

# LAW OF SUCCESSION AND INHERITANCE

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## I. INTRODUCTION

The Law relating to intestate succession among Hindus is codified under Hindu Succession Act, 1956. The Act brought about changes in the Law of Succession among Hindus and gave rights which were till then unknown in relation to women's property. Earlier landmark legislation was Hindu Womens' Right to Property Act (XVIII of ) 1937, which conferred ownership rights on women. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights. Later, Hindu Womens' Rights to Property (Extension to Agricultural Lands) Act, (Madras Act 26 of 1947 was enacted). The two enactments were considered in *L.Bappu Ayyar Vs. Ranganayaki & others* AIR 1955 Mad. 394 (DB). So also, the Hindu Inheritance (Removal of disabilities) has laid down that a lunatic or idiot by birth shall be excluded from Inheritance. The Act lays down the uniform and Comprehensive System of inheritance and applies, interalia, to persons governed by the Mithakshara and Dayabhaga Schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri Laws. These enactments were changed by introducing Hindu Succession Act, 1956. Section 6 of the Act, deals with the devolution of interest of a male Hindu will

coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The Hindu Succession Act, 1956 is not retrospective in its operation, but Section 14(1) is one of exceptions to this and thereby absolute rights are conferred in property acquired by a female Hindu, even before the Act came into force. Section 16 of Hindu Marriage Act, 1955 is amended on 27.05.1976 in respect of rights of the legitimacy of children of void and voidable marriages. Apart from State Laws, regarding creation of coparcenary right to the daughters, the Hindu Succession Act is amended by introducing amendment Act, 39 of 2005.

## **II. Different Types of Ancestral Property**

- A. Property inherited from a paternal ancestor
- B. Property inherited from a maternal grand-father
- C. Property inherited from collaterals or from females
- D. Share allotted on partition
- E. Property obtained by gift or will from a paternal ancestor
- F. Accretions

### **A. Property inherited from a paternal ancestor:**

Property inherited by a male Hindu from his father, father's father, or father's father's father, is ancestral property. The children, grandchildren and great-grandchildren of the person inheriting such property acquire an interest in it by birth. Thus, the term ancestral property is confined to property descending to the father from his male ancestor in the male line, and it is only in that property that the sons (and now, the daughters) acquire an interest jointly with, and equal to that of, their father. Property inherited from other relatives would,

therefore, not be ancestral property. For example: If X inherits property from his father's father, it is ancestral property as regards his issues. If X has no son or daughter when he inherits such property, he holds the property as the absolute owner thereof, and he can deal with the property in any manner he may choose to. If, however, such a person comes into existence subsequently, he/she becomes entitled to an interest in such property by the mere fact of his/her birth, and X cannot claim to hold the property as an absolute owner; nor can he deal with it as he likes.

### **B. Property inherited from a maternal grand-father:**

The principle of Hindu Law governing property inherited from a maternal grand-father is reflected in the following two decisions of the Privy Council. In *Venkayamma vs. Venkataramanyamma* (1905 25 Mad. 678), where in this case, two brothers, who were living as a joint family, inherited some property from their maternal grand-father. When one of them died, leaving a widow, the question arose as to whether his share in the property passed to his widow by succession or to his brother by survivorship. The Privy Council held that the property which the brothers had inherited was joint property in their hands, and that the undivided interest of the deceased passed, on his death, to his brother by survivorship, and not to the widow. However, in a later decision *Mohammad Hussain Khan vs. Babu Kishya Nandan Sahai*, 1937 64 I.A. 250, the Privy Council reversed its earlier ruling, and held that such property is not ancestral property. The effect of this decision is that property inherited by a daughter's son from his maternal grandfather is not ancestral property in his hands, but is his separate property

### **C. Property inherited from collaterals or from females:**

The only property that can be called ancestral property is that which has been inherited by a person from his father, father's father, or father's father's father. Therefore, property

inherited by a person from his collaterals, such as brother, uncle, etc., or property inherited by him from a female, e.g., his mother, will be his separate property.

**D. Share allotted on a partition:**

The share obtained by a coparcener on a partition of ancestral property is ancestral property as regards his issues. They take an interest in it by birth, whether they are in existence at the time of the partition or are born subsequently, as regards other relatives, however, such a share is separate property. So, if the coparcener dies without leaving any issue, it will pass to his heirs by succession.

