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VINEETA SHARMA V. RAKESH SHARMA & ORS: RETROACTIVE EFFECT OF 2005 AMENDMENT ON SECTION 6 OF THE HINDU SUCCESSION ACT, 1956

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ABSTRACT

The laws dealing with intestate and testamentary succession in India are not uniform. India is a multicultural society and different groups in India have separate Personal Laws. A variety of different laws are in vogue and their application depends on multiple factors. Muslims follow Muslim law, while Hindus are governed by Hindu and various other customary laws like Shastric laws depending upon region and specific school or community. The Parsis and Christians have their own customary law. However, these laws are often observed to be manifestly arbitrary, especially towards women due to which, they are being made subjected to extensive amendments and repulsions by both the legislature and judiciary. Thus, the Apex Court, in pursuance of changing from a religion-based discourse to an equality and dignity based one, delivered a 122 page judgement on 11 August, 2020 thereby recognising the succession rights of Hindu women. This article analyses the ruling given under Vineeta Sharma v. Rakesh Sharma and Ors.,[1] along with the socio-legal implications of this judgement upon the society and Indian judicial system.

KEY WORDS

Succession, Notional Partition, Coparcenary, Devolution, Joint Hindu Family, Daughters

DETAILS OF THE CASE

Particulars	**Details**
Name of the Court:	The Supreme Court of India
Case Name:	Vineeta Sharma v. Rakesh Sharma & Ors
Citation:	(2020) SCC OnLine SC 641

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[1]Vineeta Sharma v. Rakesh Sharma and Ors, (2020) SCC OnLine SC 641

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Appellant:	Vineeta Sharma
Respondents:	Rakesh Sharma and Others
Date of Judgement:	11 August, 2020
Bench:	Arun Mishra, J.; S. Abdul Nazeer, J.; M.R Shah, J.
Provisions of law:	Section 6 of the Hindu Succession Act, 1956

1. Background of the Case

The Hindu Succession Act, 1956 ("1956 Act") was a bold effort taken by the legislature to codify the Hindu Law of Succession and to bring Hindu succession laws in consistency with evolving schools of thought on equitable inheritance of property. Consequently, the Hindu Succession (Amendment) Act, 2005 was passed by the Parliament in order to achieve the constitutional objective of gender equality, which provided the daughters, the exact same rights and liabilities in coparcenary properties as the sons.

The present matter in *Vineeta Sharma v. Rakesh Sharma* came up before the larger Bench of the Apex Court, from a judgment of the Delhi High Court, where the High Court had noted that conflicting Division Bench decisions of the Supreme Court in *Prakash v, Phulavati*[2] *(Prakash) and Mangammal v. T.B. Raju*[3] *(Mangammal)* and *Danamma @ Suman Surpur & Anr. v. Amar*[4] had unsettled the law surrounding Section 6 of the Hindu Succession Act.

In *Prakash case,* the Division Bench of Supreme Court held that Section 6 of Hindu Succession Act, 1956 is prospective in nature and would apply only if *both* the coparcener and the daughter were alive as on 9 September 2005. The underlying rationale behind the judgement delivered in *Prakash case* was based on the calculated effect of the 'notional partition' contained in the proviso to Section 6 of the Hindu Succession Act, 1956, i.e., in the event of demise of the predecessor coparcener prior to the 2005 Amendment, there would be a severance of the coparcenary property and consequently a daughter would not have any

[2] Prakash v, Phulavati, AIR 2016 SC 769
[3] Mangammal v. T.B. Raju, (2018) SCConline SC 422
[4] Danamma @ Suman Surpur & Anr. v. Amar, AIR 2018 SC 721

right to claim a share in the coparcenary property available for partition under the 2005 Amendment to Section 6.

However, in *Danamma case,* the Division Bench of the Court held that the Hindu Succession Amendment Act conferred an equal coparcener status on both daughters and sons of the deceased. The Court said that the daughter is coparcener by birth, and would be granted the same status as the son, *on and from* the commencement of the Amendment Act. The Court established and affirmed the *retrospective* application of 2005 amendment in Section 6 of the Hindu Succession Act, 1956. The Court in this case also had held that the coparcenary rights of the daughter would not be lost if only a preliminary and not a final decree had been passed by the Civil Court in the partition suit.

2. ISSUE OF THE CASE

The main question before the Court in this case was whether a daughter has coparcenary rights in the coparcenary property, given that her predecessor coparcener had died before 9th September, 2005?

3. THE 2005 AMENDMENT TO HINDU SUCCESSION ACT, 1956

Before 2005 Amendment, only a male child, born in the family or validly adopted, was eligible to become a coparcener. Under coparcenary law, women could not become coparceners.[5] A wife under Hindu law has a right of maintenance out of her husband's property yet she is not a coparcener with him.[6] A widow of the deceased coparcener is not a coparcener and cannot be treated as the Karta of the family. A mother is neither a coparcener with sons[7] nor with her daughters.[8] A mother-in-law cannot be a coparcener with her daughter-in-law.[9] Similarly, a daughter also was not qualified to become a coparcener in the Joint Hindu Family.

