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SHREYA VIDYARTHI

v.

ASHOK VIDYARTHI & ORS.

(Civil Appeal Nos. 3162-3163 of 2010)

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DECEMBER 16, 2015

[RANJAN GOGOI AND N.V. RAMANA, JJ.]

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Hindu law – Hindu undivided family – Hindu widow – Role assigned – Held: Hindu Widow is not a coparcener in the HUF of her husband and, thus, cannot act as Karta of the HUF after the death of her husband – Hindu Widow can act as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener – Two expressions Karta and Manager are not synonymous –

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Expression 'Manager' may be understood as denoting a role distinct from that of the Karta – In a case where male adult coparcener has died and there is no male coparcener surviving or where the sole male coparcener is a minor, the HUF does not come to an end – Mother of the male

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coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as his (minor's) legal guardian – On facts, respondent was the only surviving male coparcener after the death of his father and was a minor – Materials on record indicate that the natural

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mother of minor played a submissive role in the affairs of the joint family and the step mother played an active and dominant role in managing the said affairs, in her capacity as the step mother of the respondent and the said role was not opposed by the natural mother – Step mother had

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purchased the suit property out of the joint family funds namely insurance money, thus, the suit property was a joint family property, the respondent was entitled to seek partition thereof and on that basis the apportionment of shares in the suit property between the respondent and the eighth

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defendant-respondent's step sister's adopted daughter rightly made by the High Court. A

Dismissing the appeals, the Court

HELD: 1.1 The appellant came to be impleaded in the suit following the death of defendant No. 2 and thereafter on the death of defendant No. 1. From the facts recorded by the High Court it is clear and evident that the appellant had participated in the proceeding before the High Court at various stages through counsels. In its order the High Court observed that full opportunity of hearing on merits was afforded to the appellant. There can hardly be any justification to remand the matter to the High Court for a fresh consideration by setting aside the impugned order. [Para 14] [1200-C-D, F] B C

1.2 The affidavit of step mother in suit filed by natural mother discloses that she was looking after the family as the Manager taking care of the respondent No.1-step son; that she had received the insurance money following the death of her husband and the same was used for the purchase of the suit property. The virtual admission by the predecessor-in-interest of the appellant of the use of the insurance money to acquire the suit property is significant. The insurance amounts constitute the entitlement of all the legal heirs of the deceased though the same may have been received by step mother as the nominee of her husband. [Para 15] [1200-H; 1201-A-B, D] D E F

1.3 The fact that the family was peacefully living together at the time of the demise of the father; the continuance of such common residence for almost 7 years after purchase of the suit property in the year 1961; that there was peace and tranquility in the whole family were rightly taken note of by the High Court as evidence G

A of existence of a joint family. The execution of sale deed
in the name of step mother and the absence of any
mention thereof that she was acting on behalf of the joint
family has also been rightly construed by the High Court
with reference to the young age of the respondent-21
B years which may have inhibited any objection to the
dominant position of step mother in the joint family, a
fact also evident from the other materials on record. The
conclusion reached by the High Court on the issue of
existence of a joint family is correct. [Para 16] [1202-E-
C G; 1203-A]

1.4 A Hindu Widow is not a coparcener in the HUF
of her husband and, therefore, cannot act as Karta of
the HUF after the death of her husband. The two
expressions i.e. Karta and Manager may be understood
D to be not synonymous and the expression 'Manager'
may be understood as denoting a role distinct from that
of the Karta. Hypothetically, the case of HUF may be taken
where the male adult coparcener has died and there is
no male coparcener surviving or as in the facts of the
E instant case, where the sole male coparcener
(respondent) is a minor. In such a situation obviously
the HUF does not come to an end. The mother of the
male coparcener can act as the legal guardian of the
minor and also look after his role as the Karta in her
F capacity as his (minor's) legal guardian. [Para 18] [1203-
G-H; 1204-A-B]

1.5 In the instant case, RV was the step mother of
the respondent who at the time of the death of his father
was a minor. The respondent was the only surviving
G male coparcener after the death of his father. The
materials on record indicate that the natural mother of
respondent, had played a submissive role in the affairs
of the joint family and the step mother had played an
active and dominant role in managing the said affairs.
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The said role of step mother was not opposed by the natural mother. Therefore, the same can very well be understood to be in her capacity as the step mother of the respondent and, therefore, consistent with the legal position which recognizes a Hindu Widow acting as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener. Such a role necessarily has to be distinguished from that of a Karta which position the Hindu widow cannot assume by virtue of her dis-entitlement to be a coparcener in the HUF of her husband. Regrettably the position remain unaltered even after the amendment of the Hindu Succession Act in 2005. [Para 20] [1204-F-H; 1205-A-C]

