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UNDERSTANDING THE SCOPE OF A HINDU DAUGHTER'S RIGHT IN COPARCENARY PROPERTY THROUGH THE LENSE OF VINEETA SHARMA V. RAKESH SHARMA.

Authored By - Mihika Suryavanshi,

INTRODUCTION

This landmark judgement revolves around the Hindu Succession Act and the Coparcenary Rights of Daughters in Hindus.

HISTORY OF HINDU SUCCESSION ACT

In Hindu law, the distinction between self-acquired property and ancestral property must be made to understand the devolution of Coparcenary Property.

The Mitakshara Law¹ recognized the devolution of property via survivorship and succession. While the rule of survivorship is applied only to Hindu joint-family properties, the rule of succession revolves around both self-acquired and ancestral property.

Section 6 of the Hindu Succession Act, 1956 dealt the devolution of Coparcenary Property till it was amended by the Hindu Succession Amendment Act, 2005. Therefore, Section 6 must be understood from how it stood before and after the 2005 Amendment.

INTEREST OF CO-PARCENARY PROPERTY (BEFORE 2005)

Section 6 essentially stated that at the time of death of a male Hindu his interest in the Mitakshara coparcenary property shall devolve upon survivorship of the surviving members of the coparcenary and not in accordance to the Hindu succession act 1956.

This legislation revolved around ancient and archaic Hindu norms which didn't consider wife as a direct bloodline. Hence, the coparcenary property interest before 2005 amendment specifically excluded any female from acquiring shares in the interest of the property. The

¹ 3 Issue 4 Int'l J.L. Mgmt. & Human. 2431 (2020) Marriages under Different Laws

proviso clause, however stated that any female relatives of the male dying intestate may devolve property through testamentary or intestate succession and not by survivorship.

The property devolved firstly upon the 12 preferential is mentioned in class one of the schedule of the act, feeling such as upon second, third and fourth class of years in that order as laid down in section 8 and nine of the Hindu succession act 1956.

The 12 preferential heirs mentioned in class one of the act are as follows :-

1. Son
2. Daughter
3. Widow
4. Mother
5. Son of a predeceased son
6. Daughter of a predeceased son
7. Son of a predeceased daughter
8. Daughter of a predeceased daughter
9. Son of a predeceased son of a predeceased son
10. Daughter of a predeceased son of a predeceased son
11. Widow of a predeceased son
12. Widow of a predeceased son of a predeceased son

This section must be read with section 8 and section 30 of the Hindu succession act 1956.

Section 8 deals with general rules of succession in case of male dying intestate. This order of succession is based upon the doctrine of propinquity² or nearness of blood. Therefore the property of the mail dying intestate shall devolve upon the following in this specific order.

1. Heirs specified in Class 1 under the Schedule.
2. Heirs mentioned in Class 2 of the Schedule.
3. Heirs who are Agnates of the Deceased.
4. Heirs who are Cognates of the Deceased.

Section 30 on the other hand deals with testamentary disposition of a male Hindu. It lays down the competency of a male Hindu to dispose his interest in the coparcenary property.

² 5 Allahabad L.J. 103 (1908) The Mitakshara Theory of Sapindaship in Hindu Law

2005 AMENDMENT AND ITS EFFECTS :-

The old law did not fulfil the desired ends and remained hardly acceptable to a dynamic Hindu society of this contemporary era. The Hindu Succession (Amendment) Act, 2005 came into force on 9th September 2005. The main purpose of the act was to remove the Gender-Bias by substituting Section-6 with a wider and feminist law.

The main changes brought about by this act are mentioned as follows:-

1. A female Hindu becomes the Coparcenary by birth
2. She has the same rights in the coparcenary property as that of a son
3. She is subject to the same liabilities in the coparcenary property as that of a son³.
4. She has the capacity to dispose this property by a testamentary declaration

In this way, a comprehensive and consequential change was brought about in the concept of devolution of interest in Mitakshara coparcenary property.

After the commencement of the Act, four more entries were added to Class one Heirs mentioned as follows:-

1. Daughter of predeceased daughter of predeceased son
2. Daughter of predeceased son of predeceased daughter
3. Son of predeceased daughter of predeceased daughter
4. Daughter of predeceased daughter a predeceased daughter

INTRODUCTION TO THE CASE

The 2005 amendment was added to align with the constitutional belief of gender equality in the legal provisions. To meet the needs of a progressive society and to remove inequalities in respect to the rights of property in Hindus, the Supreme Court of India had passed a landmark judgement in *Vineeta Sharma v. Rakesh Sharma*⁴, dealing with the retrospective effect of section 6 of the Hindu Succession (Amendment) Act 2005.

