* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Pronounced on:04th December, 2023

\+ **RFA(OS) 13/2016 & CM APPL. 6041/2016**

MANU GUPTA .....Appellant

Through: Mr. Aslam Ahmed, Ms. Charu Shriyam Singh & Mr. Abhishek Dwivedi, Advocates. Ms. Aakanksha Kaul, Amicus Curiae with Mr. Manek Singh, Mr. Aman Sahani & Mr. Harsh Ojha, Advocates.

versus

SUJATA SHARMA & ORS. ..... Respondents

Through: Ms.Mala Goel, Advocate for R-1.
Ms. Anita Trehan, Dr. Sarita Dhuper, Ms. Kajal Chandra, Ms. Prerna Chopra, Mr. Divye Puri & Ms. Sakshi Anand, Advocates.
Mr. Brajesh Kr. Srivastava, Mr. Deo Prakash Sharma, Mr. Manoj Yadav & Mr. Umesh Kr. Gupta, Advocates for R-9 & 10.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

"Real change, enduring change, happens one step at a time"
– Ruth Bader Ginsburg

1. Men and women historically were born equal. However, over a period of time, with the advancement of civilization and hierarchical division of society, women have been pigeonholed according to gender roles which progressed into an act of prelation that has relegated them to a secondary position in society. Consequently, the once egalitarian society became a breeding ground for chauvinism and discrimination in the form of Sati, Child Marriage, Sexual Harassment, Domestic Violence, Dowry Harassment and such like disparages. Legislature has time and again, brought forth reforms to overcome this bigotry and free women from the shackles of such specious fetters devised by mankind thereby enabling her to achieve her full potential and march shoulder to shoulder with men.

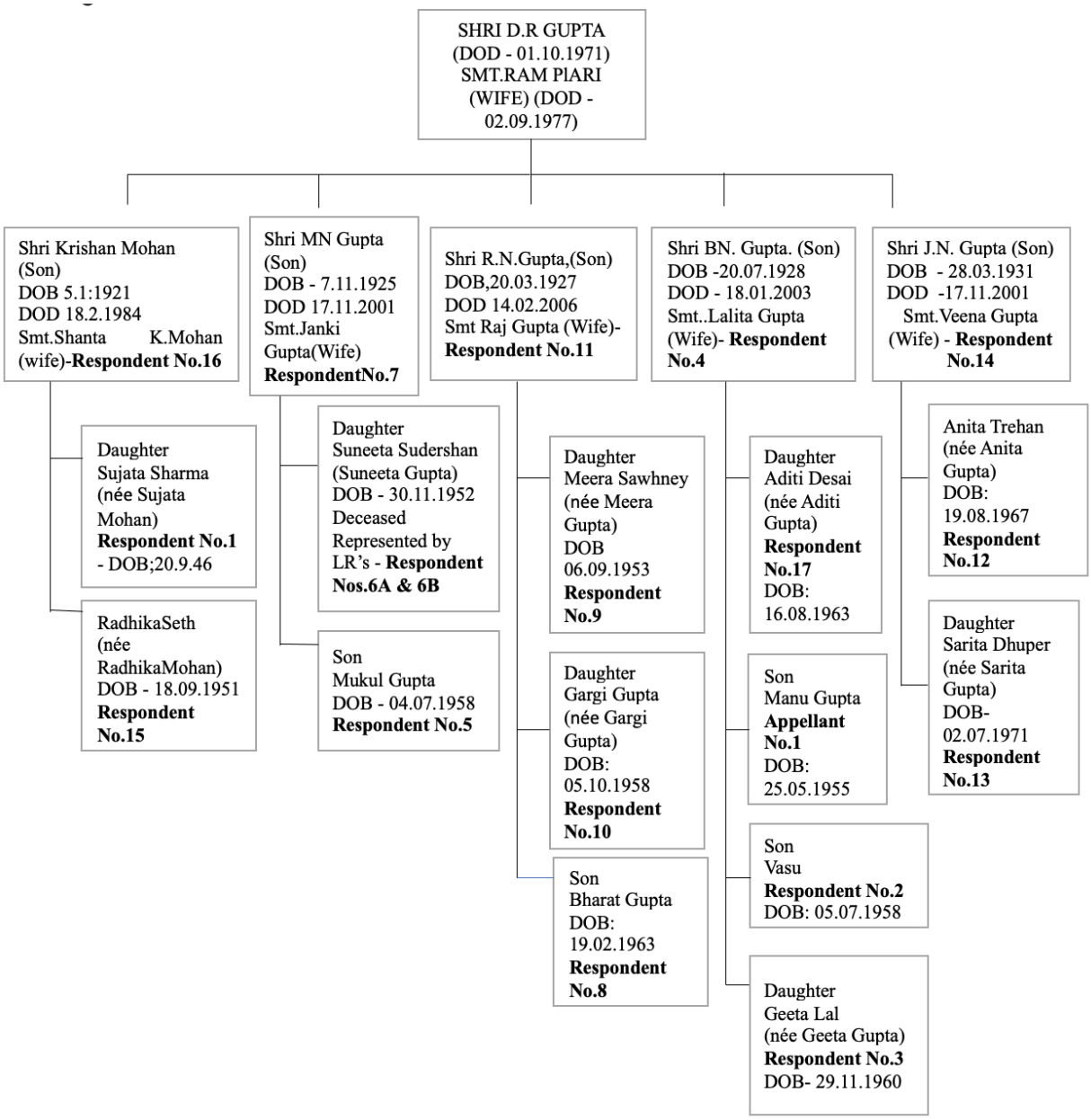
2. Despite robust legislations, real change has been slow due to the pervasive ambivalence and deeply ingrained stereotypes. This is where Courts assume significance for facilitation of implementation of the laws resulting in actualisation for the stakeholders. This has been true, especially in the laws conferring rights to women. It is known that though the right of women to own property came to be recognized under the Hindu Succession Act, 1956, the grim reality is that women were compelled, by their circumstances and family members, to forgo their rights in property. The tenacious role of Courts in upholding such rights of women has propelled them to agitate their long overdue entitlements, making Courts the game changer.

3. Similarly, the Amendment of 2005 to the Hindu Succession Act, 1956 which has conferred coparcenary rights to the women, equivalent to that of men, is a quintessence of another reform in law relating to women empowerment. However, the unwavering certitude in marginalisation of women, so deeply entrenched in Society, is perceived to be imperilled by the prospect of a woman taking the position of *Karta* in an HUF, a role that was traditionally assumed by men.

4. This disinclination in accepting a woman as a *Karta*, despite having been conferred equal rights equal coparcenary rights as men, has emerged in the present case, leaving the ball in our Court.

5. The present Appeal has been preferred by the appellant/Manu Gupta *(the defendant No.1 in the main Suit*), against the Judgement dated 22.12.2015 whereby the Suit for Declaration for declaring the plaintiff (*respondent No.1 herein*) as the *Karta* of Late Shri D.R. Gupta and Sons, HUF, has been allowed.

6. The appellant and the respondents, being Hindus and governed by the Mitakshara Law, are the descendants of Late Shri D.R. Gupta, son of Late Shri Sunder Das Gupta, who expired on 01.10.1971. Admittedly, Late Shri D.R. Gupta constituted a Hindu Joint Family (HUF) known as D.R Gupta and Sons (HUF) since 05.01.1963 comprising of himself and his five sons. The members of the HUF are reflected in the chart below: -



7. Late Shri D.R. Gupta, voluntarily put his immoveable property commonly known as No. 4, University Road, Delhi, and shares in Motor and General Finance Ltd., besides other moveable and immoveable properties in the common hotch-potch and executed an Affidavit dated 05.01.1963 declaring that all properties shall belong to the Hindu

Undivided Family (HUF) of which he shall be the *"Karta"* with right of survivorship and all other incidents of undivided coparcenary on his wife and his five sons namely Late Shri K.M. Gupta, Late Shri M.H. Gupta, Late Shri R.N. Gupta, Late Shri B.N. Gupta and Late Shri J.N. Gupta as members. *"D.R. Gupta & Sons HUF"*, thus came to own the following immovable and moveable properties which are the subject matter of the present Suit. The details of immoveable and moveable properties are as under: -

(a) Immoveable Property —

(i) No. 4, University Road, Delhi. This property was purchased vide a Registered Sale Deed dated 15.07.1943 by Late Shri D.R. Gupta from Mr. J.C. Roberts. Copy of the Sale Deed dated 15.07.1943 is filed on record.

(b) Moveable Properties —

(i) Shares of Motor and General Finance Ltd.,
(ii) Deposits with Motor and General Finance Ltd.,
(iii) Bank of Account in Bank of India, Asaf Ali Road,
(iv) Bank Account in Vijaya Bank, Ansari Road.

8. Admittedly, *"D.R. Gupta & Sons HUF"* is assessed to Income Tax and has been filing Returns for the HUF property and the PAN Number allotted to the HUF was AAA HD 4230 M. All the assets belonging to the HUF, barring the immovable property, were disposed of in the 1980s.

9. Over a period of time all the sons of late Shri D.R. Gupta expired. Shri R.N. Gupta was the last *Karta* of *"D.R. Gupta & Sons HUF"*, who expired on 14.02.2006. The question thus, arose as to who would acquire the status of the *Karta* of the HUF after his demise. The respondent No.1 as well as other members of the *"D.R. Gupta & Sons HUF"*, exchanged various e-mails regarding respondent No. 1, Sujata daughter of Late Shri

K.M. Gupta becoming the *Karta* of the HUF, who in view of the law as amended in the Hindu Succession (Amendment) Act, 2006, claimed to be the next *Karta* of the *"D.R. Gupta & Sons HUF"* being the eldest Coparcener.

10. Mr. Mukul Gupta *(respondent No. 5),* Ms. Suneeta Sudershan – represented by her LRs (r*espondent Nos. 6A & 6B*) Mr. Bharat Gupta (*respondent No. 8*), Ms. Anita Trehan (*respondent No. 12*), Dr. Sarita Dhupar (r*espondent No. 13*) and Mrs. Radhika Seth (*respondent No. 15*) are the Coparceners. Ms. Janki Gupta (*respondent No. 7*), Mr. Raj Gupta (r*espondent No. 11*), Ms. Veena Gupta (r*espondent No. 14*) and Mrs. Shanta K. Mohan (i) are the members of the HUF. They all have not raised any objection to Ms. Sujata Sharma being the *Karta* of the HUF.

