



Vineeta Sharma v. Rakesh Sharma: Strengthening the Women's Right in their Parental Property

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ABSTRACT

From time immemorial, gender inequality and differences found abundance in almost all the communities and societies all over the world, hence the problem with regard to gender inequality is not something new. Such gender inequality was seen when The Hindu Succession Act, 1956 where the daughter was not given any rights in their parent's property. Such complex set of notions and beliefs that are stereo typically associated with women was accepted by people over a period of time but in the year 2005 Government brought an amendment in the Hindu Succession Act. The Hindu Succession (Amendment) Act, 2005, states that women will be considered to be legal heir to family property. But it was the Supreme Court in the case of Vineeta Sharma v. Rakesh Sharma, where the Court strengthened the women's right in their parental property. In order to stop discrimination and disparity against women the Apex Court held that a Hindu woman is a joint heir to the ancestral property by birth and does not depend on whether her father was alive or not at the time the act was enforced. The fact that despite constitutional safeguards, statutory legislations and plethora of cases to support the cause of equality of women, changes in social attitudes and institutions have not occurred significantly but at the same time there has to be total confidence to achieve the requisite goal.

Keywords: Hindu Succession Act, Inheritance, Ancestral Property, Constitutional Safeguards

1 Literature Review

The Hindu Succession Act, 1956 (Act of 1956) was enacted to amend and codify laws relating to intestate succession among Hindus and brought about changes with respect to succession and also conferred on women certain right which until then was not in existence. Further, the Act of 1956 also recognized, under Section 6, the special right of male coparceners of a Hindu Coparcenary to inherit by birth over the coparcenary property and laid down rules for succession among the coparceners.

After the amendment Act of 2005, a Division bench of the Hon'ble Supreme Court of India, in the case of Prakash & Others Vs. Phulavati & Others, held that the Act of 2005 is prospective in nature and that rights conferred on daughter, under Section 6 of the Act of 2005, is on the living daughter of a living coparcener, requiring the coparcener to be alive as on 09.09.2005 so as to enable the daughter to claim rights over the coparcenary property. In the said case, the coparcener had died prior to 2005 amendment and hence, it was held that the daughter is not entitled to a share in the coparcenary property as she is not the daughter of a living coparcener. In a subsequent judgement of a Division bench of the Hon'ble Supreme Court of India, in the case of Danamma @ Suman Surpur & Another Vs. Amar & Others, although the Court did not specifically deal with the concept of living daughter of a living coparcener, the Court took a contradicting view from that of decision in Phulavati case and held that daughters have equal rights in the coparcenary property as that of son, even though the coparcener had died before the amendment of 2005.

In *Vineeta Sharma v. Rakesh Sharma & Others*, similar questions were raised before the Hon'ble Supreme Court, and considering the contradicting view expressed by the Hon'ble Supreme Court in the above mentioned two decisions, i.e., *Phulavati case* and *Danamma case*, the issue was referred to a larger bench constituting three judges of the Hon'ble Supreme Court.

2 The Hindu Succession Act, 1956

It is a lesser known fact that the provisions regarding succession in the Hindu Code Bill, as originally framed by the BN Rau Committee and piloted by Dr BR Ambedkar, was for abolishing the Mitakshara coparcenary and the son's right by birth to joint family property. This concept was to be substituted with the principle of inheritance by succession.

However, the final Bill was passed with major changes due to the opposition of elected representatives. To this, a disappointed Dr. Ambedkar reportedly said:

"It was not a compromise. My enemies combined with my enthusiastic supporters and my enemies thought that they might damn the Bill by making it appear worse than it was."

In 2005, the Legislature, through a progressive amendment to the Hindu Succession Act 1956, brought in the much awaited change envisioned by Dr Ambedkar, by granting coparcenary rights to daughters. Statement of Object and Reasons of the Hindu Succession (Amendment) Act, 2005 provide clarity on the 2005 Amendment Act:

"3. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section."

3 Supreme Court's Interpretation Pre Vineeta Sharma's Case

Amended Section 6 conferred full coparcenary rights to the daughters as same as that of sons. The amendment act was enacted in 9 November 2005. But the section 6(1(a)) conferred coparcenary rights on daughters by birth. So the question arose will a daughter born before 2005 will get the coparcenary rights or not. Other associated question was whether the daughter and father both need to be alive on 9 November 2005 to effectuate the provisions of the amended section or not.

The Apex Court in the case of *Prakash & others v. Phulavati others* laid down that the provisions of the amendment are applicable prospectively to living daughters of living coparceners as on 9.9.2005, irrespective of when such daughters are born. However, in *Danamma @ Suman Surpur v. Amar*, the Court granted the rights in a coparcenary to a daughter of a coparcener who had died much before 9.9.2005.

