LATEST TRENDS IN SUCCESSION AMONG HINDUS

Introduction:

Under the present legal system of India, people from different religions are governed by their own personal laws in matters of inheritance, marriage, separation, guardianship etc. The inheritance rights of Hindus are governed by the Hindu Succession Act (HSA) of 1956. The Act was built on the foundation of ancient legal doctrines and purported to lay down a law of succession. The distinction between "joint family Property" and "separate property" is a key feature of the legal structure of "Hindu" inheritance in India.

Survivorship and Intestate Succession:

The general rules of succession in case of male Hindu who dies intestate is dealt under Section 8 to 13 of the Act and in case of females Section 14 to 16 of the Act deal with general rules of succession. Whereas, succession in respect of ancestral property which is also termed as Coparcenary property is dealt separately under Section 6 of the Act which deal with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the member of the coparcenary. Prior to the Hindu Succession (Amendment) Act, 2005, the females were not included as coparceners as such they cannot inherit the ancestral property. The State of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary amendment giving equal rights to the daughters in coparcenary property in order to eradicate discrimination on ground of gender. The Central Government with Hindu Succession (Amendment) Act, 2005 gave coparcenary right to females on par with male by amendment of Section 6 of the Act.

a) HSA (Amendment) Act 2005 Controversy of prospective or retrospective effect:

The object of HSA (Amendment) Act 2005 was to provide coparcenary rights to the Hindu Female on basis of gender equality. The effect of this amendment has been the subject matter of pronouncements by various High Courts, in particular, the issue as to whether the right would be conferred only upon the daughters who are born after September 9, 2005 when Act came into force or even to those daughters who were born earlier.

The Bombay High Court in its Full Bench decision Badirnarayan Shanker Bandrari v. Omprakash Bandar AIR 2014 Bom 151 held that clause (a) of subsection (1) of Section 6 would be prospective in operation
whereas clause (b) and (c) and other parts of subsection (1) as well as subsection (2) would be retrospective in operation. It held that amended Section 6 applied to daughters born prior to June 17, 1956 (the date on which Hindu Succession Act came into force) or thereafter (between June 17, 1956 and September 8, 2005) provided they are alive on September 9, 2005 i.e. on the date when Amended Act, 2005 came into force. Orissa, Karnataka and Delhi High Court have also held to the same effect.

The contrary view taken by the Karnataka High Court giving retrospective effect to the HSA (Amendment) Act 2005 to the pending suits, by placing reliance on decision in G. Sekar v Geeta and other 2009(6) SCC 99 wherein it was held that any development in the law will inevitably apply to a pending proceedings. On appeal, the Supreme Court settled the controversy with the authoritative pronouncement in the case of Prakash & ors v Phulavati & ors 2016(2) SCC 36 by approving the view taken in Badinarayan Shanker by the Full Bench of the Bombay High Court. It was held that the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected.

However, on 1 February 2018, the Supreme Court in Danamma Suman Surpur & anr. v Amar & other "Civil Appeal No.188-189 of 2018" considered Phulavati’s case and agreed with the findings and applied a different principle to grant relief to the daughters under amended Section 6 of the Act. In the facts of the Danamma case, the father (male coparcener/prospectus) died in the year 2001 and thereafter sons instituted suit for partition in the year 2002, the daughters of the deceased father contested the suit but their claim was denied by trial court on ground that they were born prior the HSA,1956, this view of trial court was confirmed by High Court. On appeal, the Supreme Court held in favour of daughters holding that they are entitled for share. In order to reach this finding reliance was placed on Ganduri Koteshwaramma case where the principle that partition is not complete with passing of a preliminary decree until final decree is passed was laid.
b) The concept of Survivorship and change in nature of Coparcenry
Property:

In HSA Act 1956, the application of doctrine of survivorship, one of the primary features of Mitakshara coparcenary was retained generally under Section 6, but was abolished in case the deceased coparcener left behind him any of the eight class I heirs or the son of a predeceased daughter. It invented the concept of a statutory/notional partition, the effect of which was a legal presumption of enforcing a partition immediately preceding the death of the deceased coparcener. The aim of this statutory/notional partition was to demarcate the share of the deceased, which would then go not by survivorship to the surviving coparcener as was the law prior to the enactment of the HSA but would be inherited by his class-I heirs that included females. The primary objective of introduction of this fictional or notional or statutory partition was to give some share out of the ancestral property to the daughters and other female members.