1.6 The apportionment of shares of the parties in the suit property made by the High Court, does not disclose any illegality or infirmity so as to justify any correction. Having held and rightly that the suit property was a joint family property, the respondent was found entitled to seek partition thereof and on that basis the apportionment of shares in the suit property between the respondent and the contesting eighth defendant was rightly made by the High Court in accordance with the reliefs sought in the suit. [Para 23] [1205-G-H; 1206-A]

Smt. Sarbati Devi & Anr. v. Smt. Usha Devi 1984 (1) SCC 424 : 1984 (1) SCR 992; *Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd.* AIR 1966 SC 24 : 1965 SCR 488; *Controller of Estate Duty, Madras v. Alladi Kuppaswamy* 1977 (3) SCC 385 : 1977 (3) SCR 721; *Sushila Devi Rampuria v. Income Tax Officer and Anr.* AIR 1959 Cal 697 – referred to.

Case Law Reference

1984 (1) SCR 992	referred to	Para 15	
1965 SCR 488	referred to	Para 17	H

A **1977 (3) SCR 721** referred to **Para 17**

AIR 1959 Cal 697 referred to **Para 18**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3162-3163 of 2010

B From the Judgment and Order dated 12.08.2009 and 24.11.2009 of the High Court of Judicature at Allahabad in First Appeal No. 693 of 1987 and Civil Misc. Recall Application No. 262907 of 2009 in FA No. 693 of 1987

C Z. M. Naiyer, Sr. Adv., Satish Vig, Vikas Sachdeva, Ashutosh Sharma, Advs. for the Appellant.

S. B. Upadhyay, Sr. Adv., Vijaiendra Nigam, Y.K.S. Chauhan, Ms. Kumud Lata Das, V. Sushant Gupta, Dr. Kailash Chand, Advs. for the Respondents.

D The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The appellant before us is the 8th Defendant in Suit No. 630 of 1978 which was instituted by the first-respondent herein as the plaintiff. The said suit filed for permanent injunction and in the alternative for a decree of partition and separation of shares by metes and bounds was dismissed by the learned Trial Court. In appeal, the High Court reversed the order of the Trial Court and decreed the suit of the respondent-plaintiff with a further declaration that he is entitled to 3/4th share in the suit property, namely, House No. 7/89, Tilak Nagar, Kanpur whereas the appellant (defendant No. 8 in the suit) is entitled to the remaining 1/4th share in the said property. Aggrieved, these appeals have been filed.

G 2. The relevant facts which will have to be noticed may be enumerated hereinunder.

In the year 1937 one Hari Shankar Vidyarthi married Savitri Vidyarthi, the mother of the respondent-plaintiff. Subsequently, in the year 1942, Hari Shankar Vidyarthi was

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married for the second time to one Rama Vidyarthi. Out of the
aforesaid second wedlock, two daughters, namely, Srilekha
Vidyarthi and Madhulekha Vidyarthi (defendants 1 and 2 in
Suit No. 630 of 1978) were born. The appellant-eighth
defendant Shreya Vidyarthi is the adopted daughter of Srilekha
Vidyarthi (since deceased) and also the legatee/ beneficiary
of a Will left by Madhulekha Vidyarthi.

3. The dispute in the present case revolves around the
question whether the suit property, as described above, was
purchased by sale deed dated 27.9.1961 by Rama Vidyarthi
from the joint family funds or out of her own personal funds.
The suit property had been involved in several previous
litigations between the parties, details of which may now require
a close look.

