

Topic: Latest trends in Succession among Hindus

Old Hindu Law :

One of the most significant ideas behind the evolution of family was to provide security to the members of the family. An undivided Hindu family is ordinarily joint, not only in estate, but also in food and worship. The joint family system comes first and law of inheritance is of later growth. According to Dharma Sastra it is the duty of the house holder to provide that safety and security to children, the old and the infirm and the other such members of the family who cannot be independent. Normally the senior most male member is seen as the guardian figure who exercises control over all affairs of the family. Though under traditional Hindu law women were given very few rights and were considered to be subservient to the male members of the family. In Our world “Women constitute half of the World's Population, perform nearly two- thirds of it is hours, receive one-tenth of world's income and than one hundredth of the property”.

Since time immemorial the framing of laws have been exclusively for the benefit of man and woman has been treated as subservient and dependent on the male support. We all knew that there are two principal schools of Hindu law, Mitakshara and Dayabhaga came into existence. The Mitakshara school owes its nomenclature to Vijnanesvara's commentary of that name on the yajnavalkya smritis. The Dayabhaga is a digest on the law of inheritance written by Jimutavahana. The Mitakshara school had a widespread existence and was popular in almost whole India except Bengal and its surrounding areas where Dayabhaga prevailed. These schools were born out of diverse and opposing doctrines and marked a new stage in the evolution of Hindu law. Of these two schools, Mitakshara was considered to be more biased against women and gave them the least of the right to inherit property. Though Dayabhaga was also biased but it still recognized more rights for the women and was thus considered to be a liberal school. Then, Britishers decided to overhaul the Hindu law and passed many more legislations to reform it and provide women with many more rights. Some of the legislations passed by Britishers are following:

- a. The Hindu Widows' Remarriage Act, 1856
- b. Hindu Inheritance (Removal of Disabilities) Act, 1928
- c. The Hindu Law of Inheritance (Amendment) Act, 1929
- d. The Hindu Women's Right to Property Act, 1937

## 2. Inheritance Under Traditional Hindu Law :

Since Hindu society has always been a patriarchal society, property rights of male members of the family were always supreme and were considered to be more appropriate than family members. Although, constant efforts were made during that era to provide for women as mothers, daughters-in-laws etc. a right to property. The fundamental difference between the two schools is with regard to the principle on the basis of which the right to inheritance is to be determined. These schools born of diversity of doctrines marked a new stage in the evolution of Hindu law. The common principle on which both of them rely is that a sapinda inherits the deceased's property. Under Mitakshara law, only agnates could inherit the property no matter how distant they were to the deceased which meant that the property could go to a distant male cousin but not to one's own daughter's son. However, under Dayabhaga law, the view was more of liberal and allowed cognates to inherit the property such as a person can inherit his maternal grandfather's property if he had no son. According to Mitakshara law, each son acquires an equal interest in his father's property as soon as he is born and on his father's death gets the property by survivorship whereas under Dayabhaga, the son doesn't acquire any interest in father's property by birth and his rights regarding the property are determined only after father's death. Thus, the Mitakshara According to uncodified Hindu law, the woman could hold property but actually the property given to women was meagre to the property given to man. Also, she didn't have absolute right to dispose of the property and restrictions were placed on her. The restrictions were considered to be necessary by our traditionally patriarchal setup and it was thought that if women were given absolute freedom then they will neglect their marital obligations and management of household affairs.

Under the first class females have limited ownership of the property whereas under 32class (ii), the female heirs become the absolute owners of the property. Such property is considered to be stridhana and thus governed by Mitakshara law. In cases of property inherited from females, they become the absolute owners of the property. shows a clear sign of following a strong patriarchal system whereas Dayabhaga show a clear departure from set of norms and a dilution in traditional patriarchal structure. According to uncodified Hindu law, the woman could hold property but actually the property given to women was meagre to the property given to man. Also, she didn't have absolute right to dispose of the property and restrictions were placed on her. The restrictions were considered to be necessary by our traditionally patriarchal setup and it was thought that if women were given absolute freedom then they will neglect their marital obligations and management of household affairs.

