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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **‘VINEETA SHARMA V. RAKESH SHARMA’<sup>1</sup>** **- PAVING THE WAY FOR WOMEN'S** **PROPERTY RIGHTS**

AUTHORED BY - INSIA ARORA

## **1.1 INTRODUCTION AND THE BACKGROUND**

From a young age, women in Indian society often experience a sense of alienation due to deep-rooted beliefs that label them as "paraya dhan" or someone else's property, destined to be sent away after marriage to their affinal family. Certain Hindu wedding rituals, like "kanyadaan," reinforce this notion by symbolizing the act of donating or giving away the responsibility of the daughter. As a result, daughters are often perceived as belonging more to their marital families than their natal families.

This belief system leads to the preference for sons as the rightful heirs who carry the family name forward, while daughters are relegated to secondary roles in inheritance matters. The practice of dowry further entrenches the notion that daughters receive their share of money or property during marriage, and afterwards, they are often deemed to have no right to claim any share in the family property. Additionally, society's perception of women relinquishing all rights to their consanguineal home upon marriage further marginalizes them as inheritors of property.

The prevalent beliefs and practices contribute to the marginalization of women's inheritance rights. As a consequence, women are seldom considered as equal inheritors of family property, perpetuating gender-based discrimination.

Efforts to challenge these traditional norms and promote gender equality in property rights have been undertaken through legal reforms, such as the Hindu Succession Amendment Act, 2005. The objective is to empower women, granting them equal inheritance rights to ensure financial security and independence. Nevertheless, social change and awareness are essential to truly dismantle such deep-seated gender biases and create a society where women are recognized as equal inheritors and rightful owners of property.

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<sup>1</sup> (2020) 9 SCC 1.

The enactment of the Hindu Succession Amendment Act in 2005 aimed to bring about a paradigm shift in the traditional beliefs and practices surrounding women's inheritance rights. This crucial step was not only aimed at promoting gender equality in society, as mandated by the Directive Principles of State Policy (DPSP), but also at enhancing the financial security and independence of daughters.

Before this amendment, many women were financially dependent on their husbands, making them vulnerable in case of divorce, separation, or the death of their spouses. By granting equal inheritance rights to daughters, the law sought to empower women to have a rightful claim to their family's property, ensuring a more secure and independent future.

Moreover, the amendment was in line with the evolving nature of society. With increasing education and economic opportunities, a larger number of women have become financially independent through employment and entrepreneurship. Many women are now actively contributing to their families' financial well-being, challenging the traditional perception that financial responsibilities solely belong to sons. As daughters shoulder more responsibilities that were previously associated with male family members, it becomes imperative to recognize their rights to family property on an equal footing.

A significant legal precedent further bolstered women's position within the family. The case of *Mrs. Sujata Sharma v. Shri Manu Gupta* in 2015 affirmed that women can be the "Karta" of a family, regardless of their marital status. This landmark ruling granted women increased authority, responsibility, and a higher status within a Joint Hindu Family, further challenging traditional patriarchal norms.<sup>2</sup>

In conclusion, the Hindu Succession Amendment Act, 2005, represents a transformative step towards gender equality and women's empowerment. By recognizing daughters' equal rights to family property, society acknowledges their financial contributions, independence, and evolving roles. This legislative reform, along with progressive judicial interpretations, paves the way for a more inclusive and equitable society, where women can rightfully claim their place as inheritors and decision-makers within their families.

The case of *Rakesh Sharma v. Vineeta Sharma* was landmark because of the clarifications it

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<sup>2</sup> *Mrs. Sujata Sharma v. Shri Manu Gupta*, (2016) 226 DLT 647.



introduced in the succession laws. Firstly, the judgement stated that it would have a "retroactive" effect, i.e., women would be deemed as coparceners even if their father had died before the Amendment was introduced. This was a positive step as it reinstated the position of women as coparceners as it supported the view that the right arises from birth for both sons and daughters equally. Secondly, the judgement clarified that the concept of notional partition was a legal fiction and would not be considered an actual partition. The death of a coparcener shall initiate only a notional partition. Thirdly, an oral partition will not be accepted (unless it has a public document to support it) as that could be used as a tool to deny these retroactive property rights to women. This also ensured that the institution of a joint family was not broken by the death of a coparcener but also that no woman was denied a share in their father's property respectively.

