

JUS CORPUS LAW JOURNAL

VOLUME 1: ISSUE 1

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DAUGHTER'S RIGHT ON FATHER'S PROPERTY

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ABSTRACT

The Hindu Succession Act clearly lays down the rights of a son over his father's ancestral properties after his death, but when it comes to daughters, there exists a lot of ambiguity regarding the extent of her rights. This paper seeks to present a detailed discussion of the Hindu Succession Act in relation to the same. It deals with the history of the development of daughter's rights over the years, in the context of the various amendments that have been brought about and the judicial precedents laid down. It mainly focuses on the recent judgement of the Supreme Court which has brought a huge change in the interpretation of the 2005 Amendment of the Hindu Succession Act. It also discusses the implications of the retrospective effect of the judgement and intends to draw a conclusion about the present status of daughter's rights to property under Hindu Law, and whether they conform with the principles of social and economic justice as enshrined in the Constitution of India.

Keywords: Daughter's Right, Succession, Right to Property, Coparcener, Hindu law.

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INTRODUCTION

Hindu Succession Act, 1956, talks about inheritance, which means to whom the property will go in future. This act is applicable to Hindus, Buddhists, Jains and Sikhs. This Act talks about two types of properties. First is the ancestral property which we get inherently and second is the self-acquired property which we get on our own. Earlier, the Hindu Succession Act used to talk about the coparcener rights which will only be acquired by male members of the family. After the 2005 amendment, various changes were made. The issues in this amendment were regarding the daughter's right over the property after the death of her father. At first, it was said by the Supreme Court that the father must be alive at the date of the amendment. The right to property will be given to the daughter of a living coparcener only. However, after two years, it was stated that the daughter will get the right over property even if the father is not alive before 2005. So, there was a conflict, which was solved later in 2020, where it was laid down that daughter's right on ancestral property is given by birth. The right of daughter over the property will not be affected by whether the father is alive or not. Therefore, equal right was given to daughter over ancestral property irrespective of whether the father is alive or not, and it was observed that daughters have the same rights and liabilities as sons do.

HISTORY

Earlier daughter's right over parental property as shown before the Hindu Succession Act 1956. Hindus were governed by customary law and Shastric laws. They were governed from region to region on the basis of caste. Therefore laws vary from region to region. Different Schools were there which was founded in line with various interpretations. These school's interpretations were mainly relating to the matters of succession which include Dayabhaga School and Mitakshara School.

There is a sequence of amendments done from past to present which indicates changes that have been occurred regarding the daughter's right over the parental property. "The Hindu Law of Inheritance Act, 1929" was the first act that included women in the part of the inheritance.³ According to this act, female heirs which were included was the daughter of son, daughter of daughter, and sister. This rule was limited until survivorship. After this

³ 'Arguing for Daughters' Inheritance Rights from Rules of the House: Family Law and Domestic Disputes in Colonial Korea on JSTOR' <<http://www.jstor.org.kiitlibrary>> accessed 30 September 2020.

“Hindu Succession Act 1956” was passed by the Parliament regarding those matters in which a person dies without a will i.e.; succession which is intestate.⁴ It was only for Hindus, Sikhs, Jains, and Buddhists. According to section 6 of this act, only male members of the family were considered to be coparceners. No right of inheritance of the “Mitakshara coparcenary property” was given to the deceased heirs including widow and siblings.⁵ Only those were given the right of property who were lineal descendants of that person. The property which is inherited by Hindu by birth from great grandfather, grandfather, or father is coparcener property. This led to discrimination for the women as they were not considered as the coparceners and were not given right on the property since birth.

After this, there was an amendment in 2005 and According to the “Hindu Succession (Amendment) Act 2005” equal rights were given to daughters “Mitakshara Coparcenary Property”. There were many changes made by this Act including Section 6 of the act. This act stated that the daughter will also be considered as coparceners by birth and will be given equal rights as a son. If any Hindu dies then the property shall be given to the daughter in the same manner as it is given to the son. The daughter will be having a right to demand HUF partition. The coparcenary property can also be disposed of by the daughter on her will. If there is the death of the female coparcener then the property will be allocated to her children.⁶ These were some changes that were made in the 2005 amendment. It was applicable from 9th September 2005.

