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Self Acquired vs Ancestral Property – Supreme Court Answers

One of the most vexed question under the Hindu Law, is, whether a property acquires the character of self-acquired property or ancestral property. This is important because, if the property assumes character of self-acquired, then it falls into the hands of his sons as not coparcenary property, but would devolve upon on them in their individual capacity. In other words, the father has unfettered rights to do so with such property and neither his sons or grand sons would not have any claim on such property. However, if the property is held to be assuming the character of ancestral property, then the son, grand son and great grand son would acquire right in such property from the birth itself. In simpler words, the father cannot have unfettered rights qua such ancestral property and requires the consent of all the three downward generations, if existed, at the time of disposing such property.

Hence, there are multiple property disputes all over the country, with various state high courts, holding different and separate views as to when a property becomes an ancestral property or self-acquired property. The Honourable Supreme Court had an occasion to examine the said issue (by consolidating decisions of various state high courts) in a recent matter of Govindhbahi Chhotabhai Patel & Ors vs Patel Ramanbhai Mathurbhai[1]. In this article, we try to analyse the said judgement and understand the character of property and consequential rights attached to it.

The facts of the case are that the appellants are sons of Chhotabhai Patel (CP/donor), who died in 2001. During the life time of CP, he has executed a gift deed dated November 15, 1977 in favour of defendant Ramanbhai Patel (RP/donee). ***The main issue before the trail court among the challenge to genuineness of the gift deed, whether the property is ancestral property and accordingly CP does not have any right to execute gift deed in favour of RP.*** The matter reached to High Court and after framing the substantial questions of law, the High Court has set aside the judgment and decree passed on by trail court and judgement and decree passed by the first appellate court.

The High Court has held that the suit property is not an ancestral property for the reason that the said property is purchased by Ashabhai Patel (AP - father of CP/donor) and it is by virtue of will executed by AP, property came to be owned by CP in 1952. Since the property is self-acquired by AP and devolved to CP by way of will, the properties are self-acquired properties of CP and cannot be held to be ancestral property in the hands of CP. Having the character of self-acquired property, CP is competent to gift the same to whomsoever he chose to.

The sons of CP has challenged such judgment of High Court before the Supreme Court. The main grounds taken by appellants, sons of CP, were that, the findings of High Court that the property devolved on CP/donor by virtue of will, therefore ceases to be ancestral property is contrary to the judgement of Supreme Court in CN Arunachala Mudaliar vs CA Murugantha Mudaliar & Another[2]. The sons of CP has also relied on the judgment of Shyam Narayan Prasad vs Krishna Prasad & Others[3], wherein it was held that self-acquired property of a grandfather devolves upon his son as ancestral property.

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[1]https://www.livelaw.in/top-stories/fathers-self-acquired-property-given-to-son-by-willgift-self-acquired-property--148423?fb_comment_id=2620313924657452_2621004277921750

[2] AIR 1953 SC 495

[3] (2018) 7 SCC 646

RP/donee has argued, the sons of CP has failed to prove that said property was ancestral after admitting that their grandfather has purchased and given it under will to their father to the exclusion of other family members. Further, the judgement in the matter of CN Arunachala Mudaliar (supra) is to the effect that property bequeathed or gifted to a son by Mitakshara father will be treated as self-acquired property in the hands of donor.

The Supreme Court against this backdrop, has proceeded to, examine, the important question, whether the property in the hands of CP would assume the character of self-acquired or ancestral. The sons of CP has stated that there was a partition among the CP and his brothers in 1964 and since the property was partitioned in 1964, the said property acquired the character of ancestral. The Court stated that just because there was a partition, the property does not assume the character of self-acquired property. The Court further stated that since AP has self-acquired the said property and bequeathed to the CP/donor, the said property qua CP/donor assumes the character of self-acquired even applying the ratio of judgment of CN Arunachala Mudaliar (supra) as relied by sons of CP.

