

# Judiciary Digest

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## Female Hindu's Ownership in HUF Property

In a significant ruling, the Supreme Court of India, in the case of Mukatlal vs. Kailash Chand (D) Through LRS. and Ors., addressed the prerequisites for a female Hindu to claim absolute ownership of undivided property within a Hindu Undivided Family (HUF). The bench, comprising Justices BR Gavai and Sandeep Mehta, highlighted the necessity of possession for such a claim.

### Key Observations from the Supreme Court

The Court meticulously examined the statutory scheme and relevant precedents, emphasising that under Section 14(1) of the Hindu Succession Act (HSA), a female Hindu must satisfy two conditions to claim full ownership of undivided HUF property: she must be in possession of the property, and she must have acquired the property through inheritance, devise, partition, in lieu of maintenance, or by other specified means such as gift, skill, exertion, purchase, or prescription.

### Case Background

The case involved the adopted son/respondent of a female (widow) who sought partition of the HUF property on the grounds that his mother had inherited the property following her husband's death. However, it was established that the widow was never in possession of the HUF property. Her initial suit for title and possession had been dismissed, and no appeal was filed against that judgement, rendering the decision final.

Despite this, the respondent/adopted son filed a suit for partition, which was allowed by the High Court. The defendant/appellant subsequently challenged this decision in the Supreme Court.

### Supreme Court's Analysis

The Supreme Court highlighted that mere acquisition of a share in the HUF by inheritance does not confer full ownership unless the female Hindu is in possession of the property. The essential element under Section 14(1) of the HSA is possession. Since the deceased female widow was

never in possession of the property, she could not claim ownership, and consequently, her adopted son could not maintain a suit for partition claiming absolute ownership under the same provision.

### **Final Verdict**

The Supreme Court concluded that the earlier civil suit filed by the deceased widow, which was dismissed and never challenged, established that she was not in possession of the property. This finding invalidated the adopted son's claim for partition. Consequently, the Court allowed the appeal, reversing the High Court's judgement and reinforcing the requirement of possession for female Hindus to claim full ownership of undivided HUF property.

### **Supreme Court Criticises Delay in Bail Proceedings**

In a recent judgement, the Supreme Court of India, addressing the case of Amandeep Singh Dhall vs. CBI, highlighted the critical importance of timely judicial decisions in matters concerning personal liberty. The bench, comprising Justices BR Gavai and Sandeep Mehta, expressed their disappointment over the prolonged delay by the Delhi High Court in deciding a bail application.

### **Case Background**

Amandeep Singh Dhall, an accused in the Delhi liquor policy case, had his regular bail application pending before the Delhi High Court for nearly 11 months. Despite numerous postings, the High Court had adjourned the hearing to July 2024, leaving Dhall in legal limbo. Senior Advocate Kapil Sibal, representing Dhall, emphasised the undue delay, noting that the matter had been adjourned 40 times without resolution.

### **Supreme Court's Observations**

The Supreme Court bench strongly criticised the delay, emphasising that each day of delay in such cases significantly impacts personal liberty. The justices observed that protracted adjournments in bail applications undermine the fundamental rights of individuals.

"In matters concerning the liberty of citizens, every single day counts...keeping the matter pending for regular bail for almost 11 months deprives the petitioner of his valuable right of liberty...we request the HC to decide the bail application prior to vacation," the bench observed.

### **Final Order**

The Supreme Court, while disposing of the petition, requested the Delhi High Court to expedite the bail hearing and decide the matter before the summer vacation. This directive indicates the judiciary's obligation to safeguard individual liberties and prevent unnecessary delays in legal proceedings.

## **Burden of Proof in Hindu Family Land Disputes**

In the landmark case of Ram Bahal and Others v. D.D.C. and Others, the Allahabad High Court reiterated the principle that the initial burden of proof lies with the individual claiming a property to be Joint Hindu Family Property. The court emphasised that such claims must be substantiated with concrete evidence.

### **Case Background**

The dispute arose during Consolidation Proceedings when the respondents claimed adverse possession and asserted that the property was Joint Hindu Family Property under Section 9 A(2) of the Uttar Pradesh Consolidation of Holdings Act, 1953. The Consolidation Officer initially rejected these objections, leading to an appeal partially allowed in 1981, which recognized adverse possession but not co-tenancy as Joint Hindu Family Property. Both parties then filed revisions, which were resolved in favour of the respondents by the Revisional Court, prompting the petitioners to approach the Allahabad High Court.