This created a divergence of legal opinion and the matter came to be referred to a larger bench for resolution in the case titled *Vineeta Sharma v. Rakesh Sharma*. The Supreme decided the reference in a landmark judgment pronounced on 11th August 2020.

The Bench, after discussing the law of creation of Mitakshara coparcenary and the nature of the rights of the members of a coparcenary under the Hindu law, proceeded to hold the right of the daughters under the Amending Act of 2005 to be retroactive rather prospective.

4 Analysis of Vineeta Sharma's Case

The *Vineeta Sharma* verdict operates on the premise that the intent of Section 6 of the Act as amended by the 2005 amendment, was to neither confer its benefits to female successors prospectively nor for that matter retrospectively, but it was to confer benefits retroactively. A legislation applies retroactively when it prescribes benefits conditional upon an eligibility that may arise even prior to the passing of such legislation. While explaining the concept of retroactive application vis-à-vis the 2005 amendment, it was held that the 2005 amendment makes available to female successors, the benefit of succession on par with that of her male counter parts based on an antecedent event, i.e., her birth.

The Court noted that prior to the Hindu Succession Act, women did not have any interest in the coparcenary properties, and on the demise of a coparcener, the share of the deceased coparcener devolved on the surviving coparceners. The Act made inroads into the system. It provided that on the demise of a coparcener, his interest in the coparcenary properties would not devolve on other coparceners by survivorship, and the share of the deceased coparcener was to be ascertained by way of notional partition as on the date of death. To that limited extent, women did not become coparceners, but they could inherit the property under the un-amended provision.

The 174th Report of the Law Commission of India recommended the adoption of the Kerala Model. Subsequently, amendments were effected in Kerala, Andhra Pradesh, Karnataka, and several other states, giving coparcenary rights to the daughters.

The essential condition for conferring the status of coparcener on the daughter is that there should be a coparcenary on the date of coming into force of the Act in 2005. If the coparcenary was disrupted by the act of the parties or by the death of parties, in partition or sale, the daughter could not get the status of a coparcener in coparcenary. The status conferred cannot affect the past transactions of alienation, disposition, and partition – oral or written.

Furthermore, the court also remained cognizant that under the Act, a distinction must be drawn between the right to claim a share versus the extent of the share that can be claimed. A coparcener's right to claim a share in the coparcenary property remains stable although the specific share available to the coparcener fluctuates with births and deaths in the family and becomes determined only at the time of partition. Thus the court held that the notional partition under the proviso to the un-amended Section 6 of the Act only affects the extent of share that can be claimed by a coparcener but does not affect the right to claim a share in the first place.

5 Specific References to the previous Judgements

While distinguishing *Phulavati*, the court in *Vineeta Sharma's* Case observed as under:

“75. A finding has been recorded in Prakash v. Phulavati that the rights under the substituted section 6 accrue to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in Prakash v. Phulavati...The provisions of section 6(1) leave no room to entertain the proposition that coparcener should be living on 9.9.2005 through whom the daughter is claiming...”

On *Danamma*, the court in *Vineeta Sharma's* Case partly overruled it and noted as follows:

“78. In Danamma...Daughters were given equal rights by this Court. We agree with certain observations made in paras 23 and 25 to 27 (supra) but find ourselves unable to agree with the earlier part approving the decision in Prakash v. Phulavati and the discussion with respect to the effect of the statutory partition. As a matter of fact, in substance, there is a divergence of opinion in Prakash v. Phulavati and Danamma with respect to the aspect of living daughter of a living coparcener. In the latter case, the proposition of the living daughter of a living coparcener was not dealt with specifically. However, the effect of reasons given in para 23 had been carried out to logical end by giving an equal share to the daughter.”

6 Concluding Remarks

The right conferred on a daughter, in the coparcenary property is by birth and hence, it is not necessary that the father be alive as on 09.09.2005. As such, the decision in *Phulavati* case is overruled and the decision in *Danamma* case is partly overruled to the effect where it said that the coparcener father has to be alive as on 09.09.2005.

In view of this latest judgement, the only qualifying factors to claim the benefits of succession under the 2005 amendment is firstly birth and secondly, being alive as on the 2005 amendment coming into force. Therefore, any suit for partition which has yet to result in a final decree being drawn up pursuant to final decree proceedings will now be affected and be liable to be disposed off in accordance with the *Vineeta Sharma's* verdict.

However, though the right of succession of female successors has been unequivocally asserted and encumbrances related to the predecessor coparcener's date of death have been removed, the female successor claiming under the 2005 amendment must not delay the suit to challenge the alienation of the coparcenary property if already alienated or the suit for partition, beyond the periods prescribed under Articles 109 and 110 of the Limitation Act. In view of the fact that the 2005 amendment came into force as early as 09.09.2005, several potential claims for partition under Section 6 of the Amended Act may already be time barred.