According to Hindu family system, the daughter becomes part of her husband's family and accordingly is entitled to inherit property from her husband or son. However, in case of unmarried daughter, dharma sastras have clearly laid down that such daughters have right to be maintained by her father and brothers. It has been laid down by Manu that each brother must give one-fourth of the share to his unmarried sister. According to Mitakshara, the expression one-fourth did not mean one-fourth of each brother's share but only one-fourth of the share the daughter would have received if she were a son. This interpretation greatly reduces the share of a daughter and is biased against them. Though, it is, in general, according to the usual pattern followed by Mitakshara as usually it gives the son a superior right to inherit as compared to daughters.

Discrimination against woman is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing the inheritance/succession of property amongst the members of joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed woman at the receiving end. Recognizing this, on recommendations of Rau's committee some anomalies were removed by enacting Hindu Succession Act, 1956.

### 3. Hindu Succession Act, 1956 :

As stated supra, prior to commencement of Hindu Succession Act, 1956 the intestate succession among Hindus was mostly governed by Smriti, Yagnavalkya smriti and Principles of Vignewsara, Jimuthavahana etc. The said un-codified Hindu law is overridden by section 4 of Hindu succession Act. Thus, the Act, 1956 has overriding effect over any text, rule or interpretation of Hindu law or any custom or usage which was in existence prior to 17-06-1956 with respect of any matter, for which a provision is made in the Act.

First of all, coming to Section 8 of Act, 1956, it runs thus :

#### Sec 8. General rules of succession in the case of males

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased

The section, of the face of it, when studied in verbatim, it is clear that, the section applies when Hindu male dies intestate, the property succeed to whom and how it devolve. But the question, is, what is the effect of S. 8 of the Hindu Succession Act, 1956? The Hindu Succession Act, 1956 lays down the general rules of succession in the case of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class I of the Schedule provides that if there is a male heir of Class I, then upon the heirs mentioned in Class I of the Schedule. Class I of the Schedule reads as follows :

"Son; daughter; widow; mother; son of a predeceased son; daughter of, a predeceased son; son of a predeceased daughter, daughter of a predeceased daughter; widow of a pre-deceased son; son of a predeceased son of a pre-deceased son; daughter of a predeceased son of a pre-deceased son; widow of a pre-deceased son of a predeceased son."

The heirs-mentioned in Class I of the Schedule are son, daughter etc. including the son of a predeceased son but does not include specifically the grandson, being a son of a son living. Therefore, question arisen is, when the son as heir of Class I of the Schedule inherits the property, does he do so in his individual capacity or does he do so as karta of his own undivided family?

#### ***Coming to Section 14 of Act, 1956:***

Sec. 14. Property of a female Hindu to be her absolute property (1) 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.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the

terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

The Land mark judgment on this aspect till prevailing is Tulasamma's case, which had guided acid test to ascertain whether the property fell under Section 14(1) of 14 (2) of Act,1956. V.Tulasamma Vs. Sesha Reddy reported in AIR 1977 SC 1444 in which the Hon'ble Apex Court interpreted section 14(1) (2) of Act 1956. It is pertinent to note that the judgment referred by the Plaintiffs counsel i.e., Jupudy Pardha Sarathy case also delivered, by relying upon the landmark judgment of Tulasamma's case, the relevant para 68 in Tulasamma's case is reproduced hereunder.

“This Court pointed out that the Hindu Succession Act, 1956 “is a codifying enactment, and has made far reaching changes in the structure of the females full rights or inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate”. Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words “any property” are, even without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include “both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement” of the Act.”

The Hon'ble Apex Court further held in the same para as:

“This Court has also in a series of decisions given a most expansive interpretation to the language of sub-section (1) of Section 14 with a view to advancing the social purpose of the legislation and as part of that process, construed the words 'possessed of' also in a broad sense and in their widest connotation. It was pointed out by this Court in Gummalapura Taggina Matada Kotturuswami Vs. Satre Veerayya (1959 Supp 1 SCR 968), that the words 'possessed of' mean “the state of owning or having in one's hand or power”. It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It maybe actual or constructive or in any form recognized by law. Elaborating the concept, this Court pointed out in Mangal Singh Vs. Rattno (AIR 1967 SC 1786), that this section covers all cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided of course, that she has not parted with her rights and is capable of obtaining possession of the property. It will, therefore, be seen that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.” (underline is mine).