11. Mr. Manu Gupta *(appellant)*, Mr. Vasu Gupta *(respondent No. 2)*, Ms. Gita Lal *(respondent No. 3)* and Ms. Aditi Desai *(respondent No. 17)*, **are the coparceners who have opposed respondent No. 1 becoming the *Karta*.** Ms. Meera Sawhney *(respondent No. 9)* and Ms. Gargi Gupta *(respondent No. 10)* initially submitted an affidavit before the learned Single Judge consenting to accept any person determined by the Court as the *Karta*, however, they have later staked a claim to be the eligible *Karta* by stating that respondent No. 1 is not a Coparcener under law.

12. The appellant/Manu Gupta, in objection to respondent no.1's claim, declared himself as the *Karta* of HUF and had correspondence in this capacity with the Defence Estate Officer.

13. *This led to filing of the present Civil Suit in 2006 by respondent No.1/Sujata Sharma seeking a Declaration that she is the Karta of "D.R. Gupta & Sons HUF".*

14. As matter stood thus, the respondent No. 9/Ms. Meera Sawhney filed a suit bearing C.S. (OS) No. 142/2008 titled *Meera Sawhney vs Smt. Raj Gupta* for Declaration that an *Oral Settlement* dated 18.01.1999; *Memorandum of Settlement* dated 01.04.1999 and the *Will* dated 17.09.2000 be declared as null and void and sought partition of *"D.R. Gupta & Sons HUF"*, Rendition of Accounts and Permanent Injunction for restraining the other members of the family from interfering in peaceful possession of her share in the property. The respondent No. 1/Sujata Sharma was defendant No. 4 in the said Suit and opposed the claims made by Ms. Meera Sawhney.

15. On the basis of pleadings, the **Issues** were framed by the learned Single Judge *vide* Order dated 15.09.2008 which read as under: -

> *"1. Whether the suit has been valued properly and proper court fee has been paid thereon? (OPP)*
>
> *2. Whether the suit for declaration, is maintainable in its present form? (OPP)*
>
> *3. Whether there exists any coparcenary property or HUF at all?(OPP)*
>
> *4. Whether the plaintiff is a member of D.R. Gupta and Sons HUF? And if so, to what effect? (OPP)*

5. Whether the interest of the plaintiff separated upon the demise of her father Sh. K.M. Gupta in 1984? (OPD)

6. Assuming existence of a D.R. Gupta and Sons HUF, whether the plaintiff can be considered to be an integral part of the HUF, particularly after her marriage in 1977, and whether the plaintiff has ever participated in the affairs of the HUF as a coparcener, and its effect? (OPP)

7. Assuming existence of D.R. Gupta and Sons HUF, whether the plaintiff is a coparcener of and legally entitled to be the Karta?(OPP)

8. What is the effect of the amendment in the Hindu Succession Act, in 2005 and has it made any changes in the concept of Joint Family or its properties in the law of coparcenary? (OPP)

9. Relief."

16. *The respondent No.1/Sujata Sharma deposed as PW1* in support of her claim. She also examined *PW2/Ritu Grover*, *PW3/Mr. N.V. Satyanarayan*, Defence Estate Officer and *PW4/Shri Sanjay Saxena*, Book Binder, Department of Delhi Archives, Delhi Government, Delhi.

17. The *appellant/Manu Gupta deposed as DW1* and was cross examined by the counsels for respondent Nos. 1, 9 and10.

18. The *learned Single Judge in the impugned judgment* observed that the necessary qualification for becoming a *Karta* was being a Coparcener of the HUF. The only impediment that disallowed a woman from

becoming a *Karta* was the lack of this necessary qualification. The Amended Section 6 of the The Hindu Succession Act, 1956 *(hereinafter referred to as the* "Act, 1956"*)* was introduced in 2005 as a socially beneficial legislation to give equal rights of inheritance to Hindu males and females; the marriage of the plaintiff did not affect her rights in the Coparcenary as the provision clearly defines the statutory right of a female to be absolute without admitting any exception or restriction such as marriage. With the removal of this disqualifying factor, nothing prevents the eldest female Coparcener from becoming the *Karta* of an HUF. It was held that the Amendment, brought in Section 6 of the Act, 1956 by the Amendment Act, 2005, does not impose any restriction on the right of a woman of being coparcener and she cannot be denied a status of *Karta* to manage the affairs, including the property of HUF. The Suit was decided in favour of the plaintiff/respondent No.1and she was declared the *Karta* of *"D.R. Gupta & Sons HUF"*.

19. ***Aggrieved by the Judgement dated 22.12.015, the present Appeal has been filed by Shri Manu Gupta.***

20. **The challenge to the Judgement by the appellant**/Manu Gupta is essentially premised on the ground that his cousin sister i.e., respondent No. 1 admittedly, was married on 28.02.1969 and had become an active member of the HUF in her marital home. She consequently became disconnected with the activities of the *"D.R. Gupta & Sons HUF"* and has neither participated in any coparcenary activities till date nor had she resided in any of the HUF property subsequent to her marriage as can also be evinced from her own deposition. It is claimed that *Kartaship* owes its

provenance to Hindu customs and laws, which cannot be outmanoeuvred by the opinion or acts of the members of the family. The intent behind the Amendment is solely to confer equality in the scheme of division of properties and does not confer the role of *Kartaship* to women as the same is still confined to the senior most male Coparcener in the family as provided under the Mitakshara School of Hindu Law. It is reiterated that the law in regard to *Kartaship* has remained unchanged by the Amendment and the settled position remains that only the *eldest Hindu male* can become a *Karta*.

21. Thus, notwithstanding the 2005 Amendment to the Act, 1956, a daughter cannot become the *Karta* of the HUF of her father's family though she may only be recognised as the manager of a Joint Hindu Family.

22. It is further stated that Section 6 of the Act, 1956 (*as amended in 2005*) only recognises the right of daughters to have an interest in the coparcenary and the same cannot be equated with her right to become a *Karta*. Barring this right to be recognised as a coparcener, no other change has been brought with respect to HUF which is still governed by the Mitakshara School of Hindu Law. As per this School of Law, a Joint Hindu Family is one that traces its descendants through a common male ancestor and includes wives and unmarried daughters as their members.

23. Further, the learned Single Judge has failed to consider that Section 4 of the Act, 1956 clearly stipulates that the Act, 1956 has an overriding effect only on customs that had been expressly overruled by provisions of

the Act and no provision apropos the management of an HUF has been codified under the Act.

24. *"Kartaship"* is a conferment of customary law and traditions. Given that the Amendment Act, 2005 provides a statutory recognition to female as coparceners, one must read the customary law in tandem with the statutory right which clearly leads to the inference that the parity sought to be achieved by the Amendment was with respect to equal interest in the coparcenary property. Thus, the entitlement to become a *Karta* with its specific roles and responsibilities, is completely distinguishable from the statutory right of equal rights in property given to a female as a Coparcener.

25. It is asserted that the learned Single Judge failed to appreciate that a daughter upon marriage, ceases to be a member of her father's family as she becomes a member of her husband's family and with her marriage, her *Gotra* (lineage) also changes. The marriage symbolises daughter being reborn into her husband's family upon marriage and customarily, a new name post marriage was given to a woman. The respondent No. 1 had thus, ceased to be a member of the D.R. Gupta Family upon her marriage in 1969 and has become a member of her matrimonial family. It is a settled position of law that a person cannot be a member of two Joint Hindu Families at the same time. It is contended that a woman would anyway acquire certain rights in her husband's home, while the vice versa is not possible. This furthers the asymmetry in the rights of a woman as she acquires rights in her father's property and husband's property. Thus, a woman becomes a member of her husband's family and remains a

Coparcener in her father's family; however, a man is only a Coparcener in his father's family.

26. It is reiterated that a woman ceases to be a member of her father's family upon marriage. Reliance has been placed on *Narendra vs. K. Meena* (2016) 9 SCC 455; *Kamesh Panjiyar vs. State of Bihar* 2005 (2) SCC 388 for the same. Thus, the learned Single Judge has failed to appreciate that respondent No. 1 did not have the locus to file the present Suit after her marriage.

27. It is further submitted that the learned Single Judge failed to consider the judgement of the Apex Court in *Shreya Vidyarthi vs. Ashok Vidyarthi* AIR 2016 SC 139 where it was held that a woman cannot become a *Karta* even after the 2005 Amendment as it keeps the erstwhile legal position on *Kartaship* intact which is evident from the true nature of the amended and unamended Section 6 of the Act, 1956.

28. The *Law Commission in its 174th Report dated 05.05.2000,* while recommending that women should exercise all equal rights as a Coparcener, also stated that a woman cannot be a *Karta*. It was based on these recommendations that the Legislature amended Section 6 to the Act, 1956; had the intent of this Amendment been to recognise the right of a woman to become a *Karta*, the Amendment would have expressly stated so. Thus, the impugned Judgement dated 22.12.2015 is premised on incorrect appreciation of change in law brought by the Amendment Act, 2005 to the Act, 1956.

29. It is further argued that a *Karta* takes decisions on behalf of the family which has a binding effect on them. He has the right to represent

the family in litigations, arbitrations and settlements by way of compromise and it is thus, imperative for the *Karta* to be an integral member of the family. The role of a *Karta* is multifaceted and not limited to a managerial role. Along with being a financial head of the family, he is also their religious, social and spiritual head. There are several Hindu customs performed by a *Karta* that only an eldest male can perform such as *Mukhaanghi* (lighting the funeral pyre), *Shraddha*, *Kanyadaan* to name a few which are imperative incidences to be considered while adjudicating the claim of the respondent No.1 to be declared as a *Karta*. The learned Single Judge also omitted to appreciate that religious and other sanctimonious activities cannot be performed by a woman during her menstrual period. In fact, it is appellant who performed the last rights of respondent No.1's father as he did not have a son. In a way, the appellant has been fulfilling the role of a *Karta* since long while respondent No.1 has never acted in this capacity.

