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# SUPREME COURT REITERATES RIGHTS OF A FEMALE HINDU

17 August 2020

A three-judge bench of the Supreme Court delivered a landmark ruling which has put to rest a long-standing debate on the applicability of the amendment to the Hindu Succession Act 1956 (HSA) in respect of the rights of a female Hindu in joint family property.

## JOINT FAMILY PROPERTY UNDER HINDU LAW

The concept of the Hindu joint family finds its inception in olden days when Hindu families shared a common roof, common practices in respect of food and worship and were also joined at the hip in family business. Joint family property entailed common ownership of property including, *inter alia*, cash, securities, investments, businesses and land which were acquired through a common pool of resources for the benefit of the larger family.

Under the Mitakshara school of Hindu law, only a son, and not a daughter, has a right to ancestral joint family property by birth. Such an individual is termed as a coparcener. A coparcenary exists upto only 4 generations. Its trademark feature is unity of ownership. Until a partition takes place, the rights of each coparcener consists of common possession and common enjoyment of the coparcenary property. No coparcener has a fixed share in the joint family property and has only a fluctuating share which would tend to change with the birth or death of a son in the family, i.e. by survivorship.

The HSA recognized the Mitakshara concept of coparcenary property and permitted special rules to apply to its inheritance by survivorship.

## 2005 AMENDMENT AND ITS EFFECT

The Hindu Succession (Amendment) Act 2005 (2005 Amendment) to the HSA introduced sweeping changes to the inheritance of coparcenary property with effect from 9 September 2005. Primarily, the 2005 Amendment granted daughters of a coparcener equal rights as compared to sons in coparcenary property.

At the time, it was apparent that the 2005 Amendment would change the position of living daughters of living fathers in the joint family. However, what was unclear was whether the 2005 Amendment would apply to living daughters of fathers who had passed away before the 2005 Amendment was enacted.

The debate was exacerbated by conflicting decisions given by the Supreme Court in *Prakash v Phulavati* (2016) 2 SCC 36 and *Danamma @ Suman Surpur v Amar* (2018) 2 SCC 36 (*Danamma* case). In *Prakash v Phulavati*, a division bench of the Supreme Court held that the 2005 Amendment would have application only to living daughters of living fathers. The *Danamma case*, on the other hand, granted full rights under the 2005 Amendment to living daughters of a predeceased father.

This debate has been the crux of the issue in several special leave petitions (SLPs) which were pending adjudication before the Supreme Court. The Supreme Court dealt with all such pending SLPs in its decision.

## SUPREME COURT DECISION

*Rights of Daughters*

The Supreme Court has categorically held that a daughter who was living when the 2005 Amendment was passed is a coparcener in joint family property. This is irrespective of whether her father was living or deceased at the time of passing of the 2005 Amendment.

The Court's reasoning was that, by her very birth a daughter, like a son, obtained a right to joint family property and became a coparcener. This is referred to as unobstructed heritage, because the accrual of the right to it is not obstructed by the existence of the owner. This is in distinction to obstructed heritage, the right to which accrues not by birth but on the death of the last owner.

Further, a coparcener's interests are governed by the laws of survivorship and not by the laws of succession. Survivorship does not presuppose a predecessor, unlike succession, and hence a living coparcener is not a prerequisite to form a coparcenary.

*Valid Partition*

The only savings to the applicability of the rule above is where testamentary disposition of, or partition of, joint family property has taken place prior to 20 December 2004 [section 6(5), HSA]. The HSA clarifies that the partition may have taken place either by way of a registered deed or by court decree.

The Supreme Court, on examining earlier decisions, clarified that the intention of the legislature behind creating the above exception was to not re-open matters which were already closed or to take away rights which had already vested. This means, however, that the partition should be one which has legitimately been both intended and effected. The Court explained that if a partition deed has been executed and registered but no effect has been given to the same nor has it been acted upon, the joint family property in question cannot be said to have been partitioned. Further, the Supreme Court explained that in cases like the *Danamma* case where a preliminary decree of partition has been passed but the final decree is yet to be passed, it cannot be said that a partition has taken place and hence such cases would also be governed by the 2005 Amendment.

In the case of an oral partition, the Supreme Court recognized that a partition may take place orally, for various *bona fide* reasons. However, it is equally possible to make a sham claim of an oral partition. Thus, if an oral partition is alleged to have taken place, sufficient and robust documentary evidence to show the occurrence and effect of the partition must be provided to support such a claim. Otherwise, a plea of partition based on oral evidence alone must be rejected outright.

## COMMENTS

This is a landmark decision which serves to remove a long-standing bastion of inequality between sons and daughters under inheritance laws. The Supreme Court was guided by Constitutional principles of equality, although its decision was not predicated on the same.

If a coparcenary was in existence on or after the 2005 Amendment, and whether or not a valid partition has taken place thereafter, any daughter who was excluded can make a claim her rights in the joint family property. The Court clarified that the status of coparcener can also be conferred by adoption. However, the Supreme Court has not opined expressly on the rights of the daughter's children in the joint family property.

It is likely that this decision may cause a spate of litigation and possible re-opening of partitions and family settlements which have taken place since the 2005 Amendment. In light of this, it bears noting that if business assets have traditionally been held as joint family assets, as is often the case in Indian families, such business holdings may require restructuring in order to maintain the desired control.

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