Although the 174th report of the Law Commission opines on the abolition of the coparcenary system, the Joint Hindu Family system is seen as intrinsic to Indian culture. The concept of nuclear families is growing in urban India, but the notion of a joint family business is still thriving throughout the country. The 2005 Amendment tries to eradicate the inherent gender bias that exists in traditional Hindu society but fails on some accounts. The Amendment still fails to amend Section 16 of the Act, which talks about the devolution of a property when a female Hindu dies intestate. After her children and husband, the next heirs are the husband's parents. Her parents only come after them. This can lead to even more hesitation on the part of a family to give property to their daughter. In case of any untoward incident, the property that she got from her parental home would devolve unto her marital home first. Moreover, even the self-acquired property of a Hindu female dying intestate would devolve unto her husband's parents first, instead of her own parents or siblings. The same is not true for a Hindu male, whose parents, and siblings (in the same order) would be the inheritors in the absence of a wife and children.

Another social impact of this legislation can also be on the part of men. One can argue that now women can get double the amount of property as they are now liable to get property not only from their parental estate but also their marital estate upon partition or death of a family member. One can argue that this is not equitable as this gives more property rights to a woman than a man. Furthermore, certain obiter in the judgement can also insinuate that a son of a family will not forever be a son as he would start a family and form his own coparcenary. At the same time, a daughter will always be a daughter as she cannot start her own coparcenary. One may argue that this goes against the principles of equality, although the Amendment claims to be more equitable towards women. One perspective could also be that, in agreement with the 174th Law Commission

Report, the whole concept of coparcenary should be abolished in terms of succession as it cannot lead to equality between men and women (since women cannot form their own coparcenary), but it might lead to severe backlash from the community. Another section of society that our law ignores is the LGBTQ community. Transgender people (legally identified as a third gender) find no place in the laws. They need to identify as either male or female in order to inherit property. To even prove their identity and relation to the deceased, there is a need for government proof. This might not be accessible to many due to poverty or lack of awareness as the community is severely discriminated against.

This Amendment itself only refers to the Joint Hindu Family property. If succession happens through testamentary succession, women are often not a part of the will. This is again because they are considered part of their affinal family after marriage, and the sons of the family are considered natural-born heirs who would further the lineage. Some families might even ask the daughters to partake a lesser share of the property than the son, as the son would be responsible for furthering the lineage and managing the family estate.

In Hindu Classical law, only sons of the family are considered coparceners and have a birth right to property. The Hindu Succession (Amendment) Act, 2005 changed the rule to give the daughters their birth right to family property by considering them as coparceners as well. This Act, although a step in the right direction, came with a lot of questions about whether it could be applied retroactively/ retrospectively. These question were only cleared by the landmark case of “Vineeta Sharma v. Rakesh Sharma”.<sup>3</sup>

## **1.2 FACTS OF THE CASE**

The case revolves around the property owned by Sh. Dev Dutt Sharma, who had three sons (Mr. Rakesh Sharma, Mr. Satyendra Sharma, and Dr. Shailendra Sharma), one daughter (Smt. Vineeta Sharma), and a wife (Mrs. Rameshwari Sharma). The property measured 250 sq. yards with 2.5 floors and was used as the family's residence, with the ground floor and barsati being rented out to tenants.

Sh. Dev Dutt Sharma passed away intestate on 11th December 1999. Subsequently, one of his sons, Dr. Shailendra Sharma, who was unmarried, also passed away on 1st July 2001. After Dr.

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<sup>3</sup> (2020) 9 SCC 1.

Shailendra Sharma's death, Vineeta Sharma (the plaintiff) claimed her right to a 1/4 share in the property as the daughter and sought partition through a legal notice on 17th October 2001. However, the defendants refused her claim, leading to the filing of a suit by the plaintiff.

During the trial, the lower court made several determinations:

- a. The property was not considered part of the Hindu Undivided Family (HUF).
- b. There was no evidence of an oral partition dated 21st July 2001.
- c. The suit was deemed not maintainable under Section 23 of the Hindu Succession Act, 1956. The court relied on the case of *Prakash & Ors. v. Phulavati & Ors*, where it was held that the Hindu Succession (Amendment) Act, 2005 had a prospective effect and did not apply retrospectively. Therefore, female heirs could only file a suit for partition after the implementation of the Hindu Succession (Amendment) Act, 2005.<sup>4</sup>

In response to the lower court's ruling, The High Court, through an order dated 15.05.2018, made the following determinations:

- a. The property was indeed part of the Hindu Undivided Family (HUF), in accordance with Sh. Dev Dutt Sharma's intention.
- b. The plaintiff (Vineeta Sharma) was entitled to shares only under the scope of Section 6(3), where a notional partition takes place, and the shares are fixed upon the death of Sh. Dev Dutt Sharma. The High Court relied on the case of *Mangammal v. T.B. Raju*<sup>5</sup> to clarify the confusion between the decisions in the *Phulavati* and *Danamma @ Suman Surpur & Anr. v. Amar & Ors.*<sup>6</sup> case.