30. Learned counsel for the appellant has further argued that it is a settled position of law that in case of the unfortunate demise of the father, the wife, who is the mother of minor sons, can be the manager of the HUF until her sons attain majority. This, however, does not mean that the mother becomes the *Karta* of the HUF. In extension to this rationale, it is submitted that a married woman can be required to perform a managerial role in the HUF in her matrimonial home. However, any right to become a *Karta* in her father's family would clash with the rights in her matrimonial home resulting in a conflict of interest and a moral dilemma on where her loyalties should lie.

31. It is submitted that the learned Single Judge failed to consider that by declaring respondent No. 1 as the *Karta* of the *"D.R. Gupta & Sons HUF"*, the *de facto* and *de jure* control of the HUF properties and business would lie in the hands of the husband of respondent No.1 and would result in complications in the assessment of Income Tax.

32. The law traditionally recognises a *Karta* as the senior most male member of the family as such a male commands respect and authority over the family members. Since respondent No. 1 lacks such attributes and because she has not been an integral part of the family, she cannot claim to be the *Karta* of the HUF. Thus, only the appellant, being the senior most male Coparcener, would be in a position to run and manage an HUF efficiently.

33. It is further argued by the appellant that the Suit for Declaration was filed by respondent No. 1/Smt. Sujata Sharma in retaliation to the objections raised by the appellant when she attempted to sell the Charitable Trust created by Late Shri D.R. Gupta by undervaluing the said property. It is evident that respondent No. 1's objective in filing the Suit was to gain control over the property and sell the same in order to unjustly enrich herself.

34. The appellant has further submitted that the demise of Shri R.N. Gupta after 2005 Amendment to Section 6 of the Act, 1956 resulted in a deemed partition of the HUF and thus, respondent No. 1 cannot claim to be a Coparcener.

35. **The appellant in his Written Submissions** has further stated that the father of respondent No.1 passed away on 18.02.1984. The 2005

Amendment, being prospective in nature, would apply to respondent No. 1 only if her father was surviving when the Amendment came into force. The share of the deceased Coparcener to which his legal heirs are entitled gets crystallised upon his death as held in *State Bank of India vs. Ghamandi Ram*, AIR 1969 1330. Thus, none of the daughters, other than Ms. Meera Sawhney and Ms. Gargi Gupta would be entitled to be the Coparceners. Reliance was placed on *Prakash and Ors vs. Phulvati* (2016) 2 SCC 36 and *Danamma @ Suman Supur and Anr vs. Amar and Ors*, 2018 SCC OnLine SC 63 in support of this stance. It is argued that the judgement in *Danamma @ Suman Supur* (supra) consciously kept the sanctimonious status of a *Karta* outside the purview of the social inequities that was sought to be addressed through Amendment Act of 2005.

36. It is pointed out that in the Suit for Partition filed by respondent No. 9, wherein respondent No.1/Smt. Sujata Sharma who is defendant No. 4, has surprisingly taken the stance in her *Written Statement* that the HUF property has already been partitioned. In such a scenario, respondent No.1 cannot claim to be a Coparcener of *"D.R. Gupta & Sons HUF"*.

37. Subsequently, in reference to *Vineeta Sharma vs. Rakesh Sharma* (2020) 9 SCC 1, the appellant conceded that he does not wish to challenge the coparcenary right of respondent No.1. However, since the said judgment does not deal with her right to become a *Karta*, no support can be drawn by respondent No.1 to claim such a title of *Karta*. It is reiterated that the case of *Vineeta Sharma* (supra) is not applicable to the case of respondent No. 1 as she in her Written Statement filed in the Suit filed by

Meera Sawhney and Ors. (supra) has taken the stand that the HUF property has already been partitioned prior to the Amendment Act of 2006 coming into effect

38. **The respondent No.1/Sujata Sharma, in her Written Arguments,** submitted that 10 out of 17 respondents have given their affidavits of *"No Objection"* for respondent No.1 to become the *Karta* of the *"D.R. Gupta & Sons HUF"*. It is further stated that Section 6 of the Act, 1956 does not make any distinction between a married, unmarried, widowed, educated or illiterate daughter, as being a daughter of a Coparcener is the sole qualification under the law. Moreover, the performance of ceremonies like *Kanyadaan, Satphere, Panigrahana* do not take away a woman's identity of being a daughter. In response to the appellant's contention on the change in the *Gotra* of respondent No. 1 after marriage, it was vociferously argued that marriage does not change the blood of a person and she still remains the daughter of her paternal family. Reliance was placed on *Vineeta Sharma vs. Rakesh Sharma* (supra) and *Ganduri Koteshwar Ramma vs. Chakri Yanadi & Anr.* (2011) 9 SCC 788to argue that a daughter is a Coparcener who has the same rights as a son. Further, the role of a *Karta* is conferred on the senior most member of the family as held in *Tribhovan Das Tamboli vs. Gujarat Revenue Tribunal and Ors.* AIR 1991 SC 1538. Considering that only a Coparcener can become a *Karta* of an HUF as held in *Commissioner of Income Tax vs. Seth Govind Ram Sugar Mills*, AIR 1966 SC 24, a woman can become a *Karta* if she is the eldest Coparcener.

39. In response to the appellant's assertions of discharging his responsibilities in the nature of *Karta* since long, it is averred that respondent No. 1 has been dealing with the Defence Estate Officer from 2006 regarding the HUF property and had also filed Objections to the notification of the Delhi Development Authority, paid House Tax, got a Pan Card issued and the bank account revived.

40. **The respondent Nos. 9 and 10, in their Written Submissions,** contended that in view of the decision in *Prakash vs. Phulvati* (supra), respondent No. 1 is not a Coparcener as her father had expired on 17.02.1983 i.e., prior to the commencement of the Hindu Succession (Amendment) Act, 2005. Thus respondent No. 9 is the eldest legally eligible *Karta* of *"D.R. Gupta & Sons HUF"* as her father Late Shri R.N. Gupta was alive on 09.09.2005 and was then acting as the *Karta*. Thus, the judgement of the learned Single Judge is *per incurium* for not applying the decision of *Prakashi* (supra). Further, the judgment in *Danamma @ Suman Supur* (supra) affirms and reiterates the finding in *Prakash vs Phulvati* (supra).

41. Further, reliance has been placed on the judgements in *Ganga Saran vs. Civil Judge, Hapur, Ghaziabad* AIR 1991 All 114 (FB); *Indo Swiss vs. Umrao* AIR 1981 P& H 213 (FB); *Kulbhushan Kumar vs. State of Punjab* AIR 1984 P & H 55 (FB); *Special Land Acquisition Officer vs. Municipal Corporation* AIR 1888 Bom9 (FB) and *Gopa Manish Vora vs. UOIILR* (2009) IV Delhi 61(DB).

42. It is submitted that once a daughter has been made a Coparcener on the same footing as a son, any prohibition or fetters on her right is

patently unfair and illegal. Centuries of injustice to a female cannot be continued even after the law has accorded equal rights to a woman. Equal rights will form the gateway to equal treatment of a daughter and reinforce her honour and dignity in the family of her birth. It was thus asserted that the legally eligible eldest Coparcener is respondent No. 9/Meera Sawhney.

43. **The respondent Nos. 12 and 13, in their Written Submissions**, have extended their support to respondent No. 1. It is stated that a daughter continues to be a Coparcener as well as a member of the Joint Hindu family after marriage. This implies that a daughter can be a member of two HUFs after marriage. Relying on *Vineeta Sharma* (supra), it is submitted that the coparcenary right under Section 6 of the Act, 1956 is available to daughters born before or after the Amendment in 2005 in the same manner as a son with the same rights and liabilities. Further, they supported the contentions of respondent No.1 that a daughter can become a *Karta* if she is the senior most coparcener.

44. Ms. Aakanksha Kaul had been appointed as the ***Amicus Curiae*** *vide* Order dated 15.01.2021 by this Court who has provided assistance to this court on two questions, namely: -

A. *Whether a married daughter can be the Karta of a Hindu Undivided Family (HUF)?*

B. *Whether the Hindu Succession Amendment Act, 2005 to Section 6 of the Act, 1956 is retrospective?*

45. She submitted that Question B has already answered by the Hon'ble Supreme Court in the affirmative in *Vineeta Sharma* (supra) wherein it is held that Section 6 as amended in 2005 is not retrospective as concluded transactions or vested rights cannot be reopened or affected. The provision is rectroactive in its application as it confers right based on an antecedent event of birth. The only qualification for becoming a *Karta* of an HUF is that the concerned person must be a Coparcener. Reliance was placed on *Tribhovan Das Haribhai Tamboli* (supra) to describe the role of a person appointed as a *Karta*.

46. Ms. Aakanksha Kaul, learned *Amicus Curiae*, further submitted that earlier only a male could become the Coparcener of an HUF as the coparcenary rights were confined only to males. Thus, the sole ground for disentitling a daughter from becoming a *Karta* no longer survives. Therefore, if a daughter is the senior most Coparcener, then she must become the *Karta*.

47. Further, a daughter does not cease to be a Coparcener in view of her marriage as the Amendment does not distinguish between a married and an unmarried daughter. The Amendment to Section 6 of the Act, 1956 clearly states that a daughter becomes a Coparcener in the same manner as a son. When a son does not cease to be a Coparcener upon marriage, the same benefit should be extended to a daughter as well. In fact, it can no longer be said that a daughter ceases to be a member of her father's family upon marriage as observed in *Khushi Ram & Ors. vs. Nawal Singh & Ors.* 2021 SCC OnLine SC 128. The Apex Court in the landmark judgment of *Vineeta Sharma* (supra) as well has observed that the

Amendment Act of 2005 could never have intended to discriminate against a married and an unmarried woman.

48. On the basis of the recommendations of the Law Commission of India in its 174th Report on *"Properly Rights of Women: Proposed Reforms under the Hindu Law"*, the Legislature has not included the distinction drawn in State Amendments between a married and an unmarried daughter in the 2005 Amendment. Thus, all daughters of Coparceners are entitled to become a Coparcener, which also entitled them to become a *Karta*.