4. In the year 1968 Suit No. 147/1968 was instituted by
Savitri Vidyarthi (mother of the respondent-plaintiff) contending
that the suit property being purchased from the joint family funds
a decree should be passed against the daughters of Rama
Vidyarthi from interfering with her possession. This suit was
dismissed under the provisions of Order VII Rule 11 CPC on
account of failure to pay the requisite court fee. In the said suit
the respondent-plaintiff had filed an affidavit dated 24.2.1968
stating that he had willfully relinquished all his rights and
interests, if any, in the suit property. The strong reliance placed
on the said affidavit on behalf of the appellant in the course of
the arguments advanced on her behalf needs to be dispelled
by the fact that an actual reading of the said affidavit discloses
that such renunciation was only in respect of the share of Rama
Devi in the suit property and not on the entirety thereof.
Consistent with the above position is the suit filed by the
respondent-plaintiff i.e. Suit No. 21/70/1976 seeking partition
of the joint family properties. The said suit was again dismissed
under the provisions of Order VII Rule 11 CPC for failure to
pay the requisite court fee. It also appears that Rama Vidyarthi

A the predecessor-in-interest of the present appellant had filed
Suit No. 37/1969 under Section 6 of the Specific Relief Act for
recovery of possession of two rooms of the suit property which,
according to her, had been forcibly occupied by the present
respondent-plaintiff. During the pendency of the aforesaid suit
B i.e. 37/1969 Rama Vidyarthi had passed away. The aforesaid
suit was decreed in favour of the legal heirs of the plaintiff-
Rama Vidyarthi namely, Srilekha and Madhulekha Vidyarthi
on 4.2.1976.

C 5. It is in the aforesaid fact situation that the suit out of
which the present appeals have arisen i.e. Suit No. 630 of
1978 was filed by the present respondent-plaintiff impleading
Srilekha Vidyarthi (mother of the appellant) and Madhulekha
Vidyarthi (testator of the Will in favour of the appellant) as
defendants 1 and 2 and seeking the reliefs earlier noticed.

D 6. The specific case pleaded by the plaintiff in the suit
was that the plaintiff's father, Hari Shankar Vidyarthi, died on
14.3.1955 leaving behind his two widows i.e. Savitri Vidyarthi
(first wife) and Rama Vidyarthi (second wife). According to
E the plaintiff, the second wife i.e. Rama Vidyarthi had managed
the day to day affairs of the entire family which was living jointly.
The plaintiff had further pleaded that Rama Vidyarthi was the
nominee of an insurance policy taken out by Hari Shankar
Vidyarthi during his life time and that she was also receiving a
F monthly maintenance of a sum of Rs. 500/- on behalf of the
family from the "Pratap Press Trust, Kanpur" of which Hari
Shankar Vidyarthi was the managing trustee. In the suit filed,
it was further pleaded that Rama Vidyarthi received a sum of
Rs. 33,000/- out of the insurance policy and also a sum of Rs.
G 15,000/- from Pratap Press Trust, Kanpur as advance
maintenance allowance. It was claimed that the said amounts
were utilized to purchase the suit property on 27.9.1961. It was,
therefore, contended that the suit property is joint family
property having been purchased out of joint family funds. The

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plaintiff had further stated that all members of the family including the first wife, the first respondent and his two step sisters i.e. Srilekha and Madhulekha Vidyarthi had lived together in the suit property. As the relationship between the parties had deteriorated/changed subsequently and the plaintiff-respondent and his mother (Savitri Vidyarthi) were not permitted to enter the suit property and as a suit for eviction was filed against the first respondent (37 of 1969) by Rama Vidyarthi the instant suit for permanent injunction and partition was instituted by the respondent-plaintiff.

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7. The plaintiff's suit was resisted by both Srilekha and Madhulekha, primarily, on the ground that the suit property was purchased by their mother Rama Vidyarthi from her own funds and not from any joint family funds. In fact, the two sisters, who were arrayed as defendants 1 and 2 in the suit, had specifically denied the existence of any joint family or the availability of any joint family funds.

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8. The Trial Court dismissed the suit by order dated 19.8.1997 citing several reasons for the view taken including the fact that respondent-plaintiff was an attesting witness to the sale deed dated 27.9.1961 by which the suit property was purchased in the name of Rama Vidyarthi; there was no mention in the sale deed that Rama Vidyarthi was representing the joint family or that she had purchased the suit property on behalf of any other person. The learned Trial Court further held that in the year 1955 when Hari Shankar Vidyarthi had died there was no joint family in existence and in fact no claim of any joint family property was raised until the suit property was purchased in the year 1960-61. The Trial Court was also of the view that if the other members of the family had any right to the insurance money such a claim should have been lodged by way of a separate suit. Aggrieved by the dismissal of the suit, the respondent-plaintiff filed an appeal before the High Court.

