

RIGHT TO EQUALITY AND DAUGHTER'S EQUAL RIGHT IN ANCESTRAL PROPERTY

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Abstract-

Son and daughter are equal for the mother and father. They treat equally in their household. But when the question arose about to give property equally between son and daughter, both were not treated equally. Our History shows us that both are differ rights from property concern. Day by day developments arose in these rights .Our constitution shows equality before law and legislature. Statutory law and Judiciary play very important role to clarify this concept. Various verdicts related to birth right of daughter in ancestral property are shows the development came from past. Now daughter and son become equally coparcener in ancestral property. This not happen in one day actually, there is a journey for equal right in ancestral property. Here we discuss about this journey.

Key words- Coparcener, ancestral property, equality.

INTRODUCTION-

In this article, I would like to discuss on the journey of succession of women as a birth right in coparcenary property. For this right concern, our study goes with special reference to constitution and Indian Succession act, 1956. Indian constitution gives right to equality¹ from 1950 onwards to citizens of India but till 2005 amendment of succession act, this right is not available to Indian women related to property concern. Under Section 6,² of Succession Act, 1956, 'Devolution of interest in coparcenary property shows that,' men and women were not deemed to have equal rights .When a person died intestate, leaving only male heirs, the coparcenary property will devolve accordingly by **survivorship** to his sons, grandsons and great-grandsons. The devolution and inheritance process included only heirs up to three generations from the deceased coparcener. This is Doctrine of survivorship, where women were denied the right to inherit property as they were not considered as coparceners in the first place. Thus there was a very wide and disturbing lacuna in the law as it discriminated severely between male and female heirs; even the wife of deceased coparcener was not included in the devolution of property as she was not a coparcener in the joint family of her husband. After that 23³ & 24⁴ of Succession act, shows inconsistency about this right. Means there is inconsistency arose between fundamental right and succession act. After that amendments⁵ made by various states⁶ concerning to succession are very crucial for strengthen

¹ Art.14, Indian Constitution, 1950, "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

² Sec.6 of Succession act, ' Devolution of interest in coparcenary property-when a male Hindu dies after the commencement of this act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accou dance with this Act.

³ Sec.23 of Hindu Succession Act,1956, " Special provision respecting dwelling houses,-

Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then notwithstanding anything contained in this Act, the right of any such female heirs to claim partition of the dwelling-house shall not arise until male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

⁴ sec. 24 of Hindu Succession Act, 1956, " Certain widows remarrying may not inherit as widow s-

Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried.

⁵ The State amendments of Maharashtra, Andhra Pradesh, Tamil Nadu, and Karnataka, The language of these amendments is identical. The Maharashtra Amendment though published in December 1994, operates retrospectively from 22-6-1994, when the Government of Maharashtra declared its policy for women. The discussion is confined to the provisions in the Maharashtra Act, and the comments would be applicable to the identical laws of the other three states.

the right of equality in coparcenary property. In 2005, the amendment in Indian Succession act came with equality right of daughters as a son in ancestral property. After 2005 amendment,⁷ still some women acquire right of succession and some are remain apart from this right. This happen because inconsistency of provision arose between amendment of 2005 in Indian succession act 1956. This leads to very verdicts of Supreme Court from case to case till April, 2020.

Development of women's right of property with specific laws

In India, Hindus were governed by **Shasric and Customary laws** that varied from region to region. These were resulted in multiplicity of laws with diversified nature being followed in different schools like **Mitakshara** and **Dayabhaga**.

If we see the entire history of Hindu law, we see that the women's right to hold and dispose property had been recognized. Where she could hold two types of properties, one is **stridhana** and second is **women's Estate**. However, if we see the ratio of property which she held had very less. Stridhana was the absolute property of a female Hindu over which she had full powers to alienate ,sell, gift, mortgage, lease or exchange during her maidenhood and widowhood, but certain restrictions were imposed on her power, if she was married. On her death, all types of stridhana passed on her own heirs. The Hindu female owner had limited power of disposal i.e. she could not ordinarily alienate the corpus except for legal necessity, benefit of estate and for religious duties.