There was much confusion regarding the applicability of section 6 of the “Hindu Succession (Amendment) Act 2005”. There was confusion regarding the rights of the daughter if the coparcener i.e.; father dies before 9th September 2005. In 2016, it was stated that the daughter will not be having any right if the coparcener dies before 9th September 2005. It means that the father must be alive at on 9th September 2005 in order to pass the benefit to the daughter. In 2018 it was stated that the daughter will be getting right on the property irrespective of the date of death of the father which means if father has died before 9th September 2005 then also daughter will be getting equal right on the property. Therefore a confusion was created. Therefore there were two main amendments which were made by the act. Firstly, there was

⁴ Reena Patel, *Hindu women's property rights in India: a critical appraisal*, 27 THIRD WORLD QUARTERLY 1255–1268 (2006).

⁵ J. N. Saxena, *Widow's Right of Succession in India*, 11 AM J COMP LAW 574–585 (1962).

⁶ ‘WOMEN AS COPARCENERS: RAMIFICATIONS OF THE AMENDED SECTION 6 OF THE HINDU SUCCESSION ACT, 1956 | Westlaw India’ <<http://login.westlawindia.com.kiitlibrary>> accessed 1 October 2020.

an amendment in the provision in which daughters were not given rights of coparceners, and secondly, section 3 of the act was removed in which female was not authorized to ask of the partition of the house.

LEGAL JUSTIFICATION

Article 14: Article 14 is the first fundamental right that talks about equality. According to Article 14 unequal treatment should be prohibited and there should be a demand for those laws which could afford equal treatment.⁷ Earlier daughters were not considered as coparceners.⁸ There was a violation of Article 14 in which everyone should be treated equally. Therefore in the recent judgment, it was stated that the daughter will have the same coparcenary right as a son.

Article 15: This article talks about the prohibition of discrimination on the ground of race, religion, place of birth, sex, and caste. The word discrimination involves elements of unfavourable bias. The grounds in which discrimination is based is not under Articles 15(1) and 15(2) but it may come under Article 14.⁹

Article 300A: this article describes “right to property”. Earlier “right to property” was considered to be a “fundamental right” but now it's not only considered as a statutory right or a constitutional right but it is also considered as a human right. Here it is mentioned that “no person shall be deprived of his property, will be saved by law”.

SECTION 6 OF THE HINDU SUCCESSION ACT

“Section 6 of the Hindu Succession Act” was substituted in the 2006 amendment. After its substitution, there was a change in the Hindu Succession act. Section 6 included a daughter’s birthright as a coparcener. Hereunder Mitkashara's daughter is also included under the coparcener after the 2005 amendment. “Section 6 of the Hindu Succession Act,” tells that Hindu Joint family’s daughter will be considered to be as coparcener by birth in the same

⁷ Subrata Roy Chowdhury, *Equality before the Law in India*, 19 THE CAMBRIDGE LAW JOURNAL 223–238 (1961).

⁸ Klaus Deininger, Aparajita Goyal & Hari Nagarajan, *Women’s Inheritance Rights and Intergenerational Transmission of Resources in India*, 48 THE JOURNAL OF HUMAN RESOURCES 114–141 (2013).

⁹ Narasappa v Shaik Hazrat, AIR 1960 MYS 59.

way as the son and will have the same right as a son.¹⁰ The daughter will have the same right on Coparcenary property as a son. Similar to right, the liabilities of coparcener property will also be the same as of the son. Therefore under Mitakshara daughters will also be included. But this will not apply for those partitions which have occurred before 20th December 2004. However, the 2005 amendment is not only applicable to daughters born after the amendment. It will also apply to daughters who are born before the amendment.

