individuals. But where the beneficiaries are not the members of a family or specified individuals but the public at large of a specified portion thereof, then the endowment can only be regarded as public intended to benefit the general body of worshippers.
Pratapsinhji N. Desai v. Deputy Charity Commissioner, Gujarat and others, AIR 1987 SC 2064: 1987 Supp. SCC 714: 1987(3) SCR 909: 1987(2) Scale 311: 1987(3) J.T. 335

Hindu Law.-Religious endowment.-Implied endowment.-Determination of.-Consideration for.

If there is an express endowment, there is no difficulty. If there is only an implied endowment, the intention has to be gathered on the construction of the document as a whole. If the words of the document are clear and unambiguous the question of interpretation would not arise. If there be ambiguity, the intention of the founders has to be carefully gathered from the scheme and language of the grant. Even surrounding circumstances, subsequent dealing with the property, the conduct of the parties to the document and long usage of the property and other relevant factors may have to be considered in an appropriate case. As pointed out earlier, we have a document in the instant case where there is an express endowment of certain specified properties as recited in clause 8 of the deed. Significantly, there is complete omission to create an absolute endowment of the property in the ninth schedule although the same is referred to in clause 9 of the deed and has been dealt with in a very special manner therein. There is absolutely no doubt on the terms of clause 9 read with the other material provisions of the deed that there is no absolute endowment of the suit property in favour of the temple or for the charities as claimed by the plaintiffs-respondents. We may, however, add that the conclusion we have reached from the intrinsic evidence of the document itself is reinforced by the subsequent conduct of the parties and the various transactions effected from time to time with regard to the suit properties.
Sappani Mohamed Mohideen v. R.V. Sethusubramania Pillai, AIR 1974 SC 740: 1974(1) SCC 615: 1974(2) SCR_594

Hindu Law.-Religious endowment.-Liability of Trustee.-Misappropriation of amount of trust for

the use in personal business of the trustee.-The trustee is liable to pay interest on the equitable grounds.

Hukamchand Gulabchand Jain v. Fulchand Lakhmichand Jain and others, AIR 1965 SC 1692: 1965 Mah LJ 609: 1965 MPLJ 673: 1965(3) SCR_91

Hindu Law.-Religious endowment.-Mahantship.-Rights and duties of Mahants.-Enjoyment of property of Muth by the Mahant.-Scope of.-Discussed.

In the conception of Mahantship, as in Shebatiship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal heritable like ordinary property, but that is because of its pecliar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply.

It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhipati down to the level of a servant under a State department. It is from this standpoint that the reasonableness of the restrictions should be judged.

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282: 20 Cut LJ 250: 1954 SCJ 335: 1954 SCR 1005

Hindu Law.-Religious endowment.-Mahantship.-Succession.-Extinction of line of succession.-Meaning of.-Devolution of property takes place from guru to chela and if a Mahant is not survived by a chela or a gurbhai it results in extinction of the line.

A Mahant is succeeded by his Chela or his Gurbhai or the Chela of the Gurbhai and failing such claimants of the line is deemed extinct and succession goes to the representative of the other line.

The succession from `Guru' to `Chela' only means to devolution of property from the last representative of the line to his Chela and when one active of the line of his Chela and when one talks of the succession from one Chela, on his death, to another Chela, it is also to another Chela of the Guru who is the last representative of the line. When one talks similarly of the extinction of the line, it only means that when the last representative of that particular line dies without leaving a Chela or Chelas or a Gurbhai who could succeed to his estate that line becomes extinct and one has not got to go backwards in order to ascertain whether there is any Chela of any Guru in that line at all surviving.

Prithi Nath v. Birkha Nath and another, AIR 1956 SC 192:

Hindu Law.-Religious endowment.-Manager of trust.-Vacancy in Office.-Effect of.-Suit for recovery of property of Trust.-Period during which there was vacancy in the office of the Manager or while no legally appointed Manager was there, the period of limitation cannot be remained suspended.

Sarangadeva Periya Matam and another v. Ramaswami Goundar, AIR 1966 SC 1603: 1966(2) SCWR 226: 1966(1) SCR 908

Hindu Law.-Religious endowment.-Math.-Nature of institution.-Right and duties of the head of

the math.-He has a life estate in its permanent endowment and absolute property in its income subject to duty of maintaining the institution.

The property belonging to a math is in fact attached to the office of the mahant, and passed by inheritance to no one who does not fill the office. The head of a math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the institution. He is bound to spend a large part of the income derived from the offerings of his followers on charitable or religious objects. The words `the burden of maintaining the institution' must be understood to include the maintenance of the math, the support of its head and his disciples and the performance of religious and other charities in connection with it, in accordance with usage.

Krishna Singh v. Mathura Ahir and others, AIR 1980 SC 707: 980(2) SCR 660: 1980 All LJ 299

Hindu Law.-Religious endowment.-Mismanagement.-*Locus Standi* to sue.-A person making huge donation to the temple has right to sue.

The suit is filed by the deity acting through the Manager. Granting that it is not proved that the Ruler of Bharatpur established the temple and installed the deity, there is abundant evidence that the State of Bharatpur had made from time to time large donations for the maintenance of the temple. The Ruler of Bharatpur had therefore clearly a substantial interest to maintain the suit on behalf of the deity to protect the property. There is no merit in the appeal and therefore it must fail.

Ramchand v. Thakur Janki Ballabhji Maharaj and another, AIR 1970 SC 532: 1970 (1) SCJ 174: 1970 (1) SCR 334: 1969(2) SCC 313

Hindu Law.-Religious endowment.-Nature of dedication.-Determination of public or private trust.-Considerations for.

Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But does it follow from this that it is to be regarded as the beneficial owner of the endownment? Though such a notion had a vogue at one time.

When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

The word `family' in its popular sense means children, and when the settlor recites that he has no children, that is an indication that the dedication is not for the benefit of the family but for the public.

It is nothing unusual even in well-known public temples for the puja hall being cleared of the public when a high dignitary comes for worship, and the act of the pujari in stopping the public is an expression of the regard which the entire villagers must have had for the wife of the founder, who was a pardanashin lady, when she came in for worship, and cannot be construed as a denial of their rights.

Deoki Nandan v. Murlidhar and others, AIR 1957 SC 133: 1957 All LJ 416: 1957 Andh WR (HC) 358: 1957 BLJR 355: 1956 SCR 756

Hindu Law.-Religious endowment.-Nature of endowment.-Hereditary grants indicate that it is personal grant and not to the temple.

Shri Vallabharaya Swami Varu (Deity) of Swarna v. Devi Hanumancharyulu and others, AIR 1979 SC 1147: 1979(3) SCC 778: 1980(3) Mah LR 27

Hindu Law.-Religious endowment.-Nature of endowment.-Private and Public Trust.-Temple built from family funds and located within the residential area of family to which the public was occasionally permitted to visit as invitee.-Provision for collection boxes for cash and grains is not decisive factor to hold it a Public Trust.-The trust held to be private trust.

Haribhanu Maharaj of Baroda v. Charity Commissioner, Ahemdabad, AIR 1986 SC 2139: 1986(4) SCC 162: 1986(2) Scale 306: 1986 JT 280

Hindu Law.-Religious endowment.-Nature of grant.-Property given to Head of Mutt.-Nature of grant.-Determination of.

In each case the court has to come to its conclusion either from the grant itself or from the circumstances of the case whether the grant was for the benefit of the public or a section if it, i.e., an unascertained class, or for the benefit of the grantee himself or for a class of ascertained individuals. An inference can also be drawn from the usage and custom of the institution or from the mode in which its properties have been dealt with as also other established circumstances.

The Bihar State Board of Religious Trust (Patna) v. Mahanth Sri Biseshwar Das, AIR 1971 SC 2057: 1971(1) SCC 574: 1971(3) SCR 680

Hindu Law.-Religious endowment.-Object of dedication.-Partially religious endowment.-Permissibility.-The dedication under Hindu Law can be for religious or charitable purposes partially.-The nature of dedication is a question of fact to be determined in each case by ascertaining the true intention of the parties.

Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document.

In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter.

In some cases where documents purport to dedicate property in favour of public charity, provision is made for the maintenance of the worshipper who may be a member of the family of the original owner of the property himself and in such cases the question often arises whether the provision for the maintenance of the manager or the worshipper from the income of the property indicates an intention that the property should retain its original character and should merely be burdened with an obligation in favour of the charity.

If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purpose, it would be difficult to accept the theory of complete dedication.

Menakuru Dasaratharami Reddi and another v. Dudaukuru Subba Rao and others, AIR 1957 SC 797: 1957 SCR 1122

Hindu Law.-Religious endowment.-Personal property.-Distinction with trust property.-Offering is made at the fate of Guru and similar offering made while he was on moved.-Held that what is laid at his feet out of reverence by devotees belongs to him and does not form part of trust property.

Heir of deceased Maharaj Purshotamlalji Maharaj, Junagad v. Collector of Junagad District and others, AIR 1986 SC 2094: 1986(4) SCC 287: 1986(3) SCR 705: 1986(2) Scale 400

Hindu Law.-Religious endowment.-Personal property of Mahant.-Determination of.-The Mahant not celibates.-Absence of material to prove that the personal properties were purchased from the funds of the Math.-The properties held to be personal properties.

The burden of proof resting on the party who makes the claim. In the present case, it is difficult to conclude from the material before us that the total income from the properties belonging to the Math and the deity left any appreciable surplus after meeting the expenditure on account of bhog, arpan, deepdan, daily and annual puja and the other obligations specified in the waqf deed. We are in agreement with the High Court that the fund from which the Amauli properties were acquired constitutes the personal property of Mahant Shivpher Yati. On his death in 1917, the fund passed to Mahant Shivshanker Yati, who in 1921 employed it for the purchase of the Amauli properties.

Mathu Sauna and others v. Kedar Nath alias Uma Shankar and others, AIR 1981 SC 1878: 1981(4) SCC 77: 1982(1) SCR 659: 1981(5) Scale 1577

Hindu Law.-Religious endowment.-Power of Shaibat.-Except in unavoidable necessity, permanent alienation of property by Mahant is a breach of duty.