In summary, the case revolves around the rightful share of the plaintiff (Vineeta Sharma) in the property owned by her late father, Sh. Dev Dutt Sharma. The lower court's ruling was based on the Hindu Succession (Amendment) Act, 2005, while the High Court's decision clarified the application of Section 6(3) and acknowledged the property's status as part of the HUF.

### **1.3 ISSUES BEFORE THE COURT**

The High Court relied on *Mangammal* (supra), which upheld the decision in *Phulavati* (supra), wherein it was decided that Section 6 would only apply to living daughters of living coparceners

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<sup>4</sup> *Prakash & Ors. v. Phulavati & Ors.* (2016) 2 SCC 36

<sup>5</sup> (2018) 15 SCC 662

<sup>6</sup> (2018) 3 SCC 343.

irrespective of when such daughters are born, which led the plaintiff to appeal to the Supreme Court.

A three-judge bench was constituted to clarify the interpretation of Section 6 HSA due to conflict between the decision in Phulavati (supra) and Danammaa (supra). Phulavati (supra) held that Section 6 would apply to living daughters of living coparceners irrespective of birth. Danammaa (supra) held that a daughter of a coparcener would be a coparcener since birth, regardless of the living status of the father coparcener. Both these cases held that Section 6 has a prospective ruling. The questions raised by the Supreme Court were:

- a. Whether Section 6 of the HSA require the father coparcener to be alive for the daughter coparcener to claim the share in the property?
- b. Whether Section 6 retrospectively, retroactively, prospectively applicable?
- c. Whether a plea of partition based solely on oral evidence be accepted?

## **1.4 RATIO LAID BY THE COURT**

This landmark judgement cleared the conflict in the Phulavati (supra) and Danammaa (supra) decision involving Section 6 of the Hindu Succession Act. It was held that the

- a. Notional partition under Section 6(3) of the HSA was not actual partition, but more of a legal fiction.
- b. Section 6 is retroactively applicable, i.e. it took effect from a date in the past.
- c. Plea of partition under Section 6(5) on oral evidence alone cannot be accepted. The statutory recognised mode of partition is either by a deed of partition or a decree of the Court.
- d. Coparcenary rights conferred on a daughter are a right of birth and would be equal to the son's rights. The living status of the father is immaterial to the coparcenary rights conferred on a daughter. This decision overruled the decision in the Phulavati and Mangammal (supra) case and partly overruled the Danammaa (supra) case.

## **1.5 THE ANALYSIS OF THE JUDGEMENT**

### **Arguments on behalf of the Union of India**

- a. The exclusion of daughters from coparcenary rights led to oppression and negation of fundamental rights. Therefore the HSA must be retroactively applied and not retrospectively applied since it will enable daughters to avail their coparcenary rights after the commencement of the Act.

b. The conferment of coparcenary rights on the daughter would not affect any disposition or alienation, including any partition or testamentary disposition of the property that occurred before 20.12.2004.

c. The daughter of a coparcener in section 6 does not imply the daughter of a living coparcener or father, as the father's death does not automatically lead to the end of the coparcenary.

### **Arguments on behalf of Amicus Curae**

a. In both Phulavati and Danamma, there is no conflict concerning the application of Section 6. Both cases held that section 6 is prospectively applicable.

b. That the scheme of section 6 is forward looking, and it has to be interpreted in such a manner that its relevance is not diluted.

c. The use of the words "shall have the same rights" in Section 6(1)(b) and "on and from" in section 6(1) concludes that the daughter becomes coparcener from the commencement of the Amendment Act.

d. It was not necessary that a partition should be registered, and an oral partition should be recognised if it is backed by proper evidentiary support.

