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SECTION 6 HINDU SUCCESSION ACT & ITS SCOPE

Introduction

Constitution of India guarantees right to equality to every individual under the eyes of law and also the equal protection of law and therefore prohibits discrimination on the grounds of religion, race, caste and creed, etc.. Discrimination on the basis of sex is allowed only as defensive measure for the female nationals as there is need of empowerment of women suffering discrimination on the basis of sex over hundreds of years. Women empowerment, among other things, also leads to an equal social status with men hinges on their right to hold and inherit property. Civilized societies worldwide ensure that women's inheritance rights are more secure than those of men because women take up a major responsibility of producing and nurturing the next generation. In India, women's rights have suffered serious setbacks across all the communities before 1956. Despite the Hindu Succession Act being passed in 1956, which gave women equal inheritance rights with men, the government refused to abolish the system of joint family and therefore the mitakshara system of coparcenary still exists. According to this system, in a joint family, the daughter entitled to a smaller share or no share than the son however, while dividing the property of father between the mother, brother and sister, the share is equal. After 50 years, the Government finally addressed some persisting gender inequalities in the Hindu Succession Act 1956 and came up with the Hindu Succession (Amendment) Act, 2005. The aim behind this amendment was to put an end to gender discrimination in Mitakshara system of coparcenary by including daughters in the system.¹

¹ Jyotsna Upalvdya, Scope of Section 6 Under Hindu Succession Act, <https://www.latestlaws.com/wp-content/uploads/2018/09/Scope-of-Section-6-under-Hindu-Succession-Act-By-Jyotsana-Uplavdiya.pdf>

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This article will mainly look into gender discrimination and condition before implementation of Hindu Succession Act 2005 and also the major judgments relating to proper implementation of Hindu Succession Act 2005. This article will also focus concept of coparcenary in the Hindu Law.

The Concept of Coparcenary

Post independence all the laws relating to intestate succession amongst Hindus were being governed by the Hindu Succession Act 1956. The main aim behind the enactment of this act was to lay down a uniform system of inheritance in matters relating to succession amongst Hindus. However, principles governing matters relating to succession of coparcenary property were distinct under the act.²

The term Coparcenary as defined by Black's Law Dictionary refers to a person to whom an estate of inheritance descends jointly, and by whom it is held as entire estate.³ Further, Mayne's Hindu Law and Usage defines Coparceners as the persons offering funeral cakes to the owner of the property, i.e., the three generations next to the owner in unbroken male descent. Thus, it can be said that the male members, who traditionally would have offered the funeral cakes to their ancestors, would have by birth the rights in the coparcenary property i.e., right of survivorship.⁴

There are two schools under Hindu Law governing the concept of coparcenary. These are Mitakshara and Dayabhaga. Mitakshara is the most common of the two and prevails across large part of the country. Coparcenary under Mitakshara system is unity of ownership. The ownership of a coparcenary property is entirely in the body of coparceners. According to the true idea behind an undivided family governed by mitakshara system, no individual member of the family while it remains undivided, can presume, with regards to the joint and undivided family, that he has definite share in property, i.e., his share in property keeps on fluctuating and is capable of being increased with the deaths in family and it is only after the partition that a person becomes entitled to a definite share. If a coparcener under mitakshara

² Adv. Avnish Mittal, Section 6 Hindu Succession Act- Creating Gender Equality (Dec 12,2020, 10:11 P.M.), <http://www.legalserviceindia.com/legal/article-3516-section-6-hindu-succession-act-creating-gender-equality.html>

³ Black's Law Dictionary P.405, (4th edn.)

⁴ Dr. Jitendra Kumar, Mayne's Treatise on Hindu Law and Usage (18th edn.2020)

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system dies then immediately after his death his interest devolves upon the surviving partners.

Further it is also to be noted that under mitakshara system of coparcenary and Hindu Succession Act 1956 only male members of family constitute coparcenary under joint Hindu family excluding the female members, i.e., female members would get only a share in the presumed partitioned property of their fathers while the male members are entitled to share in coparcenary property as well as the partitioned property.⁵

Hindu Succession (Amendment) Act 2005

The Hindu Succession (Amendment) Act, 2005 is a landmark amendment because its after around 50 years that the government has finally addressed some persisting gender inequalities in the Hindu Succession Act, 1956 which itself was unprecedented. The 2005 Amendment covers inequalities on several fronts however; the major achievement lies in including all daughters especially married daughters as coparceners in joint family property.

The Hindu Succession (Amendment) Act, 2005 was passed to remove the provisions leading to gender discrimination in the Hindu Succession Act, 1956 and to provide equal rights to daughters in Hindu Mitakshara coparcenary property as the sons have. The Act aimed at making two main amendments in the Hindu Succession Act, 1956. Firstly, it amended the provision which excluded the right of the daughters from the coparcenary property i.e., Section 6 and secondly, it omitted Section 23 of Act which entitled a female heir to ask for partition in respect of a dwelling house, occupied entirely by a joint family, until the male heirs choose to divide their respective shares therein.⁶

Section 6 Hindu Succession (Amendment) Act 2005

S.6- Devolution of interest in coparcenary property —

- 1) *On and from the commencement of the Hindu Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*