Sridhar Suar and another v. Shri Jagan Nath Temple and others, AIR 1976 SC 1860: 1976(3) SCC 485: 1976 Supp. SCR 101

Hindu Law.-Religious endowment.-Private and public endowments.-Distinction of. The essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust.

Mahant Ram Saroop Dasji v. S.P. Sahi, Special Officer-in-charge of Hindu Religious Trusts and others, AIR 1959 SC 951: 1959 BLJR 820: 1959 Pat LR (SC) 63: 1959 Supp (2) SCR 583

Hindu Law.-Religious endowment.-Private and public trusts.-Distinction of.-Determination of.

The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

We must construe the deed of trust with refeence to all its clauses and so construed, we have no doubt that the trusts imposed constitute a public endowment. There is one other point to be noticed in this connexion. The deed of trust in the present case is in the English form and the settlor has transferred the properties to trustees who are to hold them for certain specified purposes of religion and charity; that in our opinion is not decisive but is nevertheless a significant departure from the mode a private religious endowment is commonly made.

State of Bihar and others v. Sm. Charusila Dasi, AIR 1959 SC 1002: 1960 Pat LR (SC) 1: 1959 SCJ 1193: 1959 Supp (2) SCR 601

Hindu Law.-Religious endowment.-Private or public temple.-Determination of.-Considerations for.

A temple belonging to a family which is a private temple is not unknown to Hindu law. In the case of a private temple it is also not unlikely that the religious reputation of the founder may be of such a

high order that the private temple founded by him may attract devotees in large number and the mere fact that a large number of devotees are allowed to worship in the temple would not necessarily make the private temple a public temple. On the other hand, a public temple can be built by subscritions raised by the public and a deity installed to enable all the members of the public to offer worship. In such a case, the temple would clearly be a public temple. Where evidence in regard to the foundation of the temple is not clearly available, sometimes, judicial decisions rely on certain other facts which are treated as relevant. Is the temple built in such an imposing manner that it may prima facie appear to be a public temple? The appearance of the temple of course cannot be a decisive factor; at best it may be a relevant factor. Are the members of the public entitled to an entry in the temple? Are they entitled to take part in offering service and taking Darshan in the temple? Are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple? Are their offerings accepted as a matter of right? The participation of the members of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations of festival occasions may be a very important factor to consider in determining the character of the temple.

Tilkayat Shri Govindlalji Maharaj etc. v. State of Rajasthan and others, AIR 1963 SC 1638: 1964(1) SCR 561

Hindu Law.-Religious endowment.-Public and private trust.-Determination of.-Scheme for management of temple.-Necessity of.-The temple held to be a public temple.-Direction given to the District Judge to frame scheme for the management of temple.

Ram Mandir has been declared to be a public temple. There is no deed conferring the right on any person to manage the temple exclusively. There is a rival claim for the right of management. It would be, therefore, proper to frame a scheme for management. We, therefore, direct the District Judge to frame a scheme for proper management of the temple. In that scheme, plaintiff 1 since deceased by his L.Rs and the defendant be given equal rights in the management. If they are not able to co-operate each other, they may be given such exclusive rights in the alternative periods of six months or one year. The scheme also may provide the right to nominate the successor of plaintiff 1 and the defendant for management of the temple. We, however, make it clear that the directions given by the trial court against the defendant in regard to the missing articles of the temple is kept undisturbed and the defendant shall be asked to restore all the articles to the temple.

Jagdish Prasad (since deceased through LRs.) v. Mahant Tribhuwan Puri, AIR 1988 SC 323: 1987 Supp. SCC 482: 1987(2) Scale 1464: 1987(4) JT 509

Hindu Law.-Religious endowment.-Public or private trust.-Enjoyment of property by individual and non-interference of Public in the management is not sufficient to hold that the Temple is a private trust.

An idol is a juristic person capable of holding property. The property end owed to it vests in it but the idol has no beneficial interest in the endowment. The beneficiaries are the worshippers. Dedication may be made orally or can be inferred from the conduct or from a given set of facts and circumstances. There need not be a document to evidence dedication to the public. The consciousness of the manager of the temple or the devotees as to the public character of the temple; gift of properties by the public or grant by the ruler of Govt.; and long use by the public as of right to worship in the temple are relevant facts drawing a presumption strongly in favour of the view that the temple is a public temple.

It is true that there is no proof of dedication to the public. It is seen that it was lost in antiquity and no documentary evidence in that behalf is available. Therefore, from the treatment meted out to the temple and aforesaid evidence in our considered view an irresistible inference would be drawn that the temple was dedicated to the Hindu public or a section thereof and the public treat the temple as public temple and worship thereat as of right. It is true that there is evidence on record to show that there was a board with inscription thereon that "no entry without permission" and that only Darshan was being had and inside pooja was not permitted. But that is only internal regulation arranged for

the orderly. Darshan and that is not a circumstance to go against the conclusion that it is a public-temple.

Bala Shankar Maha Shankar Bhattjee and others v. Charity Commissioner, Gujarat State, AIR 1995 SC 167: 1995 Supp (1) SCC 485: 1994(3) Scale 796: 1994(5) JT 152

Hindu Law.-Religious endowment.-Public trust.-Frequent visit of public to the temple in question.-Effect on nature of trust.

The mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. No such evidence of any reliable kind was available to the appellant- Board in the instant case.

A religious mutt in northern India is usually known as asthal, a monastic institution founded for the maintenance and spread of a particular sampradaya or cult. The distinction between dedication to a temple and a mut is that in the former case it is to a particular deity, while in the latter, it is to a superior or a mahant. But just as in the case of the debutter endowment, there is both a private and a public endowment, so too there can be the same distinction between a private and a public mutt. A mut can be dedicated for the use of ascetics generally or for the ascetics of a particular sect or cult, in which case it would be a public institution. Mutts have generally sadavrats, i.e., arrangements for giving food and shelter to wayfarers and ascetics attached to them. They may have temples to which the public is allowed access. Such circumstances might indicate the public character of the institution. But it is not impossible to have a private mutt, where the endowment is not intended to confer benefit upon the public generally or even upon the members of a particular religious sect. or order. Examples do occur where the founder may grant property to his spiritual preceptor and his disciples in succession with a view to maintain one particular spiritual family and for perpetuation of certain rights and ceremonies which are deemed to be conducive to the spiritual welfare of the founder and his family. In such cases it would be the grantor and his descendants who are the only persons interested in seeing that the institution is kept up for their benefit.

The Bihar State Board of Religious Trust (Patna) v. Mahanth Sri Biseshwar Das, AIR 1971 SC 2057: 1971(1) SCC 574: 1971(3) SCR 680

Hindu Law.-Religious endowment.-Public trust.-Part of premises used as residence.-People permitted to enter temple only after the settler had finished his worship.-Test for determination of nature of the trust of temple.

Though most of the present day Hindu public temples have been founded as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired great deal of religious reputation either becuase of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to offer worship. In such a case the temple would clearly be a public temple.

The true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as.-

(1) Is the temple built in such imposing manner that it may *prima facie* appear to be a public temple?

(2) Are the members of the public entitled to worship in that temple as of right?

(3) Are the temple expenses met from the contributions made by the public?

(4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples?

(5) Have the management as well as the devotees been treating that temple as a public temple?

Goswami Shri Mahalaxmi Vahuji v. Shah Ranchhoddas Kalidas and others, AIR 1970 SC 2025: 1970 (2) SCR 275: 1969(2) SCC 853

Hindu Law.-Religious endowment.-Public trust.-Proof of.-The proof of dedication to public is

difficult to find in respect of ancient temples.-It can be traced through the circumstances of its management and worship.-The fact that the members of public worshipped in the temple and gave offerings, cannot be ignored.

The Bihar State Board of Religious Trust v. Ramsubaran Das, AIR 1996 SC 3354: 1996(9) SCC 305: 1996(2) Scale 702: 1996(3) AD (SC) 109: 1996(3) Curr. C.C. 58

Hindu Law.-Religious endowment.-Religious purpose.-Determination of.-The religious or charitable purposes are not confined to actual or assumed public benefit but acquisition of religious merit is also important criterion.

Any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recognition from certain classes, as constituting purposes conductive to religious merit. If such beliefs are to be accepted by Courts as being sufficient for valid perpetual dedication of property therefor without the element of actual or presumed public benefit it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. That is a question which does not arise for direct decision in this case. But it cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tying up property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistency with public policy and needs of modern society.

Saraswathi Ammal and another v. Rajagopal Ammal, AIR 1953 SC 491: 1953 SCJ 714: 1954 SCR 277

Hindu Law.-Religious endowment.-Right in offering.-Transfer of right.-Permissibility.-The right is subject to obligations and duties and being heritable is transferable and is subject to succession under the provision of Hindu Succession Act.

The right to receive a share in the offerings is subject to the performance of onerous duties. But then it is apparent that none of these duties is in nature priestly or requiring a personal qualification. On the other hand all of them are of a non.-religious or secular character and may be performed not necessarily by the baridar personally but by his agents or servants so that their performance boils down to mere incurring of expense. If the baridar chooses to perform those duties personally he is at liberty to do so. But then the obligation extends merely to the making of necessary arrangements which may be secured on payment of money to others, the actual physical or mental effort involved being undertaken by those others. The right is, therefore, a transferable right as envisaged in the passage above extracted.

The right to share the offerings being a right coupled with duties other than those involving personal qualifications and, therefore, being heritable property, it will descend in accordance with the dictates of the Hindu Succession Act and in supersession of all customs to the contrary in view of the provisions of Section 4 of that Act.

Badri Nath and another v. Mst. Punna (Dead) by LRs. and others, AIR 1979 SC 1314: 1979(3) SCC 71: 1979(3) SCR 209: 1979(3) Mah LR 198

Hindu Law.-Religious endowment.-Right of *Sudras* to become *Sanyasi*.-Part III of Constitution has no application.-Where the uses indicate that a *Sudra* can enter into a higher religious order, it must be given affect.

