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VINEETA SHARMA V. RAKESH SHARMA: A STEP TOWARDS GENDER EQUALITY

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ABSTRACT

On the 11th of August 2020, in the case of Vineeta Sharma v. Rakesh Sharma[1588], the three-judge bench of the Hon'ble Supreme Court cleared the final hurdle in the path of daughters to become a coparcener of the Hindu Mitakshara Family and have equal rights as the sons have for the inheritance of the joint family property. after numerous different and rather contradictory judgements laid in many a case by both the High Courts and the Supreme Court, giving different interpretations of the provisions in the Hindu Succession Act, 1956[1589] after the changes brought into the Act by the Hindu Succession (Amendment) Act, 2005[1590]. The legislature's purpose behind bringing the Hindu Succession (Amendment) Act, 2005[1591] was to remove such discriminatory provisions from the Hindu Succession Act, 1956 which were directly in violation of the fundamental right to equality, of daughters of the family, enshrined in Article-14[1592] of the Indian Constitution because those provisions restricted daughters from becoming a coparcener and inheriting an equal share in the family property as sons of the joint family enjoy from their birth, the amendment was surely brought with a positive approach by the parliament to ease daughters in inheriting their family property but it only brought more lawsuits to the courts as it was said that the act was ambiguous regarding its nature of the operation, whether it is retrospective or prospective in operation. Now in the judgement of Vineeta Sharma case, the Supreme Court has finally clarified on the interpretation of section 6 of the Hindu Succession Act, 1956 and the nature of the operation.

Keywords- *Coparcener, daughters, Mitakshara, Family, Succession.*

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[1588] Vineeta Sharma v. Rakesh Sharma, SCC Online SC 641 (2020)
[1589] The Hindu Succession Act (1953)
[1590] The Hindu Succession (Amendment) Act (2005)
[1591] Ibid
[1592] The Constitution of India § 14 (1949)

INTRODUCTION

"Gender equality is a human fight, not a female fight."

-Frieda Pinto

After almost a decade and a half, the Supreme Court has finally cleared the air around Section 6 of the Hindu Succession Act, 1956, which came in when the Legislatures brought the Hindu Succession (Amendment) Act, 2005 and tried to bring some progressive amendments to the Hindu Succession Act, 1956 and remove discrimination by giving daughters equal rights in the Hindu Mitakshara coparcenary property as the sons have, but the Amendment brought a wave of questions on the matter of interpretation of Section 6 of the Hindu Succession Act, 1956. The main issue was whether the amendment of the Hindu Succession (Amendment) Act, 2005 will come into force retrospectively or prospectively. After a series of judgements and various differing views by different benches of Supreme Court on the matter, on 11th August 2020 a three-judge bench of Hon'ble Supreme Court comprising of Justice Arun Mishra, Justice S. Abdul Nazeer and Justice M.R. Shah, cleared the final hurdle in the way of daughters getting equal rights in Hindu Mitakshara Coparcenary property. When the question of interpretation came in front of them in the case of *Vineeta Sharma v. Rakesh Sharma,*[1593] preceded by the conflicting verdicts rendered in two division bench judgements of the Supreme Court itself in the cases of *Prakash v. Phulvati*[1594], where the division bench held that Section 6 is not retrospective in operation and it is requisite that both coparceners and his daughter must be alive on 09 September 2005, when the Amendment Act came into operation, and in *Danamma Suman Surpur* v. *Amar,*[1595] where the division bench held that any coparcener, including a daughter, can claim a partition in the coparcenary property irrespective of whether the father is alive or dead on the date of 09 September 2005, when the Amendment Act came into operation.

There have been other instances also where various courts tried to give their interpretation Section 6 of the Hindu Succession Act. In the case of *Lokamani v. Mahadevamma*[1596], the Karnataka High Court adjudged that the amendments brought in Section 6 of Hindu Succession Act by the 2005 Amendment are deemed to be there since 17 June 1956, when the original Act came into force, the amended provisions are given retrospective effect and

[1593] Vineeta Sharma v. Rakesh Sharma, 2020 SCC Online SC 641 (2020)
[1594] Prakash v. Phulvati, 2 SCC 36 (2016)
[1595] Danamma Suman Surpur v. Amar, 3 SCC 343 (2018)
[1596] Lokamani v. Mahadevamma, 2015 SCC Online Kar 8642

the rest of the proceedings were to be done in light of the amended provisions. Moreover, the High Court held that the oral partition and unregistered partitions deeds have been excluded from the definition of 'partition' used in the explanation to amended Section 6(5).