After Independence, **Indian Constitution** shows social and economic justice and gender equality as envisaged in the preamble of the Constitution. Fundamental Rights in part III (Articles- 14,15,16), Directive Principles of state policy in part IV (Articles 38,39,39A,44) and Fundamental Duties in part IVA (Articles 51A(e)).In spite of these constitutional mandates women continued to be subjugated to patriarchal domination and deprived of her rights including property rights.

Indian Succession Act, 1956 was come into force on 17th June 1956, under this, Section 14 to 16 of the Hindu Succession Act 1956 specify the rules for the succession of the

The Maharashtra Amendment adds to the principal Act (the Hindu Succession Act) a new chapter II-A entitled "Succession by Survivorship." Despite its incorporation in a law relating to Succession (i.e. The Hindu Succession Act),and reference to "Succession" in the title of the chapter, the amendment confers rights upon daughters inter vivos and deals with matters of property irrespective of death of any person or of Succession.

Under Section 29-A added by the Amendment, the daughter of a coparcener shall birth become a coparcener in her own right in a joint Hindu family governed by Mitakshara law, and shall have the same rights and be subject to the same liabilities as if she would have been a son .In the event of partition, she shall be allotted her share. She shall hold such property with incidents of coparcenary ownership, and shall be entitled to dispose of it by will. A daughter married before 22-6-1994(The date of operation of the Act) has been excluded from these benefits. Nor are partitions effected before 22-6-1994 to be reopened. And partitions effected on or after 22-6-1994 and before 15-12-1994, if not effected according to the provisions of the Amendment, shall be rendered null and void.

under Section 29-B, if such daughter having share in Mitakshara Coparcenary dies leaving behind a child or a child of a predeceased child, the share in coparcenary property held by her at the time of her death shall pass by testamentary succession if she has made a will disposing it, else by intestate succession. If she does not have these relatives, the share shall pass by survivorship to other coparceners.

Section 29-C deals with the right of preemption, referred as "preferential right to acquire property". After 22-6-1994, if any heir on whom property devolves under Sections 29-A or 29-B desires to transfer his/her share, other heirs shall have a right to acquire the interest proposed to be transferred. If the heirs cannot agree upon the amount of consideration for the share, the amount shall be determined by the court. As discussed above, the amendments of Tamil Nadu, Andhra Pradesh and Karnataka make same provisions.

⁶ Five states in India have amended the law relating to coparcenary property. Four States, viz.,Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka, have conferred upon daughters a birthright in coparcenary property.1.Kerala has abolished the joint family system among Hindus.2.The object of this article is to explore the conflicts which may arise due to operation of different laws in different states in India.

⁷ Section 6. (1) of Hindu Succession Amendment Act,2005., On and from the commencement of the Hindu Succession (Amendment) Act,2005, in a Joint Hindu family governed by Mitakshara law,the daughter of a coparcener shall,-

- (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:

property of a Hindu female. Section 14 of the Act specifies general rules while Sections 15 and 16 describe and provide details for the rules laid down in section 14 of the Act. A Hindu woman has **absolute and full ownership** of property instead of limited rights to property as evident from 14(1)⁸ of the act. The Act is not retrospective in operation but sec.14 of the Act has qualified retrospective application.

devolution of interest in a coparcenary property⁹-when a male Hindu dies after the commencement of this act, having at the time of his death an interest in a Mitakshara coparcenary property- his interest in the property shall devolve by **survivorship** upon the surviving members of the coparcenary and not in accordance with this Act. However, if the Mitakshara coparcener died leaving behind a female heir of class I or a male heir claiming through her, then the interest would devolve by testamentary or intestate succession in accordance with the act and rule survivorship is inapplicable (proviso to section 6) This meant that Hindu females could not inherit ancestral property by birth right and was excluded from joint family coparcenary under Mitakshara system. For instance, if a joint family property was divided, then each male coparcener took his share and female got nothing.