We are inclined to take the view that though according to the orthodox Smriti writers a *Sudra* cannot legitimately enter into a religious order and although the strict view does not auction or tolerate ascetic life of the Sudras, it cannot be denied that the existing practice all over India is quite contrary to such orthodox view. In cases, therefore, where the usage is established, according to which a *Sudra* can enter into a religious order in the same way as in the case of the twice born classes, such usage should be given effect to.

Krishna Singh v. Mathura Ahir and others, AIR 1980 SC 707: 1980(2) SCR 660: 1980 All LJ 299

Hindu Law.-Religious endowment.-Sale of property of Trust.-Challenge to sale by the worshippers is maintainable in respect of a public temple.

The temple has been found to be a public temple. In respect of a public temple, the law is well-settled that the true beneficiaries of religious endowments are not the idols but the worshippers and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers.

The worshippers have a right to file a suit to set aside a transfer of immovable property comprising in a Hindu religious or charitable endowments made by a manager thereof for valuable consideration. In such a suit, though the plaintiff worshippers may have the transfer set aside but they cannot claim to recover possession.

Kapoor Chand and others v. Ganesh Dutt and others, AIR 1993 SC 1145: 1992(3) Scale 356: 1992 Supp. JT 529: 1993 Supp (4) SCC 432: 1993(49) DLT 351

Hindu Law.-Religious endowment.-Shebaiti rights.-Transfer of.-Permissibility.-Deed of sale executed by co-shebaiti in favour of stranger is void and is unenforceable.

The appellant cannot invoke the doctrine of transfer of shebaiti right for the benefit of the deity because the transfer of Pramila Debi to Upendra Nath Ganguli is illegal for the principal reason that neither the temple nor the deities nor the shebaiti right can be transferred by sale for pecuniary consideration. The transfer by sale is void in its inception.

The reason why transfer in favour of the next shebait or one in the line of succession or a co-shebait is permissible is that if anyone of the shebaits intends to get rid of the duties the proper thing for him to do would be to surrender his office in favour of the remaining shebaits. In such a case no policy of Hindu Law is likely to be affected nor can such transaction be said to be against the presumed intentions of the founder. A transfer of shebaiti by will is not permitted because nothing which the shebait has can pass by his will which operates only at his death.

Kali Kinkor Ganguly v. Panna Banerjee, AIR 1974 SC 1932: 1974(2) SCC 563: 1975(1) SCR 728

Hindu Law.-Religious endowment.-Shebaitship.-Hereditary office of Shebaitship is an immovable property.-Transfer by Gift must be made by registered instrument.

Ram Rattan (dead) by legal representatives v. Bajrang Lal and others, AIR 1978 SC 1393: 1978(3) SCC 236: 1978(3) SCR 963: 1978 Curr. LJ (Civil) 426

Hindu Law.-Religious endowment.-Shebaitship.-Right and duties of Shebait.-Principle of construction of deed of endowment.

There is no doubt that under the law shebaits have a right and, perhaps, the duty also of living in the premises dedicated to the deity. But it would be strange if the shebaits themselves should be in a position to enjoy the whole of the dedicated property to the detriment of the deity. In a genuine absolute dedication the settlor would take care that a fund is created for the repair and upkeep of the deity's abode from year to year and for that purpose direct that as much of the house as possible should be let out so that, in a place like Calcutta or round about, the deity may get a decent income not only for the routine Pujas and observances but also for the maintenance and repairs of the house in which the deity is installed.

Shebaits are merely Managers of the deity and are not expected to spend out of their pocket for the upkeep of the deity. They might spend out of devotion to the deity, but there is no legal obligation on them. In these circumstances, a settlor intending an absolute dedication in favour of a deity or charity would not be more concerned that his heirs live in the house from generation to generation along with their families, but would be more concerned for the welfare of the deity and the permanent maintenance of the building in which the deity is housed. In our opinion, the Settlement Deed has actually settled the bulk of the property on his heirs and we are in agreement with the High Court that the real intention of the donor was not only to provide for the worship of his family deity and the religious and charitable purposes mentioned in the Deed but also to provide the heirs from generation to generation a permanent habitation in the property. The provision is inconsistent with an absolute dedication in favour of the deity and the charitable purposes. The High Court, therefore,

is right in holding that this was a partial dedication.

Smt. Nirupama Ghosh v. Smt. Purnima Ghosh and another, AIR 1972 SC 1412: 1973(3) SCC 411

Hindu Law.-Religious endowment.-Shebaitship.-Succession.-Absence of any provision in the deed of settlement.-In the absence of any contrary or uses or customs shebaitship devolve like heritable property.

Shebaitship being property, it devolves like any other species of heritable property. It follows that, where the founder does not dispose of the shebaiti rights in the endowment created by him, the Shebaitship devolves on the heirs of the founder according to Hindu Law, if no usage or custom of a different nature is shown to exist.

Then, there is a distinction between a public and private debutter. In a public debutter or endowment, the dedication is for the use or benefit of the public. But in a private endowment, when property is set apart for the worship of a family idol, the public are not interested. The present case is one of a private debutter. The distinction is important, because the results logically following, therefrom have been given effect by Courts differently.

Profulla Chorone Requitte and others v. Satya Choron Requitte, AIR 1979 SC 1682: 1979(3) SCC 409: 1979(3) SCR 431: 1979 BLJR 257

Hindu Law.-Religious endowment.-Succession to office of Mahant.-Absence of evidence proving existence of custom.-The claimant is not entitled to succession to office.

Munshi Dass v. R. Mal Singh (dead) by L.Rs. and another, AIR 1977 SC 2002: 1977(4) SCC 65

Hindu Law.-Religious endowment.-Succession.-Grant made in favour of.-Idol is a juristic person who lives for ever and therefore no question of succession can arise in case of such grant.

In the case of a grant to the Idol or temple as such there would be no question about the death of the grantee and, therefore, no question about its successor. An Idol which is a jurisdical person is not subject to death, because the Hindu concept is that the Idol lives for ever, and so, it is plainly impossible to predicate about the Idol which is the grantee in the present case that it has died at a certain time and the claims of a successor fall to be determined.

Idol of Thakurji Shri Govind Deoji Maharaja, Jaipur v. Board of Revenue, Rajasthan, Ajmer and others, AIR 1965 SC 906: 1965(1) SCWR 956: 1965(1) SCR 96

Hindu Law.-Religious endowment.-Succession.-Local custom of succession to the office of Mahant in Punjab is usual elective.-A person claiming right of succession on the basis of hereditary or on the basis of Chelaship and Gurubhaiship must establish it by positive evidence.

Brahma Nand Puri v. Nelci Puri, AIR 1965 SC 1506: 1965(2) SCJ 673: 1965(2) SCR 233

Hindu Law.-Religious endowment.-Succession.-Mahant of Math.-Appointment of a person though not a chela but accepted as chela and successor at the time of succession.-Appointment, upheld.

Amar Prakash and others v. Parkasha Nand and others, AIR 1979 SC 845: 1979(3) SCC 221: 1979(2) SCR 1012: 81 Puri LR 486

Hindu Law.-Religious endowment.-Succession.-Nature of property held to be endowment property and not private property.-Claim of succession on the basis of contention that the property was a private property.-The status of claimant as to whether he was duly appointed chela of deceased mahant remains open for adjudication as this issue did not survive due to other findings of the court.

Mahant Narayangiri Guru Mahant Someshwarigiri v. The State of Maharashtra and another, AIR 1977 SC 628: 1976(4) SCC 534

Hindu Law.-Religious endowment.-Succession.-Nomination of Head of the Mutt for succession.-Such nomination though exercised by Will, is not revocable except on a good cause.

Sri Mahalinga Thambiran Swamigal v. Arulnandi Thambiran Swamigal, AIR 1974 SC 199: 1974(1) Mad LJ (SC) 134: 1974(2) SCR 74: 1974(1) SCC 150

Hindu Law.-Religious endowment.-Tomb.-Worshipping at the tomb if a religious worship.-Burden of proof.

The rule that a provision for the purpose of Puja over the tomb of the remains of a person is invalid is subject to certain exceptions.

The raising of a tomb over the remains of an ancestor, an ordinary person is not recognised as religious in nature. The burden is on the person setting up a case of religious practice in the community to prove it. This prohibition may not apply when an ancestor is cremated and a memorial raised for performing Sharadha ceremonies and conducting periodical worship for this practice may not offend the Hindu sentiment which does not ordinarily recognise entombing the remains of the dead. A place of worship will not cease to be religious because of its being in the memory of a person.

Nagu Reddiar and others v. Banu Reddiar and others, AIR 1978 SC 1174: 1978(2) SCC 591: 1978(3) SCR 770

Hindu Law.-Religious endowment.-Transfer of property.-Validity of.

The Mahants had systematically pursued a money-lending business, that there was little nucleus of any endowed property, that during the course of a century and a half the proved endowments were hardly of any importance, that the Mahants were transferring properties to others in recognition of the claims of the disciples or voluntarily for lawful consideration and were describing themselves in the Tamilknamas as the absolute owners of the property, we cannot but hold that the properties in their charge were their personal properties unless it be established that any particular item of property was the subject-matter of an endowment or a gift for a particular charitable purpose.

Gurcharan Prasad v. P. Krishnanand Giri etc., AIR 1968 SC 1032: 1968 (2) SCR 600

Hindu Law.-Religious endowment.-Written deed.-Necessity of.-The dedication to charity can be established by cogent evidence and conduct of parties.-Such dedication need not be by written instrument of grant.

Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity.

Menakuru Dasaratharami Reddi and another v. Dudaukuru Subba Rao and others, AIR 1957 SC 797: 1958 An LT 1: 1957(2) Mad LJ (SC) 175: 1957 SCR 1122

Hindu Law.-Religious endowment.-Written instrument.-Necessity of.-Dedication of property to charity can be made only or the same can be inferred from the conduct of the parties.