**E. Property obtained by gift or will from a paternal ancestor:**

Where a Hindu makes a gift of his self-acquired or separate property to his son, or bequeaths it to him under a will, the question that arises is whether such property is the separate property of the son, or whether it is ancestral in his hands as regards his (his son's) male issues. The Supreme Court has now expressed its view on this point in *Arunachala Mudalier v. Muruganatha* 1954 S.C.R. 243, where the Court observed, in that case, that it is not possible to hold that such property must necessarily and under all circumstances, rank as ancestral property in the hands of the donee (or legatee). Rather, it must be seen whether the donor intended that the donee should take it exclusively for himself or that the gift would be for the branch of the family. This decision of the Supreme Court thus makes it clear that there is no presumption either way; it is a question of fact in each case, to be decided after considering all the circumstances of the case.

**F. Accretions:**

Accumulations and accretions of income of ancestral property are ancestral property. In *Ramanna v. Venkata*, 1888 11 Mad. 246 held that, property purchased or acquired out of the income or with the assistance of ancestral property, would be ancestral property. In *Lal*

Bahadur v. Kanhia Lal, 1907 29 All. 244 held that property purchased out of the sale proceeds of ancestral property or obtained in lieu of such property are ancestral property. It also be noted that children, grandchildren and great grandchildren acquire a vested interest, not only in the income and accretions of ancestral property which accrued after their birth, but also in that which accrued before their birth.

### **III. Hindu Coparcenary And Joint Family**

1. To understand the conception of coparcenary it is necessary to note the distinction between ancestral and separate property. The property inherited by a Hindu from his father's father and father's is ancestral property. Property inherited by other relations is his separate property. The essential feature of ancestral property is that if that person inheriting it has sons, grandsons or great grandsons, they become joint owners with him. They become 10 entitled to it by reason of their birth. Father, son, son's and son's son together constitute coparcenary, because they have common ownership in the ancestral property. The conception of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line four degrees counting from and inclusive of such ancestor. No coparcenary can commence without a common male ancestor, though after his death it may consist of collaterals, such as brothers, uncles and nephews, etc.

2. A member of a joint family may be removed more than four degrees from the common ancestor and yet he may be a coparcener. If he can demand partition he is a member of coparcenary. Only those members of a joint family can demand partition that is within four degrees from the last holder of the property. A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and

unmarried daughters. A Hindu coparcenary is on the other hand much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint coparcenary property. These are the sons, grandsons and great grandsons of the holder of joint property for the time being.

A Hindu coparcenary under the Mithakshara School consists of males alone: it includes only those members who acquire by birth, or adoption interest in the coparcenary property. The essence of coparcenary property is unity of ownership which is vested in the whole body of coparceners. While it remains joint, no individual member can predicate of the undivided property that he has a definite share therein. The interest of each coparcener is fluctuating, capable of being enlarged by deaths, and liable to be diminished by the birth of sons to coparceners: it is only on partition that the coparcener can claim that he has become entitled to a definite share. The two principal incidents of coparcenary property are: that the interest of coparceners devolves by survivorship and not by inheritance; and that the male issue of a coparcener acquires an interest in the coparcenary property by birth, not representing his father but in his own independent right acquired by birth.

For the First time, the effect of 2005 amendment was discussed The Hon'ble apex court in GANDURI KOTESHWARAMMA AIR 2012 SC 1693 held in a case where Son had filed suit against father and brothers and sisters. The father died in 1993. The Karnataka amendment came into force in 1994. The daughters married prior to amended act. They are claiming enhanced share under 2005 act and the same is granted by the apex court.

#### **IV SCOPE OF SECTION 6**

The Honourable Supreme Court of India in DANAMMA @ SUMAN SURPUR & ANR.VERSUS AMAR & ORS. Held the changes of section 6 of Hindu Succession Act, 1956