The Amendment act, 2005- The Hindu succession (Amendment) Act, 2005, after having been passed in both the houses of the parliament of India on 5th September 2005, and came into force from 9th September, 2005.

Sec 6(1) provides that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, **on and from the date of commencement** of the Hindu Succession (amendment) Act,2005, **by birth become a coparcener in her own right in the same manner as the son**. She shall have the same rights and be subjected to the same disabilities in the coparcenary property as that of a son and any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener.

Any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th December, 2004, shall not be affected or invalidated by the provision in section 6(1).¹⁰ Further any property to which female Hindu become entitled by virtue of sub-section (1) of section 6, shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition.¹¹

Section 23 of the Hindu Succession Act,1956 has been omitted by the Amendment Act,2005,as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in and to claim partition of the parental dwelling home.

The Amendment Act, 2005 has also omitted section 24 which had disqualified certain widows on remarriage from succeeding to the property of intestate. Now the widow of a predeceased son or the widow of a pre-deceased son of a pre-deceased son or widow of the brother can inherit the intestate property even if she has remarried.

In this study we know rights of daughter available as the sons have. But this right makes confusion between section 6 of Hindu Succession amendment act, 2005. Act says on and from date of commencement in one hand and in other hand it also says by birth become a coparcener in her own right as the same manner as the son. For these issues very confusion arose till 2020. What were issues made confusion for these confusions and how these issues were clarify by judiciary we see as follows.

CONFLICTING OPINIONS IN REGARD TO SECTION 6 OF SUCCESSION ACT- Prakash & ors. v. Phulavati & ors¹²

⁸Sec. 14 (1) of The Hindu Succession Act- ‘Any property possessed by a female Hindu, whether acquired before or after the commencement of this act, shall be held by her as full owner thereof and not as a limited owner.’

⁹ Sec.6 of Hindu Succession old act 1956.

¹⁰ Proviso to sec.6 (1).

¹¹ Sec.6 (2) of Hindu Succession Amendment Act, 2005.

¹² (2016) 1 SCC (Civ) 549.

In the present case, the daughter claimed for an equal share in her father's property as a coparcener and father had died prior to the commencement of the Hindu Succession Amendment Act, 2005. There was a dispute regarding self-acquired property and ancestral property and its retrospective or prospective application. Here, the main issue was whether the Hindu Succession Amendment Act, 2005 will be applied retrospectively or not?

The Apex Court differed from the decision of High Court and Trial Court and placed reliance on unless the statute expressly states the retrospective applicability, it is implied that the status is applied prospectively.¹³ The Apex Court stated that as per notional partition the shares were already allotted under Hindu Succession Act, 1956, herein termed as principal way of an amendment i. e. Hindu Succession Amendment Act, 2005. The Court reflected the contention of the respondent that as it was a social legislation aimed at removing the inequalities between male and female, it should be applied retrospectively. The Supreme Court is applied retrospectively. The Supreme Court expressly stated that the social legislation also cannot be given retrospective application unless provided expressly in the statute. It stated that the Hindu Succession Amendment Act, 2005 will be applicable to 'living daughters and living coparceners as on 9-9-2005, irrespective of when such daughters were born and all the partitions wherein the coparcener has passed away before 9-9-2005, the living daughter will not be entitled to her share in the property.

Danamma @ Suman Vs Amar¹⁴ In The present case, there was a dispute as to whether the Appellants (daughters) were entitled to equal share in the property as they were born prior to the enactment of Hindu Succession Act, 1956 or not?

The trial court and High court rejected the application of the Appellant and stated that she was not entitled to share in the property as she was born prior to the enactment of Hindu succession Act, 1956 and the original coparcener had died prior to the Hindu Succession amendment act, 2005. A special Leave petition challenging the order was filed before the Supreme Court.