As a result, daughters were introduced as coparceners by virtue of the Hindu Succession (Amendment) Act, 2005. The Hindu Succession (Amendment) Bill was introduced in the

[5] CIT v. Govinda Ram Sugar Mills, AIR 1966 SC 240. Also, Pushpa Devi v. CIT, AIR 1977 SC 2230
[6] Sabitri Mistry v. FA Savi, AIR 1933 Pat 306
[7] Hirasingh v. Mangalan, AIR 1928 Lah 122
[8] Gangamma v. Cuddapah Kuppamal, AIR 1939 Mad 139
[9] CIT v. Pannbai, AIR 1913 Ngp 160

Parliament on 20 December 2004 and was passed by the Rajya Sabha on 16th August, 2005 and the Lok Sabha on 29th August, 2005, respectively. Based, on the recommendations of the 174th Report of the Law Commission on "Property rights of Women –Proposed Reforms under Hindu Law", its primary intent was to remove the gender inequalities under the Act, as it stood before the Amendment. The Bill received the assent of the President on 5th September 2005, and it came into effect on 9th September, 2005.

Section 6 of the Hindu Succession Act, 1956, as substituted by the Hindu Succession (Amendment) Act, 2005 has been explained. **Section 6(1)** provides that with effect from 6 September, 2005, the daughter of coparcener **shall by birth** become a coparcener in her own right **in the same manner as the son,** in a joint Hindu family governed by the Mitakshara law. She shall have the same rights in the coparcenary property as she would have had if she had been a son and she shall be subject to the same liabilities in respect of the said coparcenary property as that of a son. **Section 6(2)** of the new post amendment section 6 provides that any property which a female Hindu becomes entitled to, by the virtue of sub section (1) shall be held by her **with the incidents of coparcenary ownership**. And property is capable of being disposed of by her by testamentary disposition. However, Section 6(1) is subject to the non obstante clause i.e. the proviso to sub clause (1) of Section 6 which says that nothing contained in clause (1) shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of properties which had taken place prior to 20 December 2004. Additionally **Section 6(3)** provides that:

1. Where a Hindu dies after the commencement of Hindu Succession Act 2005, his interest in the property of joint family, **shall devolve by testamentary or intestate succession.**
2. As the case may be, under this Act and not by survivorship, & the coparcenary property shall be deemed to have been divided as if a partition has taken place and, daughter is allotted the same share as son.
3. The share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter.

4. VERDICT OF THE COURT

In this landmark judgment, the Supreme Court of India held that a daughter coparcener would have equal coparcenary rights in Joint Hindu Family (JHF) properties as son coparceners regardless of the fact that whether the father coparcener had passed away before or after 9th of September, 2005. The three-judge bench of the Supreme Court, led by Arun Mishra, J. opined that Section 6 of the amended Hindu Succession Act, 1956 bestowed upon the daughter an equal coparcenary status, along with its rights and liabilities, similar to a son coparcener. This right of the daughter was one bestowed by her birth, and would remain unaffected, whatsoever, by the date of her father's demise. The Court held that, a daughter would be entitled to a share in the coparcenary property in the same manner as a son, simply by virtue of:

(i) her birth; and

(ii) her being alive as on the date of coming into force of the 2005 Amendment.

5. OBSERVATIONS AND FINDINGS OF THE COURT

a) Retroactive Nature of the 2005 Amendment in Section 6

The *Vineeta Sharma* verdict operates on the premise that the intent of amended Section 6 of the Act, was to neither confer its benefits upon female successors prospectively nor for that matter retrospectively, but it was supposed to confer the benefits retroactively.[10] In *Benner v. Canada (Secretary of State),* the Supreme Court of Canada observe that; *"A retroactive statute operates as of a time prior to its enactment. It therefore operates backwards, i.e. it changes the law from what it was. A retrospective statute operates for the future only. It is prospective, but imposes new results in respect of a past event. A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event."*[11] While explaining the concept of retroactive application vis-à-vis the 2005 amendment, the Court observed that since the operative requirement under the amended Section 6 is birth, thus, there is no

[10] Vineeta Sharma v. Rakesh Sharma & Ors.,(2020) SCC OnLine SC 641, at para56
[11] Benner v. Canada (Secretary of State),[1997] 1 S.C.R. 358, at para. 39

requirement for both the father and the daughter to be alive as on 9 September 2005, as the daughter is not bound by principles of obstructed heritage. The only imperative condition is that the coparcenary must have existed in the family as on 9 September 2005.[12]

b) Rejection of legal fiction created with respect to notional partition

Court explained that a distinction must be laid down between the right to claim a share in the coparcenary property and the extent of the share that can be claimed. The Court said that a coparcener's right to claim a share in the coparcenary property remains stable throughout his lifetime, although the specific share available to the coparcener fluctuates with births and deaths in the family and can be determined only at the time of partition.[13]

The Court went on to explain that, prior to the 2005 Amendment to Section 6, it provided that on the death of a coparcener, his interest in the Mitakshara coparcenary shall be devolved by *survivorship* upon the surviving members of the coparcenary under the un-codified Hindu law, and not in accordance with the mode of succession prescribed under the Hindu Succession Act, 1956. But when a male Hindu left behind a surviving female Class I heir or a male relative claiming through such a female heir, an *exception* was carved out in the 1956 Act for succession by *inheritance* according to the 1956 Act. It was in the context of this exception that the legal fiction of partition had been created, so as to ascertain the share of the deceased coparcener immediately prior to his death. The objective of such notional partition was only to determine the extent of the share and not to affect the right of any coparcener to claim a share *per se*.