**Case Facts:** The appellants are two daughters of one, Gurulingappa Savadi, propositus of a Hindu Joint Family. Apart from these two daughters, he had two sons, namely, Arunkumar and Vijay. Gurulingappa Savadi died in the year 2001 leaving behind the aforesaid two daughters, two sons and his widow, Sumitra. After his death, Amar, S/o Arunkumar filed the suit for partition and a separate possession of the suit property that the two sons and widow were in joint possession of the aforesaid properties as coparceners and properties mentioned in Schedule B was signature not verified digitally signed by ASHWANI KUMAR acquired out of the joint family nucleus in the name of Gurulingappa Savadi. Case set up by him was that the appellants herein were not the coparceners in the said joint family as they were born prior to the enactment of Hindu Succession Act, 1956. It was also pleaded that they were married daughters and at the time of their marriage they had received gold and money and had, hence, relinquished their share. The appellants herein contested the suit by claiming that they were also entitled to share in the joint family properties, being daughters of Gurulingappa Savadi and for the reason that he had died after coming into force the Act of 1950. The trial court, while decreeing the suit held that the appellants were not entitled to any share as they were born prior to the enactment of the Act and, therefore, could not be considered. In this case, the trial court also rejected the alternate contention that the appellants had acquired share in the said properties, in any case, after the amendment in the year 2005 to the Act, 1950. This view of the trial court has been upheld by the High Court in the impugned judgement dated January 25, 2012 thereby confirming the decree dated August 09, 2007 passed in the suit filed for partition. The controversy now stands settled

with the authoritative pronouncement in the case of Prakash & Ors. v. Phulavati & Others which has approved the view taken by the aforesaid High Courts as well as Full Bench of the Bombay High Court. The law relating to a joint Hindu family governed by the Mitakshara law has undergone unprecedented changes. The said changes have been brought forward to address the growing need to merit equal treatment to the nearest female relatives, namely daughters of a coparcener. The section stipulates that a daughter would be a coparcener from her birth, and would have the same rights and liabilities as that of a son. The daughter would hold property to which she is entitled as a coparcenary property, which would be construed as property being capable of being disposed off by her either by a will or any other testamentary disposition. These changes have been sought to be made on the touchstone of equality, thus seeking to remove the perceived disability and prejudice to which a daughter was subjected. The fundamental changes brought forward about in the Hindu Succession Act, 1956 by amending it in 2005. The Ideal Element in Law, that the law must be stable and yet it cannot stand still. In the present case, no doubt, suit for partition was filed in the year 2002. However, during the pendency of this suit, Section 6 of the Act was amended as the decree was passed by the trial court only in the year 2007. Thus, the rights of the appellants got crystallised in the year 2005 and this event should have been kept in mind by the trial court as well as by the High Court.

The appeals are allowed and thus Honourable Supreme Court has clarified that the Hindu Succession Act ( 2005 ) includes daughters who were born prior to the date o'f the introduction of the law as well.

In Ganduri Koteswaramma & Anr. v. Chakiri Yanadi & Anr. held that the rights of daughters in coparcenary property as per the amended S. 6 are not lost merely because a

preliminary decree has been passed in a partition suit. So far as partition suits are concerned, the partition becomes final only on the passing of a final decree. Where such situation arises, the preliminary decree would have to be amended taking into account the change in the law by the amendment of 2005.

In *B.Chandrakala Vs. A.Anuradha* Judgment dated 31.12.2014, their Lordships of Honourable High Court considered the nature of amended Act of 2005 of Hindu Succession Act and thoroughly examined the daughters' share in coparcenary property. The Bar under section 23 of the Act was also considered, since deleted by the Act, 2005. The Prospective nature and Scope of the amended provision of section 6 of the amended Act of 2005 was examined. The same view was taken by the Honourable Supreme Court in the case of *Prakash Vs Phulavati*.

In *M.Sujatha W/O Late M.Bhupati vs M.Surender Reddy & Others* Judgment dated 1st April, 2015, the Honourable High Court of A.P., made observations that in a suit for partition, the daughter being coparcenar, is entitled to share in the joint family property. The retrospective nature of the amended Act of 2005 of Hindu Succession Act was examined. Till today in recent judgment in *Kunchakurthy Veera Sangayya and others vs. G.Sakunthala (died)* per Lrs, 2018 (6) ALT 66 (DB) their lordships have considered the the amended section 6 of Act, 2005 in respect of the daughter being coparcenar, is entitled to share in the joint family property.

## **CONCLUSION**

The Gender justice and equality of daughter with the son has been checked from time to time by the legislature and the Honourable Apex Court has been expressing its progressive

outlook considering Articles 14 & 15 of the Constitution. But, however, declaring Father as Class-I heir, has become a forgotten aspect, though the son-in-law and daughter-in-law are added as protectors of father and mother or father-in-law and Mother-in-law under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Amended Act, 2018).

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