
JOINT HINDU FAMILY AND RIGHTS OF DAUGHTER IN PROPERTY

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ABSTRACT

A unique concept recognised by Hindu law is the HUF (Hindu Undivided Family), which refers to a group of people who are lineally derived from a common male ancestor and are linked to one another through birth or marriage. One may categorise the members of a joint family into two types. In the first group, which includes all coparceners, there are those who were born into the family or who were adopted into the family. The second group consists of female members who have become part of the family as a result of their marriage to a male member of the family. All the coparcener are members but vice versa is not true. Prior to the amendment of the law, only male members were considered coparceners; however, following the amendment of the law, daughters are now considered coparceners as well, and they have the same rights as sons.

A portion in the joint family property was not provided for by the legislation prior to its alteration, and the daughter had no such right. The daughter, on the other hand, was entitled to receive her half of her father's interests in the joint family upon his death in the same manner that he would have received his individual property had he died before her. The father's portion of the property was determined by assuming that a notional division had taken place shortly before his death in order to determine his share of the property. In the event that the male had no female heirs, his portion of the joint family property would be passed on to the remaining coparceners under the law of survivorship.

In this paper, rights of daughter in joint hindu family will be discussed in an edifying manner and apart from that, the paper will also throw light on the evolution of rights of daughter with respect to joint hindu property.

Keywords: Hindu Undivided Family, joint family, coparcener, property, survivorship, etc.

INTRODUCTION

All of their parents' self-acquired property, as well as any other property in which they are absolute proprietors, is passed down to them as daughters. During the course of its decision in a case that dealt with the property rights of women, the Supreme Court noted that this rule would apply even in cases where the parents of a daughter died intestate prior to the codification of the Hindu Succession Act, 1956. The ruling came as part of a case that dealt with the property rights of women.

The judgement by the Supreme Court permitted the self-acquired possessions of Marappa Gounder, who died intestate in 1949, to be passed on to his lone surviving daughter Kupayee Ammal, despite the fact that his combined family was still residing in the home at the time of his passing. “Coparcener is a word used in Hindu succession law to refer to a person who acquires a legal claim in his or her ancestors' property as a result of his or her birth into a Hindu Undivided Family (HUF). According to the Hindu Succession Act of 1956, each person who is born into a Hindu family automatically becomes a coparcener. Members of the HUF have distinct rights than coparceners when it comes to the HUF's property. Coparceners have the right to petition the court for the division of the property and the distribution of the shares. Members of the HUF, such as daughters and mothers, had the right to receive support from HUF property as well as a portion in the HUF's property if and when the HUF was disbanded or otherwise divided. On becoming a member of the father's HUF, his daughter would lose the right to receive maintenance from her father, as well as the right to receive a portion of any HUF property that was partitioned after her marriage, if such property was partitioned.” Due to the fact that only a coparcener was eligible to become the Karta of the HUF, female members were denied the opportunity to serve as Karta and administer the activities of the organisation.

On September 9, 2005, “Section 6 of the Hindu Succession Act, 1956, which deals with a coparcener's interest in a HUF's property, was amended to reflect the new provisions. Daughters now have the same rights as sons when it comes to coparcenary rights in HUF property as a result of this modification. Thus, the daughter inherits all of the rights associated with coparcenary, including the right to petition for the division of property and the right to become a Karta of the HUF. Only the daughters who are born into the family, on the other hand, will be granted coparcenary privileges. Other female relatives of the family who are brought into the family via marriage are still considered as members of the family. As a result, they do not have the right to apply for the division, but they do have the right to maintenance

and shares if and when the partition occurs.”

An adult daughter will no longer be considered a member of her paternal HUF, but she will continue to be considered a coparcener. As a result, if she happens to be the oldest coparcener of her father's HUF, she has the right to petition for the division of the HUF's property as well as the right to become the Karta of the HUF. “It is possible that a married daughter who has died may be survived by her children, who will be entitled to the shares that she would have gotten if she had survived the division. In the event that none of her children are living on the day of division, the grandchildren will be entitled to the shares that would have been distributed to the daughter had she been alive. It is interesting to note that the daughter is unable to transfer her half of the HUF property while she is alive, but she is entirely capable of transferring her share of the HUF property via a will. If she dies without having made a will, her portion of the joint property will not transfer to the other members of the HUF, but would instead pass to her legal heirs. Following the Supreme Court's decision, family members on the maternal side of a Hindu widow are no longer deemed strangers, and her property may pass to them under the Hindu Succession Act, which was enacted in 1890. The Supreme Court of India has stated that the heirs of a Hindu woman's father are included in the category of individuals entitled to succession of property. The Supreme Court upheld the decision of the high court and the trial court, which allowed a childless widow to enter into a family settlement in order to transfer her property to her brother's son. The court stated that a perusal of Section 15 of the Hindu Succession Act indicates that heirs of the father are covered in the heirs (of the property) who could succeed. When the heirs of a female's father are listed as those who may be able to succeed her, it cannot be argued that they are strangers and not part of the female's family as a whole.”¹