This section also tells about how property will be held by the daughter. The daughter will be holding property in the same manner as coparcenary ownership is held. Coparcenary ownership is the birthright of coparcener on coparcenary property. So the daughter is having birthright and she will be considered as a coparcener. The daughter will be having partition right. If the property is alienated then the daughter will also have the right to challenge it without any legal requirement. She can also dispose of the property through a testamentary disposition. If any Hindu dies after the 2005 amendment then the interest of the property will be divided through testamentary or intestate succession.¹¹ There will be no division through survivorship. The property will be divided in the same manner as partition and the daughter will get the same part as a son. If the coparcener's son or daughter dies then the property will go to their grandchildren in the same manner.

In the 2005 amendment, the rule of bias obligation is also removed. But if there is any debt before the 2005 amendment then the creditor will have the “right to proceed” against great-grandson, grandson and son to claim the debt.¹² The creditor will have to claim the debt in the same manner as it is done in the rule of bias obligation.

So, according to the above-stated articles of constitution of India “right to property” is a constitutional right and it is given from the very beginning when the constitution came into force. So before the 2005 amendment, it was a difficult era and the judgements in various cases laid down were unconstitutional because it was discrimination on the ground of sex. There was ambiguity whether the daughters will have rights on father’s property or not?

¹⁰ Arjun Pal, *Transformation of Women’s Rights under section 6 of the Hindu Succession Act, 1956*, April 17, 2016.

¹¹ The Hindu Succession Act, 1956: An Experiment in Social Legislation on JSTOR, <http://www.jstor.org.kiitlibrary.remotexs.in/stable/837692> (last visited Oct 26, 2020).

¹² Paras Diwan, *ANCESTRAL PROPERTY AFTER HINDU SUCCESSION ACT 1956—JOINT FAMILY PROPERTY OR SEPARATE PROPERTY? A MUDDLE UNDER TAX CASES*, 25 JOURNAL OF THE INDIAN LAW INSTITUTE 1–16 (1983).

Then in the case, **Prakash and others v. Phulavati**¹³ respondent who is the daughter files a suit in the year 1992 and demands partition of her father's property whatever he was acquired and inherited. The appellant was the respondent's brother. Her father died in the year 1988.

She demanded the property according to the Hindu succession amendment which was come into effect on 9th September 2005. As the decision of the trial court was not favouring her so she approached the high court and the Karnataka High court held the decision in favour of the respondent. But the Supreme Court has challenged the decision of the high court. Issues raised in this case that whether the Hindu succession act 2005 is applicable on the notional partition? And whether there is a retrospective effect in the "Hindu Succession act 2005"?

As per the first issue Supreme Court laid down in the notional partition, according to the Hindu Succession act 1956, already given about shares in the ancestral property to the legal heirs, any amendment to the parent act cannot take away the rights.

As per the second issue, High court allowed the appeal with applying the judgement of the case *G. Sekar vs Geetha*,¹⁴ the Retrospective effect will be applied, held that if any amendment came into force will be applicable in pending cases. Supreme Court overruled the decision of the High Court applying a case named *Shyam Sunder vs Ram Kumar*¹⁵, held if it is not mentioned about the application of retrospective effect by the legislature itself then it is an assumption of applying the prospective effect.

Lastly, the Supreme Court delivered the decision that the daughter has a right in coparcenary according to the Hindu Succession Amendment Act 2005.

Danamma vs Amar¹⁶

This mentioned case is an appeal in the high court as the trial court refused to acknowledge the appellants as Coparceners, born before the date of enactment of the act and are two daughters of Mr Gurulingappa Savadi. The second parties are the two sons and their mother. The appellant demanded the property as showing reason that Mr Gurulingappa had died after the enactment of the act 1950 while the judgement of the trial court and high court was

¹³ (2016) 2 SCC 36

¹⁴ AIR 2009 SC 2649

¹⁵ AIR 2001 SC 2472

¹⁶ (2018)3SCC 343

against the appellant, therefore, they approached to the Supreme Court under “Article 136¹⁷ of the constitution”.

