



How can and cannot claim ancestral property

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Abstract

An ancestral property is a self-acquired and undivided property of a person's grandfather. The property inherited up to four generations of male lineage. (i.e., father, grandfather, etc.). by the Hindu Succession Act, altered in 2005, enables woman to appreciate equivalent rights to the property. Ancestral property suit file in partition suit. The right to share in an ancestral property comes by birth. But, no son can not claim any share in father's self earned/acquired property only can claim in ancestral properties.

Keywords: Ancest, acquid, parcelled, genealogical or self-obtained etc

1. Introduction

The property which is acquired up to three ages is alluded to familial property. That is the property descends from father, father's father, and great grandfather. Any property acquired other than the individuals/relations are known as separate property. Just male individuals have rights over the ancestral property. The Hindu Succession Act, altered in 2005, enables woman to appreciate equivalent rights to the property. Presently ladies have a similar ideal as men over the hereditary property. When the division/parcel occurs, all individuals will get an equivalent offer from the property.

The following are the incidents of ancestral property

1. Property acquired up to four ages of male ancestry, which means father, granddad, incredible granddad and extraordinary granddad is called ancestral property. It ought to have stayed unified till the fourth era upwards.
2. In contrast to different types of legacy, where legacy opens just on the demise of the proprietor, any privilege to an offer in such a property collects by birth itself.
3. Ancestral property could incorporate self-obtained property also. This is an issue that is resolved based on certainties and conditions of a case.
4. Any property divided through a partition deed, family course of action, and so forth loses its ancestral character. "The pre-essential is that the property ought not have been separated by the clients in the Hindu unified family as once a division of the property happens, the offer or bit which each coparcener gets after the division turns into his or her self-obtained property," says Hardeep Sachdeva, senior accomplice, AZB and Partners. The Supreme Court in 2016 has given a judgment such that any property which has been recently parceled or which has been disseminated as per Section 8 of the Hindu Succession Act, 1956, on standards of intestacy stops to be joint family property and no suit for segment can lie in regard to such property.
5. The rights in ancestral property are resolved per stripes and not per capita. This implies the offer of every age is first decided and the progressive ages' offer thus is sub-separated. Each generation inherits from its

- predecessors.
6. Properties acquired from mother, grandma, uncle and much sibling isn't ancestral property.
7. Property acquired through Will and Gift are not ancestral properties.
8. Self-acquired property can become ancestral property in the event that it is tossed into the pool of ancestral properties and delighted in like manner.
9. Property talented by a dad to his child can't wind up ancestral property in the hands of the child basically by reason of the way that he got it from his father.
10. Now, daughters too got a right in ancestral property in 2005. clarifying later, the supreme court had said that a daughter's right to ancestral property does not arise if the father died before the amendment of the hindu law came into force in 2005.
11. With respect to the property law, a son may be disinherited from the self-acquired property of the father, but he will still have equal right overs the ancestral or the coparcenary property of the hindu.

Incidents of ancestral property

The ancestral property should be four generations old. The property should not have been divided by the members. When the division/partition happens, it becomes the self-acquired property and not ancestral property. The person has the right over the property right from the birth. The ancestral property rights are controlled by per stripes and not by per capita. The shares are first determined for each generation and subdivided for the successive generation.

Classification of ancestral property

- Property from fatherly precursors: Here, the Hindu male acquires the property from his father, father's father, father's father's father. At the end of the day, property gained from any of the three prompt fatherly predecessors. Such property is considered as ancestral property.
- Property from maternal ancestors: Any ancestral property acquired from the maternal predecessors is named as discrete property and not ancestral property.

- Property from the females: Any property acquired by the females of the house doesn't go under the ancestral property. The property brought by woman is considered as her different property.
- Property obtained through gift/Will from paternal ancestors: When a property is gotten by blessing/Will from his progenitors, it very well may be either considered as genealogical or self-obtained property. It relies upon the aim of the progenitors as referenced in the deed/Will. In the event that the predecessors make a condition that the inheritor should take the property to support the family, at that point it is ancestral property. In the event that no condition is made, it is considered as a different property.
- Other property: Any property which is purchased from the salary of the hereditary property is known as ancestral property. So anything obtained with the help of ancestral property is likewise called as ancestral property. The youngsters, grandkids, extraordinary grandkids have an enthusiasm over the salary and gradual addition even before their introduction to the world.

Sec 26 of Hindu Succession Act gives that, if an individual is changed over into other religion, regardless he has rights over genealogical property. The individual has the bequest over such property, so the change can't prevent from asserting the property. The ill-conceived youngster can't guarantee any rights over ancestral property.

Under Muslim law, there is no understanding of coparcener property, so hereditary property doesn't exist. The Christian law is administered by the Indian Succession Act and there are no arrangements for the hereditary property. These the two laws can acquire their property either by Will/blessing or after their demise the lawful beneficiary can acquire their property.