Tilkayat Shri Govindlalji Maharaj etc. v. State of Rajasthan and others, AIR 1963 SC 1638: 1964(1) SCR 561

Hindu Law.-Reversion.-Sale by limited owners.-Declaration granted that the right of reversioner is unaffected by sale, affirmed. *Smt. Sheela Devi v. Mohan Sarup and others,* AIR 1987 SC 1072: 1987(2) SCC 235: 1987(1) Scale 422: 1987(1) J.T. 486: 1987(2) Guj. LH 74

Hindu Law.-Sale of undivided interest.-Partition.-Sale effected in execution of personal decree against a coparcener.-The auction purchaser is entitled to claim partition by way of suit and his right to possession shall be from the date of specific allotment made in his favour. *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh and others,* AIR 1953 SC 487: 1953 SCJ 700: 1954 SCR 177

Hindu Law.-Shebaitship.-Adverse possession against the idol.-Permissibility. If a shebait by acting contrary to the terms of his appointment or in breach of his duty as such shebait could claim adverse possession of the dedicated property against the idol it would be putting a premium on dishonesty and breach of duty on his part and no property which is dedicated to an idol would ever be safe. The shebait for the time being is the only person competent to safeguard the interest of the

idol, his possession of the dedicated property is the possession of the idol whose sevait he is, and no dealing of his with the property dedicated to the idol could afford the basis of a claim by him for adverse possession of the property against the idol. No shebait can, so long as he continues to be the sevait, every claim adverse possession against the idol. *Sree Sree Ishwar Sridhar Jew v. Mst. Sushila Bala Dasi and others,* AIR 1954 SC 69: 1954 SCJ 17: 1954 SCR 407: 1954(1) Mad LJ 55

Hindu Law.-Shebaitship.-Female shebait.-Rights of.-Alienation of property by female shebait.-The right of reversioner to succeed to shebaitship after the death of the widow cannot be defeated by an act of alienation by the widow.-The limitation to sue for the office of shebaitship shall commence from the date of the death of the widow and not from the date of alienation. That except where a decree has been obtained fairly and properly and without fraud and collusion against the Hindu female heir in respect to a property held by her as a limited owner, the cause of action for a suit to be instituted by a reversioner to recover such property either against an alience from the female heir or a trespasser who held adversely to her accrues only on the death of the female heir. This principle, which has been recognised in the Law of Limitation in this country ever since 1871, seems to us to be quite in accordance with the acknowledged principles of Hindu Law. The right of reversionary heirs is in the nature of *spes successions,* and as the reversioners do not trace their title through or from the widow, it would be manifestly unjst if they are to lose their rights simply because the widow has suffered the property to be destroyed by the adverse possession of a stranger. As the shebaiti interest is heritable and follows the line of inheritance from the founder, obviously when the heir is a female, she must be deemed to have, what is known, as widow's estate in the shebaiti interest. Ordinarily there are two limitations upon a widow's estate. In the first place, her rights of alienation are restricted and in the second place, after her death the property goes not to her heirs but to the heris of the last male owner. It is admitted that the second element is present in the case of succession to the rights of a female shebait. As regards the first, it is quite true that regarding the powers of alienation, a female shebait is restricted in the same manner as the male shebait, but that is because there are certain limitations and restrictions attached to and inherent in the shebaiti right itself which exist irrespective of the fact whether the shebaitship vests in a male or a female_heir. Article 124 relates to a hereditary office and this means that the office goes from one person to another solely by the reason of the latter being a heir to the former. Under the Hindu Law of Inheritance, when a female heir intervenes, she holds during her life-time a limited interest in the estate and after her death succession opens out not to her heirs but to the heris of the last male holder. It has not been and cannot be disputed that the same rule applies in the case of succession to shebaitship. Reading Article 124, Limitation Act, along with Section 2(8), the conclusion is irresistible that to defeat the title of the plaintiff under Article 124 it is necessary establish that the defendant had taken possession of the office adversely to the plaintiff or somebody from or through whom the plaintiff derives his title, more than 12 years prior to the institution of the suit.*Kalipada Chakraborti and another v. Smt. Palani Bala Devi and others,* AIR 1953 SC 125: 1953 SCJ 208: 1953 SCR_503

Hindu Law.-Shebaitship.-Rights of.-The exact position of a shebait in respect of the property is not exactly as similar to the position of a trustee in respect of trust property as defined in English Law. *Mahant Moti Das v. 1. S.P. Sahi, The Special Officer in charge of Hindu Religious Trust & others,* AIR 1959 SC 942: 1959 SCJ 1144: 1959 Supp (2) SCR 563

Hindu Law.-Shebaitship.-Succession.-Absence of provision by the founder for succession.-The widow of shebait could succeed to the shebaitee right as limited owner which in turn could get enlarged as absolute rights under Hindu Succession Act entitling her to further transfer the shebaitship by Will. *Shambhu Charan Shukla v. Shri Thakur Ladli Radha Chandra Madan Gopalji Maharaj and another,* AIR 1985 SC 905: 1985(2) SCC 524: 1985(3) SCR 372: 1985(1) Scale 503

Hindu Law.-Shebaitship.-Succession by Will.-Construction of Will.-Necessity to gather intention of testator.-The Will conferring sole shebaitship to wife and children for life and thereafter to legal heirs.-Construction of. The intention of the testator was, after bequeathing the properties to

the deity, to appoint his wife as the sole shebiat during her lifetime and to treat his foster son Shyam Sundar and his daughter's son Krishna Chandra on equal footing so that so long both were alive they may act as joint shebiats and after the death of either his male heirs may step into his shoes. It was not the intention of the testator to make either of the survivors, the foster son or the daughter's son, to be the sole Shebiat for his life. It is not correct to say, as was argued on behalf of the appellant, that the heirs were to come in the picture only after the death of both. In clause 9 a direction was given to the Shebiat or the Shebiats whether one was the sole Shebiat or a joint Shebiat to do certain things according to the will of the testator. In the event of one of the two dying without leaving any male heir, the surviving one could have become the sole Shebiat. But he would be a joint Shebiat with the male heirs of the deceased Shebiat in case he left such heirs. It is on that account that in clause 9 it was said "one of them on the demise of the other as the joint or the sole Shebiat, to meet both the eventualities. *Shyam Sundar Pramanick v. Moni Mohan Sadhukhan and others,* AIR 1976 SC 977: 1975(4) SCC 668

Hindu Law.-Shebaitship.-Succession to shebaitship.-It is the common law of succession which govern the succession of shebaitship. Succession to shebaitship, even though there is an ingredient of office in it, follows succession to ordinary or secular property. It is the general law of succession that governs succession to shebaitship as well. While the general law has now been changed by reason of Act XVIII (18) of 1937, there does not appear to be any cogent reason why the law as it stands at present should not be made applicable in the case of devolution of shebaitship. *Smt. Angurbala Mullick v. Debabrata Mullick,* AIR 1951 SC 293: 1951 ALJ SC 132: 64 MLW 960: 1951 SCJ 394: 1951 SCR 1125

Hindu Law.-*Stridhan*.-Effect of Entrustment.-Upon entering the matrimonial home, the Stridhan does not become joint property with husband and relatives.-Prosecution for breach of trust on misappropriation of Stridhan against the husband and her family is permissible. *Pratibha Rani v. Suraj Kumar and another,* AIR 1985 SC 628: 1985(2) SCC 370: 1985(3) SCR 191: 1985 MLR 119

Hindu Law.-*Stridhan*.-Restrictions on right to use Stridhan.-A Hindu women is entitled to deal with her *Stridhan* property as she like which also includes putting restriction or curtailment of her rights by her own consent and free will, in the *Stridhan* property. *B.T. Govindappa v. B. Narasimhaiah,* AIR 1991 SC 1969: 1991(4) SCC 106: 1991(2) Scale 233: 1991(3) JT 344

Hindu Law.-*Stridhan*.-Succession.-Rule and order of succession amongst the relatives of the deceased Hindu maiden. It is admitted that Bhimabai died while she was a maiden and that a maiden's property under the Hindu Law goes in the first place to her uterine brothers, in default of them to the mother and then to the father. This is according to the text of Baudhayana, see Mitakshara Chapter II, Section 11, Para 30 which is accepted by all the commentators. Viramitrodaya adds to this that "on failure of mother and father it goes to their nearest relations," see Viramitrodaya Chapter V, Part II, Section 9. It has been held in a large number of cases that the expression "nearest relations of the parents" means and refers to the sapindas of the father and in their default the sapindas of the mother both in order of propinquity *vide* Mayne's Hindu Law, Edn. 11; Article 621, page 741. In the case before us both the plaintiffs and defendant 4 are sapindas of Firangojirao, the plaintiffs being the sister's sons of Frangojirao, while the latter is his paternal uncle's son. It is not disputed that apart from the changes introduced by the Hindu Law of Inheritance (Amendment) Act, (Act II(2) of 1929), the place of the paternal uncle's son in the line of heirs under the Mitakshara Law of Succession is much higher than that of the sister's son, and the Mayukha Law, which prevails in the State of Bombay, does not make any difference in this respect. Under the Mitakshara Law, the paternal uncle comes just after the paternal grandfather and his son follows him immediately. The istridhan heirs are to be ascertained with reference to the general provisions of the Hindu Law of Inheritance ignoring the statutory heirs who have been introduced by the Act. The fallacy in the line of approach adopted in these cases seems to be that they treat the Inheritance Act 1929 as amending

or altering the Mitakshara Law of Succession in all cases and for all purposes, whereas the Act has absolutely no operation when succession to the separate property of a male is not the subject-matter of investigation. *Annagouda Nathgouda and another v. Court of Wards, Satara, by its Manager, The Collector of Satara and another,* AIR 1952 SC 60: 1952 SCJ 20: 1952 SCR 208

Hindu Law.-Stridhan.-Land ceiling laws.-Definition given in Land Ceiling Laws construed in the light of personal laws.

