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SUPREME COURT CLEARS THE AIR ON COPARCENARY RIGHTS OF DAUGHTERS UNDER THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

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Introduction:

A three-judge bench of the Supreme Court in the case of Vineeta Sharma v. Rakesh Sharma & Ors. [Diary No.32601 of 2018] and a batch of similar appeals tagged together has finally settled the issue of applicability and scope of Sec.6 of the Hindu Succession Act, 1956 (1956 Act) as amended by the Hindu Succession (Amendment) Act, 2005 (2005 Amendment). There was lack of clarity regarding the amended section which deals with devolution of interest in coparcenary property due to conflicting judgments of the Supreme Court in *Prakash & Ors. v. Phulavati & Ors.* [(2016)2SCC36] (Phulavati) and *Danamma@ Suman Surpur & Anr. v. Amar & Ors.* [(2018) 3 SCC 343] (Danamma).

In Phulavati, the Supreme Court held that Sec.6 would apply only when the coparcener and his daughter, both were alive on the date of commencement of the 2005 Amendment. In Danamma, while the Supreme Court agreed with the principles laid down in Phulavati, it held that the 2005 amendment confers upon the daughter of the coparcener, the status of coparcener in her own right in the same manner as the son and accordingly, the female coparcener was given a share upon partition even if the father had died before the 2005 Amendment came in force.

Contentions:

Arguments for and against the correctness of the decision in Phulavati and Danamma were made by the parties in appeals. The Court also heard submissions of the Union of India and the Amici Curiae appointed by the Court.

Following were the main submissions made on behalf of the Union of India:

- The exclusion of a daughter from coparcenary was discriminatory and led to oppression and negation of fundamental rights.
- The conferment of rights on the daughter does not disturb the rights which got crystallised by partition before 20 December 2004.
- The decision in Phulavati failed to appreciate that coparcenary rights accrued by birth by operation of law, and death of a coparcener was only relevant for the succession of his coparcenary interest at the time of partition. Thus, the daughter of a coparcener had herself become a coparcener on her birth and her father need not have been alive on the commencement of the 2005 Amendment.

- The explanation to Sec.6(5) requiring the partition to be registered, was inserted to avoid any bogus or sham transactions. The requirement of registration was directory and not mandatory. Any family arrangement or oral partition relied upon would have to be proved by leading documentary evidence.

The principal submissions by the Amici Curiae were:

- There was no conflict between the decisions in Phulavati and Danamma as both held that Sec.6 was prospective in application.

- The scheme of Sec.6 was future and forward-looking. Thus, only the daughter, whose coparcener father was alive on the commencement of 2005 Amendment, would be treated as a coparcener.

Decision:

The Court delved into a historical analysis of Hindu Law and the concept of Joint Hindu Family to arrive at its decision. It also went on to discuss the formation of a coparcenary. The significant findings are:

- Unobstructed heritage takes place by birth while obstructed heritage takes place after the death of the owner. Under Sec.6, rights are given by birth, which is unobstructed heritage, independent of the owner's death. Thus, the coparcener father need not be alive on the date of substitution of Sec.6 i.e. 9 September 2005.

- The provisions of section 6 are retroactive in nature and not retrospective as even though the right of a coparcener accrued to the daughter by birth, it could be claimed only from the date of the 2005 Amendment.

- The coparcenary right to be claimed by a daughter with effect from commencement of 2005 Amendment is subject to any disposition or alienation, testamentary disposition of the property or partition which had taken place before 20 December 2004.

- The finding in Phulavati, that the rights under Sec.6 accrue to living daughters of living coparceners as on 9 September 2005 irrespective of when such daughters were born, was misconceived. Phulvati overlooked the concept of creation of a coparcenary at birth and was accordingly overruled. The decision in *Mangammal v. T.B. Raju* [(2018)15SCC662] which followed Phulavati was also overruled while the decision in Danamma was partly overruled.

- Mere filing of a suit for partition does not bring about partition. In fact, any subsequent change in law from the time of filing the suit, could also be taken into consideration before passing of the final decree.

- Though, the Explanation to Sec.6(5) contemplates partition only by the virtue of registered partition deed or partition effected by a decree of court, the Courts could recognize oral partition in exceptional cases based upon long standing evidences in the form of contemporaneous public documents.

In view of the delay caused due to these conflicting decisions, the Supreme Court has directed all High Courts and subordinate courts to dispose of cases involving this issue, as far as possible, within six months.

Comment:

The interpretation of Sec.6 as settled by the Supreme Court is a progressive and a welcome decision.

In effect, after the 2005 amendment a daughter will no longer be treated on a separate footing from a son. The Court has clarified that the father need not be alive on the date of the 2005 Amendment for the daughter to be able to claim her coparcenary right.

The judgment also clarifies the intent behind introducing a special definition of "partition" and has held that in order to protect the interests of daughters form sham transaction which could be set up to show partition, oral partitions and unregistered memorandums could be considered only in exceptional situations and after discharging a high burden of proof,. The coparcenary rights are conferred on the daughter if she is alive on the date of 2005 Amendment irrespective of her date of birth.

In so far as the self-acquired property is concerned, daughters are class I heirs and entitled to an equal share as that of a son in every intestate succession. As an outcome of this decision, the daughters will now also have an equal right in ancestral property and their father's Joint Family property. The judgment will go a long way in promoting gender equality. This judgment may have a significant impact on the pending litigation including cases where the final decree is yet to be passed and in cases where the coparcenary property is the subject matter of a dispute.

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