49. Ms. Aakanksha Kaul, learned *Amicus Curiae*, has reiterated the aforementioned contentions in her oral arguments.

50. **Submissions heard from the learned counsels of all the parties and the Written Submissions as well as the record perused.**

51. Based on the facts and submissions made by the parties, it is apodictic that the appellant is not at odds with the coparcenary interest of a daughter; however, he assails the coparcenary interest as well as the right of respondent No.1 to become the *Karta* of the *"D.R. Gupta & Sons HUF"* by relying on the Written Statement of latter in another Suit. The *respondent Nos. 9 and 10* persist on their stance that respondent No. 1 is not a Coparcener as the father of Ms. Sujata Sharma expired before the Amendment Act, 2005 came into effect. *The primary point of contention is thence, her claim to become a Karta of the "D.R. Gupta & Sons HUF".*

52. Before delineating the rights of the appellant and the respondents, it is imperative to examine the findings of the learned Single Judge on the implications of the 2005 amendment to Section 6 of the Act, 1956.

ISSUE NO. 8: —

> ***"What is the effect of the amendment in the Hindu Succession Act, in 2005 and has it made any changes in the concept of Joint Family or its properties in the law of coparcenary? (OPP)"***

53. The appellant has contended that Section 6 of the Act, 1956 defines only the rights with respect to inheritance of property and not its management by a *Karta* which continues to be governed by the customs and the interpretation of the ancient texts of Hindu religion. It is argued that the statutory enlargement of rights of a woman to be a Coparcener and the devolution of interest in the coparcenary property has been made under Section 6 of Act, 1956 and it does not extend to *Kartaship*. Therefore, the learned Single Judge ought not to have exceeded the intent and purpose of the Act, 1956 and amended Section 6 of the Act, 1956 to conclude that a recognition of a woman as a Coparcener included the right of being a *Karta*.

54. To determine the contention raised by the appellant, it becomes pertinent to refer to the concept of Joint Hindu Family and HUF under the traditional Hindu Law.

55. A ***Joint Hindu Family*** consists of male members descended lineally from a common male ancestor, together with their mothers, wives or widows and unmarried daughters. They are bound together by the fundamental principle of *Sapindaship* or family relationship, which is the essential feature of the institution. The cord that knits the members of the

family is not property but the relationship of one another as explained in the *Commissioner of Income Tax vs. Luxminarayan* (1935) 59 Bom 618.

56. In *Raghavachariar's* Hindu Law, 5th Edition at Page 838, the concept *"coparcenary"* was defined which is as under: -

> *"Co-parcenary is a narrower over body than a joint family and consist of only those persons who have taken by birth and interest in the property of the holder for the time being and who can enforce a partition whenever they like. It commences with the common ancestor and includes the holder of joint property and only those males in his male line who are not removed from him by more than three degrees. The reason why coparcenership is so limited is to be found in the tenet of the Hindu religion that only male descendants up to three degrees can offer spiritual ministration to an ancestor. Only males can be coparceners."*

57. From the aforesaid explanation, it may be observed that a *"Joint Hindu Family"* consists of male members descended lineally from a common male ancestor and included their unmarried daughters, wives, mothers and widows. A *"coparcenary"* is a narrower body which is a subset within a Joint Hindu Family where an interest in the property is created by birth. Though a joint family status is a result of birth, the possession of joint property is only an appendage and not prerequisite for the constitution of such a family as held in *Haridas vs. Devaki Bai*, 1926 SCC OnLine Bom 76. On the other hand, a *"coparcenary"* is created only when there is joint or coparcenary property.

Position of Manager: **—**

58. The question which thus, needs to be answered is whether recognition of a woman as a coparcener carries with it a necessary incident of becoming a *Karta* to assume the management of the coparcenary property.

59. In ***Raghavachariar's Hindu Law,*** a *"manager"* of a Joint Hindu Family has been described as a senior member of the family who is entitled to manage the properties and, in his absence, *the next senior most male member of the family, is its manager provided he is not incapacitated from acting as such by illness or other sufficient cause*. At Page 295, the position of a *"manager"* of a Joint Hindu Family is explained which is as under: -

> *"276.* ***Position of Manager****. – In a Hindu family the Karta or manager occupies a position superior to that of the other members in so far as he manages the property or business or looks after the family interests on behalf of the other members. The managership of the joint family property comes to a person by birth and he does not owe his position as manager to be presumed to the consent of his coparceners."*

60. In **B M Gandhi's Hindu Law,** the concept of *"managership"* or *"Kartaship"* has been similarly explained which is as under: -

> *"****19. Manager (Karta): –***
>
> ***(a) Who is/Who can be****. The Hindu joint family is governed by the principle of subordination.* ***Its affairs are managed by one person, called the Karta or the manager****."*

61. It was explained by Bombay High Court in *Gansavant Balsavant vs. Narayan Dhond Savant*, (1883) ILR 7 Bom 467 that a Hindu family may be regarded as a corporation whose interests are necessarily centred in the manager, the presumption being that the manager is acting for the family unless the contrary is shown. Unless the *Karta* or manager relinquishes his right or there are exceptional, extraordinary or compelling circumstances, juniors in the family cannot exercise this right. Even if the *Karta* is a lunatic, the juniors cannot alienate the property without obtaining a Court's order under the Lunacy Act, 1912.

62. In *Tribhuvandas Haribhai Tamboli* (supra), the Apex Court observed that **the managership of the joint family property goes to a person by birth and is regulated by seniority**. He is a *"**primus inter pares**"*. It was further observed that the father is ordinarily the manager of the family consisting of himself, his descendants and other relations. After the father's death his elder son generally becomes the manager. It is possible that a more capable son may become the manager, or it is also possible that the senior member may give up his right of management and a junior may act in his place when the senior member is incapacitated due to reasons of health. Thus, **the right to become a manager depends upon the fundamental fact that the person on whom it devolves was a Coparcener of the joint family**. Consequently, under traditional Hindu Law, no female (e.g., a widow) member could be a manager or *Karta* of a joint family.

63. From the above discussion, it may be concluded that **birth in the Joint Hindu Family, seniority by age and the status of being a**

Coparcener are the necessary qualifications to become a *Karta*. The traditional Law nowhere proscribed a female from being a manager but the requisite of being the *"senior most male"* was the necessary corollary of the fact that only male members of the Joint Hindu Family who were born within the degrees of coparcenary, were given the status of a Coparcener.

64. This limitation has been redressed by Amendment to Section 6 of the Act, 1956 which now confers the equal status of Coparcener on woman equating her rights to be at par with a son. Therefore, having acquired the status of Coparcener, the respondent No.1 should be entitled to acquire the status of *Karta*.

65. The appellant, on the other hand, has contended that **the Legislative Object behind the Amendment Act, 1956 as reflected in its Preamble and the Title of Section 6 (as amended in 2005)** is solely to codify the law on succession of property and does not change the traditional Hindu law or amend the necessary qualification of being a male Coparcener to become the *Karta* of an HUF.

66. This contention of the appellant gives rise to the question of whether the *heading of the provision* or *the Preamble of the Act*, 1956 can be used to restrict the scope of express words used within the body of the section.

Title of Section 6 of the Act, 1956: **–**

67. The title of Section 6 of the Act, 1956 reads as *"devolution of interest in coparcenary property"* and the relevant portion of the Section has been extracted below: -

> *"—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*
>
> *(a) by birth become a coparcener in her own right the same manner as the son;*
>
> *(b)* ***have the same rights in the coparcenery property as she would have had if she had been a son;***
>
> *(c) be subject to the same liabilities in respect of the said coparcenery property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*
> *Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."*

68. In the case of *Raichurmatham Prabhakar vs. Rawatmal Dugar* (2004) 4 SCC 766, the Apex Court observed that the heading or title of a provision plays a limited role in the construction of statutes. In the event of a dispute between the plain language of the provision and the meaning of the heading or title, the interpretation that is clearly and obviously visible from the language of the provision thereunder, shall prevail.

69. Thus, the title of Section 6 of the Act, 1956 cannot form the basis for restricting the express statutory right conferred under the provision.

***Preamble of the Act, 1956:* –**

70. A Preamble lists the principle objectives of an Act which forms an internal aid of interpretation. The *Preamble to the Act, 1956* reads as *"An Act to amend and codify the law relating to Interstate succession among Hindus."*

71. As early as in 1956, the House of Lords in *Prince Ernest of Hanover vs. Attorney General* (1957) 1 All E.R. 49 held that *"When there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is, therefore, clearly permissible to have recourse to it as an aid to construing the enacting provisions.* ***The Preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail.***

72. It was further observed in *Prince Ernest of Hanover* (supra) that the Courts *are concerned with the practical business of deciding a lis, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the Court's business in any case of some*

difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the Preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred.

73. In *R. Venkataswami Naidu vs. Narasram Naraindas* (1966) 1 SCR 110, it was observed that though a Preamble is a key to interpreting the statute, it cannot restrict the enacting part of the statute when it is clear, wide and unambiguous. While acknowledging that the Objective for the legislation is illustrated in the Preamble, it was explained that the remedy in the enacting part of a statute may extend beyond the cure of the evil as stated in the Preamble.

74. Nothing prevents the Legislature from providing coparcenary rights to a daughter on the same footing as a son in a manner that is beyond the wordings of the Preamble of the Act, 1956. Rather there is not even a scintilla of ambiguity in the words of Section 6 of the Act, 1956 as they clearly state that *a daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and any reference to a Hindu Mitakshara Coparcener shall be deemed to include a reference to a daughter of a coparcener*. The explicit language of Section 6 of the Amendment Act, 2005 makes it abundantly clear that though the reference in the Preamble may be to inheritance, but

conferring *"same"* rights would include all other rights that a coparcener has, which includes a right to be a *Karta*.

Statement of Objects and Reasons of Act (39 of 2005): **–**

75. Further, the ***Statement of Objects and Reasons of Act (39 of 2005) apropos Section 6*** perspicuously states that the provision has been enacted to render social justice to women by removing the discrimination in coparcenary ownership. The Statement of Objects reads as under: -

> *"2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do.* ***The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution having regard to the need to render social justice to women,*** *the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975."*

76. We thus, observe that Section 6 of the Act, 1956 in clear and unambiguous words, confers equal rights as a coparcener to a daughter as well as the son. The dichotomy of status of coparcener and its necessary

incidents in conferring differential rights to son and daughter, hence stand addressed, giving equal rights to both.

Whether recognition of a daughter as a Coparcener necessarily entitles her to be a Karta: **–**

77. The appellant's entire arguments are premised essentially on the ground that the Hindu Succession Act, 1956 was enacted to amend and codify the law relating to intestate succession of property amongst Hindus and in no manner tinkers with the customary Hindu law in regard to *Karta* and his obligations which are specifically protected and preserved by virtue of Section 4 of the Act, 1956.