The question which was considered by a three-member bench in the of CN Arunachala Mudaliar (supra) was that whether properties acquired by defendant under Will are to be regarded as self-acquired or ancestral in his hands. The plaintiff claimed partition of property of suit filed against his father and brother. The stand of the father was that the house property was the self-acquired properties of his father and he got them under a Will executed. ***The three-member bench held that father of a Joint Hindu Family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired property and his male issue could not interfere with these rights in any way.*** The three-member judge also held that it was not possible to hold such property bequeathed or gifted to son must necessarily rank as an ancestral property. It was further held that a property gifted by a father to his son could not become ancestral property in the hands of the son simply by reason of the fact that the son got it from his father or ancestor.

The Supreme Court then referred to the judgement of Bombay High Court in the matter of Jugmohan Das v Sir Mangal Das[4] [which was also ratified by Allahabad High Court, Lahore High Court and Supreme Court in the matter of CN Arunachala Mudaliar (supra)], wherein it was held that if the son takes the property by devise, the property continues to be self-acquired in his hands. The Bombay High Court has held that a bequest by will, is a gift made in contemplation of death. It only differs from a gift in the fact that it takes effect at future time instead of immediately. Since, there is no doubt that a man can give away self-acquired property to whomsoever he pleases, including his own sons, and there is no doubt that property so given would be considered self-acquired in the hands of donee and therefore, follow that the property given by Will would equally be self-acquired in hands of devisee.

Then the Supreme Court proceeded to discuss another judgement relied on by the sons of CP vide Shyam Narayan Prasad (supra). The said matter was dealing with the status of partitioned property post partition. In such a situation, the court held that property post partition would acquire the character of ancestral property. Since the facts in the instant case and Shyam Narayan Prasad (supra) were different, the ratio of later judgment does not apply to the facts on the hand.

Accordingly, the Supreme Court proceeded to conclude that the property was self-acquired by AP and since he obtained such property via Will and no further intention to designate such property as ancestral emanates from Will, by applying the ratio of CN Arunachala Mudaliar (supra) held that such property assumes the character of self-acquired and not ancestral. Since the property was self-acquired in the hands of CP, he is competent to gift it to RP.

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[4] (1886) ILR 10 Bom 528

Also, the judgement of Delhi High Court in the matter of Sh. Surender Kumar vs Sh. Dhani Ram & Others[5] vide Para 7 has summarised as to when a property becomes ancestral or self-acquired in case of Hindu Undivided Family (HUF) vis-à-vis Section 8 of Hindu Succession Act, 1956 (HSA):

- If a person dies after passing HSA and there is no HUF existing at the time of the death of such a person, inheritance of immovable property of such a person by his successors – in – interest is no doubt inheritance of 'ancestral' property, but the inheritance is as self-acquired property in the hands of the successor and not as HUF property although the successor(s) indeed inherits 'ancestral' property i.e., a property belonging to his parental ancestor

- The only way in which HUF/joint hindu family can come into existence after 1956 (and when a joint hindu family did not exist prior to 1956) is if an individual's property is thrown into a common hotchpotch. Thus, if an HUF property exists because of its such creation by throwing of self-acquired property by a person in the common hotchpotch, consequently there is entitlement in coparceners, etc. to a share in such HUF property.

- An HUF can also exist if paternal ancestral properties are inherited prior to 1956, and such status of parties qua the properties has continued after 1956 with respect to the properties inherited prior to 1956 from paternal ancestors. Once that status and position continues even after 1956, of HUF and of its properties existing, a coparcener etc., will have a right to seek partition of properties.

- Even before 1956, an HUF can come into existence even without inheritance of ancestral property from paternal ancestors, as HUF could have been created prior to 1956 by throwing of individual property into a common hotchpotch. If such HUF continues even after 1956, then in such case a coparcener etc. of an HUF was entitled to partition of HUF property.

From the above decision of Delhi High Court in the matter of Sh. Surender Kumar (supra) and Supreme Court in the matter of Govindhbahi Chottabhai Patel (supra), it is clear that the issue that when a property constitutes a self-acquired or ancestral is not free from ambiguity is quite ambiguous and the judgment in Govindhbahi Chottabhai Patel (supra) helps to resolve the ambiguity and inconsistency prevalent to certain extent. However, till such more clarity on the subject evolves, the disputes are expected to arise.

[5] (2016) 1 High Court Cases (Del) 17