So, by virtue of above dictum, it is clear that section 14(2) operate as rider/exception to 14(1) of Act, 1956. To ascertain the document under guise of section 14 of Act, 1956, Before embarking upon 14(1) of Act,1956 the document has to pass test provided under 14(2) of Act,1956. if the property gifted to woman who have pre-existing right of maintenance, even if she conferred limited interest, she will become absolute owner as per Section 14(1) of Act, 1956. Further, as per the explanation appended to section 14(1) of Act, 1956, the property would include that the property acquired by female Hindu by inheritance or devise or at partition or in lieu of maintenance or arrears of maintenance or gift from any other person.

Thereafter, how the property has to devolved is envisaged in section 15 of the act, 1956.

Section 15. General rules of succession in the case of female Hindus.

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16:

- a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- b) secondly, upon the heirs of the husband;
- c) thirdly, upon the mother and father;
- d) fourthly, upon the heirs of the father; and
- e) lastly, upon the heirs of the mother.

2) Notwithstanding anything contained in sub-section (1)-

a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband

Further, the order of succession given in section 16 of the Act, 1956

Sec.16. Order of succession and manner of distribution among heirs of a female Hindu The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:-

Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

Section 6 of Hindu Succession Act, 1956 :

Now coming to the Section 6, which, till now going on creating doubts in our minds, we all knew that, the said section deals with coparcenary property. However, the Act, 1956 did not define the word coparcener, so, we have to fall back to old law only. Coparcenary property means a property inherited by a Hindu from his father grandfather and great grandfather in unobstructed heritage is coparcenary. Therefore, whatever property succeed into fourth generation under lineal descendants is the Coparcenary property. The ancestral property is only species of Coparcenary property.

The objective of this report is to examine whether, the Hindu Succession Act, 1956 (the "HSA") actually gave women an equal right to property. The daughters were also given right to property in their father's estate. If a Hindu male died intestate, section 8 to 13. Under section 8 three classes (7) heirs recognized by Mithakshara law and three classes (8) heirs recognized by Dayabhaga law cease to exist and the heirs are divided into four classes i.e.,

1. Heirs in Class I schedule
2. Heirs in Class II schedule
3. Agnates and
4. Cognates.

***Devolution of property of a Hindu intestate:***

On the event of death of an intestate Hindu (male or female) the interest in the coparcenary property thereof devolves in the following manner.

***First Step:***

Firstly the coparcenary property should be notionally partitioned and the shares in the property would be first determined as below-

Daughter- The daughter, being a coparcener, shall get same share as allotted to the son.

Child of a pre-deceased son – The same share that would have been allotted to pre-deceased son had he been alive at the time of the partition.

Child of a pre-deceased daughter – The same share that would have been allotted to pre-deceased daughter had she been alive at the time of the partition.

Child of Pre-deceased child of a pre-deceased son – The child would be allotted the same that share that would have been allotted to pre-deceased child had he or she been alive at the time of the partition.

Child of Pre-deceased child of a pre-deceased daughter – The child would be allotted the same that share that would have been allotted to pre-deceased child had he or she been alive at the time of the partition.

***Second Step:***

After effecting the notional partition the interest of the Hindu person shall devolve, if he or she dies intestate, by succession and not by survivorship, and in accordance with the provisions of the HSA (as amended from time to time) .

Of course, the mother, widow, son and daughter are the primary heirs,. In the absence of class I legal heirs, the property devolve upon class II legal heirs and in their absence first on agnates and then on cognates. Still some section of the act came under criticism evoking controversy as being favorable to continue inequality on the basis of gender. One such provision has been retention of Mithakshara coparcenary with only males as coparceners.

For the first time in Andhra Pradesh, sec.29A, inserted giving right to unmarried daughters in the property, by way of Act 13 of 1986 Succession by survivorship:

**29A.** Equal rights to daughter in coparcenary property:- Notwithstanding anything contained in Section 6 of this Act-

(i) in a Joint Hindu family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship, and shall be subject to the same liabilities and disabilities in respect thereto as the son; (ii) at a partition in such a joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son.

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter;

Provided further that the share allottable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or of the pre-deceased daughter as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

**Sec.29-B.** Interest to devolve by survivorship on death:- When a female Hindu dies after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 having at the time of her death an interest in a Mitakshara coparcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act.

Provided that if the deceased had left any child or child of a pre-deceased child the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship.