Unless the 'definitions' in land ceiling laws themselves refer to personal laws, it is not permissible to resort to the personal laws while interpreting 'definitions' in land ceiling laws. It may be that for purposes of computation of the ceiling area, the land ceiling law may itself refer to the personal laws or it may be necessary to refer to personal laws but that is different. It is not therefore permissible to introduce principles of Hindu law relating to maintenance of a wife or mother into the interpretation of the word 'Stridhana land'. *A.G. Varadarajulu and another vs. State of Tamil Nadu and others,* AIR 1998 SC 1388 : 1998(2) Mad LW 47 : 1998(2) Rec Civ R 268 : 1998(4) SCC 231

Hindu Law.-Succession.-Adoption.-Customary right of widow to adopt without authority of husband.-Death of son of widow leaving behind his widow, resulted in loss of right to adopt.-Remarriage of widow of son would not revive her right to adopt. The interposition of a grandson, or the son's widow, competent to continue the line by adoption brings the mother's power of adoption to an end. We accordingly held that on the death of Balu the responsibility for the continuance of the family line fell on his widow Lilabai by the power of adoption vesting in her, and the power of Parvati to adopt was extinguished permanently and did not revive even on Lilabai's remarriage. Consequently the adoption of first defendant was invalid in the eye of law and he did not get any interest in the suit properties. *Sau. Ashabai Kate v. Vithal Bhika Nade,* AIR 1990 SC 670: 1989 Supp. (2) SCC 450: 1989 Supp. (1) SCR 464: 1989(4) JT 163: 1989 Mat LR 449

Hindu Law.-Succession.-Bequeath by Will.-Right of co-widow to make Will in respect of her right of survivorship in the property is coextensive to right to transfer.-Partition of properties amongst co-widows.-Bequeath by one co-widow in respect of her share of property is valid. *Bindumati Bai v. Narbada Prasad,* AIR 1977 SC 394: 1976(4) SCC 626: 1977(1) SCR 988: 1977 Hindu LR 611

Hindu Law.-Succession.-Bequest in favour of unborn.-Permissibility.-Such bequest is void subject to the provisions of Sections 113 to 116 of Succession Act, 1925. Although there is no authority in Hindu Law to justify the doctrine that a Hindu cannot make a gift or bequest for the benefit of an unborn person yet that doctrine has been engrafted on Hindu Law by the decision of the Judicial Committee. Which has stood a great length of time and on the basis of that decision rights have been regulated, arrangements as to property have been made and titles to property have passed. We are hence of the opinion that this is a propoer case in whcih the maxim *communis error facit jus* may be applied. The doctrine in Tagore's case has been altered by three Acts, namely Hindu Transfers and Bequests Act, 1 of 1914, the Hindu Disposition of Property Act of 1916 and the Hindu Transfers and Bequests (City of Madras) Act, 1921. The legal position under these Acts is that no bequest shall be invalid by reason only that any person for whose benefit it may have been made was not born at the date of the testator's death. This rule, however, is subject to the limitations and provisions contained in Sections 113, 114, 115 and 116 of the Indian Succession Act, 1925. *Raman Nadar Viswanathan Nadar and others v. Snehappoo Rasalamma and others,* AIR 1970 SC 1759: 1970 (2) SCJ 738: 1969(3) SCC 42: 1970(2) SCR 471

Hindu Law.-Succession.-Custom.-Preference to degraded descendants.-Succession in dasies.-Preference to a dasi daughter of a dasi mother over married daughter.-In the absence of proof of existence of custom, the succession must be governed by justice, equity and good conscience. In the absence of proof of existence of a custom governing succession the decision of the case has to rest on the rules of justice, equity and good conscience because admittedly no clear text of Hindu law applies to such a case.The rule of preference based on degradation was no longer good

law. Degradation of a woman does not and cannot sever the ties of blood and succession is more often than not determined by ties of blood than by the moral character of the heir. *T. Saraswathi Ammal v. Jagadambal and another,* AIR 1953 SC 201: 1953 SCJ 287: 1953 SCR 939

Hindu Law.-Succession.-Customary Law of Punjab in respect of succession in Hindu Grewal Jats of Ludhiana.-Claim of acceptance of customs entitling collateral succession to non-ancestral property in preference to daughter held to be unsubstantiated. *Jai Kaur and others v. Sher Singh and others,* AIR 1960 SC 1118: 1961(2) SCJ 62: 1960(2) SCR 975

Hindu Law.-Succession.-Customary succession.-Custom found to be tribal in nature and therefore applicable on parties rather than the area.-Custom is applicable in respect of the land of parties situated in other village also. The Sharat-Wajib-Ul-Arz in both the villages record in identical terms existence of such a custom amongst the Hindu Rajputs and that custom is known as Chondapatt. Such custom being tribal in nature primarily would apply to parties rather than to areas in which they live. If custom was valid for the parties and was made applicable to their rights qua agricultural lands in village Parson, it is difficult to hold that a contrary rule of succession would apply to the parties qua their agricultural lands in village Galand. *Hardan Singh and others v. Deputy Director of Consolidation and others,* AIR 1992 SC 1009: 1993 Supp (1) SCC 457: 1992(4) JT 468: 1992 All LJ 390

Hindu Law.-Succession.-Daughters of pre-deceased son.-Right of.-Application of Mitakshara Law.-Marriage in approve or disapproved form.-Effect of.-Right to succeed to women's stridhan. If the woman dies without leaving any issue, her stridhan, if she was married in an approved form, goes to her husband, and after him, to the husband's heirs in order of their succession to him; on failure of the husband's hiers, it goes to her blood relations in preference to the Government. But if she was married in an unapproved form, it goes to her mother, then to her father, and then to the father's heirs and then to the husband's heirs in preference to the Government. Stridhana of a Hindu woman governed by Mitakshara passed in the order mentioned in Mitakshara and the children of the deceased woman do not take the same as a body either jointly or as tenants-in-common. Only the heirs belonging to a class take the properties as tenants-in-common. We are unable to accept the contention that the expression `son's son' include son's daughters as according to the rules of interpretation the masculine includes the feminine. That rule of interpretation is inapplicable in the present case as daughter's daughter succeeds to the stridhana in preference to daughter's son. The order of succession prescribed clearly rules out the application of that rule of interpretation. *Shamlal and others v. Amar Nath and others,* AIR 1970 SC 1643: Andh WR (SC) 5: 1970 MPLJ (Notes) 77: 1970 (2) Mad LJ (SC) 5: 1970(1) SCC 33

Hindu Law.-Succession.-Devolution of property of maternal grand-father.-The property is not ancestral estate in the hands of the son of the beneficiary. *Maktul v. Mst. Manbhari and others,* AIR 1958 SC 918: 1958 SCJ 1268: 1959 SCR 1099

Hindu Law.-Succession.-Disability.-Effect of.-Sole surviving coparceners suffering from congenital disability being deaf and mute.-Such co-parcener when succeed as sole surviving coparcener is entitled to enjoy whole estate upon becoming sole surviving member of the family. *Kamalammal and others v. Venkatalakshmi Ammal and another,* AIR 1965 SC 1349: 1965(2) MadLJ (SC) 122: 1965(2) SCJ 638

Hindu Law.-Succession.-Effect on survivorship.-Co-widows inherited property of husband as joint tenants with right of survivorship.-One co-widow is not entitled to enforce an absolute partition of the Estate without the consent of the other so as to destroy the right of survivorship. *Karpagathachi and others v. Nagarathinathachi,* AIR 1965 SC 1752: 1965(2) SCWR 284: 1965(3) SCR 335

Hindu Law.-Succession.-Frustration.-Effect of.-Bequeath of property to widow and after her death to daughter.-Held that on death of daughter, property would revert to settler. *Sarupuri Narayanamma and others v. Kadiyala Venkatasubbaiah,* AIR 1973 SC 2114: 1973(1) SCWR 715:

1973 (1) SCC 801

Hindu Law.-Succession.-Insanity.-Effect of.-The Insanity need not be congenital for the purpose of barring succession from inheritance. *J.V. Gokal & Co. (Private) Ltd. v. The Assistant Collector Sales-Tax (Inspection) and others,* AIR 1960 SC 595: 1960 SCJ 671: 1960(2) SCA 19: 1960(2) SCR 852

Hindu Law.-Succession.-Mitakshra.-Right of co- widows.-They succeed the estate of deceased husband as co-heir without any right to enforce partition of possession against the other. They succeed as co-heirs to the estate of their deceased husband and take as joint tenants with rights of survivorship and equal beneficial enjoyment; they are entitled as between themselves to an equal share of the income. Though they take as joint tenants, no one of them has a right to enfore an absolute partition of the estate against the others so as to destroy their right of survivorship. But they are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing there from. *Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad v. Smt. Indira Balkrishna,* AIR 1960 SC 1172: 63 Bom LR 197: 1961(1) SCJ 153: 1960(3) SCR_513

Hindu Law.-Succession.-Primo- geniture.-Application of custom.-The provisions of Hindu Succession Act does not exempt a custom unless it was expressly incorporated in any covenant, agreement or enactment.-A statute merely keeping alive such custom is not sufficient. *Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj Pratap Deo and others,* AIR 1981 SC 1937: 1981(4) SCC 613: 1982(1) SCR 417: 1981(3) Scale 1425

Hindu Law.-Succession.-Primo-geniture.-Determination of Status of single heir.-Procedure. Succession is governed by the rules which govern succession to partible property subject to such modifications only as flow from the character of the impartible estate; the only modification which impartibility suggests in regard to the right of succession is the existence of a special rule for the selection of a single heir when there are several heirs of the same class who would be entitled to succeed to the property if it were partible under the general Hindu law; and in the absence of a special custom, the rule of primogeniture furnishes a ground of preference. In determining a single heir according to the rule of primogeniture the class of heirs who would be entitled to succeed to the property if it were partible must be ascertained first, and then the single heir applying the special rule must be selected. *Dayaram and others v. Dawalatshah and another,* AIR 1971 SC 681: 1971)1) SCC 358: 1971(3) SCR 324