EQUAL RIGHTS OF DAUGHTERS IN JOINT FAMILY PROPERTY

Specifically, under Hindu law, property is divided into two categories for the purposes of inheritance: There are two types of property: (1) joint family property and (2) self-acquired property. A son's inheritance from his father, paternal grandpa, and even paternal great-grandfather is deemed Joint Family Property, which means that anything he inherits from them is considered his property. All other property is regarded as having been acquired by the taxpayer. According to where you live in India, the nature of various sorts of properties is either

¹ Srimati Basu, *She Comes To Take Her Rights: Indian Women, Property, And Propriety* 78 (State University of New York Press 1999).

the same or different depending on your location. In the following areas, this difference is observed²:

1. Joint family property is inherited in a different way than individual family property (compared to Self-Acquired Property).
2. Multiple individuals have rights to the Joint Family Property as a result of their birth. This is in contrast to Self-Gained Property, over which rights may only be bought if the property was acquired by the owner himself.

The rights of both sons and daughters to inherit, acquire, keep, and dispose of their ancestors' Self-Acquired Property are generally the same across the world, regardless of where they live. For a long time, however, in places where this difference is maintained, females did not have the same rights as boys in the context of Joint Family Property. If you compare daughters to boys, you will find that they are at a disadvantage in terms of both their rights to govern the property and their rights to inherit it. Over the course of the last century, law after legislation has worked to reduce this inequity. Finally, with the passing of the Hindu Succession (Amendment) Act, 2005, sons and daughters now have equal rights to inherit the Joint Family Property of their forefathers, which was formerly reserved for male heirs. *Vineeta Sharma v. Rakesh Sharma*, a Supreme Court ruling on the property rights of daughters, was handed out in 2020, and it established that sons and daughters had precisely the same rights in the Joint Family Property, as was previously thought. The daughter's inheritance rights are unaffected by her marriage, the death of her husband, the death of her father, or any other event that occurs in her life. As a result, the lawsuit made use of a phrase that has since become well-known: "once a daughter, always a daughter." The property rights in the Joint Family Property of their parents are the same for both an unmarried daughter and a married daughter, as a result of this arrangement. A daughter-in-law has the right to inherit her father-in-law's property as well as her own. This regulation applies equally to a daughter-in-law who has been widowed. During her lifetime, the daughter is entitled to govern and inherit the Joint Family Property of her forebears on the same basis that a boy would be allowed to do so.³

² Niyati Karia and Urvi Jinsiwale, *Daughters: The New Equals?*, SCC ONLINE (Feb 15, 2022, 10:04 AM), <https://www.sconline.com/blog/post/2021/01/22/daughters-the-new-equals/#:~:text=ED.,-Published%20on%20January&text=On%2011%2D8%2D2020%2C,constitutional%20belief%20of%20gender%20equality>.

³ Reena Patel, *Hindu Women's Property Rights In Rural India: Law, Labour And Culture In Action* 45 (Taylor & Francis 2018).

BACKGROUND AND HISTORY

- When there was no specific rule governing the inheritance of property among all Hindus, the situation was as follows:
- Caste and conventions were used to create a variety of laws, which were then applied differently in different parts of the world. The Hindu Succession Act, 1956 was created in order to develop a standard legal framework that would deal with all kinds of coparcenary inheritance under Hindu law and to address this need.
- When the Hindu Succession Act, 1956, was passed, it established the survivorship rule, which states that property passes to the survivor only after the death of the common ancestor. This guideline was essential in determining who would receive the family property. The coparcenary rights on such property were only granted to the male heirs who were within three degrees of the coparcener at the time of the purchase. They were referred to as the ancestor's lineal descendants at the time.
- Previously, Section 6 of the Hindu Succession Act of 1956 stated that “When a Hindu male dies after the commencement of this Act and has 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.”
- Women, on the other hand, were not regarded to be legal heirs to the ancestral property in the same way that males were believed to be. The rationale for this exclusion was because she is expected to marry and become a member of another family in the near future. For example, the wife of a coparcener was not considered to be a direct descendant of the progenitor since she is not considered to be a descendant. It was necessary to revise the Hindu Succession Act, 1956, to address the unfair treatment of women and the suppression of their basic rights as a result of this approach.⁴

DEVELOPMENT OF THE LAW OVER THE YEARS

“The Hindu Succession (Amendment) Act, 2005”, was approved after five decades of back and forth on the issue of whether a woman has the right to inherit the coparcenary property or not,