The Legal Position

According to the Hindu Mitakshara School of law, in a Hindu Joint Family, the allocation of the inherited property was based on the Law of Possession by Birth. The Joint Family property went to the group known as coparceners, that is those who belonged to the next three generations. Coparcenary under Hindu Law was mainly by the male member of the Family were children, grandsons and great-grandsons, who had a right by birth, who had an inherent interest in the coparcenary property. No females of a Mitakshara coparcenary, including daughters, could inherit the family part or demand partition. Such laws of the Mitakshara coparcenary contributed to discrimination on the ground of gender and denied the fundamental rights of quality guaranteed by the Constitution of India. At the time when the Hindu Code Bill was in the developing stages, the BN Rau Committee and Dr B.R. Ambedkar framed the provisions regarding succession in such a way as to abolish the Mitakshara coparcenary and the son's exclusive birth right over the inheritance of family property. But the opposition of elected representatives to such provisions created major challenges, so the Bill was passed with some major changes, excluding such provisions which denied son's birth right to inherit joint family property under Mitakshara coparcenary. Nonetheless, the Legislature tried to bring some progressive amendments into the Hindu Succession Act of 1956 and abolish the discriminatory provisions and give daughters equal rights of inheritance to the Joint Family Property under Mitakshara coparcenary law and so the Hindu Succession (Amendment) Act, 2005 was brought which proposed to amend the laws and bring some major changes in Section 6 of the Hindu Succession Act.

The Retroactive Interpretation

The main argument which was raised in the case by the learned Solicitor General of India, Shri Tushar Mehta appearing for the Union of India was that exclusion of the daughters from the Hindu Joint Family Property was discriminatory and was in violation of the fundamental rights of women. He argued that the daughters had been given equal rights as coparcener, by the 2005 Amendment to bring them on equal footing and remove the gender discrimination

which existed for decades in the Hindu Succession Act. The issue of interpreting the application of the amendment the court held that the amendment can't be considered prospective as then, the daughters who had acquired the right to property by birth would be denied their right similarly the amendment can't be considered retrospective as though the daughters had acquired the right to property by birth there existed no legislative provisions to enforce the right. The court finally decided that the amendment can neither be prospective or retrospective but it is instead retroactive. The Court clarified that the daughters have the right to their coparcenary property by birth but claim the right to the property only after 9th September 2005, the date when the amendment was passed. This interpretation of Section 6 of the Hindu Succession Act, by the Supreme Court, has made the amendment retroactive. The Court further clarified that families where a partition had taken place before 20th of December 2004, which is the day that the Amendment Bill was introduced in the Rajya Sabha, would remain unaffected by this amendment.

The Court overruled the Prakash vs Phulvati[1597] Judgement where the Division Bench had held that Section 6 is prospective in operation and further held that the father must be alive on 9th September 2005, for the daughter to claim her right in the joint family property. The Supreme Court overruled this interpretation by the Division Bench in the Phulvati's Case and held that the right to the coparcenary property is originated since the birth of the daughter and the right exists irrespective of the fact if the father is alive on the 9th of September, 2005. Hence, overruling the Division Bench judgement the Supreme Court held the term 'daughter of a coparcener is a coparcener' mentioned in Section 6 doesn't mean the daughter of a "living coparcener' and since the right of the daughter has been created at birth so her right can be enforced irrespective of the fact if the father is alive or not. This interpretation cleared the deadlock between the various judgements clouding Section 6 and entitled the daughters to equal coparcenary rights as the son.

The Legal Fiction: Notional Partition

Post this interpretation by the Supreme Court another important issue was raised. It was argued that although the daughter's right to coparcenary originated by birth but in the case of the death of the father before the date of the amendment on 9th September 2005, the Joint

[1597] Prakash v. Phulvati, 2 SCC 36 (2016)

Family Property or the Coparcenary would cease to exist as the property would be divided as per old Section 6 where the son claimed his part of the coparcenary while the daughter got her share of the property by the concept of 'notional partition'. So, once there was a notional partition it was argued that the coparcenary ceased to exist and hence post 2005 without the existence of the coparcenary the daughters wouldn't be able to claim her share of the property. For understanding this aspect, we must first analyse and understand the concept of 'notional partition.'

