

Mulla on Hindu Law

"20. Mulla in his classic work Hindu Law while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

"Article 254

254. Alienation by father.— A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;

(2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes (Article 294)."

21. What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

"Article 241

241. What is legal necessity.—The following have been held to be family necessities within the meaning of Article 240:

(a) payment of government revenue and of debts which are payable out of the family property;

(b) maintenance of coparceners and of the members of their families;

(c) marriage expenses of male coparceners, and of the daughters of coparceners;

(d) performance of the necessary funeral or family ceremonies;

(e) costs of necessary litigation in recovering or preserving the estate;

(f) costs of defending the head of the joint family or any other member against a serious criminal charge;

(g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity." (See Hindu Law by Mulla

“22nd Edition”)

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26. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all.

Kehar Singh (D) through Legal Representatives v. Nachittar Kaur, (2018) 14 SCC 445