After considering the provisions of Sec.6 and 8 of Hindu Succession Act, it is clear that Sec.6 recognizes the special right of the Coparceners in the Coparcenry property which was in force prior to codification. Sec.8 of Hindu Succession Act not creates special rights and it deals only the mode of division of property among the legal heirs of a Hindu male who died intestate by leaving his separate property or share in a Coparcenry property. The proviso to old Sec.6 of Hindu Succession Act is incorporated as Sub-Section 3 in the amended Sec.6 of Hindu Succession Act with some modifications by removing the gender difference. As seen from the wording of amended Sec.6 of Hindu Succession Act, where a Hindu died intestate by leaving interest in the property of joint Hindu family governed by Mitakshara law shall devolve by testamentary or intestate succession as the case may be. What is the interest of the said Hindu Coparcener is subject to the rights of other Coparceners under the provisions of Sec.6 of Hindu Succession Act and after ascertaining the shares of the Coparceners survived by that time including the deceased Coparcener, notionally and decide the share of the deceased Hindu Coparcener in the entire Coparcenry property and thereafter only the legal heirs of deceased Hindu Coparcener would take their shares under Sec.8 of Hindu Succession Act. By reason of Sec.8 of Hindu Succession Act, the concept of Coparcenry not loses its enforceability. Sec.8 is supplemental to Sec.6 of Hindu Succession Act and it lays down the rules of succession among legal heirs and not effects the special rights of Coparceners. Sec.8 of Hindu Succession Act not overrides Sec.6 of Hindu
Succession Act. When Coparcenary property is in existence, in first, notionally divide the property among Coparceners including deceased Coparcener and then divide the share of property in which the deceased Coparceners had under Sec.8 of Hindu Succession Act among the heirs of him.

Procedurally and practically application of Section 8 to the share calculated by application of Section 6 has given rise to a lot of litigation. In Commissioner of Wealth Tax Kanpur Vs Chander Sen and ors reported in AIR 1986 SC 1753 Hon’ble Supreme Court at para-20 of its judgment observed that Sec.4 of the Act makes it clear that when there is doubt, one should see the Act and not the pre-existing law. As seen from the old as well as amended Sec.6 of Hindu Succession Act, legislature recognized the special rights under the concept of Coparcenry. It is a statutorily recognized concept and special right and therefore, courts can consider this concept and by reason of Sec.4 of Hindu Succession Act, Sec.6 not loses its applicability by reason of Codification of the principles of Succession under Hindu Succession Act.

The Supreme Court in significant judgment Uttam v. Saubhag Singh 2016 (4) SCC 68 dealt with the issue of devolution of a share in the coparcenary property and demarcation of share of a coparcener. The decision in Chanderson case13 was quoted and it was observed that shares inherited by the son under Section 8 in view of notional partition by way of legal friction under proviso to Section 6 of the Act, would constitute his separate property and the grandson would have no rights in the property as the whole of the property would convert from joint family property to separate property.

In Anar Devi & ors. v Parmeshwari Devi & ors 2006 (8) SCC 656 Explanation 1 of Section 6 of the Act came up for interpretation before the Supreme Court in para no.11 it is held that “for the purposes of finding out undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the Coparcenary property which he could have got in notional partition.”
Another two judges bench of Hon'ble Supreme Court in Bhanwar Singh Vs Puran and others reported in 2008(2) ALT 80 relied on the decision of Chandra Sen case. Recently again two judge's bench of Hon'ble Supreme Court in Shyam Narayan Prasad Vs Krishna Prasad reported in 2018 (4) ALT accepted the principle that if any Coparcener taken share in the Coparcenary property under a partition, his share of property to the extent of others is his separate property but the same is Coparcenary property to the extent of his sons and daughters born after partition.

c) Hindu Female Succession:

The Hindu Succession Act, 1956 brought in two major changes: it conferred under Section 14 of the Act full ownership of property on Hindu women who prior to the Act had only a "limited estate" and it diluted the doctrine of survivorship by introducing the concept of "notional partition" under the proviso to Section 6 of the Act. Further, with HSA (Amendment) Act, 2005, daughters are made as coparceners equal to that of sons. The former change has improved the condition of women considerably. The courts have interpreted the Section 14 of the Act liberally giving benefit to women.