⁵ Adv. Avnish Mittal, Section 6 Hindu Succession Act- Creating Gender Equality (Dec 12,2020, 10:11 P.M.), <http://www.legalserviceindia.com/legal/article-3516-section-6-hindu-succession-act-creating-gender-equality.html>

⁶ Jyotsna Upalvdiya, Scope of Section 6 Under Hindu Succession Act, <https://www.latestlaws.com/wp-content/uploads/2018/09/Scope-of-Section-6-under-Hindu-Succession-Act-By-Jyotsana-Uplavdiya.pdf>

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- a) *by birth become a coparcener in her own right in the same manner as the son;*
- b) *have the same rights in the coparcenary property as she would have had if she had been a son;*
- c) *be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

- 2) *Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.*
- 3) *Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005*, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—*
 - a) *the daughter is allotted the same share as is allotted to a son;*
 - b) *the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*
 - c) *the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.*

Explanation —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

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4) *After the commencement of the Hindu Succession (Amendment) Act, 2005*, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005*, nothing contained in this sub-section shall affect—*

- a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or*
- b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.*

Explanation —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.*

5) *Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.*

Explanation —For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.⁷

The Parliament by virtue of this amended section intends to declare that, on and from the commencement of this Amendment Act in a Joint Hindu family governed by the Mitakshara system, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son. Therefore, the Mitakshara system in respect of coparcenary property and coparcenary consisting of only male members ceases to exist.

⁷ Hindu Succession (Amendment) Act 2005, §6

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The rights conferred under this section are by birth. Therefore, although such rights were declared in the year 2005, the declaration that the said rights as a coparcener ensure her the benefit by birth makes the said provision retroactive.⁸

Judicial Dictum

The 2005 amendment acted as a balancing measure between the coparcenary property rights of the male and female siblings. Though the amendment was clearly to be implemented from 9th September 2005 but, soon after the amendment, the questions regarding the prospective or retrospective operation of the amendment came up before the both High Courts and Supreme Court. The major judgments of Supreme Court in this regards are:

The Hon'ble Supreme Court in the case of Ganduri v. Chakiri Yanadi⁹ held that the amended Section 6 will apply only to a partition suit wherein the final decree was not passed before the date of commencement of the Amended Act of 2005.

Further, the Division Bench of Supreme Court in the case of Prakash v. Phulavati¹⁰ held that Section 6 of the Act is not retrospective in operation and is applicable when both the coparcener and his daughter are alive on the date of enforcement of 2005 amendment. The Court also contended that the Explanation to the Section 6(5) provides that the partition for the substituted Section 6 is to be registered one or by a decree of a court and can have no application to the presumed statutory partition on the opening of the succession as given in the unamended Section 6. The presumed statutory partition is deemed to have taken place in order to ascertain the share of the deceased coparcener which is not covered under proviso clause to Section 6(1) or Section 6(5) including the Explanation. The registration requirement is inapplicable to partition of property by operation of law, which has to be in full effect. The provisions of Section 6 have therefore been held to be retrospective.

In the case of Danamma @ Suman Surpur and Anr. v. Amar¹¹ the hon'ble Supreme Court held that the amended provisions of Section 6 confer full rights upon the daughter coparcener and any coparcener including a daughter can claim a partition in the coparcenary property.

⁸ Adv. Avnish Mittal, Section 6 Hindu Succession Act- Creating Gender Equality (Dec 12,2020, 10:11 P.M.), <http://www.legalserviceindia.com/legal/article-3516-section-6-hindu-succession-act-creating-gender-equality.html>

⁹ AIR 2012 SC 169

¹⁰ AIR 2013 SC 7217

¹¹ (2018) 3 SCC 343

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Later, in the case of *Mangammal v. T.B. Raju*¹² Supreme Court upheld the ratio given in the case of *Prakash v. Phulwati*¹³ and held that there should be living daughter of a living coparcener to inherit the property on the date of enforcement of the amended provisions of the 2005 Act.

However, Supreme Court removed all these anomalies by its judgment in the case of *Vinita Sharma v. Rajesh Sharma and Ors.*¹⁴ wherein it has held that:

- i. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.
- ii. The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.
- iii. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.
- iv. The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.
- v. In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

¹² (2018) 15 SCC 662

¹³ AIR 2013 SC 7217

¹⁴ Civil Appeal Diary No. 32601 of 2018 reportable in the Supreme Court of India

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Further, the Hon'ble Court in the light of above holdings also overruled the views to the contrary expressed in *Prakash v. Phulavati*¹⁵ and *Mangammal v. T.B. Raju & Ors.*¹⁶ and the opinion expressed in *Danamma @ Suman Surpur & Anr. v. Amar*¹⁷ was overruled partly to the extent it is contrary to this decision.

Conclusion

The main object behind the amendment to the Section 6 of the Hindu Succession Act was to achieve equal inheritance for all. Thus, after this amendment daughter of a coparcener whether married or unmarried in a Hindu joint family governed by Mitakshara Law is now a coparcener by birth in her own right in the same manner as a son; she has right of claim by survivorship and has same liabilities and disabilities as a son; now coparcenary property is to be divided and allotted in equal share. This amended Section is applicable retrospectively i.e. it confers the status of coparcener upon females by birth irrespective of their birth date.

¹⁵ AIR 2013 SC 7217

¹⁶ (2018) 15 SCC 662

¹⁷ (2018) 3 SCC 343