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A 9. Certain facts and events which had occurred during
the pendency of the appeal before the High Court will require
a specific notice as the same form the basis of one limb of the
case projected by the appellant before us in the present appeal,
namely, that the order of the High Court is an ex-parte order
B passed without appointing a legal guardian for the appellant
for which reason the said order is required to be set aside
and the matter remanded for a *de novo* consideration by the
High Court.

C 10. The first significant fact that has to be noticed in this
regard is the death of Madhulekha Vidyarthi during the
pendency of the appeal and the impleadment of the appellant
as the 8th respondent therein by order dated 31.08.2007. This
was on the basis that the appellant is the sole legal heir of the
deceased Madhulekha. The said order, however, was curiously
D recalled by the High Court by another order dated 10.10.2007.
The next significant fact which would require notice is that upon
the death of her mother Srilekha Vidyarthi, the appellant-
defendant herself filed an application for pursuing the appeal
in which an order was passed on 16/18.05.2009 to the effect
E that the appellant is already represented in the proceedings
through her counsel (in view of the earlier order impleading
the appellant as legal heir of Madhulekha). However, by the
said order the learned counsel was given liberty to obtain a
fresh vakalatnama from the appellant which, however, was not
F so done. In the aforesaid fact situation, the High Court
proceeded to consider the appeal on merits and passed the
impugned judgment on the basis of consideration of the
arguments advanced by the counsel appearing on behalf of
the appellant at the earlier stage, namely, one Shri A.K.
G Srivastava and also on the basis of the written arguments
submitted on behalf of the deceased Srilekha Vidyarthi. It is
in these circumstances that the appellant has now, inter alia,
contended that the order passed by the High Court is without
appointing any guardian on her behalf and contrary to the

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provisions of Order XXXII Rules 3, 10 and 11 of the CPC.

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11. Insofar as the merits of the appeal are concerned, the High Court took the view that on the facts before it, details of which will be noticed in due course, there was a joint family in existence in which the second wife Rama Vidyarthi had played a predominant role and that the suit property was purchased out of the joint family funds namely the insurance money and the advance received from the Pratap Press Trust, Kanpur. Insofar as the devolution of shares is concerned, the High Court took the view that following the death of Hari Shankar Vidyarthi, as the sole surviving male heir, the respondent-plaintiff became entitled to 50% of the suit property and the remaining 50% was to be divided between the two wives of Hari Shankar Vidyarthi in equal proportion. Srilekha and Madhulekha Vidyarthi, i.e. defendants 1 and 2 in the suit, as daughters of the second wife, would be entitled to share of Rama Vidyarthi, namely, 25% of the suit property. On their death, the appellant would be entitled to the said 25% share whereas the remaining 25% share (belonging to the first wife) being the subject matter of a Will in favour of her minor grandchildren (sons of the respondent-plaintiff), the respondent-plaintiff would also get the aforesaid 25% share of the suit property on behalf of the minors. Accordingly, the suit was decreed and the order of dismissal of the suit was reversed.

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12. The aforesaid order of the High Court dated 12.08.2009 was attempted to be recalled by the appellant-8th defendant by filing an application to the said effect which was also dismissed by the High Court by its order dated 24.11.2009. Challenging both the abovesaid orders of the High Court, the present appeals have been filed.

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13. Having heard learned counsels for the parties, we find that two issues in the main arise for determination in these appeals. The first is whether the High Court was correct in passing the order dated 24.11.2009 on the recall application

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- A filed by the appellant and whether, if the appellant had really
been proceeded ex-parte thereby rendering the said order
untenable in law, as claimed, should the matter be remitted to
the High Court for reconsideration. The second question
arising is with regard to the order dated 12.08.2009 passed
B by the High Court in First Appeal No. 693 of 1987 so far as the
merits thereof is concerned.

14. The detailed facts in which the appellant-8th defendant
came to be impleaded in the suit following the death of
Madhulekha Vidyarthi (defendant No. 2) and thereafter on the
C death of Srilekha Vidyarthi (defendant No. 1) has already been
seen. From the facts recorded by the High Court in its order
dated 24.11.2009 it is clear and evident that the appellant had
participated in the proceeding before the High Court at various
stages through counsels. Therefore, there is no escape from
D the conclusion that the order passed in the appeal was not an
ex-parte order as required to be understood in law. The
appellant was already on record as the legal heir of Madhulekha
Vidyarthi (defendant No. 2) and was represented by a counsel.
The High court had passed its final order after hearing the said
E counsel and upon consideration of the written arguments filed
in the case. In its order dated 24.11.2009 the High Court has
observed that full opportunity of hearing on merits was afforded
to the appellant. Even before us, the appellant has been heard
at length on the merits of the case. In these circumstances
F there can hardly be any justification to remand the matter to
the High Court for a fresh consideration by setting aside the
impugned order.