The Supreme Court differed from the judgment passed by Trial Court and High Court. It stated that the original coparcener had died in the year 2001, the suit for partition was filed in the year 2002 and the decree by Trial court was awarded in the year 2007. During the pendency of the suit the Hindu Succession Amendment Act, 2005 was passed which conferred the status of coparcener to daughter as well and her rights and liabilities were equated to those granted to the son. Thus, the Supreme Court explicitly deliberated that the amendment is applied to the present case as the partition was given affect after the decree passed by lower court in 2007.

Conflicting interpretations by the Courts with respect to Section 6 of Hindu Succession Act, 1956 gave rise to ambiguities. Danamma's case failed to delve upon the actual issue of the case and passed a decision in conflict to the previous decision upheld in Phulwati. The date of partition being taken into consideration is not relevant in the present scenario as the issue is whether daughter is entitled to the share if her father passes away court had fixed a cut-off date that if the father is alive as on 9-9-2005, then the living coparcener (daughter) will be entitled to the share in the property and subsequently will have to forgo her before that. The divergent legal opinions passed in the above two cases created unnecessary ambiguity with respect to the interpretation of section 6 of Hindu Succession Amendment Act, 2005.

vineeta Sharma v Rakesh Sharma¹⁵

The question with respect to ambiguous interpretations of Section 6 is addressed to a larger bench as it involved similar issues with conflicting previous judgments. The three judge bench of the Supreme Court stated the following:

The Hon'ble Supreme court stated that it is not necessary for the daughter and the coparcener to be alive as on the date of amendment i. e. 9-9-2005. By fixing a cut-off date it

¹³ Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24.

¹⁴ (2018) 3 SCC 343.

¹⁵ Vineeta Sharma Vs Rakesh Sharma on 11 August, 2020.

will defeat the purpose of amendment as the main objective behind amendment was to grant equal rights to daughters as granted to sons. Irrespective of whether the original coparcener is alive as on 9-9-2005 or not the daughter is entitled to claim an equal share in the property with respect to prospective and retrospective application, the court stated that the prospective status operates backwards taking away vested rights. It stated that Section 6 would be a retroactive statute, the one that operates in future, its operation is based upon an event which happened in the past, the antecedent event as per Section 6 is the right being given by birth even if the birth takes place prior to the Hindu Succession Amendment Act, 2005. Thus, the recent judgment by Supreme Court takes a laudable step thereby ending the gender injustice and implements Section 6 amendment of 2005 in its true spirit. It further puts an end to various divergent opinions by different Courts.

Conclusion-

Mahatma Gandhi messages almost six decades ago at the All India Woman's Conference on December 23, 1936 was, "When women, whom we call 'abla' becomes 'sabra' all those who are helpless will become powerful." ¹⁶ With Vineeta Sharma's case women's move one step ahead towards empowerment of women.

With the changing era, status of women have seen various upliftments, because of constitutional, legislative, statutory efforts made year by year for women upliftment. Judiciary also plays a vital role for strengthen a women's right when ever question arose before him. Gender neutral or equal inheritance laws are the grave need of the Hour. India tries to move towards gender equal laws. This will strengthen the women's position in India. Hopefully women's will get benefit about this in future.

BIBLIOGRAPHY-

- Hindu succession Act 1956;
- Hindu Succession Amendment Act 2005;
- Indian Constitution Act, 1950;
- Interview, 'The project of Reforming the Hindu Succession Act Is far from over': Dr. Saumya Uma, m.thewire.in.
- Desk Brief: 'The Demand for gender quality law', CAD India Blog, Editorial Team, 14th September 2020. www.constitutionofindia.net.
- J.A.S. Anand, 'crimes against women and Dynamics of gender justice. PDF. <https://www.google.com>

Case laws-

- Prakash v. Phulvati(2015)
- Danamma v Amar; (2018)
- Vineet Sharma v Rakesh Sharma.

¹⁶ Dr. Vibhuti patel Director, PGSR, SNTD Women's University Mumbai', Gandhiji and Empowerment of Women www.mkgandhi.org