### **Legal Precedents and Arguments**

The High Court relied heavily on the precedent set in Kunj Bihari v. Ganga Sahai Pande, which established that the initial burden of proof rests on the party claiming the property as Joint Hindu Family Property. Once this burden is met, it shifts to the opposing party to demonstrate that the property was self-acquired.

The petitioners argued that the property in question was self-acquired by their great-grandfather and not purchased using Joint Hindu Family funds. They referenced Jai Narain v. D.D.C. & Ors., which clarified that while jointness of the family can be presumed, the status of property as Joint Family Property must be proven through evidence.

The respondents countered by citing revenue and irrigation receipts accepted by the Revisional Court. They also disputed the petitioners' claims about the property's acquisition and argued that the property should belong to a common ancestor, thus making them co-tenure holders.

### **High Court's Verdict**

Justice Manish Kumar of the Allahabad High Court reaffirmed that the burden of proof lies with the claimant of Joint Family Property status. The court observed that the property was registered in the name of the petitioners' great-grandfather, who was not a common ancestor to both parties. Thus, the property could not be presumed as Joint Hindu Family Property.

The court found that the Revisional Court erred by inferring joint family ownership based merely on possession of land revenue and irrigation receipts. The respondents failed to prove that the property was acquired from the Joint Hindu Family nucleus.

## Old versus New: Conspiracy Evidence

Section 10 of the Indian Evidence Act (IEA) and Section 8 of the Bhartiya Sakshaya Adhinyam (BSA) both address the relevance of actions, statements, or writings by conspirators in proving the existence of a conspiracy. Both provisions state that if there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done, or written by any one of the conspirators in reference to their common intention is admissible as evidence against all conspirators.

The illustrative examples in both sections serve to clarify the application of the law. The IEA illustration refers to locations such as Europe, Calcutta, Bombay, Agra, and Kabul, while the BSA updates these to Europe, Kolkata, Mumbai, Agra, and Singapore. This reflects the modern nomenclature of Indian cities post-independence, with "Calcutta" becoming "Kolkata" and "Bombay" becoming "Mumbai." The transmission of money in the IEA is from Delhi to Kabul, whereas in the BSA it is from Delhi to Singapore, illustrating a change in geographical context but not in the legal principles involved.

Despite these minor differences in wording and examples, the legal interpretation remains consistent. Both sections emphasise that actions or statements by conspirators are relevant regardless of the individual conspirator's knowledge of all the details or other participants. This reinforces the principle that involvement in a conspiracy extends liability to all conspirators for acts done in furtherance of the conspiracy, highlighting the broad scope of evidentiary admissibility in such cases.

## Past Exam Highlights: Prelims and Mains

### Prelims

1. "Contract of Indemnity" is defined in which section of Indian Contract Act?

- a. Section 124
- b. Section 125
- c. Section 126
- d. Section 127

Ans. (a)

**Explanation:** "Contract of Indemnity" is defined under Section 124 of the Indian Contract Act, 1872. This section specifically outlines that a contract of indemnity is one where one party promises to save the other from loss caused either by the conduct of the promisor himself or by the conduct of any other person.

2. 'A' and 'B' go into a shop. 'B' Says to the shopkeeper- " Let A have the goods. I will see that you are paid",

This is a Contract of

- a. Guarantee
- b. Bailment
- c. Indemnity
- d. Pledge

Ans. (a)

**Explanation:** When B tells the shopkeeper "I will see that you are paid," in the presence of A, this creates a contract of guarantee. Here, B becomes the surety, ensuring the shopkeeper is paid for goods A takes, which positions B as guaranteeing A's debt.

3. Mark the correct answer in respect of the Contract of Guarantee.

- a. It may be in writing

- b. It may be oral**
- c. Both (a) and (b)**
- d. Neither (a) nor (b)**

**Ans. (c)**

**Explanation:** A contract of guarantee can be either oral or written as per the Indian Contract Act, which allows for flexibility in how guarantees are formed, not mandating a specific form unless required by law.