78. The concept of coparcenary is derived from the joint ownership of a common pool of assets held by a family and the necessary corollary was that who owns the property, would have a right to manage it. When under the traditional Hindu law, the woman was not entitled to coparcenary property; resultantly, she could not assume the position of *Karta*. However, the Amendment to Section 6 of the Act, 1956 redefines the meaning of coparcenary as understood under the traditional Hindu Law, which is no longer limited to devolution of interest in the coparcenary property alone but encompasses all other incidents of a Coparcener, including the right to be a *Karta*. To say that a woman can be a coparcener but not a *Karta,* would be giving an interpretation which would not only be anomalous but also against the stated Object of introduction of Amendment.

79. We also find support to this conclusion from ***Mulla on Hindu Law, 20th Edition-Volume II at Pages 234-235*** which succinctly expresses the most logical interpretation of the Amendment Act, 2005 as under:

> *"The Hindu Succession Act has been amended by the Hindu Succession (Amendment) Act 2005. As a result of the amendment daughters have been conferred equal status as that of the sons in a Mitakshara coparcenary.* ***It appears that with the inclusion of daughters of a coparcener with equal rights as those of sons, the ascension of a daughter as Karta or Manager can no longer be ruled out.*** *This would have a lover be dependent on various factors, such as the presence of other meals in the family, and the seniority of the daughter qua such male coparceners. In the humble opinion of the author,* ***if therefore, there is a male coparcener capable of acting as Karta, he would become the Karta. If however, the daughter is senior to such male coparcener, the daughter would become the Karta, unless she expresses a desire not to act as such."***

80. The appellant has placed reliance on *Shreya Vidyarthi vs. Ashok Vidyarthi* (supra) to contend that a woman, even if is recognized as a coparcener, cannot assume the status of Karta. In the said case, the rights of a Widow of a Coparcener were under consideration, who was held not entitled to be the *Karta*. The reason for disentitlement of a widow from becoming the *Karta* of the HUF of her husband's family stems from the principle that a wife only becomes a member of her husband's HUF upon marriage, and not a Coparcener. This settled position, however, has to be contradistinguished with the rights bestowed under the amended Section 6 as the said Amendment pertains to the daughter of a Coparcener as

opposed to the spouse. Thus, the reliance on *Shreya Vidyarthi vs. Ashok Vidyarthi* (supra) is misplaced and is of no assistance to the appellant.

81. We thus, concur with the observations of learned Single Judge that Section 4 of the Act, 1956 cannot be invoked artificially to prevent what has been expressly done by the Legislature. To give any other interpretation to deny the right of a woman to be a Coparcener and consequently a *Karta*, would strike at the very Object of giving the woman an equal right to property as a man. The right to manage the property is incidental to ownership, and it is absurd to claim that the owner of an estate is curtailed from the right to manage it.

ISSUE NO. 6: –

> ***"Assuming existence of a D.R. Gupta and Sons HUF, whether the plaintiff can be considered to be an integral part of the HUF, particularly after her marriage in 1977, and whether the plaintiff has ever participated in the affairs of the HUF as a coparcener, and its effect? (OPP)"***

82. The appellant claims that the learned Single Judge failed to appreciate a significant aspect that performance of spiritual and managerial duties is by the *Karta* of the HUF which respondent No. 1 being a female, cannot perform. Thus, it has to be accepted that only the appellant, being the eldest male coparcener, is eligible to become the Karta of the *"D.R. Gupta & Sons HUF"*.

83. This argument raises a fundamental question of the necessary competency of the woman to perform the religious and familial obligations of a Karta in the backdrop of Mitakshara Law.

Spiritual efficacy of a female Coparcener: **–**

84. Their Lordships of the Judicial Committee of the Privy Council in *Surendranath v. Musammat Heeramonee*,12 M. I. A. 81 observed that in the Hindu Law there is so close a connection between their religion and the succession to property that the preferable right to perform the *shradha* is commonly viewed as governing also the preferable right to succession of property as a general rule.

85. In the case of *Katama Natchivar vs. Raja of Sivaganga*, 9 M.I. A., 610, the Judicial Committee of the Privy Council enunciated that there are two leading rules of Inheritance that are founded on the religious duty and superior efficacy of oblations and sacrifice and that of survivorship, in the Hindu Law. When the latter rule cannot apply, the former must be resorted to.

86. There are two systems of inheritance according to Hindu Law: (1) *The Mitakshara system,* and (2) *The Dayabhaga system*. The Dayabhaga system prevails in Bengal, while the Mitakshara system prevails in other parts of India. Both the systems are based upon the text of Manu that "*to the nearest Sapinda the inheritance next belongs; after them, the Sakulyas, the preceptor of the Vedas, or a pupil*". The differences between the two systems arise from the fact that while the doctrine of *religious efficacy* is the guiding principle under Dayabhaga School, there is no such definite guiding principle under the Mitakshara School.

87. **Dayabhaga** system brings out a different explanation to the texts of Manu. It states that the closest Sapinda is the one who can make an offering to the ancestors' souls and thus, ***the doctrine of religious efficacy***

or spiritual benefit is the guiding principle of inheritance under the Dayabhaga Law. It may sound incongruent to say but the logic of this principle is that according to the traditional principles of Hindu Law, property is regarded as the means of paying a man's funeral expenses, thus the right of inheritance is wholly regulated with reference to the spiritual benefits to be conferred on the deceased.

88. **Mitakshara** interprets *Sapinda* as the nearest in blood that will be the heir. The Mitakshara system is, therefore, based on consanguinity or proximity of blood relationship. *The fundamental principle of Mitakshara Law of Succession is propinquity, with the crucial exception that no cognate aside from a daughter's son may succeed an agnate in preference*. The principle of spiritual benefit does not find mention in the Mitakshara Law for determining the order of succession. Among *Bhinna Gotraja Sapinda*, the test is propinquity, i.e., the nearness in blood and agnates are preferred to cognates. Mitakshara thus, recognises two modes of devolution of property, namely, survivorship and succession. The rules of survivorship apply to joint family property, and the rules of succession apply to property held in absolute severalty by the last owner.

89. Mulla explains the right to inheritance under the Mitakshara School of Law as under: -

> *"**Though under the Mitakshara the right to inherit does not arise from the right to offer oblation, the test to be applied when a question of preference arises in the case of sagotra sapindas, is the capacity to offer oblation**, but, in the case of bhinna gotra sapindas, 'primary test' is 'propinquity of blood' and, when the degree of blood*

relationship furnishes no certain guide,' best is the capacity for conferring spiritual benefit."

90. From the above discussion, we may conclude that the spiritual efficiency is an indispensable requirement under the Dayabhaga Law; however, the same cannot be presumed under Mitakshara law. It is amply clear from the above that the spiritual duties performed by a *Karta* of an HUF governed by Mitakshara law was only coincidental to the fact that only male descendants were entitled to become coparceners in the past. Thus, with the amendment in law conferring daughters with coparcenary rights, spiritual efficiency or the ability to perform certain rituals cannot become a prerequisite qualification for becoming a *Karta* of an HUF governed by Mitakshara law.

91. Spiritual efficiency comes under consideration only when the question of preference arises. In the present case, the question of preference is obviated by the overt seniority by age of respondent No.1 in comparison to the appellant.

Non-Participation in the Affairs of the Family after Marriage: **-**

92. The appellant also claims that respondent No.1 has not been involved in the management of the HUF properties post her marriage in 1969. It was Manu Gupta/appellant who took charge of managing the properties and filing of Income Tax Returns for the same after the demise of Late Shri R.N. Gupta on 14.02.2006. Thus, respondent No.1 has no right to claim *Kartaship*. In this regard it is apposite to first examine whether the position of *Karta* is conferred on a person who actually

performs all the managerial duties or whether it is a position that is conferred by law.

93. The Apex Court in *Union Of India vs. Sree Ram Bohra & Ors.* (1965) 2 SCR 830, dealt with a peculiar question of whether an HUF can have two *Kartas* at the same time. The business activities in the said HUF were managed by two Coparceners who represented themselves as the *Karta* of the HUF in a Suit. While emphasising that an HUF cannot have two *Kartas* at the same time, it was concluded that any member of a family can act as a manager to carry on business etc on behalf of the family. This, however, does not mean that such representatives become the *Karta*(s) of the HUF. Thus, their authority to manage the HUF and represent it in legal matters is derived from the authority given by the family or the *Karta* and not from any principle of Hindu Law. The Court relied on the judgement of *Bhagwan Dayal vs. Reoti Devi* (1962) 3 SCR 440 wherein it was observed as under: -

> *"The legal position may be stated thus: Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of reunion. ....**Ordinarily the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property. subject to the limitations laid down by the said law, for or on behalf of the family**."*

94. Punjab and Haryana High Court in *Madan Mohan vs. Balkishan Das* 1964 SCC OnLine Punj 256, stated that in some exceptional cases, the *Karta* need not be the eldest Coparcener. Be that as it may, a

managing member does not become a *Karta* merely because he was managing the properties of the HUF on behalf of its members.

95. In a similar vein, in *Sunderlal Nanalal (HUF) vs. Commissioner of Income-Tax, Gujarat-II, Ahmedabad* 1983 SCC OnLine Guj 198, it was observed that the *Karta* of the HUF, due to his old age and indifferent health, can assign the role of managing the business to a Coparcener through an agreement on behalf of the family.

96. From the aforesaid rulings, we may observe that while a HUF cannot have two *Kartas*, it being a legal entitlement of the eldest member of an HUF, but the duty of management can be performed by another Coparcener in given circumstances. This relegation of managerial responsibility does take away the legal title of a *Karta*, unless it is renounced by the person legally entitled to be a *Karta*.

97. This court thus, concludes that being a *Karta* is conferment of legal status which includes right to manage the HUF properties and even if the appellant represented himself as *Karta* in official correspondence on behalf of HUF to manage the property, it does not take away the legal right of the eldest member of the Coparcener of the family, even if she is a woman, to stake a claim to be a *Karta*.

Societal stereotypes - Social acceptance: -

98. The appellant has come up with myriad hypotheses justifying why it would be incorrect for a woman to become a *Karta* from the societal standpoint.