**Explanation-1:** For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death irrespective of whether she was entitled to claim partition or not.

**Explanation-2:** Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

**Sec.29-C** Preferential right to acquire property in certain cases:-

1) Where, after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others devolves, under section 29A or section 29-B upon two or more heirs and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have preferential right to acquire the interest proposed to be transferred.

(1) The consideration for which any interest in the property of the deceased may be transferred under this section shall in the absence of any agreement between the parties, be determined by the court, on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(2) If there are two or more heirs, proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

**Explanation:-** In this section 'court' means the court within the limits of whose jurisdiction the immovable property is situated or the business is carried on, and includes any other court which the State Government may, by notification in the official Gazette, specify in this behalf.

The insertion of section 29-A by way of Act, 13, 1986 gave drastic change in the rights of a woman, so far as Andhra Pradesh state is concerned. However, it has given right to unmarried daughters only and restricting their right to claim share in the dwelling house.

Section 6 of the Act deals with the devolution of interest in 'Coparcenary' property. In so far as States of Andhra Pradesh and Telangana are concerned, we must deal with the cases of partition among the Hindus by dividing them under the following three heads because of incorporation of Sections 29A to 29 C by AP Act No.13 of 1986 and subsequent Central Amendment by Act No. of 2005.

i. Property in which the succession opened prior to 05.09.1985.

ii. Property in which the succession opened after 05.09.1985.

iii. Property in which the succession opened on or after 09.09.2015.

For adjudicating the claim of partition, the crucial aspect is the date on which the succession opened. The Hindu Succession Act 1956 does not provide any where that the succession would open on occurrence of a particular event in the joint Hindu family. However the Law is now settled by the Apex Court to the effect that the date of death of the main 'Coparcener' shall be the date of opening of the succession as held in *Sheela Devi v.Lal Chand*.2007 (2)ALT 52 (SC) = (2006) 8 SCC 581. The division Bench of Madras High Court in the decision in *Ibhagirathi Bai v.Mani Vannan*, AIR 2008 Mad 250 held that Act No.39/2005 applies to the persons who died after 09-09-2005 and if a person dies before that date, the old Act No.30/1956 would be applicable. In *Prakash v.Phulavati* 2015 1072, THE Apex Court held that the rights under the amended Act No.39/2005 are applicable to living daughters of living coparceners as on 09-09-2005 irrespective of when such daughters are born.

So far as Sec.6 of Act No.39/2005 is concerned, the following main aspects are to be borne in mind.

(a) On and from 09-09-2005, a daughter shall be a "Coparcener" in the Joint Hindu Family Governed by Mitakshara Law on par with a son in her own right.

(b) If a Joint family property is alienated or transferred or partitioned or bequeathed under a Will Deed before 20.12.2004, such disposition shall not be questioned and reopened.

(c) The female Hindu "Coparcener" may dispose of her interest in the "Coparcenary" property by way of a Will Deed.

(d) Where a Hindu dies after 09-09-2005, his interest in the Joint Hindu family shall devolve by testamentary or intestate succession as provided in the Act, but not by survivorship and it shall be deemed that the "Coparcenary" property has been divided as if a partition had taken place. This is prominently called as principle of "Notional Partition". In such Notional Partition, the daughter shall be allotted the same share as like a son and even the share of a predeceased son or a predeceased daughter shall be allotted, as if he or she is alive, to his or her child.

(e) On or after 09-09-2005, no Court shall recognize the principle of pious obligation of a son, grandson or great grandson of the deceased, to discharge any due of debt contracted by his father, grandfather or great-grand father. If the debt was contracted prior to 09-09-2005, the said bar shall not affect the right of a creditor to proceed against such a son, grandson or great grandson and any alienation made in satisfaction of such debt contracted prior to 09-09-2005, shall be enforced notwithstanding, any of the provisions of the Hindu Succession (Amendment) Act, 2005.

All alienations and partitions effected by way of a registered instrument or under a Court decree and disposition by way of a Will, effected prior to 20-12-2004 are saved.