⁴ Kovuru Uma Devi, Property Rights Of Women 12 (Serials Publications 2008).

and after much debate. Coparcenary property is defined as property that is inherited by a Hindu from his father, grandpa, or great grandfather, among other sources. Coparcener is a term that refers to anyone who has the right to inherit ancestral property through their parents' marriage. Changes brought about by the Hindu Succession (Amendment) Act, 2005. It amended the provision that removed the “right of daughters to inherit coparcenary property from their fathers. In the event of the death of a Hindu, the coparcenary property will be divided amongst the sons and daughters in the same proportion. As a result, it was determined that the daughter of a coparcener should be by birth a coparcener, just as the boy is. It abolished the succession based on the law of survivorship and replaced it with Testamentary Succession and Intestate Succession, respectively.”

As is the case with a Hindu Undivided Family, “both a daughter and a son have the right to seek a division. A daughter has the authority to dispose of her portion of the coparcenary property on her own initiative. In the event that a partition occurs shortly before the death of a female coparcener, the children of such coparcener shall be entitled to inherit the coparcenary property. Coparceners have the right to seek division in the coparcenary property if they choose to do so. It became more difficult to implement the legislation retroactively as a result. A successful application would result in the reopening of several settlements that have already been completed. In order to prevent this situation, the court set the date of December 20, 2004 as the deadline for restricting the applicability of the modified statute retroactively. According to the ruling, a daughter who continues to seek division in order to get a piece of the culled out property cannot have her claim refused on the basis of an oral family settlement that is backed by public papers. The Hindu Succession (Amendment) Act, 2005, proven to be more gender-neutral than previous legislation. Gender discrimination and violation of the basic right to equality of women, which were related with the 1956 Act, were severed from the legislation.” It made it possible for women to be the coparceners in the Mitakshara Coparcenary Property inheritance. It supported the constitutional ideals by granting equal rights to men and women in the workplace. The Amendment Act, on the other hand, brought with it the repercussions of legal uncertainty.⁵

⁵ Sunita Mishra, *Who is an heir and what is inheritance?*, HOUSING.COM (Feb 15, 2022, 10:25 AM), <https://housing.com/news/all-about-property-rights-in-india/>.

LANDMARK CASES

Case of Prakash & Ors. v. Phulavati & Ors.⁶

The Hon'ble Supreme Court of India said in this matter that “the rights of coparceners under the Amendment Act, 2005 extend to the live daughters of living coparceners as of September 9, 2005, regardless of the daughters' birth date. It indicates that if a coparcener's father died before September 9, 2005, the coparcener's live daughter would have no right to inherit the coparcenary property in such a case. This case shed insight on how the Amendment Act of 2005 was interpreted. It specified that if the coparcener died before the Act's inception, the Act would not apply to him. It indicates that the survivorship rule will apply in such instances, and the daughter will have no claim to the coparcenary property.”

Case of Danamma v. Amar Singh⁷

The Hon'ble Supreme Court of India held in this case that “if the father was a coparcener who died before September 9, 2005, and a previous petition for partition by a male coparcener was ongoing, the female coparceners were entitled to a share. The court stated that the provisions of Section 6 of the Amendment Act are retroactive and provide the daughter unlimited rights to be a coparcener from the moment she is born. In contrast to the ruling in the Phulavati case, this determination was made. As a result, both of the aforementioned judgements were in disagreement with one another, resulting in a slew of doubts about a daughter's coparcenary rights in inheriting her late father's coparcenary property.” As a result, the Hon'ble Supreme Court of India granted an appeal.

Case of Vineeta Sharma v. Rakesh Sharma & Ors.⁸

This case was decided by the Hon'ble Supreme Court of India, which handed down a “122-page decision. The court ruled that women have been exposed to historical unfairness when it comes to being a coparcener and that they must be afforded equal rights regardless of whether the Amended Act, 2005 is applied prospectively or retrospectively.”

Under Mitakshara coparcenary, the birthright of a coparcener, i.e. unobstructed legacy, is explained in “Section 6(1)(a) of the Amendment Act, 2005, which allows the coparcener to

⁶ Prakash & Ors. v. Phulavati & Ors, (2016) 2 SCC 36.

⁷ Danamma v. Amar Singh, (2018) 3SCC 343.

⁸ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

inherit the land. Because the coparcener has a claim to the ancestral property by birth, the court determined that the father (the coparcener) does not have to be alive at the time of the modification to be valid. This is due to the fact that the coparcenary rights provided by the daughter are bestowed by her birth rather than through blocked inheritance. As a result, the idea established in the Phulavati case that both the father (coparcener) and the daughter must be alive on the day that the Amendment Act, 2005” came into effect was overturned by the court.