Hindu Law.-Succession.-Religious office.-Succession by woman.-Permissibility.-Office of Pujari.-Claim of right to perform the puja either herself or through her *karinda* (agent).-Effect of personal disqualification of woman to officiate as Pujari.-No prohibition on performance of duties through substitute.-Right of woman to succeed to the office upheld. It is also undisputed that according to Hindu Shastras the functions of a `Pujari' can be performed only by certain limited classes and involves special qualifications and that these classes may vary with the nature of the institution. Now, whatever may have been the position in early times, of which there is no clear historical evidence, it appears to have been well established in later times that a female, even of the recognised limited classes, cannot by herself perform the duties of a `Pujari'. Even at a time when the institution of temple worship had probably not come into general vogue, the incapacity of a woman to recite `Vedic' texts, to offer sacrificial fire, or to perform sacramental rites, is indicated in certain texts of Manu. It cannot be denied and is indeed a matter of common knowledge, that at the present day, hereditary priestly offices are, as often as not, performed by proxies, the choice of proxy being, of course, limited to a small circle permitted by usage. In a matter of this kind where there is no express prohibition in the texts for the performance of the duties of the `Pujari's' office by the appointment of substitutes, and where such an office has developed into a hereditary right of property, the consideration of public policy cannot be insisted on to the extent of negativing the right itself. In such a situation what has to be equally emphasised is the duty-aspect of the office and to insist, on the

superior authorities in charge of the temple exercising vigilantly their responsibility by controlling the then incumbent of the priestly office in the exercise of his rights (or by other persons having interest taking appropriate steps through court), when it is found that the services are not being properly or efficiently performed. In view of the peculiar nature of such offices as combining in them both the element of property and the element of duty, it cannot be doubted that superior authorities in charge of the institutions or other persons interested have this right which may be enforced by appropriate legal means. There is nothing on the record to show whether the temple in this case falls within this category. If, however, the temple is a private one or the idol therein is not one `Shastrically' consecrated, the case in favour of the plaintiff is much stronger and her right cannot be seriously challenged. *Mst. Raj Kali Kuer v. Ram Rattan Pandey,* AIR 1955 SC 493: 1955 All LJ 525: 1955 BLJR 442: 1955 SCJ 493: 1955(2) SCR 186

Hindu Law.-Succession.-Relinquishment of right.-Permissibility.-Succession by co-widows.-It is permissible for one co-widow to give up her right of survivorship in the property which fell to her share. *Bindumati Bai v. Narbada Prasad,* AIR 1977 SC 394: 1976(4) SCC 626: 1977(1) SCR 988: 1977 Hindu LR 611

Hindu Law.-Succession.-Re-marriage of woman.-Effect of.-Succession to the property of pre-deceased son.-The mother cannot be disinherited on account of re-marriage. Our attention has not been invited to any text of the Hindu Law under which a mother could be divested of her interest in the property either on the ground of unchastity or remarriage. We feel that application of the bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spiritual relationship of the wife and the husband. After the marriage, the wife becomes an absolute partner and an integral part of her husband and the principle on which she is excluded from inheritance on remarriage is that when The relinquishes her link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her. The same, however, cannot be said of a mother. The mother is in an absolutely different position and that is why the Hindu Law did not provide that even the mother would be disinherited if she remarried. *Smt. Kasturi Devi v. Deputy Director of Consolidation and others,* AIR 1976 SC 2595: 1976 (4) SCC 674: 1977 (2) SCR 25

Hindu Law.-Succession.-Right of adopted son.-Right to succeed in natural family.-Local custom.-Effect of. In questions regarding succession and certain other matters, the law in the Punjab is contained in Section 5 of the Punjab Laws Act, No. IV of 1872. Clause (b) of that section provides that the rule of decision in such matters shall be the Hindu law where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act or has been modified by any such custom as is referred to in clause (a) thereof. Clause (a) provides that any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished and has not been declared to be void by any competent authority shall be applied in such matters. The position therefore that emerges is, where the parties are Hindus, the Hindu law would apply in the first instance and whosoever asserts a custom at variance with the Hindu law shall have to prove it, though the quantum of proof required in support of the custom which is general and well-recognised may be small while in other cases of what are called special customs the quantum may be larger. The position as it emerges from a comparison of the entries in the riwaj-i-am of 1865, 1911-12 and 1940 is somewhat confused and the High Court therefore thought that the custom recorded in para 48 should be adhered to as Brahmins and Khatris did not accept the extreme position that a son given away in adoption was excluded altogether from succeeding in his natural father's family as recorded in 1911-12. This conclusion seems to be fortified by the statements of Brahmins and Khatis in 1911-12 that a son given away in adoption succeeded in the family of his natural father if he had no brother.-though the High Court did not notice this part of the answer in the riwaj-i-am of 1911-12. The conclusion therefore at which we arrive is that amongst

Brahmins and Khatris of Amritsar district, a son given away in adoption can succeed to the property of his natural father only if there is no other son of the natural father; if there is another son he cannot succeed. *Salig Ram v. Munshi Ram and another,* AIR 1961 SC 1374: 1962(1) SCJ 130: 1962(1) SCR 470

Hindu Law.-Succession.-Right of illegitimate son.-Succession to self acquired property of Sudra.-Right of son to succeed after the death of the widow of the father. An illegitimate son has the status of a son under the High Law and he is a member of the family. But his rights are limited compared to those of a son born in wedlock. He has no right by birth and, therefore, he cannot demand partition during his father's lifetime. During the lifetime of his father, the law allows the illegitimate son to take only such share as his father may give him. But on his father's death, he takes his father's self-acquired property along with the legitimate son and in case the legitimate son dies, he takes the entire property by survivorship. Even if there is no legitimate son, the illegitimate son would be entitled to a moiety only of his father's estate when there is a widow, daughter or daughter's son of the last male holder. In the absence of any one of the three heirs, he succeeds to the entire estate of his father. Under the Hindu Law, the death of the widow opens inheritance to the reversioners and the nearest heir at the time to the last full owner becomes entitled to possession. When the succession opens, in a competition between an illegitimate son and other revesioners, the illegitimate son is certainly a nearer heir to the last male holder than the other reversioners. If he was the nearest heir only yielding half a share to the widow at the time of the death of his putative father, how does he cease to be one by the intervention of the widow's estate? As on the death of the widow the estate reverts back to the last male holder the succession shall be traced to him, and, if so traced, the illegitimate son has a preferential claim over all other reversioners. Once it is established that for the purpose of succession an illegitimate son of a Sudra has the status of a son and that he is entitled to succeed to his putative father's entire self-acquired property in the absence of a son, widow, daughter or daughrer's son and to a share along with them, we cannot see any escape from the consequential and logical position that he shall be entitled to succeed to the other half share when succession opens after the widow's death. The intervention of the widow only postpones the opening of succession to the extent of half share but it cannot divert the succession through a different channel, for she cannot constitute herself a new stock of descent. *Singhai Ajit Kumar and another v. Ujayar Singh and others,* AIR 1961 SC 1334: 1961 Andh LT 788: 1961(2) Ker LR 36: 1961(2) Mad LJ (SC) 193: 1962(1) SCR 347

Hindu Law.-Succession.-Right of widow.-Remarriage of widow does not take away the rights vested in widow at the time when succession opened. *Smt. Gajodhari Devi v. Gokul and another,* AIR 1990 SC 46: 1989 Supp. (2) SCC 160: 1989(4) J.T. 36: 1989(2) Scale 676: 1989 All. W.C. 1209

Hindu Law.-Succession.-Rule of survivorship.-Exceptions.-The custom or special law prevail upon the rule of succession by survivorship. *Annasaheb Bapusaheb Patil and others v. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc.,* AIR 1995 SC 895: 1995(2) SCC 543: 1995(1) Scale 100: 1995(1) JT 370: 1995 Civ. CR (SC) 380

Hindu Law.-Succession.-Sathanam property.-Liability of estate duty on death of Sathanamdar.-The legal fiction evolved by provision cannot be extended beyond limited purpose of devolution of interest in the property. The legal fiction also which has been introduced should only be limited to that purpose and there can be no justification for extending it. The legal fiction created by the words "as if the Sthanam property had been divided per capita immediately before the death of the Sthanamdar" appears to be meant solely for the purpose of gradually liquidating the Sthanams and distributing the Sthanam properties amongst the members of the Sthanee's tarwad and his personal heirs without infringing the provisions of the Constitution. The Sthanam property held by the Sthanamdar has to pass from the Sthanamdar to the members of the family to which he belonged and his heirs. Legal fiction in the words which has been set out do not cut down the Sthanam property that passes on the death of Sthanamdar to a per capita share the fiction having

been introduced only for determing the respective shares for the purpose of distribution to the members of the family and the heirs of Sthanamdar. *M.K. Balkrishna Menon v. The Assistant Controller of Estate Duty-cum- Income-tax Officer, Ernakulam,* AIR 1971 SC 2392: 1971(2) SCC 909: 1972(1) SCR 961

Hindu Law.-Succession.-Sudras.-Succession of illegitimate son.-Right in joint family property.-On death of the father, illegitimate son succeed as coparcener alongwith the legitimate son with right of survivorship as also to seek partition. The illegitimate son of a Sudra by a continuous concubine has the status of a son, and that he is a member of the family; that the share of inheritance given to him is not merely in lieu of maintenance, but in recognition of his status as a son; that where the father has left no separate property and no legitimate son, but was joint with his collaterals, the illegitimate son is not entitled to demand a partition of the joint family property in their hands, but is entitled as a member of the family to maintenance out of that property. This statement of the law, may be supplemented by three other well-settled principles, these being firstly, that the illegitimate son does not acquire by birth any interest in his father's estate and he cannot therefore demand partition against his father during the latter's lifetime, secondly that on his father's death, the illegitimate son succeeds as a coparcener to the separate estate of the father along with the legitimate son(s) with a right of survivorship and is entitled to enforce partition against the legitimate son(s) and thirdly that on a partition between a legitimate and an illegitimate son, the illegitimate son takes only one-half of what he would have taken if he was a legitimate son.The last point put forward on behalf of the appellants was that the plaintiff not being in possession of the properties which are the subject of the suit, he cannot maintain a suit for partition. This contention cannot prevail, because the plaintiff is undoubtedly a co-sharer in the properties and unless exclusion and ouster are pleaded and proved, which is not the case here, is entitled to partition. *Gur Narain Das and another v. Gur Tahal Das and others,* AIR 1952 SC 225: 1952 SCJ 305: 1952 SCR 869