**4. 'A' says to 'B' that he will give a sum of rupees 5000 if B marries his daughter.**

**This is :**

- a. Vested Right**
- b. Primary Right**
- c. Contingent Right**
- d. None of these**

**Ans. (c)**

**Explanation:** When A promises B a sum of money contingent upon B marrying his daughter, it creates a contingent right, as the right to the sum is dependent on the occurrence of a future event, namely B's marriage to A's daughter.

**5. 'Bailee' is a person:**

- a. to whom the goods are delivered**
- b. who delivers the goods**
- c. who fails to deliver the goods**
- d. none of the above**

**Ans. (a)**

**Explanation:** 'Bailee' refers to the person to whom the goods are delivered in the context of bailment. This term, although less commonly used, emphasises the role of the receiver in the bailment process, highlighting their responsibilities in handling the goods temporarily.

**6. Section 170 of Indian Contract Act deals with:**

- a. General lien**
- b. Particular lien**
- c. Wharfinger lien**
- d. Broker's lien**

**Ans. (b)**

**Explanation:** Section 170 of the Indian Contract Act addresses the concept of a

Particular Lien, which allows a bailee to retain specific goods until payment for services rendered in relation to those goods is made.

**7. An agency can be terminated by :**

- a. the principle revoking his authority**
- b. The agent renouncing the business of the agency.**
- c. Either the principle or agent dying**
- d. All of these.**

**Ans. (d)**

**Explanation:** An agency can indeed be terminated by all the mentioned conditions: the principle revoking his authority, the agent renouncing the business of the agency, and either the principle or agent dying. These factors sever the contractual relationship that defines an agency.

**8. Under Section 25 of the Indian Partnership Act, 1932 the liability of the partners for the acts of the firm is:**

- a. Joint and several**
- b. Several**
- c. Joint or several**
- d. Joint**

**Ans. (a)**

**Explanation:** Under Section 25 of the Indian Partnership Act, 1932, the liability of partners for the acts of the firm is both joint and several. This means that a third party can claim full compensation from any single partner or from all partners collectively, depending on the circumstances.

**9. A minor, who has been admitted to the benefits of the partnership, under Section 30 of the Indian Partnership Act on attaining majority has to exercise an option, to stay or to leave the firm, within**

- a. One month of attaining majority**
- b. Six months of attaining majority**
- c. 90 days of attaining majority**
- d. None of the above**

**Ans. (b)**

**Explanation:** Under Section 30(5) of the Indian Partnership Act, a minor who has been admitted to the benefits of a partnership must decide within six months of reaching majority whether to become a full partner or leave the partnership.

**10. Under the Indian Partnership Act, 1932, where the partnership is at will, a partner may retire.**

**a. By giving oral notice expressing his intention**

- b. By giving written notice expressing his intention**
- c. Without any notice**
- d. None of the above**

**Ans. (b)**

**Explanation:** Under the Indian Partnership Act, 1932, specifically under Section 32(1)(c), a partner in a partnership at will can retire by giving a written notice to the other partners expressing his intention to retire. This requirement ensures clarity and formality, preventing disputes regarding the partner's intention and the exact date of retirement.

### **Mains**

**Q. "Arbitrariness is antithesis to Article 14 of the Constitution of India". Elaborate.**

**Ans.** Article 14 of the Constitution of India guarantees the right to equality before the law and equal protection of the laws within the territory of India. This fundamental right ensures that every individual is treated equally without any arbitrary discrimination. The principle that "arbitrariness is the antithesis of Article 14" highlights the importance of fairness, reasonableness, and non-discrimination in the application of laws and actions by the state.

#### **Essence of Article 14**

Article 14 embodies the principle of equality, which mandates that similar situations should be treated similarly and dissimilar situations should be treated differently if there is a reasonable basis for the differentiation. It ensures that all individuals have equal access to the law and that no person is discriminated against arbitrarily by the state. For example, laws that apply equally to all citizens regardless of their background uphold the spirit of Article 14.

#### **Arbitrariness: An Antithesis**

Arbitrariness refers to actions that are based on random choice or personal whim, rather than any reason or system. In the context of Article 14, arbitrariness negates the principle of equality, as it implies the absence of any rational or fair basis for differentiation. An arbitrary action by the state violates the guarantee of equality because it is not based on any objective criteria or standard, leading to unjust discrimination. For instance, if a government policy arbitrarily favours one group of people without a reasonable justification, it would be considered arbitrary and contrary to Article 14.