The problem arises in the 2005 amendment that father should be alive, but that problem is solved in this case. Supreme Court laid down that if any suit is pending before the Court and father die prior to the date on 9th of September 2005, the female coparceners will be having rights over ancestral property.

These two cases made an ambiguity of section 6 of Hindu succession (amendment) Act 2005.

Vineeta Sharma v Rakesh Sharma 2020, issues raised in this case:

- Whether the coparcener requires to be alive as on 09.09.2020 according to the amendment of “section 6 of the Hindu succession act” for the daughter to demand right on father’s property?
- Whether the Hindu succession act 2005 amendment in section 6 is prospective, retrospective or retroactive?

Here the bench of the Supreme Court was large. Here the decision of the Phulvati case is overruled and the decision of the Danamma case is partly overruled. After discussion, the judges reached the conclusion and ruled that daughters are also coparcener and they have equal rights over parental property same as the son has. And relating to the first issue judges passed the decree that even if the father died before the Hindu succession amendment act 2005 daughters are entitled to get rights.

As regards to the second issue the applicability of retrospective, retrospective or retroactive of the amendment of section 6 Hindu Succession act 2005. Here the judges reached the conclusion after explaining the concept of prospective, retrospective and retroactive that it is retroactive in nature.

RIGHTS OF A MARRIED DAUGHTER

Is married daughter have the same rights as an unmarried daughter over father’s property? The answer is yes. Looking into the earlier decision it was held that married daughters will not have equal right over father’s property if they are born before the enactment of 2005 Act;

¹⁷ Article 136, Constitution of India, 1950

i.e.; 9th September 2005.¹⁸ But after that, it was decided that all daughters (whether married or unmarried) will be having equal right over parental property irrespective of their date of birth. Section 6 of the act before the amendment was given retrospective effect. But there was a condition on this. It was also clarified by the court that if the father (coparcener) dies before the 2005 amendment then previous law will be applied and married daughter will not be having right over the father's property.¹⁹ This means that the right of a married daughter will only be there if her father is alive at the time of the 2005 amendment. This was done because in the act it was clearly written that act will be applicable from "on and from the commencement of Hindu Succession (Amendment) Act, 2005". Therefore this condition was there to protect the rights which were already there in the act and not to affect the moral of the person who has passed before 2005.

CONCLUSION

Daughter's right over ancestral property has been questioned for many years. At first the "Hindu Succession Act" does not provide right over property to women. Hindu Succession act tells us that to whom the property will be transferred in the future which means to whom the property will be inherited. There were many questions about whether women to be included in the part of the inheritance or not. Earlier women were not included to be the part of inheritance but after that, there was an amendment in which women were also included to be part of the inheritance. After the 2005 amendment, the question was whether women are allowed to get the property if the father dies before the 2005 amendment or not. There was much confusion with this regard. At first, it was said that women should not be getting property if her father dies before the 2005 amendment i.e. 9th September 2005. But after that, it was stated that the daughter will be having right over the parental property if her father dies before the 2005 amendment. There were many cases that have been discussed in this regard. Section 6 of the act was amended in which coparcenary right was not given to the daughter. There was an amendment in which daughters will be considered as coparcener by birth in the same manner as sons are considered. The daughter has the authorization to demand HUF property partition also.

¹⁸ Vijender Kumar, *MATRIMONIAL PROPERTY LAW IN INDIA: NEED OF THE HOUR*, 57 JOURNAL OF THE INDIAN LAW INSTITUTE 500–523 (2015).

¹⁹ Hindu Women's Property Rights in India: A Critical Appraisal on JSTOR, , <http://www.jstor.org.kiitlibrary.remotexs.in/> (last visited Oct 30, 2020).

Therefore, the 2005 amendment act has been considered as a retrospective and according to the judgment passed in 2020, the daughter will be getting equal rights over the property as son irrespective of the date of the father's death. And as said earlier, the daughter will be getting an equal share in HUF property also even irrespective of whether the father was alive at the time of amendment; i.e. 9th September 2005, or not.