15. Insofar as the merits of the order of the High Court is
concerned, the sole question involved is whether the suit
G property was purchased by Rama Vidyarthi, (defendant No.1)
out of the joint family funds or from her own income. The affidavit
of Rama Vidyarthi in Suit No. 147 of 1968 filed by Savitri
Vidyarthi discloses that she was looking after the family as the

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Manager taking care of the respondent No.1, her step son i.e. A
the son of the first wife of Hari Shankar Vidyarthi. In the said
affidavit, it is also admitted that she had received the insurance
money following the death of Hari Shankar Vidyarthi and the
same was used for the purchase of the suit property along
with other funds which she had generated on her own. The B
virtual admission by the predecessor-in-interest of the
appellant of the use of the insurance money to acquire the suit
property is significant. Though the claim of absolute ownership
of the suit property had been made by Rama Vidyarthi in the
aforesaid affidavit, the said claim is belied by the true legal C
position with regard to the claims/entitlement of the other legal
heirs to the insurance amount. Such amounts constitute the
entitlement of all the legal heirs of the deceased though the
same may have been received by Rama Vidyarthi as the
nominee of her husband. The above would seem to follow from D
the view expressed by this Court in Smt. Sarbati Devi & Anr.
vs. Smt. Usha Devi¹ which is extracted below. (Paragraph
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“12. Moreover there is one other strong
circumstance in this case which dissuades us from
taking a view contrary to the decisions of all other
High Courts and accepting the view expressed by
the Delhi High Court in the two recent judgments
delivered in the year 1978 and in the year 1982. E
The Act has been in force from the year 1938 and
all along almost all the High Courts in India have
taken the view that a mere nomination effected
under Section 39 does not deprive the heirs of their
rights in the amount payable under a life insurance
policy. Yet Parliament has not chosen to make any
amendment to the Act. In such a situation unless
there are strong and compelling reasons to hold
that all these decisions are wholly erroneous, the
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¹ 1984 (1) SCC 424

A Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in *Fauza Singh case* and in *Uma Sehgal case* do not lay down the law correctly.

B They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

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E 16. The fact that the family was peacefully living together at the time of the demise of Hari Shankar Vidyarthi; the continuance of such common residence for almost 7 years after purchase of the suit property in the year 1961; that there was no discord between the parties and there was peace and tranquility in the whole family were also rightly taken note of by

F the High Court as evidence of existence of a joint family. The execution of sale deed dated 27.9.1961 in the name of Rama Vidyarthi and the absence of any mention thereof that she was acting on behalf of the joint family has also been rightly construed by the High Court with reference to the young age

G of the plaintiff-respondent (21 years) which may have inhibited any objection to the dominant position of Rama Vidyarthi in the joint family, a fact also evident from the other materials on record. Accordingly, there can be no justification to cause any

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interference with the conclusion reached by the High Court on the issue of existence of a joint family. A

17. How could Rama Vidyarthi act as the Karta of the HUF in view of the decision of this Court in **Commissioner of Income Tax vs. Seth Govindram Sugar Mills Ltd.**² holding that a Hindu widow cannot act as the Karta of a HUF which role the law had assigned only to males who alone could be coparceners (prior to the amendment of the Hindu Succession Act in 2005). The High Court answered the question in favour of the respondent-plaintiff by relying on the decision of this Court in **Controller of Estate Duty, Madras Vs. Alladi Kuppaswamy**³ wherein the rights enjoyed by a Hindu widow during time when the Hindu Women's Rights to Property Act, 1937 remained in force were traced and held to be akin to all rights enjoyed by the deceased husband as a coparcener though the same were bound by time i.e. life time of the widow (concept of limited estate) and without any authority or power of alienation. We do not consider it necessary to go into the question of the applicability of the ratio of the decision in **Controller of Estate Duty, Madras (supra)** to the present case inasmuch as in the above case the position of a Hindu widow in the co-parcenary and her right to co-parcenary property to the extent of the interest of her deceased husband was considered in the context of the specific provisions of the Estate Duty Act, 1953. The issue(s) arising presently are required to be answered from a somewhat different perspective. B C D E F