99. Traditionally, the eldest male commanded the respect and obedience of the family due to the power proffered upon them. The only hindrance to a female *Karta* commanding the same respect today is the reluctance of a family to accept the social and cultural change. Many a times, a change or amendment in law becomes a trigger to stimulate social change as opined in *Badshah vs. Urmila Badshah Godse & Anr.* (2014) 1 SCC 188.

100. The Law Commission of India in its *174th Report on Property Rights of Women: Proposed reforms under the Hindu Law (2000)* had noticed the societal uneasiness with the idea of a woman assuming the role of a *Karta* at a time when the State Amendment Acts began to recognise the interest of a daughter in the coparcenary:-

> *"3.2.12 The HSA of 1956 dithered in not abolishing the very concept of coparcenary which the Act should have done. But the Hindu Succession (State Amendment) Acts have conferred upon the daughter of a coparcener, the right to become a coparcener like a son which may affect the brother-sister relationship.* ***It further appears that even where daughters have been made coparceners there is still a reluctance to making her a Karta as the general male view is that she is incapable of managing the properties or running the business and is generally susceptible to the influence of her husband and his family, if married****. This seems to be patently unfair as* ***women are proving themselves equal to any task and if women are influenced by their husbands and their families, men are no less influenced by their wives and their families****."*

101. Experience has shown that any culture or practice that is ingrained in the *society* is bound to face some apprehension and resistance by the

society when systemic changes are made to it. But with passage of time it becomes a tool of social change. The amendment to Section 6 of the Act, 1956 owes its provenance to the right to equality guaranteed under Article 14 of the Constitution of India. Such societal displeasure was also witnessed in the cases of *Navtej Singh Johar and Ors. vs. Union of India, Ministry of Law and Justice*, (2018) 1 SCC 791; *K.S. Puttaswamy and Anr. vs. Union of India and Ors*, (2017) 10 SCC 1 where the *test of popular acceptance* was applied to hold that the guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion. The *test of popular acceptance* does not furnish a valid basis to disregard statutory rights that are conferred with the sanctity of constitutional protection.

102. Further, the rights of the members in a coparcenary remain unaffected even when a female coparcener acts as its *Karta* as Coparceners continue to enjoy the same entitlements and interests which they otherwise have; their rights as coparcener do not get impinged in any manner. If there arises any scepticism about the skills, efficiency, sincerity or ability of female Coparceners to act as the *Karta* or being influenced by her in-laws, the other Coparceners have adequate remedies to seek for a partition or impeach any wrongful alienation of property made by the *Karta*.

103. Moreover, contention that the husband of a female *Karta* would have an indirect control over the activities of the HUF of her father's family is only a parochial mindset which even the legislature had diligently attempted to oust through Section 14 of the Act, 1956 to accord

women with the long overdue right to be the absolute owner of her property. If a woman is proscribed from becoming a *Karta* in view of this reasoning as cited by the appellant, it will only render the legislative endeavour to give rights in immovable properties to women through Section 14 of the Act,1956 as a mere mirage. Ergo, a woman who has absolute ownership in a property cannot be denied a right to manage it on the warped reasoning that she may get influenced by her in-laws. Thus, societal apprehension and reluctance can never truncate legislative enactments to do away with patriarchal discrimination.

104. We, therefore, conclude that neither the Legislature nor the traditional Hindu Law in any way limits the right of a woman to be a *Karta*. Also, societal perceptions cannot be a reason to deny the rights expressly conferred by Legislature. There is no impediment in the respondent No. 1 being the *Karta* of the HUF.

ISSUE NO. 4: -

"Whether the plaintiff is a member of D.R. Gupta and Sons HUF? And if so, to what effect?" (OPP)

ISSUE NO. 7: -

"Assuming existence of D.R. Gupta and Sons HUF, whether the plaintiff is a coparcener of and legally entitled to be the Karta?"(OPP)

105. It is the case of the respondent Nos. 9 and 10 that respondent No. 1 was not the daughter of a surviving Coparcener when the Amendment Act

of 2006 came into force as her father has expired before the commencement of the Amendment Act of 2005.

106. According to the finding in *Prakash and Ors. vs. Phulvati* (supra), living daughters of living Coparceners as on 09.09.2005 are entitled to the rights under the substituted Section 6, regardless of when such daughters are born. Howbeit, a three-Judge Bench of the Apex Court in the land mark case of *Vineeta Sharma* (supra) concluded that the Court in *Prakash and Ors.* (supra) did not bring attention to the issue of how a coparcenary is formed. It is not required for a previous Coparcener to be alive in order to form a coparcenary or to become a coparcener; what matters is birth within the degrees of the coparcenary to which it extends. The mode of succession, not the process of forming a coparcenary, is one of survival.

107. The Apex Court thus, clarified the rights of a daughter as a Coparcener under the amended Section 6 of the Act, 1956 and concluded that it is not necessary that the father of the daughter should be alive on the date of the amendment.

108. The Apex Court in *Vineeta Sharma* (supra) further observed that the amended provision of Section 6(1) of the Act, 1956 provides that on and from the date of Amendment, the daughter is conferred the right of coparcenary *'in her own right*' and '*in the same manner as a son*'. The right of Coparcener is by birth, and the rights are given in the same manner with the incidents of coparcenary as that of a son. **Hence, as this right is acquired by way of birth, the same is unobstructive in nature as long as the birth is within the degrees of coparcenary.** It is thus, irrelevant that a coparcener whose daughter is conferred with the rights is

alive or not as the right to be a Coparcener is independent of the existence of the father, making respondent No.1 the eldest surviving Coparcener.

109. Thus, the right of the daughter of a Coparcener to enjoy the status of a Coparcener from the commencement of the Hindu Succession (Amendment) Act, 2005 cannot hinge upon the life span of her father. Such a distinction can certainly not sustain the test of intelligible differentia that was sought to be addressed through the Amendment.

110. The same contention was initially raised by the appellant as well, however, it was withdrawn by conceding to the coparcenary right of a woman in light of the holding in *Vineeta Sharma* (supra).

111. We thus, agree with the observations of learned Single Judge that merely because father of respondent No.1 had died before the introduction of the Amendment Act, 2005 her right to be a *Karta* is not lost.

ISSUE NO. 3: –

"Whether there exists any coparcenary property or HUF at all? OPP"

ISSUE NO. 5

"Whether the interest of the plaintiff separated upon the demise of her father Sh. K.M. Gupta in 1984?" (OPD)

112. The learned Single Judge had referred to a Family Settlement dated 01.04.1999 Ex PW1/5 to observe that respondent No. 1 was a party to the said Family Settlement of 1999 as she was an acknowledged Coparcener being the daughter of Kishan Mohan Gupta, to conclude this issue in favour of respondent No.1.

113. While respondent No. 1, as a matter of right would be a Coparcener by birth, this right hinges upon the existence and continuance of the D.R. Gupta HUF when the Amendment Act of 2005 came into effect. The proviso to Section 6(1) of the Act lucidly provides that *nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004*.

114. The Appellant assails and challenges the coparcenary right of respondent No. 1 in light of her Written Statement in another Suit (*Partition Suit CS(OS) 142/2008 filed by respondent Nos. 9 and 10*) where it was asserted by her that the suit property had already been partitioned in 1999. Thus, respondent No.1 cannot claim to be a *Karta* when the coparcenary itself has ceased to exist.

115. Admittedly, Shri D.R. Gupta, the common ancestor of all the parties to the Suit, had constituted a *"D.R. Gupta & Sons HUF"* on 05.01.1963 of which his five sons were the Coparceners. Shri D.R. Gupta had drawn both moveable and immoveable properties into a common hotchpotch to be owned by the HUF. The HUF was assessed to Income Tax and was allotted PAN No. AAA HD 4230 M. Further, it is not in dispute that all the sons of Shri D.R. Gupta had expired, the last being Shri R.N. Gupta who expired on 14.02.2006.

116. **The essential question is whether the HUF stood dissolved upon the demise of Shri D.R. Gupta on 02.09.1977 or continued even after the demise of his five sons.**

117. The appellant DW1/Manu Gupta had deposed that *"D.R. Gupta & Sons HUF"* ceased to exist in the year 1971 on the demise of Shri D.R. Gupta and thus, the question of anyone being the *Karta* of this HUF does not survive. PW3/N.V. Satyanarayan, Defence Estate Officer, Delhi Circle, Delhi produced the copy of the Letter dated 01.06.1985 Ex. PW3/A addressed to Smt. Shanta K Mohan, wife of Shri Krishan Mohan (father of the respondent No. 1), in regard to the mutation of the suit property. The said letter is reproduced as under: -

> *"* *No: 3/220-F/III/180*
> *DEFENCE ESTATES OFFICE, DELHI CIRCLE,*
> *DELHI CANTONMENT DATED 01, Jun, 1985.*
>
> *To*
>
> *Mrs. Shanta K. Mohan W/O*
> *Late Shri Krishan Mohan*
> *18, Anand Lok, NEW DELHI.*
>
> *SUBJECT : MITIGATION IN THE NAME OF SUCCESSOR OF LATE Shri Krishan Mohan (Karta) (HUF).*
>
> *In r/o No. 4, University Road, Delhi.*
>
> *Reference your affidavit dated 13.8.1984 received in this office on 24thAugust, 1984 under your letter dated 16/21.8.1984.*
>
> *2. It is to inform you that necessary entries an requested under your letter cited above have been* ***effected in the record of this office as successors of Late Shri Krishan Mohan.***
>
> *(i) ShrimatiShanta K. Mohan*
> *(ii) Smt. SuzataSharma*
> *(iii) Smt. Radhika Seth*
>
> *3. This is for your information and record.*

Sd/-
DEFENCE ESTATES OFFICER, DELHI CIRCLE.
(A.P. SINGH)"

118. It is evident from the bare perusal of the aforesaid Letter that Smt. Shanta K. Mohan, Smt. Sujata Sharma and Smt. Radhika Seth, the legal heirs of Late Krishan Mohan Gupta in terms of their Affidavit dated 13.08.1984, were added as the owners and the property was mutated in the joint name of aforesaid three legal heirs of Late Shri Krishan Mohan Gupta. The Mutation Letter dated 01.06.1985 Ex PW3/A shows that the two daughters of Late Shri Krishan Mohan Gupta had also been entered in the records as joint owners. This was neither necessary nor permissible as in 1971 daughters were not recognised as Coparceners. Had the HUF been continuing after the demise of Late Shri D.R. Gupta on 01.10.1971, such inclusion of daughters in the mutation would have never taken place.