Hindu Law.-Succession.-Survivorship.-A coparcenor not heard for seven years.-Presumption of death but the date of death not proved.-Other coparcenor surviving.-Property rightly inherited on survivorship. *N. Jayalakshmi Ammal and another v. R. Gopala Pathar and another,* AIR 1995 SC 995: 1995 Supp (1) SCC 27: 1994 (4) Scale 50: 1994 (6) JT 19: 1995 (1) Hindu LR 332

Hindu Law.-Succession.-Trust providing for distribution of properties in equal shares amongst grand sons on a specified happening.-The properties devolved on the grand sons as individual beneficiaries not kartas of their Hindu Undivided Families. *Commissioner of Income- tax, Madhya Pradesh v. Maharaja Bahadur Singh and others,* AIR 1987 SC 518: 1986(4) SCC 512: 1986(3) SCR 1020: 1986(2) Scale 591: 1986 JT 648

Hindu Law.-Succession.-Widow's estate.-Life estate.-Determination of.-Intention of the testator has to be gathered by construction of Will by reading the same as a whole.-Power of alienation in express terms not conferred on the widow.-In the circumstances the widow held to have inherited life estate. *Lakshmana Nadar and others v. R. Ramier,* AIR 1953 SC 304: 1953 SCJ 420: 1953 SCR 848

Hindu Law.-Succession.-Devolution of property.-Widow allotted suit land in lieu of land left in Pakistan.-After death she was survived by two daughters who remained in possession of land.-Death of one daughter.-Property inherited by succession would devolve on her sister and not on heirs of her pre-deceased husband.

In the present case, it is not in dispute that both Indro and Santi inherited this property from their mother, hence inherited this property as a female from her mother. Thus on the facts of this case succession clearly falls under sub-section (2). Hence, we have no hesitation to hold that on the facts of this case, the property would devolve after the death of Santi not on the heirs of her pre-deceased husband, but would devolve on Indro. This legal principle has wrongly been decided by all the courts below including the High Court. *Bhagat Ram (dead) vs. Teja Singh,* AIR 1999 SC 1944 : 1999(3) Mad

LJ 69 : 1999(2) Hindu LR 1 : 1999(4) SCC 86 : 1999(2) Marri LJ 524 : 1999(3) Raj LW 371 : 1999(2) Andh WR 226

Hindu Law.-Succession.-Devolution of property on widowed daughter-in-law.-Heirs of female Hindu.-To be ascertained at the time of wife's death and not at the time of husband's death.-When succession opens.-Widowed daughter-in-law being Class-I heir held to be heir of her mother-in-law.

In order to decide who are the heirs of a female Hindu under category (b) Section 15(1), one does not have to go back to the date of the death of the husband to ascertain who were his heirs at that time. The heirs have to be ascertained not at the time of the husband's death but at the time of the wife's death because the succession opens only at the time of her death. Her heirs under Section 15(1)(b) will have to be ascertained as if the succession to her husband had opened at the time of her death. Thus, if at the time of Gomathi Ammal's death, there is any heir of her husband who fits the description in the Schedule of being the widow of his pre-deceased son, she will be one of the heirs entitled to succeed. The status of the heir must be determined at the time of the death of the female whose heirs are being ascertained. *Seethalakshmi Ammal vs. Muthuvenkatarama Iyengar and another,* AIR 1998 SC 1692 1998(3) Mah LJ 390 : 1998(2) MPLJ 549 : 1998(1) Hindu LR 498 : 1998(5) SCC 368

Hindu Law.-Succession.-Right of adopted son.-Adoption of son by widow after death of her husband.-Findings in previous suit that widow was not living as member of HUF of her father-in-law and was entitled only to maintenance.-Would operate as *res judicata* in subsequent suit for possession by adopted son.

Where the plaintiff in a suit for possession of properties claimed that he was adopted in the year 1967 by a widow after death of her husband and that her husband, *i.e.* his his adoptive father was also adopted to her father-in-law, the findings in previous suit before date of his adoption to which the widow was party, to the effect that adoption of defendant in that suit to her father-in-law and not of her husband was proved and that she was not living as a member of HUF of her father-in-law and was entitled to maintenance, would operate as *res judicata*, because the plaintiff in subsequent suit could only claim by succession to his mother who would have become full owner of property under Hindu Succession Act and not independently as a coparcener of his father on the basis of a legal fiction. Moreover by virtue of Section 12 of the Act of 1956, the plaintiff would not have any right only on the basis that he was adopted son of widow's husband because he could not have divested his mother of her full ownership even by virtue of his adoption. *Rajendra Kumar vs. Kalyan (dead) by LRs,* AIR 2000 SC 3335 : 2000(3) Mad LJ 170 : 2000(2) Hindu LR 353 : 2000(4) Pat LJR 210 : 2000(8) SCC 99 : 2000(2) Marri LJ 491 : 2000(3) Cur C 274

Hindu Law.-Succession.-Right of widow.-Enlargement of widow's estate.-Chance of daughter a mere spes successionis to succeed to her father's property and not pre-existing legal right.-Limited ownership conferred on daughter by her father through Will.-Does not confer full ownership merely on basis of chance to succeed.

If Sham Singh (sole owner of land) had died without making a will of his own properties, then appellant No. 1 could have become the full owner of the entire property left by him and would have excluded both his brothers whose interest is claimed by the respondents'/plaintiffs'. But that situation never occurred on the death of the testator. Appellant No. 1 had merely a right to succeed to her father's property if she had survived her father and if her father had died intestate without making any will. This was merely a spes successionis, a chance to succeed to her father's property and not any pre-existing legal right. It is, therefore, not possible to agree with the contention of learned counsel for the appellants for invoking Section 14(1) of the Succession Act that, on the date of the operation of the will appellant No. 1 widowed daughter of the testator, had any pre-existing right in the testator's estate at any time prior to 11th October, 1960 under Section 8 of the Succession Act. *Balwant Kaur and another vs. Chanan Singh and others,* AIR 2000 SC 1908 :

2000(2) Hindu LR 1 : 2000(3) Mad LJ 59 : 2000(2) Cur CC 201 : 2000(6) SCC 310 : 2000(4) Andh LD 36 : 2000(126) Pun LR 469 : 2000(4) Civ LJ 408

Hindu Law.-Succession.-Right of widow.-Widow given life interest in disputed home in lieu of her right to maintenance.-Pre-existing right transformed into absolute right by virtue of Section 14(1) of Hindu Succession Act.-She was competent to execute gift deed in favour of her daughter.-Deed valid.

In the instant case, under a will executed by the husband, his son was to be owner of disputed house only after death of testator's wife. The widow was given only life interest in the said house in lieu of her maintenance. After death of testator his widow entered into possession of house for her lifetime. The widow was conferred the limited right in lieu of maintenance in recognition of her pre-existing right. The limited interest conferred upon her by virtue of the will being in lieu of maintenance and in recognition of her pre-existing right, the said right transformed into an absolute right by virtue of Section 14(1) of the Act. The said right was not conferred on her for the first time. Thus sub-section (2) of Section 14 of the Act no application. Under such circumstances, the widow became the absolute owner of house and was fully competent to execute the Gift Deed in favour of her daughter. The Gift Deed executed by the widow is thus valid. *Beni Bai (Smt.) vs. Raghubir Prasad,* AIR 1999 SC 1147 : 1999(1) Hindu LR 210 : 1999(3) Mad LW 902 : 1999(2) All Mah LR 443 : 1999(3) SCC 234 : 1999(4) Andh LD 8 : 1999(1) Orissa LR 452 : 1999(1) Marri LJ 443

Hindu Law.-Succession.-Right of widow.-Will of husband executed in favour of grand child.-Terms of Will provide that till testator along with his wife shall have control over movable and immovable property during their life time.-Rights were to later on devolve upon legatee after their death.-In compromise decree challenging validity of Will, ownership right of widow recognised.-After husband's death, widow became absolute owner of property by virtue of Section 14(1).

It is, thus, clear from a reading of the above portion of the will, that Manraj Singh and Janak Dulari were to retain all their rights and control over the property as owners thereof till their death and all those right which they had over the suit property, were to later on devolve upon Raghuvir Singh after their death. Raghuvir Singh was to acquire only such “rights” and “control” over the suit property, which the testator and his wife Smt. Janak Dulari themselves had in respect of the suit property during their life time.

It recognises her right to remain in “ownership and possession” of the suit property. The terms of the will and the compromise decree thus unmistakably show that Smt. Janak Dulari had the “ownership and possession of the suit property” till her death and (even if it be assumed to be her “limited estate,” for the sake of argument) it ripened into full ownership by virtue of Section 14(1) of the Act.

The High Court fell in error in holding that the case of Smt. Janak Dulari was covered by Section 14(2) of the Act and not by Section 14(1) of the Act. The 'will' as already noticed declared and the Compromise Decree recognised the right of Smt. Janak Dulari as an “owner in possession” of the suit property with all the “rights and control” over it. The compromise decree did not create any independent or new title in her favour for the first time. Sub-section (2) of Section 14 thus has no application to her case. By virtue of sub-section (1) of Section 14 of the limited interest (even if it be assumed for the sake of argument that Smt. Janak Dulari had only a limited interest in the property of which she was in possession as an owner) automatically got enlarged into an absolute one, her case was clearly covered by Section 14(1) of the Act. *Raghubar Singh and others vs. Gulab Singh and others,* AIR 1998 SC 2401 : 1998(3) Rec Civ R 330 : 1998(4) Scale 62 : 1998(6) SCC 314 : 1998(3) Civ CC 49

Hindu Law.-Succession.-Tenancy rights.-Inheritance of tenancy rights can be determined according to Tenancy Act.-Personal law has no application.-Khatas comprised of Bhumidari and Sirdari lands cannot be held in name of joint family, but stand in name of members of different branches of family.-Khatedars ought to be taken as holding collectively benefit of all

members of family. *Gaya Din (dead) through LRs and others vs. Hanuman Prasad (dead) through LRs and others,* AIR 2001 SC 386 : 2001(1) SCC 501 : 2000(53) JT 199

Hindu Law.-Succession.-Widow's estate.-Conversion of limited ownership into absolute right.-Remarriage of widow prior to 1956 Act came into force.-Second marriage being void does not obliterate disqualification from inheritance by reason of remarriage.-Widow divested of her rights cannot take advantage of her own immoral conduct.-Expression "as if she had then died" occurring in Section 2 of Hindu Widow's Remarriage Act 1856 is significant and shows legislative intent.-She cannot take advantage or benefit of Section 14 of Hindu Succession Act and would lose her right of even limited interest in property on remarriage.-Property would go to next heirs of her deceased husband.