#### **Judicial Interpretation**

Indian judiciary has consistently held that arbitrariness is incompatible with Article 14. In **E.P. Royappa v. State of Tamil Nadu (1974)**, the Supreme Court emphasised that equality is antithetical to arbitrariness. The Court held that any arbitrary action violates the principle of equality enshrined in Article 14 because it introduces inequality where there should be fairness and justice. Similarly, in **Maneka Gandhi v. Union of India (1978)**, the Supreme Court expanded the scope of

Article 14 by ruling that any law or action that is arbitrary, unreasonable, or not based on fair procedure violates Article 14.

### **Reasonableness and Fairness**

The principle that arbitrariness is the antithesis of Article 14 also implies that state actions must be reasonable and fair. Reasonableness requires that actions must be based on relevant considerations and must have a rational connection to the objective sought to be achieved. Fairness entails adherence to just and equitable procedures.

### **Application in Administrative Actions**

Article 14 is particularly relevant in the context of administrative actions. Administrative authorities must exercise their powers in a non-arbitrary manner, ensuring that their decisions are based on objective criteria and relevant considerations. In **Shrilekha Vidyarthi v. State of U.P. (1991)**, the Supreme Court held that the state must act fairly and reasonably, and any arbitrary dismissal of government counsel without proper reason violated Article 14. This principle applies broadly to all administrative actions, ensuring that public authorities do not act capriciously.

### **Clear Concept: Interim Measures by Arbitral Tribunal**

Section 17 of the Arbitration and Conciliation Act, 1996 (the Act), as amended, provides the framework for arbitral tribunals in India to order interim relief. This provision lays the extent of the tribunal's power to grant interim measures, specifying the types of orders that can be made, and clarifying the distinction between interim orders and interim awards.

It also addresses the enforcement of these measures, the tribunal's ability to issue orders against third parties, and the remedies available to challenge interim measures. The power to grant interim measures remains discretionary, requiring the applicant to demonstrate (i) a prima facie case, (ii) that the balance of convenience favours the interim measure, and (iii) that irreparable harm would ensue without the requested relief.

### **Pre- and Post-2015 Amendment Framework**

Prior to the 2015 Amendment, Section 17 was limited in scope, allowing tribunals to order interim measures deemed necessary concerning the subject matter of the dispute, and to require appropriate security. However, parties could limit this power through arbitration agreements. The 2015 Amendment significantly expanded the tribunal's powers, aligning them with the court's powers under Section 9.

The amended Section 17 grants the tribunal authority to order all interim measures that a court can under Section 9(1), effectively treating tribunal orders as equivalent to court orders for enforcement purposes under the Civil Procedure Code (CPC). Correspondingly, Section 9(3) restricts courts from entertaining applications for interim measures once an arbitral tribunal is constituted, except under circumstances where Section 17 relief would be ineffectual.

### **Party Autonomy and Institutional Rules**

The 2015 Amendment removed the ability for parties to contract out of the tribunal's interim relief powers under Section 17. This ensures that, in Part I arbitrations, Section 17 relief remains available regardless of any contrary agreement. When arbitrations are conducted under institutional rules, the tribunal's powers under these rules supplement those under Section 17. In case of a conflict between institutional rules and Section 17, the statutory provision would likely take precedence, although this remains to be judicially tested.

### **Post-Award Interim Measures and 2019 Amendment**

Initially, the 2015 Amendment allowed tribunals to grant interim measures after the award but before its enforcement. However, this was inconsistent with Section 32, which terminates the tribunal's mandate with the final award, rendering it functus officio. This inconsistency was resolved by the 2019 Amendment, which removed the provision allowing post-award interim measures. Thus, tribunals can no longer grant interim measures after the conclusion of arbitral proceedings up to the enforcement of the award.

### **Applicability to Foreign Seated Arbitrations**

Section 17 does not apply to arbitrations seated outside India. For such arbitrations, the power to grant interim measures is governed by the laws of the arbitration seat, supplemented by any applicable institutional rules agreed upon by the parties. This ensures that the procedural and substantive laws relevant to the arbitration's location determine the scope of interim relief.