

Consent but a
general consent may
be



**ASSIGN
BUSTER**

Consent may be express or implied.

In case of implied consent it is not necessary to prove its existence with reference to a particular instance of alienation, but a general consent may be deductible in case of urgent necessity, from the very fact of the manager being entrusted with the management of the family estate by the other members of the family. Where the alienation has been effected without such consent it would be taken to be valid in Bombay, Madras and Madhya Pradesh to the extent only of the manager's interest in the property as well as that of any other coparceners therein, whose consent was obtained to alienation. In other parts of the country which are governed by the Mitakshara law, even the alienor's i. e.

, Karta's interest could not pass to the alienee or be sold in the enforcement of the mortgage. The same law is in force in Bengal as well as in Uttar Pradesh, where the court would set aside such alienation at the instance of any member. In execution of a decree against the Karta, for the debt independently taken by him, his interest in the joint family property can be attached.

Alienation by Father as 'Karta' of the Family:

In Mitakshara law the powers of the father as Karta of the family with respect to alienation of joint family property are wider than those of other Kartas of such families. The father enjoys all those powers which a Karta has. In addition he has the following special powers with regard to the disposal of coparcenary property:— (a) He has got the power to sell or mortgage even the entire ancestral property, whether movable or immovable including the

interest of his sons, grandsons and great grandsons for the payment of debts provided such debts are antecedent and not tainted with immoral or illegal purposes. According to a decision of Bombay High Court, where the father has taken some loan for his own needs and mortgaged the joint family property in lieu of it, it would bind not only his interest but the interests of his sons also in such property, provided it is established that the loan taken by the father was not for any immoral purposes.

In *Guramma Bhartar v. Nagamma Bhartar*, the Supreme Court observed that a managing member (in the present case father) of the family has power to alienate for value joint family property either for family necessity or for the benefit of estate. An alienation can also be made by a managing member with the consent of all the coparceners of the family. The sole surviving member of a coparcenary has an absolute power to alienate the family property, as at the time of alienation there is no other member who has joint interest in the family.

If another member was in existence or in the womb of his mother at the time of the alienation, the power of the manager was circumscribed as aforesaid and his alienation would be voidable at the instance of the existing member or the member who was in the womb but was subsequently born, as the case may be, unless it was made for purposes binding on the members of the family or the existing member consented to it or subsequently born member ratified it after he attained majority. If another member was conceived in the family or inducted therein by adoption before such consent or ratification his right to avoid the alienation will not be affected.