ISSUES RAISED

1. Whether the 2005 amendment had deemed the daughter with the same rights and liabilities in a Mitakshara Coparcenary property as the son irrespective of father being alive before the judgement?

³ Provided that none of the above shall invalidate disposition or alienation in her property which had taken place before the 20th day of December, 2004

⁴ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1

2. Whether the Hindu Succession (Amendment) Act 2005 was prospective, retrospective or retroactive in nature?

RELEVANT PRECEDENTS

1. Prakash and others versus Phulavati and others⁵

The daughter claimed the property of her father when the father had died prior to the commencement of the Hindu Succession (Amendment) Act, 2005. The primary question was whether the ancestral and the self-acquired property of Mitakshara laws are applied retrospectively or not. Supreme Court through a divisional bench held that the provisions have a prospective effect and the coparcenary rights will be conferred to a living daughter of a living coparcener, which meant that both father and daughter had to be alive on 9 November 2005.

2. Danamma @ Suman Surpur & Anr. V. Amar & Ors.⁶

This case contradicted the Phulavati case. In this case a Hindu male died intestate. He had two sons two daughters and one widow. The property was equally divided among the five with 1/5th share each in accordance with the Hindu Succession (Amendment) Act, 2005. The landmark judgement of Vineeta Sharma Case was essentially put up with to solve the contradictory interpretations of section 6 under the HSA.

ARGUMENTS ADVANCED

Four Advocates including the Solicitor General of India presented their respective arguments in this landmark judgement and understanding each one's point of view is necessary to understand the entire scope of the judgement.

1. Solicitor General of India

The statute doesn't explicitly mention the existence of living to coparcener for the devolution of interest given to his or her son or daughter. The amendment of 2005 is retroactive in nature and the explanation given in section 6(5) is directory in nature As far as the proviso clause is concerned, before the partition of 20 December 2004 the conferment of rights of daughter did not disturb her rights as well as her liabilities.

⁵ (2015) 4 WBLR 793 (SC)

⁶ (2018) 127 ALR 711

2. Mr. R. Venkataramani

There existed no clash of opinions in the case of Phulavati and the Danamma. In both the cases the provisions of section 6 is to be interpreted as prospective in nature.

Birth of a coparcener, son or daughter before 2005 is an irrelevant factor because the 2005 amendment is prospective in nature. Any family settlement or oral partition is to be settled and not intended to be reopened by section 6.

Finally a daughter can get the devolution of interest of a living coparcener only

3. Mr. V.V.S. Rao

The daughter born before or after 2005 amendment is still a coparcener in the Mitakshara coparcenary property laws in Hindus. The intention of the legislature was not to confer daughter with the devolution of interest of coparcenary property in a retrospective manner. The beneficiary statute provides that the daughter will become the coparcener on and from the commencement of the act.

Any past transactions of partition, disposition, alienation whether oral or written is irrelevant and there must exist a living coparcener who will give his or her right of property to the daughter

4. Mr. Amit Pai

The Phulavati Judgement laid down the correct interpretation of the Legal provisions.

Section 6 of the act includes all daughters whether or not the father is alive or not at the time of devolution of property.

JUDGEMENT

The Supreme Court of India overruled the judgement of Phulavati case and held that section 6 of the Hindu succession act after the 2005 amendment is retroactive in nature. It is neither prospective nor retrospective in nature Based on past events including the birth of the daughter, equal rights of coparcenary will be given to the daughter on and from ninth of November 2005 as this effect is retroactive in nature.

Whether or not the father is alive on and after 9th of November, 2005, equal rights and liabilities will be conferred upon the son and daughter for devolution of interest of coparcenary property.

CONCLUSION

The Parliament had passed the act for social welfare of Hindus and to ensure that the ancestral and self-acquired property is devolved upon through succession and survivorship without any discrimination or coercion. This landmark judgement, the Supreme Court interpreted section 6 of the Hindu succession act in its true spirit to end any gender injustice in provisions of Hindu succession laws in India.

This judgement also successfully cleared any confusion in section 6 of the Hindu succession act which was created through prior precedence by giving a clear judgement in this instant case

