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Sharma v Sharma: A Case Comment

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ABSTRACT

Although it has been seventy-four years since India gained independence, women's rights to familial property have been very limited. The 2005 amendment to the Hindu Succession Act, accompanied by the judgements leading to Sharma v. Sharma have only been minor stepping stones towards achieving equality in matters pertaining to property rights. This case comment provides an insight into the historical discrimination faced by women by delving into the Hindu Succession Act, 1956, along with its subsequent amendment which brought about important constitutional questions about equality under Article 14. We look at three important judgements- Danamma Suman Surpur & Another v Amar & Others, Prakash & Ors. V. Phulavati & Ors, and Sharma v Sharma to show the trajectory of change that has taken place over the years to provide more inclusive laws with respect to inheritance. The aim of this paper is to elucidate the modifications that have taken place in the Hindu Succession Act over the years and the persisting challenges that it needs to address.

I. INTRODUCTION

Women have been historically discriminated against in the Indian society due to its deeply patriarchal roots. They have been systemically oppressed in all spheres of the society and have been defined by their relations to the men in their life. Only with the gradual legislative changes over the course of the last few decades there have been attempts to bring about constitutional equality of women. Property rights too, have always been exclusively for the benefit of men and women had little to no rights. Before the introduction of the Hindu Succession Act 1956, Shastric customary laws were followed which

varied according to regions. In a patriarchal system like ours, the woman had no control and ownership over property and was not given the same rights as the son when it came to family, ancestral property. The framers of the constitution took measures to alleviate women from the discrimination they have suffered over centuries and give them equal status as that of a man. The fundamental rights and directive principles provided by the constitution provided equality and nondiscrimination based on sex and enabled the state to make laws to further such equality on the basis of protective, positive discrimination. One such step towards equality

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was the Hindu Succession Act introduced in 1956.

The Hindu Succession Act 1956 brought about a uniform codified law that governs intestate succession among the Hindus. It brought about many revolutionary changes that empowered women and their right to own and acquire property. Though the Hindu succession act provided full ownership rights to women as compared to the previous laws that only provided them with limited partial ownership, its efforts to bring about equality were not enough due to its inclusion of section 6. When a Hindu male died intestate, all his property was divided among the widow, mother, sons and daughters in equal shares but the devolution of coparcenary interest governed by section 6 was based on survivorship and Mitakshara law. Section 6 exclusively reserved the coparcenary rights to men.

In the Hindu joint family system, ancestral property has always been held by male coparceners and it descends through the male members of the family by birth. The interest of the coparcenary property in a joint family is automatically available to a man by birth. Since a woman could not be a part of this coparcenary, she was never entitled to her share of the ancestral property by birth. Section 6 of the Hindu succession act states as follows, “When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and

not in accordance with this Act.”³ The property is devolved by survivorship to the surviving coparceners unless the previous coparcener has “left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative”⁴ in such a case, the interest is devolved by testamentary or intestate succession and not the Mitakshara law which prescribes devolution of property by survivorship. The problem was in the fact that women had a claim to the ancestral property in the form of interest only upon partition of the coparcenary property on the death of their father or their husband. They had no direct claim to the coparcenary by birth unlike the sons. Therefore, the daughter or the widow had no right to claim to be a survivor as she can never be recognized as a coparcener merely due to her gender.

Over the next few decades after the implementation of the HSA, 1956 there have been individual state legislatures that have taken measures to bring about more gender equality in property rights. The state legislatures of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu provided unmarried daughters with equal coparcenary rights as the son, they were entitled to ancestral property by birth. The Kerala State Legislature completely removed the right to coparcenary rights by birth greatly altering the Hindu joint family system. The 174th law commission report recommended changes to section 6 based on the Andhra and the Kerala models with modifications. The Law Commission Report which mainly focused on

³ Hindu Succession Act, 1956

⁴ Ibid (1)

section 6 and the danger it poses towards achievement to gender equality in the Hindu Succession Laws. Post this, the Hindu Succession Amendment act was passed in 2005. Section 6 (1) of the amended HSA states that “on and from the commencement of the Hindu Succession (Amendment) Act 2005, in a joint Hindu family, governed by the Mitakshara law the daughter of a coparcener shall- a) by birth become a coparcener in her own right in the same manner as the son”^{5 6 7}

The amendment to the Hindu succession act in 2005 brought about major changes in the rights of women and their claim to ancestral property. Many questions were raised as to the prospective or retrospective application of this act like whether daughters born prior to the enactment of the act were entitled to claim a share as coparceners by birth, one such case was *Danamma v Amar*. In this particular case, Gurulingappa Savadi was the head of the joint family who died in 2001 after which his grandson bought a suit of partition for the family property claiming that only Gurulingappa’s widow and his two sons were the owners of the property and the two married daughters were not entitled to any share in the property, as they were born prior to HSA, 1956 and therefore, could not be treated as coparceners. The trial court upheld the contention and said that the daughters had no right to family property. When appealed to the supreme court, the ruling of the lower court was

reversed and it was held that the 2005 amendment states that any daughter of a coparcener by birth becomes the coparcener and is entitled to the same rights and liabilities as the son. The suit for partition was filed in the trial court in 2002 and the partition decree was announced in 2007, the introduction of the HSA, 2005 should have been considered in the decision of the lower courts. The amendment is not retrospective in nature; however, the partition became final only when the judgement was passed in 2007 therefore, the amendment must be taken into consideration. The court stated that, “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... 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.”⁸ This judgement was an important milestone achieved towards inclusivity of women in the ownership of ancestral property.⁹