Section 6 of the Amendment Act, 2005, was found to be applicable retrospectively by the Supreme Court of India, which upheld this decision. After elucidating the notion of retroactive application of the Amendment Act, 2005, it was determined that the said Act permits women to get the advantage of succession depending on the date of their birth. With the help of this lawsuit, it was determined that girls had the same rights as sons in the coparcenary property, even though their father died before to the passage of the Hindu Succession (Amendment) Act, 2005. It further decided that the rights conferred by the abovementioned amendment are applicable to live daughters of living coparceners as of the 9th of September 2005, regardless of the date of birth of the daughter in question.

CONCLUSION

The HSA was amended in 2005, and the daughter now has equal property rights with her father. Prior to 2005, males were entitled to inherit their dead father's property, whilst daughters were only entitled to inherit their father's property while they were still single. It was formerly believed that following marriage, a woman becomes a member of her husband's family and, as a result, has rights in a different Hindu Undivided Family (HUF). “Daughters, whether married or single, now have the same rights to their father's property that their brothers have. They are also entitled to the same rights, obligations, and responsibilities as their older brothers. On September 9, 2005, it was also determined that a daughter had the same rights as her father, assuming that both father and daughter were still alive on that day. In 2018, the Supreme Court ruled that a daughter may inherit her dead father's property regardless of whether the father was still alive at the time of the inheritance.” Women were permitted to serve as coparceners from this point on. They have the right to claim a piece of their father's property. A ruling by the Supreme Court of India in 2022 stated that “daughters have the right to inherit their parents' self-acquired property, as well as any other property in which they are absolute owners. The court also stated that this rule applies even in cases where the parents of a daughter died

intestate prior to the codification of the Hindu Succession Act, 1956.”

For the reason that laws are generally regarded as prospective, civil cases involving coparcenary property raised questions such as whether it would apply only to daughters born after September 9, 2005, or whether it would be limited to those whose father — the coparcener through whom they will inherit the status — was also alive on that date. Many judges held that the new legislation would only apply to the daughters of surviving coparceners, and that this was the correct interpretation. As a result, it was claimed that if a man died before 2005, his interest would not have transferred to his daughter since the amendment had not yet taken effect. Assuming that such women were granted coparcenary status, it would follow that the amendment had retroactive effect.

The Hindu Succession Act, 1956, was the first piece of legislation to codify the Hindu Law governing the transfer of property. It dealt with the devolution of interest in ancestral and self-acquired property in the case of a Hindu intestate who died without a will. Although not explicitly discriminatory, the Act did so on the basis of gender inequity and the violation of the basic right to equality, which is guaranteed by “Article 14 of the Indian Constitution. It only granted coparcenary rights to male lineal descendants of the family, and it did not provide such rights to female lineal descendants of the family. One of the reasons for this exclusion was that the lady would eventually marry and become a member of her husband's family.” Coparcenary property, as defined by Hindu law, is property that has been inherited by a Hindu from his father, grandfather, or great-grandfather and passed down down the generations. The unfair treatment of women based on their gender and the suppression of their basic rights necessitated the revision of the Hindu Succession Act, 1956, which was passed in 1956. As a result, “Section 6 of the abovementioned Act was altered, and the Act was renamed the Hindu Succession (Amendment) Act, 2005 to reflect the changes. This modification made it possible for women to serve as coparceners in the same capacity as their male colleagues. It was unclear how the provisions of the Amendment Act, 2005 would be applied because of the uncertainty caused by it. On the basis of two contradicting instances, it was unclear how the interpretation of the law should be conducted. The Phulavati's Case from 2015 and the Danamma's Case from 2018 are two examples of such cases. The issue was whether the Amendment Act, 2005 could be applied retroactively and if the father (coparcener) and daughter had to be alive on the day when the Amendment Act, 2005 went into effect. The answer was yes. Both of these problems were resolved in the case of *Vineeta Sharma v. Rakesh Sharma*, in which the Hon'ble Supreme

Court of India declared that daughters had the same rights in coparcenary property as sons, even if the father died before the implementation of the Hindu Succession (Amendment) Act, 2005. It went on to say that the rights conferred by the amendment apply to live daughters of living coparceners as of the 9th of September 2005, regardless of when the daughters were born. A historical injustice has been committed against women as a result of the non-availability of their coparcenary rights and the vagueness with which those rights have been construed in practise.” The decision of the Hon'ble Supreme Court of India in the case of *Vineeta Shama v. Rakesh Sharma* is a significant step forward in the fight for gender justice and equality. The emergence of women's coparcenary rights under Hindu Law, on the other hand, took a long time to occur due to the nature of the law.

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