The State of Kerala has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975 and when we compare the provisions of the said Act with the provisions of the Hindu Succession Act 1956 (Act No.39 of 2005), whatever the net object proposed to be achieved under Act No.39 of 2005 was already achieved in Kerala State by making the said Law in 1975. Under said Kerala State Act, the provisions of Sec.6 were curtailed to a greater extent and they simply abolished the principles of Coparcenary and provided that all the interest of a Hindu male shall be devolved only by way of intestate succession, but not by survivorship. Therefore the law governing in Kerala State is more stringent than the effect of Hindu Succession (Amendment) Act No.39 of 2005. It is a misconception that lot of rights are conferred on the women under Hindu Succession (Amendment), Act 2005 and that there would be a great improvement in the economic, social standard of a woman in Hindu Society due to the rights given in the property. In fact, the right of partition which is available to son and daughter prior to 09-09-2005 is narrowed down to a considerable extent by virtue of the provisions under Hindu Succession (Amendment) Act, 2005.

The following are the basis to fortify my above view:

Firstly the alienations and registered partitions, partition effected by Court decrees and Will deed dispositions which were made prior to 20-12-2004 are totally protected.

Secondly the interest of a Mitakshara Coparcener shall devolve by the Rule of Intestate Succession when there is no Will need, but not as per the Rule of Survivorship. In one sense, the Doctrine of Survivorship has become obsolete. Prior to Act 39 of 2005, if great grandfather dies, all the surviving lineal descendants were entitled to succeed such Coparcenary interest due to their mere existence or survival. Now the Rule of Survivorship is taken away and in that place, the Rule of Intestate Succession is substituted. Thus, broadly the provisions of Sec.8 of the Hindu Succession Act 1956 shall be applied since it is the only provision which deals with the intestate succession of a male Hindu. Under Sec.8 of the Act, a grandson or great grandson is not recognized as a Class-I heir of a Hindu male. Thus the right of a grandson or great-grandson to succeed a Hindu male, is totally taken away.

Since there are four generations in a Hindu Coparcenary and as the grandson and great-grandson are ousted from the list of successors by virtue of Sec.8 and Schedule annexed to Hindu Succession Act, 1956, the very theory of four generation Coparcenary has fell into great crisis.

Thirdly, Sec.6 is totally substituted the old Sec.6 of the Act. Thus, whatever the Law applies to a daughter is equally applicable to a son also. Therefore even a son cannot challenge the alienations, apertitions, Court decrees and Will deed dispositions which were made prior to 20-12-2014. Thus the right of partition is curtailed to a greater extent even in respect of a son. Further, under Articles 60 and 109 of the Limitation Act, 1963 the period prescribed to challenge the alienations or transfers made by the guardian of a ward or by a Mitakshara Hindu father is 3 years and 12 years respectively. Here, a cutoff date is provided barring challenge to the dispositions of all kinds referred to above if made prior to 20.12.2004, but the said provisions of the Limitation Act are not suitably amended. The provisions of the Limitation Act are procedural in nature and are subject to the substantive law made under Hindu Succession Act, 1956 as amended under Hindu Succession (Amendment) Act, 2005. Therefore a party cannot say that still he got right to question the alienations or dispositions which were made prior to 20-12-2004 on the ground that the prescribed period under the above articles of Limitation Act is not expired. This is an anomaly created under the provisions of the Hindu Succession (Amendment) Act 2005.

Coming to the Landmark Judgments, firstly in *Sheela Devi v.Lal Chand.2007 (2)ALT 52 (SC) = (2006) 8 SCC 581*, the Honourable Apex Court held that while deciding partition Suit date of opening of succession is important and further held that the common ancestors died after the amendment, then only the Hindu SuccessionAmendment Act No.39/2005 will come into force. The same analogy applied in *Anardevi and another Vs.Parameswara Devi and others*. Thereafter, in *Gunduru Koteswaramma case*, the Honourable Apex Court held that in Final decree petition also the parties can be added. That Judgment leads to controversy pertaining to giving importance to the date of opening of succession. Subsequently in *Prakash Vs. Pulavathi* reported in *2015 (6) ALT 34 SC* most of the anomaly is cleared and 51concluded that date of death of common ancestor is a criteria while ascertaining the date of opening of Succession. However in that Judgment the Honourable Apex Court opined that the Gunduru Koteswaramma Judgment holds Good. Therefore we opine that till the issue has to what is the date of opening of succession is still unclear and the ambiguity that which Judgment has to be followed is there till now.

Submitted by

R. Varalakshmi  
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Sompeta