

A Partnership is defined by the Indian Partnership Act, 1932, as 'the relation between persons who have agreed to share profits of the business carried on by all or any of them acting for all'. This definition gives three minimum requirements to constitute a partnership, viz.

- (1) there must be an agreement entered into orally or in writing by the persons who desire to form a partnership,
- (2) the object of the agreement must be to share the profits of business intended to be carried on by the partnership, and
- (3) the business must be carried on by all the partners or by any of them acting for all of them.

The term 'person' is not defined by the Partnership Act. Section 2(42) of the General Clauses Act defines 'a person' to include a company or an association or body of individuals, whether incorporated or not. But the Supreme Court has held that this definition cannot be imported into the Partnership Act, and the 'person' under the Partnership Act means either an individual or any other legal entity such as a Limited Company registered under the Companies Act, or any other Corporation constituted by or under any act of the Legislature as a body corporate. The Supreme Court has observed that it is now well settled that Hindu Undivided Family cannot as such enter into a contract of partnership with another person or persons because it is a fleeting body, its composition changes by births and deaths, marriages and divorces and such a partnership is likely to have a precarious existence. It, therefore, follows that a body of individuals such as an unincorporated society cannot as such become a partner in a firm. It also follows that a partnership firm cannot as such enter into a partnership with another individual or legal entity, or with any other partnership firm because a partnership as such is not a person. But in the case of H.U.F. the Karta of the family or a member thereof can become partner with another individual or with other legal entity or even with the partners or partner of a partnership firm because in such a case it is the Karta or the individual member who is the partner for all purposes and not the joint family whom he represents and the family does not become a partner of the firm. It has been held that when two Kartas of two H.U.Fs. enter into a partnership agreement, the partnership though popularly known as one between the two HUFs, in the eye of law, it is a partnership between two Kartas and the other members of the two families do not 'ipso facto' become partners. There is nothing to prevent individual members of one H. U. F. from entering into a partnership with the individual members of another H.U.F. and in such a case it is the partnership between the individual members and it is wholly inappropriate to describe such a partnership as one between two HUFs. When the Karta of a H.U.F. enters into a partnership with a stranger the members of the family do not ipso facto become partners in that firm and they have no right to take part in its management or to sue for its dissolution.