The Succession Act of 1956 obviously is prospective in operation and in the event of a divestation prior to 1956, question of applicability of Section 14(1) would not arise since on the date when it applied, there was already a remarriage disentitling the widow to inherit the property of the deceased husband. The Act of 1856 had its full play on the date of re-marriage itself, as such Succession Act could not confer the widow who has already re-married, any right in terms of Section 14(1) of the Act of 1956. The Succession Act has transformed a limited ownership to an absolute ownership but it cannot be made applicable in the event of there being a factum of pre-divestation of estate as a limited owner. If there existed a limited estate or interest for the widow, it could become absolute but if she had no such limited estate or interest in lieu of her right of maintenance from out of deceased husband's estate, there would be no occasion to get such non-existing limited right converted into full ownership right. *Veramuri Venkata Sivaprasad (dead) by LRs vs. Kothuri Venkateswarlu (dead) by LRs and others,* AIR 2000 SC 434 : 2000(1) Hindu LR 1 : 2000(1) Marri LJ 424 : 2000(1) Andh LD 21 : 2000(2) SCC 139 : 2000(1) Cur CC 12 : 2000(2) Civ LJ 810 : 1999(3) Cal LT 90

Hindu Law.-Succession.-Widow's estate.-Enlargement of Widow's estate.-Deceased bequeathed suit property to daughter and son-in-law and that his second wife to be looked properly by them.-Widow given life interest under Will in case she did not wish to live with her daughter and son-in-law.-Son-in-law at the time of his death was living with widow and mother-in-law with his brothers.-Testator's widow subsequently shifting her residence from joint family and acquired half share in property left by her husband.-Held, there was no blending of property inherited by son-in-law through Will and deceased testator's wife became full owner in respect of half share in suit property.-Both daughter and her mother entitled to half share each in property and would not sell or mortgage it. *Yadala Venkata Subbamma vs. Yadalla Chinna Subbaiah (dead) by LRs and others,* AIR 2001 SC 1664 : 2001(1) SCC 393 : 2001(1) JT 110

Hindu Law.-Succession.-Widow's estate.-Full ownership.-Property sold by widow prior to coming into force of 1956 Act.-Widow does not become full owner of property under Section 14(1).-Transfer without legal necessity invalid.-After her death property reverts back to reversioners of her husband from alienee.

It cannot be said that as the sale deed does not restrict the enjoyment of the estate, hence it would fall outside the purview of sub-section (2) and would fall under sub-section (1) of Section 14. Alienee could have matured her right in the property, if transfer by Hindu widow would have been after she had become full owner under Section 14(1), after coming into force of Act. It is only in cases of valid transfers the question of examining whether such deed or document of transfer confers the transferee a restrictive right or not arises. *Naresh Kumari (Smt.)(dead) by Lrs and another vs. Shakshi Lal (dead) by LRs. and another,* AIR 1999 SC 928 : 1999(3) mad LJ 1 : 1999(1) Hindu LR 192 : 1999(2) SCC 656 : 1999(2) Marri LJ 173 : 1999(1) Cur CC 71

Hindu Law.-Succession.-Bequeath by Will.-Will in favour of third wife.-Absolute ownership conferred.-Testator not having any other heir.-Even without will being executed, after death of her husband she would have life interest in the property and absolute owner.-Exception to Section 14(2) of Hindu Succession Act is not applicable. *Brahma Vart Sanatan Dharm*

Mahamandal vs. Kanhayalal Bagla, AIR 2001 SC 3799 : 2001(6) Scale 453 : 2001(8) JT 396 : 2001(10) SRJ 61

Hindu Law.-Succession.-Window's estate.-Rights of Hindu widow in dealing with properties of her late husband.-She fully represents the estate.-Land sold in execution for legal necessity.-Auction sale is binding on applicant, who was reversioner therein being only spes successionis.

In the proceeding under which award was made it was disclosed that opposite party No. 3 obtained the loan of Rs. 650/- on 1-11-46 for family necessity and executed a pro-note. Therefore, the disputed property was sold for legal necessity and this has attained finality. Moreover, the applicant has not pleaded that the amount was not for legal necessity. The applicant has not also assailed this transaction on the ground of immorality or the absence of legal necessity. There is clear finding of the learned Trial Court that the opposite party No. 3 did not take the loan for the purpose of any luxury and that as the debt incurred was for legal necessity it was binding on the applicant.

The settled position of law is that the widow succeeds as a heir to her to her husband. The ownership of properties vests in her. She fully represents the estate, the interest of reversioners therein being only spes successions. In the case in hand after the death of her husband, the widow.-Smt. Yenki, the opposite party No. 3 succeeded to the property of her husband and she was entitled to full enjoyment of the estate subject to limited interest known as Hindu Women's Estates. This rights includes right to alienate the property for legal necessity of the family. Therefore, the allegation of the applicant that he was the sole owner of the disputed land is not sustainable in law.

In the case in hand the disputed land was old for legal necessity. In the present application there is no averment or evidence to show that there was no legal necessity, therefore, we hold that the sale in question is binding on the applicant, who is a reversioner.# *Narayan Govind Hegde vs. Kamalakara Shivarama Hegde*, AIR 2001 3861 : 2001(8) SCC 487 : 2001(7) Scale 242 : 2001(9) JT 30

Hindu Law.-Sudras.-Succession of illegitimate son.-Right in joint family property.-On death of the father, illegitimate son succeed as coparcener alongwith the legitimate son with right of survivorship as also to seek partition. The illegitimate son of a Sudra by a continuous concubine has the status of a son, and that he is a member of the family; that the share of inheritance given to him is not merely in lieu of maintenance, but in recognition of his status as a son; that where the father has left no separate property and no legitimate son, but was joint with his collaterals, the illegitimate son is not entitled to demand a partition of the joint family property in their hands, but is entitled as a member of the family to maintenance out of that property. This statement of the law, may be supplemented by three other well-settled principles, these being firstly, that the illegitimate son does not acquire by birth any interest in his father's estate and he cannot therefore demand partition against his father during the latter's lifetime, secondly that on his father's death, the illegitimate son succeeds as a coparcener to the separate estate of the father along with the legitimate son(s) with a right of survivorship and is entitled to enforce partition against the legitimate son(s) and thirdly that on a partition between a legitimate and an illegitimate son, the illegitimate son takes only one-half of what he would have taken if he was a legitimate son.The last point put forward on behalf of the appellants was that the plaintiff not being in possession of the properties which are the subject of the suit, he cannot maintain a suit for partition. This contention cannot prevail, because the plaintiff is undoubtedly a co-sharer in the properties and unless exclusion and ouster are pleaded and proved, which is not the case here, is entitled to partition. *Gur Narain Das and another v. Gur Tahal Das and others,* AIR 1952 SC 225: 1952 SCJ 305: 1952 SCR 869

Hindu Law.-Trust.-Custom.-Effect of.-Management of a dargah housing the buried bodies of a Muslim saint and Hindu princes.-Management vesting in the Hindu assisted by the Muslim.-The dispute about the right of management has to be decided on the basis of general laws of religious and charitable trusts or the custom. The building is a composite structure in which the bodies of a Muslim saint and a Hindu princess are buried side by side. There is no suggestion that she was ever converted to Muhammadanism. It is evident then that this cannot be governed either by

the Hindu or the Muhammadan law. It must be governed either by its own special custom or by the general law of public religious and charitable trusts. *Gopal Krishnaji, Ketkar v. Mahomed Jaffar Mohamed Hussein & another,* AIR 1954 SC 5: 1953 SCJ 621

Hindu Law.-Trust.-Management of.-Trustees.-Transfer of duties, functions and powers of trustees is not permissible. That trustees cannot transfer their duties, functions and powers to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust; but having once entered upon the trust he cannot renounce the duties and liabilities except with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his office or any of his functions except in some specified cases. The principle of the rule against delegation with which we are concerned in the present case, is clear: a fiduciary relationship having been created, it is against the interests of society in general that such relationship should be allowed to be terminated unilaterally. That is why the law does not permit delegation by a trustee of his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from delegation "in the regular course of business", that is, all such functions which a prudent man of business would ordinarily delegate in connection with his own affairs. The provision for the appointment of new trustees cannot by any stretch of imagination be held to mean the substitution of the old body of trustees by a new body. That provision only permits the old trustees to add to their number. Nor does the power to frame rules and regulations for the benefit and efficient running of the school authorise the trustees to give up the management of the school themselves or to divest themselves of the properties entrusted to them by the trust deed and vest them in other persons. We are satisfied therefore that Clause 5 of the trust deed does not in any manner authorise the trustees appointed by the deed to abdicate in favour of another body of persons or to constitute that body as trustees in their own place. *Sheikh Abdul Kayum and others v. Mulla Alibhai and others,* AIR 1963 SC 309: 1963 Mad LJ 49: 1963 MPLJ 57: 1963(3) SCR 623

Hindu Law.-Viruddh Sambandh.-Application of Rule.-Person governed by Hindu Mitakshara Law.-Adoption of wife's sister's daughter and.-On interpretation all the relevant scripts in Dukat Mimansa held that such rule is not mandatory. *Abhiraj Kuer v. Debendra Singh,* AIR 1962 SC 351: 64 Bom LR 433: 1962(3) SCR 627.