119. The second document of relevance is Letter dated 05.08.2003 Ex. PW3/B produced by PW3 addressed to Shri R.N. Gupta (*Karta of the HUF then)* by the Defence Estates Office which also deals with mutation of the suit property in the name of legal heirs of late Shri J.N Gupta, Late Shri B.N. Gupta and Late Shri M.N. Gupta. The letter declared all the legal heirs as stated above as joint owners of the suit property through its *Karta,* Late Shri R.N. Gupta.

120. The aforesaid two documents reveal that all the respective legal heirs of the four deceased brothers had been individually and separately entered in the records as joint owners. Though the property was declared as HUF property, but all the legal heirs, including the girls were made

joint owners. **Had there been an HUF continuing after the demise of Late Shri D.R. Gupta, the property need not have been mutated in the name of daughters as they were not Coparceners according to the law existing then.** The very fact that all the legal heirs from time to time have been recorded as joint owners on demise of their father in the mutation records of the suit property, **leads to an inference that there was no HUF that continued after the demise of Late Shri D.R. Gupta and the properties of the HUF became the joint property of the legal heirs of Shri. D.R. Gupta.**

121. Respondent No. 1 Sujata Sharma has asserted that *a partial partition* of moveable assets took place on 26.03.1977 in respect of deposits and shares in Motor and General Finance Limited. There is no denial that pursuant to this partial partition, each coparcener became entitled to receive from the HUF, a sum of Rs. 28,000/- from the deposits of Motor and General Finance Limited held by HUF and further each was to get 1000 equity shares of the Motor General and Finance Limited as their respective share while the other properties continued to remain in the HUF. The Notice of Partial Partition as required under Section 171 of the Income Tax Act, 1961 was also agreed to be sent.

122. Another significant fact which was stated and which essentially has not been disputed by all the parties, except Smt. Meera Sawhney and Smt. Gargi Gupta (respondent Nos. 9 and 10 who are the two legal heirs of Late Shri B.N. Gupta), is **a Family Settlement of 01.04.1999 Ex.PW1/5** which admittedly has the signatures of four sons of the deceased Shri D.R. Gupta (Shri M.N. Gupta, Shri R.N. Gupta, Shri B.N. Gupta, Shri

J.N. Gupta) and of respondent No. 1/Sujata Sharma, her sister Smt. Radhika Seth and their mother, Smt. Shanta K. Mohan being the legal heirs of late Shri Krishan Mohan (son of Shri D.R. Gupta) who had died on 18.02.1984.

123. According to this *Memorandum of Family Settlement*, an oral partition had taken place between all the parties on 18.01.1999 and the same was recorded in the Memorandum of Settlement dated 01.04.1999. In the said Memorandum, it was clearly stipulated as under: -

> *"2. The parties hereto confirm and declare that the oral family settlement dated 18.1.1999 was arrived at on the following terms.*
>
> > *2.1 The parties acknowledge and confirmed that that the parties hereto are the members of the Hindu Undivided Family D.R. Gupta & Sons (HUF) and each having share in the movable and immovable properties presently owned by the Hindu Undivided Family as under:*
> >
> > *a) Shri Krishan Mohan Gupta (the eldest son of late Shri D.R. Gupta, who died on 17th Feb. 1984 and is survived by his wife Smt. Shanta K Mohan and Mrs. Sujata Sharma & Mrs. Radhika Seth, daughter, heirs to the party of the "First Party" 1/5th share.*
> >
> > *b) Shri Mahendra Nath Gupta as Karta (party of the "Second Part) 1/5th share.*
> >
> > *c) Mr. Ravinder Nath Gupta (party of the Third") 1/5th share.*
> >
> > *d) Shri Bhupinder Nath Gupta (party of the "Fourth") 1/5th share.*
> >
> > *e) Mr. Jitender Nath Gupta (party of the "Fifth Part") 1/5th share.*

2.2 The parties acknowledge and confirm that the Hindu Undivided Family owns and possesses the following movable and immovable properties.

a) Bunglow No. 4 University Road, Delhi

b) Share of Motor & General Finance Ltd. (4309Share)

c) Bank account of Hindu Undivided Family D.R. Gupta & Sons (HUF) with Bank of India. Asaf Ali Road, New Delhi.

d) Bank account with Vijiya Bank, Ansari Road, New Delhi

e) Deposit with the Motor & General Finance Ltd. of Rs. 6,400/-.

2.3 ***The parties effected partition of Hindu Undivided Family D.r. Gupta & Sons (HUF)*** *and that the parties hereto being the members of the said Hindu Undivided Family were entitled to and were owners of the movable and immovable properties of the said Hindu Undivided Family mentioned in para 2.2 above to the extent as under:*

a) Shri Krishan Mohan Gupta (The eldest son of late Shri D.R. Gupta, who died on 17th Feb. 1984) and is survived by his wife Smt. Shanta K Mohan and Mrs. Sujata Sharma & Mrs. Radhika Seth, daughter, heirs to the party of the "First Part". 1/5th Share.

b) Shri Mahendra Nath Gupta (as karta of the "Second Party"). 1/5th Share.

c) Mr. Ravinder Nath Gupta (party of the "Third Part"). 1/5th Share.

d) Mr. Bhupinder Nath Gupta (Party of the "Fourth Part"). 1/5th Share.

e) Mr. Jitender Nath Gupta (Party of the "Fifth Part"). 1/5th Share.

7. No one party or parties hereto shall be entitled to bind the other parties hereto by his acts or deed with respect to the affairs of the said business.

8. ***It has been further agreed between the parties that the immovable property No. 4 University Road, Delhi, after the partition, if any, of the HUF, and recording of this family settlement, will continue to remain in the name of D.R. Gupta & Sons, HUF before the Revenue Authority/competent Authority****."*

124. As is already discussed in detail, all the family members have admitted this document of Memorandum of Settlement dated 01.04.1999 Ex. PW1/5. Pertinently, even respondent Nos. 9 and 10 have not disputed the execution of the document in this Suit, but only assail its validity.

125. It is the appellant's assertion that respondent No. 1 has taken contradictory stance with respect of the existence of the HUF. However, we find that respondent No.1, in her Written Statement in CS(OS) 142/2008 has merely averred that a partition of the HUF by determining the share of each branch took place prior to the Amendment Act of 2005 and thus, such a prior partition cannot be reopened. This statement is nothing but in conformity with the Hindu Succession (Amendment) Act, 2005 which came into effect on 09.09.2005. Section 6 (5) of the Amended Act, perspicuously explains that the provision will be inapplicable in cases where a partition had been effected before 20.12.2004.

126. It has emerged from the evidence of the parties that the HUF continued only for the purpose of dealing with the Revenue Authority/Competent Authority. The relevant portion of the said Written Statement reads as under: -

> *"6. ...However as per the Partition, the parties agreed that the Immovable property 4, University Road, Delhi will continue to remain in the name of D.R. Gupta & Sons HUF before the Revenue Authority/Competent Authority."*

127. With respect to the Family Settlement, respondent No. 1 as PW1 had deposed as under: -

> *"Q. 25. How is the Family Settlement dated 1.4.1999 refer to in your affidavit in evidence as Exhibit PW 1/5 (to which there is an objection as to mode of proof) relevant to the question of Karta?*
>
> *A. I have brought the original of Exhibit PW1/5 (shown to the Commissioner and returned).* ***This document is of partition of HUF. It is a family settlement. It gives a share of all the families and we have to deal with certain authorities such as Defence Estates and other authorities for which we require a Karta. This is the evidence.****"*

128. The appellant as DW1 also made certain significant admissions. On being asked who was the *Karta* of Late Shri D.R. Gupta, HUF after the death of Late Shri D.R. Gupta, he replied that it was Shri Krishan Mohan Gupta. He also clarified that *"after the death of Shri Krishan Mohan Gupta, there was no Karta as such but for the Military Defence Estate Office, the information regarding the passing away of Mr. Krishan Mohan Gupta was given by Mahender Nath Gupta, holding himself to be the Karta of HUF. After Mr. Mahender Nath Gupta, there was no Karta as such but for the Military Defence Estate Office, the information regarding the passing away of Mahender Nath Gupta, was given by Mr. Ravinder Nath Gupta".*

129. DW1/Manu Gupta (appellant herein) thereafter deposed that earlier Income Tax Returns were being filed, but the same have not been filed now for the last many years. On being asked specifically if he was a Coparcener of *"D.R. Gupta & Sons HUF"*, DW1 stated that *"assuming the HUF exists, I am Coparcener otherwise I am member of the Joint Family".*

130. DW1/Manu Gupta further deposed that like the members before him who informed the Defence Estate Office about the passing away of previous *Karta* to the Estate Office as the *Karta* of the family, he also informed the said Office. He even informed the Motor and General Finance Limited Company where the HUF holds some shares to change the name of the authorised signatory from that of Mr. R.N. Gupta to his name.

131. DW1/Manu Gupta also deposed that the House Tax for the suit property was paid upto 2007, but he was not aware thereafter. The system of paying the house tax was that all the five branches of the family used to share equal payment of house tax.

132. From these significant admissions of the appellant/DW1 coupled with the letters produced by PW3/ N.V. Satyanarayan, Defence Estate Officer in regard to the mutation of the property in the name of all the legal heirs of respective sons of Late Shri D.R. Gupta, the irresistible conclusion that can be drawn is that *"D.R. Gupta & Sons HUF"* came to an end on the demise of Shri D.R. Gupta and all his sons as five branches became equally entitled to their respective share and consequently, all were mutated as the owners of the suit property. Thus, no HUF was

continued after 1977, but the senior most male member was representing himself for and on behalf of all the owners by reflecting himself as a *Karta* of *"D.R. Gupta & Sons HUF"*, merely for the purpose of nomenclature and as the authorised representative of all the family members.

133. Now, coming to the ***Memorandum of Settlement dated 01.04.1999 Ex. PW1/5,*** all the parties have admitted to the execution of this document, though they have interpreted it differently and have raised contradictory claims.