Thus the court held that the proviso to the unamended Section 6 of the Act, which talks about notional partition, can only affect the extent of the share that can be claimed by a coparcener but does not affect the right to claim a share of any coparcener in the first place.[14] Now, since a daughter acquires the status of a coparcener on account of her birth in the family due to the application of the 2005 amendment, her right to claim a share under Section 6 of the Amended Act, is independent of notional partition in the event of her predecessor coparcener's death prior to the 2005 amendment.

[12] Vineeta Sharma v. Rakesh Sharma & Ors., (2020) SCC OnLine SC 641, at para 56.
[13] Vineeta Sharma v. Rakesh Sharma & Ors., (2020) SCC OnLine SC 641, at para 36
[14] Vineeta Sharma v. Rakesh Sharma & Ors., (2020) SCC OnLine SC 641, at para 101

c) Have to produce corroborating evidence to dismiss partition claims

The Court held that, now the defense of oral partition against a claim under Section 6 of the Amended Act could be taken only when significant corroborating evidence such as public records in order to justify dismissal of such claim under Section 6 of the Amended Act are produced.[15]

d) Bar by Limitation Act, 1963 to bring suits for partition

The Court held that, the female successor claiming a share in coparcenary property under the 2005 Amendment must not delay the suit to challenge the alienation of the coparcenary property if already alienated or the suit for partition, beyond the periods prescribed under Articles 109 and 110 of the Limitation Act, 1963. Considering the fact that the 2005 amendment came into force as early as 9 September, 2005, several potential claims for partition under Section 6 of the Amended Act may already be time barred according to the rule laid down in this judgement.

e) Suits in which final decree is not drawn must be adjudicated in accordance which Vineeta Sharma ruling

The Apex Court has expressly held that any suit for claim for partition in which the final decree is yet to be drawn, will now be determined in accordance with the verdict given in *Vineeta Sharma case*. The *Vineeta Sharma verdict* does not specifically deal and interfere with those final decree proceedings that have already been concluded based on the earlier law laid down in the *Prakash v. Phulavati case*. The Apex Court has said that any pending suit or appeal involving the controversy related to the application and operation of Section 6, Hindu Succession Act, 1956 must be disposed-off not later than six months in accordance with the *Vineeta Sharma* verdict. Therefore, there remains the larger question that what would happen to those appeals which are pending and have arisen out of a final decree, where the mandate under Section 6 of the Amended Act was not followed while passing such decree.

f) Decisions Overruled

Except for the finding that the female successor must be alive as on the date of the coming into force of the 2005 amendment to claim coparcenary rights[16], the verdict in

[15] Vineeta Sharma v. Rakesh Sharma & Ors., (2020) SCC OnLine SC 641, at para 129
[16] Vineeta Sharma v. Rakesh Sharma & Ors., (2020) SCC OnLine SC 641, at para 75

the *Prakash* case, was overruled. The court also overruled *Mangammal case,* which followed the dictum laid down in *Prakash*. The Court even overruled *Danamma case*, though partially and to the extent that it is contrary to the present ruling.

6. AUTHOR'S COMMENT

A Judgement on these lines by a larger Bench of the Supreme Court is duly welcomed since it not only corrects the historical wrongs and discrimination against women but also puts to rest the controversy created by inconsistent views taken by the Division Bench of the Supreme Court in different cases. This judgement considerably expands the number and scope of situations where daughters can successfully make a claim for partition against her brothers/relatives and get their share culled out from the coparcenary property. According to author, this ruling could inter alia have the following implications:

1. Firstly, a plethora of new legal proceedings would be initiated before Civil Courts, High Courts and Debt Recovery Tribunals in the country
2. Secondly, there would be a sharp rise in litigation not only from male and female coparceners, but also from developers, banks and financial institutions where they are portrayed as parties, including the suits in the nature of partition, declaration, cancellation and injunction, as well as suits instituted to challenge the validity of mortgages in order to defeat loan recovery, etcetera.
3. Thirdly, ongoing partition suits in which final decree has not been issued will be directly affected, as the Courts will have to consider the cases afresh in accordance to the clarifications and ruling of *Vineeta Sharma case*.
4. There will be an acute rise in the re-structuring of JHF/ HUF assets, especially in the male dominated joint Hindu families and businesses.

While the *Vineeta Sharma* verdict is indeed laudable for achieving the noble and much needed to be achieved objective of gender equality and gender justice in personal laws, the fact that the controversy took close to 15 years to be finally settled reflects the long journey towards justice. One hopes that in the days to come, the Indian judiciary continues to incline in favour of progressive values and ethics and while doing so it keeps its rich traditions intact and most importantly, it does so with speed and agility.