In Jupudy Pardha Sarathy v. Pentapati Rama Krishna & Ors 2016(2) SCC 56, the Supreme Court held that a limited interest created in whatever form, in favour of a widow who was having a preexisting right of maintenance becomes an absolute right by the operation of Section 14(1) of the Hindu Succession Act. This was a case where the husband of the widow had bequeathed a limited interest in some property to her. The court held that the interest was given to her in lieu of maintenance since the husband was aware that she had no means to maintain herself and therefore, Section 14 (1) would apply and she had become the full owner of the property after the 1956 Act was enacted. They gave a narrow meaning to Section 14 (2) to ensure that the woman gets the benefit of Section 14 (1) and upheld the spirit of the provision.

In Sarupuri Narayannamma v Kadiyala Venkatasubbaiah, the Supreme Court has given the meaning to the word "pasupu Kummuma" to mean 'confering an absolute tile in the property.

In T.Venkatewara Rao v T. Nageswra Rao 2004(1) ALT 270 (DB), it was observed that the succession to a female Hindu generally is provided for under subsection (1) of S.15 and exception has been engrafted
under subsection(2) recognizing a differing mode of devolution in respect of
property which the women acquired by inheritance, in a way to a very
limited extent recognizing the old Hindu law in the matter which restricted
the woman’s estate in inherited property and provided for its devolution as
from the last full owner.

Dealing with the purport of Section 15 (2) of the Act, in *S.R. Srinivas
v S. Padavathamma*, the Supreme Court observed that the basic aim of
Section 15 (2) is to ensure that inherited property of an issueless female
Hindu dying intestate goes back to the source. It was enacted to prevent
inherited property falling into the hands of strangers.

d) Right of female heir claiming partition in dwelling house:

Prior to the amendments to Hindu Succession Act 2005, under Sec.23
of the Act, female heir is dis-entitles to ask for partition in respect of a
dwelling house wholly occupied by joint family until the male heirs choose to
divide their respective shares therein. Under the Amendment Act 2005,
deleted Sec.23 of the Act and thereby removed the discrimination between
male and female heirs in this regard. Now the female heirs are entitled to file
suit for partition of dwelling house even though male persons who are in
occupation of property not filed the suit for partition.

e) Re-marriage of a widow -heir right in the property of her
deceased husband:

Prior to the amendments to Hindu Succession Act 2005, any heir who
is related to an intestate as the widow of pre-deceased son, the widow of
pre-deceased son of a pre-deceased son or widow of brother shall not be
entitled to succeed to the property of intestate as such widow, if on the date
of the succession opens, she has re-married. By making amendments to
Hindu Succession Act in the year 2005, deleted Sec.24 of the Act. By reason
of deletion of Sec.24 from the Act, now a female continues as a legal heir in
the family of her deceased husband though she re-married before opening
the succession of an intestate in the family of her deceased husband.

f) Addition of some more Class-I legal heirs:

While making amendments to Hindu Succession Act in the year 2005,
some more heirs were added in the list of Class-I heirs of Schedule under
Sec.8 of Hindu Succession Act. They are (1) son of predeceased daughter of
pre-deceased daughter, (2) daughter of pre-deceased daughter of pre-deceased daughter, (3) daughter of a pre-deceased son of pre-deceased daughter and (4) daughter of a pre-deceased daughter of pre-deceased son.

Conclusion:

The 2005 Amendment Act is required to be seen as a step in the direction of reducing the existing gender inequalities.

(Smt. G. Swathi)
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Rajam.