134. **First and foremost**, it is stated in the Memorandum of Settlement that an oral partition took place on 18.01.1999. The validity of an oral partition has been recognised in the case of *Kale vs. Director of Consolidation* 118 (1976) 3 SCC 119, the Hon'ble Apex Court explained how the family settlement is effected which reads as under: -

> *"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:*
>
> *(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by 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 arrangement 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 immovable properties and therefore does not fall within the mischief of Section 17(2)of 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 the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims 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 claims 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."

135. **The second aspect** is the registration of the Memorandum of Settlement dated 01.04.1999 which recorded the Oral Settlement dated 18.01.1999. In *Teg Bahadur Bhujil vs. Debi Singh Bhujil* AIR 1966 SC

292, the Hon'ble Supreme Court observed that a family arrangement can also be arrived at orally and registration would not be required only if its terms may be recorded in writing as a memorandum of what has 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 has been agreed upon so that there is no hazy notion about it in future.

136. In *Kalwa Devadattam vs. Union of India* AIR 1994 SC 880, while endorsing that an oral partition was permissible, the Hon'ble Apex Court observed that the burden of proof remained on the person who asserted such partition. The separate occupation of portions, division of the income of the joint property, defining of shares of the joint property in the revenue or land registration records, mutual transactions could be the factors which may become significant to prove an oral agreement as observed in *Bhagwani Kunwar vs. Mohan Singh* AIR 1925 PC 132 and *Digambar Adhar Patil vs. Devram Girdhar Patil* AIR 1995 SC 1728.

137. It is also pertinent to note that the Memorandum of Family Settlement was only signed by the first *stirpe* of the coparcenary and not by all its coparceners at that point in time. Under Hindu Law, though all the Coparceners have an undivided share in the properties belonging to the HUF, however, this principle of undivided ownership of each coparcener is not applied when the members of the HUF decide to effect a partition. The Madras High Court in *A.M. Narayana Sah vs. A. Sankar Sah* 1929 SCC OnLine Mad 53 referred to Mayne on Hindu Law, Page 346, Paragraph 270, which reads as under: -

> *"It is common to say that* ***in an undivided family each member transmits to his issue his own share in the joint property, and that such issue takes per capita inter se, but per stirpes as regards the issue of other members.*** *But it must always be remembered that this is only a statement of what would be their rights on a partition. Until a partition all their rights consist merely in a common enjoyment of the common property, to which is further added the right of male issue to forbid alienations, made by their direct ancestors"*

138. Thus, when the partition of an HUF takes place, the shares are divided amongst each branch of the HUF. However, this division amongst branches does not lead to the creation of a separate coparcenary in each branch; rather the share so allotted to a branch is equally divided amongst all its leaves (members).

139. In the present case, the shares in the Family Settlement of 1999 has been determined as 1/5 *per stirpe* (which included the legal heirs of Late Shri K.M. Gupta, Shri M.N. Gupta, R.N. Gupta, Shri J.N. Gupta), thus constituting a division of their respective shares as per Hindu Law.

140. In this context, the decision of the Privy Council in *Appovier vs. Rama Subba* Aiyan 11 M.I.A. 75 (1866) described the manner in which severance of status of HUF may take place which reads as under: -

> *"According to the true notion of an undivided family in Hindoo law, no individual member of that family, whilst it remains undivided, can prejudice of the joint and undivided property, that he, that particular member, has a certain definite share. No individual of an undivided family could go to the place of the receipt of rent, and claim to take from the Collector or receiver of the rents, a certain definite share. The proceeds of undivided property must be brought, according to the theory of an*

undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family. ***But when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with;*** *and in the estate, each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided.*

xxxx xxxx xxxx xxxx

Then, if there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the property that is the subject of that agreement, and that is a 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."

141. Thus, in the present case, it is established there was no continuation of *"D.R. Gupta & Sons HUF"* after the demise of Shri D. R. Gupta in the year 1977 and the property got mutated in the name of all the legal heirs. In furtherance of such severance of status, the also parties determined the shares of each of the branch of the five brothers to be $1/5^{th}$ as mentioned in the Memorandum of Settlement. **Thus, even though no partition by metes and bounds took effect between the parties, a partition took place leading to severance of status of the undivided family into a divided family.**

142. At this juncture, we may examine that an HUF that has *albeit* ceased to exist under the Hindu Law, but may continue to be so recorded as an HUF in the revenue or Income Tax records.

143. In *Kalloomal Tapeswari Prasad (HUF), Kanpur vs. Commissioner of Income Tax, Kanpur* (1982) 1 SCC 447, after referring to *Appovier* (supra), the Hon'ble Apex Court concluded that Hindu law does not require that the property, must in every case be partitioned by metes and bounds or physically into different portions to complete a partition. Disruption of status can be brought about by any of the modes (1) by a father during his lifetime between himself and his sons by dividing properties equally amongst them, (2) by agreement, or (3) by a suit or arbitration. It is open to the parties to enjoy their share of property as tenants-in-common in any manner known to law according to their desire. **However, Income Tax law introduces certain conditions of its own to give effect to the partition under Section 171 of the Income Tax Act. Section 171 postulates that until a claim is made under Section 171(2) of the Income Tax Act that there has been a partition (total or partial) of the HUF, it continues to exist under the Income Tax records**. Sub-Section 1 of Section 171 of the Income Tax Act contains a deeming fiction that provides that a Hindu family hitherto cease as undivided, shall be deemed for the purpose of the Income Tax Act to continue to be a Hindu Undivided Family, except where and insofar as a finding of partition has been recorded in respect of it under Section 171 of the Income Tax Act. Such finding of partition can be recorded only where the property admits to physical division which has taken place. Mere

physical division of the income without a physical division of the property, cannot be treated as a partition.

144. Therefore, having concluded that the severance of status had taken place in the year 1977 and that a partition of the suit property which was till then in the nature of Joint Hindu property has also been effected by the parties *vide* Memorandum of Family Settlement dated 01.04.1999, but it has still not been partitioned by metes and bounds, but it would still continue to be assessed as a Hindu Undivided property in the Government records/Income Tax records and for that purpose one of the family members has to represent himself on behalf of an HUF. This is exactly what has been stated by the appellant in his testimony that it is only for the purpose of communication with the Government authorities that the suit property was being reflected in the name of *"D.R. Gupta & Sons HUF"*. Thus, the partition has already happened but the appellant had so communicated on behalf of HUF as it had to be represented before the Competent Authority till the partition actually takes place by metes and bounds.

145. Lastly, we observe that the position of *Karta* is a legal entitlement that has no bearings on the person who actually performs the managerial functions. In the present case, though there is no express delegation by respondent No.1 or other members on the appellant, the status of a *Karta* and his acts of performing managerial functions do not confer him with the title of Karta for the *"D.R. Gupta & Sons HUF"*.

Having held that the respondent No. 1 is entitled to be the Karta under law, she is hereby declared as Karta of D.R. Gupta and Sons, HUF.

ISSUE NO. 1: –

" Whether the Suit has been valued properly and proper court fee has been paid thereon? OPP"

146. Respondent No.1/plaintiff has stated that she has valued the Suit for the purpose of jurisdiction at over Rs. 1,00,00,000/- and the court fee payable on the relief of declaration being fixed at Rs. 20/- which has been paid.

147. The law in regard to the valuation for the purpose of court fee and jurisdiction is well-settled. The party while the valuation for the purpose of jurisdiction determines the forum where the Suit is to be filed i.e., whether before the District Court or the High Court, the valuation of the Suit for the purpose of court fee is for the purpose of affixing the requisite court fee.

148. We find that the respondent No. 1 has vaguely stated that the Suit valuation is more than Rs. 1,00,00,000/-. The plaintiff/respondent No. 1 should have been specific in giving valuation for the purpose of jurisdiction. Considering that the plaintiff has the discretion to value their suit as held by the full bench of this Court in *Smt. Sheila Devi vs. Kishan Lal Kalra* ILR (1974) 2 Del 491and as the trial has continued for over 18 years, we do not deem it appropriate to seek further clarification on this aspect and hold the jurisdictional valuation as Rs. 1,00,00,000/-.

149. The next aspect is what should be the court fee payable on this valuation. The declaratory Suits essentially deal with the status of a

person or a property and, therefore, being an inherent right is not subject to any valuation. Therefore, under the Court Fee Act, the minimum valuation of the Suit for Declaration has been assessed as Rs. 200/- on which a court fee of Rs. 20/- is payable. This is when the plaintiff chooses to value the Suit for Rs. 200/- which also determines the forum where the Suit shall be tried.

150. *Section 8 of the Suits Valuation Act, 1887* provides that where a Suit is valued at a certain amount for the purpose of jurisdiction, then the court fee shall be also payable at the same amount.

151. Since the Suit valuation for the purpose of jurisdiction is Rs. 1,00,00,000/-, the plaintiff/ Respondent No.1 has been in error in paying fixed court fee of Rs. 20/-.as *ad valoraem* fee should have been on the sum of Rs. 1,00,00,000/-. **The court fee is deficient, and the plaintiff/respondent No. 1 is directed to make good the deficient court fee within 1 (one) week.**

152. CM APPL. 6041/2016 has been filed by the appellant in the present appeal seeking for an exemption from paying additional Court Fees beyond the fixed Fee of Rs. 20. **Since the Suit has been valued at Rs. 1,00,00,000, by respondent No. 1, the appellant shall also be liable to pay the deficient court in the same manner for the present appeal.**

ISSUE NO. 2: –

" Whether the Suit for declaration is maintainable in its present form? OPP"

153. A Preliminary Objection had been taken on behalf of the appellant that the present Suit for declaration is not maintainable as consequential relief of possession has not been sought. Since, the appellant and the

respondents are in constructive joint possession of the suit property being the joint owners and the co-owners of the suit property, the consequential relief of possession was not required to be sought. Therefore, Suit for Declaration on the status of being the Karta of HUF as filed by the respondent No. 1, is maintainable simplicitor and no consequential relief is required to be claimed.

154. Lastly, this Court appreciates the assistance provided by the *Amicus Curiae* Ms. Aakanksha Kaul.

RELIEF: -

The respondent No. 1 is hereby declared as the *Karta* for the purposes of representing the *"D.R. Gupta & Sons HUF"* before the Competent Authority. Deficient Court fee be paid. In view of the above discussion, we find no merit in the present appeal which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 04, 2023
Ek /S.Sharma