## **1.6 THE JUDGEMENT GIVEN BY THE COURT**

Regarding whether the father coparcener needs to be alive for the daughter coparcener to avail of her rights, the Supreme Court divulged into the historical background of Mitakshara and Dhayabhaga. It elucidated how it was necessary to codify Hindu Law and amend it from time to time to bring equality of status and remove anomalies.

Further on, the Court, having relied on several judgements, uncovered the essential characteristics and the formation of a Hindu Undivided Family' and the narrower 'coparcenary' body.

The Hon'ble Court explained the concept of apratibandha daya or unobstructed heritage, and sapratibandha daya or obstructed heritage relying on the Mitakshara school. Unobstructed heritage is when the right is created by birth, whereas obstructed heritage is when a coparcener dies without leaving a male issue. Further on, the Court decided that Section 6 of the HSA is a right created by birth and comes under the ambit of unobstructed heritage. The father coparcener need not be alive as on 09.09.2005 for the daughter to inherit coparcener rights.

Relying on the 'Statement of object and reasons' of the proposed bill and uncodified Hindu Law, the Court held that the notional partition under Section 6(3) does not disrupt the existing coparcenary and is only a legal fiction for ascertaining the share of a deceased coparcener, which would have been allotted to them when an actual partition takes place.

In furtherance, the Court relied on *State of Travancore Cochin. v. Shanmugha Vilas Cashew Nut Factory* to explain that the fiction of notional partition was only employed to give effect to explanation under Section 6 and did not bring about real partition and that if every time a notional partition occurs, a real partition takes place, the death of a coparcener would bring an end to the entire coparcenary.<sup>7</sup>

By amending the provisions of the HSA, the injustice caused by Shastric Hindu Law, which excluded the coparcenary rights of a daughter, was discarded and complied with the rights provided by the constitution.

The decision of *Phulavati* (supra), where there was a necessity for the father coparcener to be alive for the daughter coparceners to have the coparcenary rights, was found to be in deviation from how a coparcenary is formed. The Court disagreed with this decision since there is no mention or requirement under section 6 for the daughter to be a daughter of a living coparcener and overruled the decision of *Phulavati* (supra) and *Mangammal* (supra).

Although the Hon'ble Judges agreed with several parts of the decision in *Danamma*, there was disagreement with reference to the upholding of the decision in *Phulavati* (supra) and the prospective application of Section 6. Therefore the decision in *Danamma* was partly overruled, only to the extent of this disagreement.

The Court placed reliance on *Chinthamani Ammal v. Nandgopal Gounder*,<sup>8</sup> *Bhagwani v. Mohan Singh*<sup>9</sup> and *Digambar Patil v. Devram*<sup>10</sup> to decide that a plea of partition on oral evidence alone cannot be accepted and that the statutorily recognised mode of partition is either by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court and that the Court could recognise oral partition in exceptional cases based on other evidences.

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<sup>7</sup> *State of Travancore Cochin & Ors. v. Shanmugha Vilas Cashew Nut Factory & Ors.*, (1954) SCR 53

<sup>8</sup> *Chinthamani Ammal v. Nandgopal Gounder*, (2007) 4 SCC 163

<sup>9</sup> *Bhagwani v. Mohan Singh* AIR 1925 PC 132

<sup>10</sup> *Digambar Patil v. Devram*, AIR 1995 SC 1728

## 1.7 CONCLUSION AND SUGGESTIONS

In conclusion, the Vineeta Sharma v. Rakesh Sharma case has had a significant and positive impact on society by providing much-needed clarity on the terms of the 2005 Amendment. However, it has also shed light on various social inequalities and biases faced by women in our society, necessitating further efforts to address these issues.

**2. The judgment serves as a crucial reminder that there is a pressing need for more amendments to promote equitable succession rights for women. Special provisions must be introduced, as mandated by Article 15(3), to ensure gender equality in succession laws. It is essential for the constitution to adopt a substantive approach rather than a merely protectionist one while formulating laws that empower women.**

To drive meaningful change, the feminist jurisprudence movement emerges as a powerful force that can advocate for inclusive and progressive legal reforms. By embracing feminist principles and perspectives, we can create a more just and equal society where women's rights are protected, and opportunities are afforded without discrimination.

In summary, the Vineeta Sharma v. Rakesh Sharma case serves as a catalyst for a broader conversation about women's rights and the need for a more gender-inclusive legal framework. It challenges us to rethink and reshape our laws, policies, and societal norms to build a more equitable future for all..