According to the Mitakshara School of Law, before the 2005 amendment, the daughters had no right to the ancestral property. In such a situation, the courts had ruled that this is gross discrimination, inequitable and the violation of the fundamental right to life of a woman. The Court recognised the need for a major reform for the equitable distribution of the coparcenary property and hence came with the concept of a legal fiction known as 'Notional Partition'. This concept refers to that when one of the coparceners died, in respect of his undivided interest in the coparcenary property, there should be an equal distribution of that share between his male heirs and female heirs, particularly between his daughter and son.[1598] The Court affirmed this principle of notional partition in the judgements of Bhaiya Ramanuj Pratap Deo vs Lalu Maheshanuj Pratap Deo & Ors.[1599] and Yogendra & Ors v. Leelamma N. & Ors.[1600] The Supreme Court addressed the issue raised regarding the non-existence of partition post notional partition and held that the concept of notional partition is a 'legal fiction' and was created to give women an equitable share of the property before the 2005 amendment. The Supreme Court held that the notional partition which is adopted to give the daughter's equitable share in property can't be termed as a real partition and hence the real coparcenary or the Joint family Property doesn't cease to exist. The Notional Partition doesn't mean an end to the coparcenary and the legal fiction must be applied to the purpose of its creation that is providing women with an equitable share in the coparcenary or the joint family property. Hence, the Supreme Court held that in cases where the death of the father has taken place before 2005 and a notional partition has taken place, still the coparcenary would not cease to exist and the daughter can claim the right to the coparcenary or the joint family property.

[1598] Purnendu Bhattacharya, M.N Das's Laws Relating to Partition (2000), Eastern Law House
[1599] Bhaiya Ramanuj Pratap Deo vs Lalu Maheshanuj Pratap Deo & Ors.[1599] and Yogendra & Ors, 1981 AIR 1937
[1600] Yogendra & Ors v. Leelamma N. & Ors, (2009) 15 SCC 184

The Issue of Pre-Amendment Partitions

While the Supreme Court had clarified that the partitions in which the final decree of partition had been passed before 9th September 2005, the amendment would have no effect and those partitions could not be challenged post the amendment. However, the question regarding the status of applicability of the amendment in ongoing partition suits was raised before the Supreme Court. The Supreme Court held that in the suits of partition filed before 2005 where the final decree has not been passed, after 9th September 2005 the daughter's would gain the right to claim their share in coparcenary property and hence the amendment would be applicable in such cases and the courts must apply the 2005 amendment in such cases and give daughter's their share of the coparcenary property. The Supreme Court further held that in case of a partition suit where the preliminary decree had been passed before 9th September 2005, the courts must acknowledge the 2005 amendment and apply it accordingly by passing another preliminary decree where the daughter is recognised as a coparcener and her share of the joint family property is accrued to her. The Court observed that in cases when there is a birth or death of a coparcener after the passing of a preliminary decree of partition by the court, the court has to cancel the decree and pass another preliminary decree where the shares of the coparceners are decreased or increased respectively. Similarly, after 9th September 2005, the daughter would be considered as a new coparcener and hence the initial preliminary decree of partition delivered by the court must be annulled and a new preliminary decree of the partition must be passed by the court where the daughter's right to the coparcenary or the Joint Family Property is recognised.

Now, partition under the Hindu Succession Act can be either oral, registered or by a decree of the court. The Supreme Court clearly stated that all partitions finalised in the aforementioned manners would be held valid and executable before 20th December 2004, that is the day the 2005 Amendment Bill was introduced in the Rajya Sabha. Post 20th December 2004 any partition executed orally would be considered to have been executed with a mala fide intention of excluding the daughter from the coparcenary property and hence be declared invalid. No oral partitions can be executed post 20th December 2005 and this has been decided to prevent hasty partitions in Joint Family to exclude daughters from their rightful share in the property. However, the Supreme Court has clearly stated that any partition which

has been completed before 20th December 2005 can't be challenged or reopened on the ground of the 2005 amendment.

Conclusion

There are several issues and questions which had been affecting the effective implementation of the 2005 Amendment of Section 6 of the Hindu Succession Act. The Supreme Court in this case clarified all such issues and objections that were being raised in partition suits regarding the application of the impugned section. The key takeaways of this case are that 2005 Amendment is retrospective in nature, the death of the father is immaterial and the daughter's coparcenary right is formed by birth and can be enforced after 9th September 2005 and unless the final decree of partition suit is passed before 9th September 2005, the 2005 amendment will apply to all such partition suits. The judgement is important as it ensures and protects the women's right to coparcenary joint family property. The ambiguities that plagued the implementation of the legislation have now been cleared which is going to help the lower courts interpret the Section better and resolve disputes at the same time ensure the rights of the daughter and her claim over the fair share of coparcenary property.