The case *Prakash & Ors v. Phulavati & Ors*, 2016¹⁰ was a landmark judgement as it elaborated on the applicability of the Act to the ‘living daughters of living coparceners regardless of their date of birth.’ In this case, the respondent claimed her share to the ancestral property of her deceased father. The High Court had held that since the amended act had come into power post the respondent’s father’s demise,

⁵ Hindu Succession (Amendment) Act, 2005

⁶ Coparcenary Rights to Daughters: Constitutional and Interpretational Issues by B. Sivaramayya Cite as: (1997) 3 SCC (Jour) 25

⁷ Law Commission, Property Rights of Women: Proposed Reforms Under Hindu Law, (Law com

report 174, 2000)

⁸ *Danamma Suman Surpur & Another v Amar & Others*, Civil Appeal Nos. 188-189 of 2018

⁹ *Ibid* (4)

¹⁰ *Prakash & Ors. V. Phulavati & Ors.*, (2016) 1 Supreme Court Cases (Civ) 549.

it cannot be applied to the case, However, the Supreme Court reversed the HC judgement and held that, ‘the amendment can be applied to the daughters, whose father was a living coparcener as of 9th September, 2005, regardless of when the daughters were born.’ Since the respondent’s father was not a living coparcener on the date of commencement of the judgement, the respondent is not considered to be a coparcener. The court also stated that even though the amendment acted as a progressive social legislation, it had to contain express mention of retrospective application to be considered for previous cases.¹¹

The judgement in the case of Prakash & Ors and Phulavati & Ors, 2016 stated that the provisions of the amendment are applicable prospectively to living daughters of living coparceners as of 9/9/2005 irrespective of when the daughters were born. However, in a previous judgement provided by the court in Danamma v Amar Singh, the court granted the rights in a coparcenary to the daughter of a coparcener that had died much before 9/9/2005. Due to these conflicting judgements provided by the apex court, a three judge constitutional bench was set up in Vineeta Sharma v Rakesh Sharma, 2020.¹² The court delivered a judgement which answered the issues that were raised regarding the amendment such as whether the father should be living as of 9/9/2005, whether a daughter born

before 9/9/2005 can claim the same rights as a coparcenary as that of a son, whether notional partition introduced by the original act brings about actual partition in a coparcenary and whether a plea of oral partition can be accepted as the statutory recognized mode of partition after 20/12/2004.¹³ The court held that “The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities... The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004... Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.”¹⁴ It also stated that it is unimportant whether the father coparcener is alive at the time of the amendment because it has a retroactive effect. It “works backwards and also undo the impairment caused prior to its coming into force. This amendment too operates in futuro but by virtue of its retroactive operation, it confers rights on daughters from the time of their birth even if the birth took place prior to the amendment”

The coparcenary rights were extended to women

¹¹ Ibid (6)

¹² Vineeta Sharma vs Rakesh Sharma, 2020 (Supreme Court of India)

¹³ Jain A, “Vineeta Sharma v. Rakesh Sharma: Clearing the Last Hurdle towards Gender Equality in Hindu Property Law” (*Bar and Bench - Indian Legal news*) <[https://www.barandbench.com/columns/vineeta-sharma-v-rakesh-sharma-gender-equality-hindu-](https://www.barandbench.com/columns/vineeta-sharma-v-rakesh-sharma-gender-equality-hindu-property-law)

[property-law](https://www.barandbench.com/columns/vineeta-sharma-v-rakesh-sharma-gender-equality-hindu-property-law)> accessed May 7, 2021

¹⁴ Mahajan S, “Daughters Become Equal Coparceners at Birth Even If Born Prior to 2005 Amendment to Hindu Succession Act: Supreme Court” (*Bar and Bench - Indian Legal news*) <<https://www.barandbench.com/news/litigation/supreme-court-daughter-equal-coparcener-amendment-hindu-succession-act>>

and the goal of gender justice with respect to ancestral inheritance was constitutionally achieved when the Hindu Succession Amendment Act, 2005 was implemented. The *Sharma v Sharma* case was a push towards achieving this equality and answering questions as to the scope of the applicability of these newly introduced rights. The constitutional right to equality of genders was achieved with the amendment but women still continue to be socially discriminated against. Legislative changes introduced in order to achieve equality have had drastic social impacts, a 2018 study published in the *Journal of Development economics* found that state legislatures that amended the HSA 1956 had a higher rate of female foeticide and infant mortality, there was a higher amount of sex selective abortions between the years 1970 and 1990.¹⁵ The Indian society is still of the view that once a woman is married, she belongs to her martial family and they would control over her share of the natal family's property. This view is also seen with the lack of legislation that governs succession of a woman's self-acquired property as seen in the case, *Omprakash & Ors v Radhacharan & Ors*, 2005.¹⁶ In this case, the interstate had left behind self-acquired property was unfairly devolved upon her deceased husband's heirs since there is no provision for self-acquired property of Hindu females under the HSA, 1956. Although law commission reports have been introduced to

amend the current Hindu Succession Act, there is a need for substantive changes in law with changing times where women are actively reaching new heights in every aspect of life.¹⁷ Thus to conclude, constitutional progress is not equal to social progress and in a patriarchal society like ours where women continue to be treated as property, their property rights have a long way to go.

¹⁵ Sanghera T, "Reforms of India's Inheritance Laws Inadvertently Increased Female Foeticide and Deaths in Infancy" (*India spend* February 23, 2019), <https://www.indiaspend.com/reforms-of-indias-inheritance-laws-inadvertently-increased-female-foeticide-and-deaths-in-infancy/> accessed May 8, 2021

¹⁶ *Omprakash & Ors vs Radhacharan & Ors* on 5 May, 2009

¹⁷ Law commission, Proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a female dies intestate leaving her self-acquired property with no heirs (Law Com No.207, 2008)