18. While there can be no doubt that a Hindu Widow is not a coparcener in the HUF of her husband and, therefore, cannot act as Karta of the HUF after the death of her husband the two expressions i.e. Karta and Manager may be understood to be not synonymous and the expression "Manager" may be understood as denoting a role distinct from G

² AIR 1966 SC 24

³ [1977 (3) SCC 385]

A that of the Karta. Hypothetically, we may take the case of HUF
where the male adult coparcener has died and there is no male
coparcener surviving or as in the facts of the present case,
where the sole male coparcener (respondent-plaintiff - Ashok
Vidyarthi) is a minor. In such a situation obviously the HUF
B does not come to an end. The mother of the male coparcener
can act as the legal guardian of the minor and also look after
his role as the Karta in her capacity as his (minor's) legal
guardian. Such a situation has been found, and in our opinion
rightly, to be consistent with the law by the Calcutta High Court
C in ***Sushila Devi Rampuria v. Income Tax Officer and Anr.***⁴
rendered in the context of the provisions of the Income Tax Act
and while determining the liability of such a HUF to assessment
under the Act. Coincidentally the aforesaid decision of the
Calcutta High Court was noticed in ***Commissioner of Income***
D ***Tax vs. Seth Govindram Sugar Mills Ltd. (supra)***.

19. A similar proposition of law is also to be found in
decision of the Madhya Pradesh High Court in ***Dhujram v.***
Chandan Singh & Ors.⁵ though, again, in a little different
context. The High Court had expressed the view that the word
E 'Manager' would be consistent with the law if understood with
reference to the mother as the natural guardian and not as the
Karta of the HUF.

20. In the present case, Rama Vidyarthi was the step
F mother of the respondent-plaintiff - Ashok Vidyarthi who at the
time of the death of his father - Hari Shankar Vidyarthi, was a
minor. The respondent plaintiff was the only surviving male
coparcener after the death of Hari Shankar Vidyarthi. The
materials on record indicate that the natural mother of Ashok
G Vidyarthi, Smt. Savitri Vidyarthi, had played a submissive role
in the affairs of the joint family and the step mother, Rama
Vidyarthi i.e. second wife of Hari Shankar Vidyarthi had played
an active and dominant role in managing the said affairs. The

⁴ AIR 1959 Cal 697

⁵ 1974 MPL J554

aforesaid role of Rama Vidyarthi was not opposed by the natural mother, Savitri Vidyarthi. Therefore, the same can very well be understood to be in her capacity as the step mother of the respondent-plaintiff-Ashok Vidyarthi and, therefore, consistent with the legal position which recognizes a Hindu Widow acting as the Manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener. Such a role necessarily has to be distinguished from that of a Karta which position the Hindu widow cannot assume by virtue of her dis-entitlement to be a coparcener in the HUF of her husband. Regrettably the position remain unaltered even after the amendment of the Hindu Succession Act in 2005.

21. In the light of the above, we cannot find any error in the ultimate conclusion of the High Court on the issue in question though our reasons for the aforesaid conclusion are somewhat different.

22. Before parting we may note that the history of the earlier litigation between the parties involving the suit property would not affect the maintainability of the suit in question (630 of 1978). Suit No.37 of 1969 filed by Rama Vidyarthi was a suit under Section 6 of the Specific Relief Act whereas Suit No.147 of 1968 and Suit No. 21/70/1976 filed by first wife Savitri Vidyarthi and Ashok Vidyarthi, respectively, were dismissed under Order VII Rule 11 CPC on account of non-payment of court fee. In these circumstances, the suit out of which the present appeal has arisen i.e. Suit No. 630 of 1978 was clearly maintainable under Order VII Rule 13 CPC.

23. The apportionment of shares of the parties in the suit property made by the High Court, in the manner discussed above, also does not disclose any illegality or infirmity so as to justify any correction by us. It is our considered view that having held and rightly that the suit property was a joint family property, the respondent-plaintiff was found entitled to seek partition thereof and on that basis the apportionment of shares

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A in the suit property between the plaintiff and the contesting eighth defendant was rightly made by the High Court in accordance with the reliefs sought in the suit.

24. For the aforesaid reasons, we do not find any merit in these appeals, the same are being accordingly dismissed.
B However, in the facts of the case we leave the parties to bear their own costs.

Nidhi Jain

Appeals dismissed.