1. In which suit Ansectral property can file ?

- Ancestral property suit file in partition suit.
- What is Partition Suit - Property Law of Partition in India also states that an ancestral property division happens either by family settlement deed or by filing a suit of partition in the Court.
- Partition definition - A partition is a term used in the law of real property to describe an act, by a court order or otherwise, to divide up a concurrent estate into separate portions representing the proportionate interests of the owners of property. It is sometimes described as a forced sale.
- Partition Suit Leading Cases – 1) Narayana Prabhu Venkateswara Prabhu v. Narayana Prabhu Krishna Prabhu (Dead) By Lrs.
 - The partition suit was filed originally in another court but was sent to the Court of the Second Additional Sub Judge of Alleppey in 1957, and the preliminary decree was passed on August 5, 1960.
 - It appears that the defendant-appellant had also filed a money suit in the Court of the Munsif only against Defendant 3, one of the four brothers, but all of them were impleaded in the partition suit.
 - The judgments were two separate ones given in one continuation but under separate headings.
 - Learned counsel for the defendant-appellant urges that the two suits were different in nature and were

filed in different courts originally so that the court trying the partition suit and the court in which the money suit was triable were not courts of coordinate jurisdiction.

- It is true that the appeals against both the decrees of the trial court were heard together in the High Court, and, although the appeal in the money suit is decided under a separate heading and the short judgment in it appears to be practically consequential on the judgment in the partition suit the judgments in the two appeals decide a common issue and resulted in two decrees.
- It is urged that, whereas the defendant-appellant had filed an appeal on the strength of a certificate granted to him as a matter of right, following upon the modification of the decree of the trial court by the High Court, the defendant-appellant had no such right of appeal in this Court.
- It was submitted that neither in law nor in equity could the defendant-appellant be barred from putting forward his objections to the decree in the partition suit.
- Section 11 of our Civil Procedure Code contains in statutory form, with illuminating explanations, a very salutary principle of public policy.
- They filed a second appeal in the High Court only as against the decree passed by the District Court in AS 66 of 1958 which arose out of the decree passed by the trial court in the appellant's suit.
- It was also observed there (para 19): "The decision of the District Court was given in an appeal arising out of a suit which, though instituted subsequently, stood finally decided before the High Court disposed of the second appeal.
- The preliminary objection must prevail.
- We reject the Civil Miscellaneous Petition No. 8585 of 1976, the application for condonation of delay in filing the special leave petition.

***Ancestral property leading cases-1) Sheela Devi and others v. Lal Chand and another.**

The issue is decided

- On a second appeal having been filed by the appellants herein, according to the High Court, the only question which required determination was as to whether the provisions of Section 8 of the Act would apply to the facts of the present case or the law as applicable prior to the enforcement of the 1956 Act would apply.
- Having held that the nature of the property must be recorded as Hindu coparcenary and ancestral property, it was stated that the law applicable before the Act which came into force would govern the rights of the parties and not the provisions of the Act.
- In view of the well-settled principles of Hindu law, as soon as a son was born to him the concept of the property being a coparcenary property in terms of the Mitakshara school of Hindu law revived.
- It is not self-acquired property within the meaning of Hindu law, though in their incidents, there may be no difference between the two species."
- We have noted the divergent views expressed on this aspect by the Allahabad High Court, Full Bench of the Madras High Court, Madhya Pradesh and Andhra Pradesh High Courts on one side and the Gujarat High

Court on the other.

- It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary.
- Whenever the father gets a property from whatever source from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him.
- We hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e where succession opened before the Act, Section 8 of the Act will have no application."
- First son of Babu Lal viz. Lal Chand, was a coparcener.
- It was obligatory on the part of the respondent-plaintiffs to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof.
- Except to the aforementioned extent, in our opinion, the courts below are correct in applying the provisions of Section 6 of the Act and holding that Section 8 thereof will have no application.
- The decree would be modified.

2. In which act Ancestral property can file?

***Hindu succession act 1956 (section 8):** General rules of succession in the case of males. The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter.

- firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- lastly, if there is no agnate, then upon the cognates of the deceased.

***Section 34 in The Specific Relief Act, 1963:** Discretion of court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation. A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.

Conclusion

- The right to share in an ancestral property comes by birth.
- Yes, a son can partition and his share in the ancestral property, even when the father is alive, a joint Hindu family consists of all male lineal ascendants and descendants and after 2005, daughters are also equal co-parceners.
- Under the Hindu law the moment a son is born he gets a share in father's property and becomes part of the

coparcenary his right accrues to him not on the death of the father or inheritance from the father but the very fact of his birth.

- But, no son can not claim any share in father's self earned/acquired property only can claim in ancestral properties.

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