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Case Comment

Vineeta Sharma v. Rakesh Sharma

(2020) 9 SCC 1

By:

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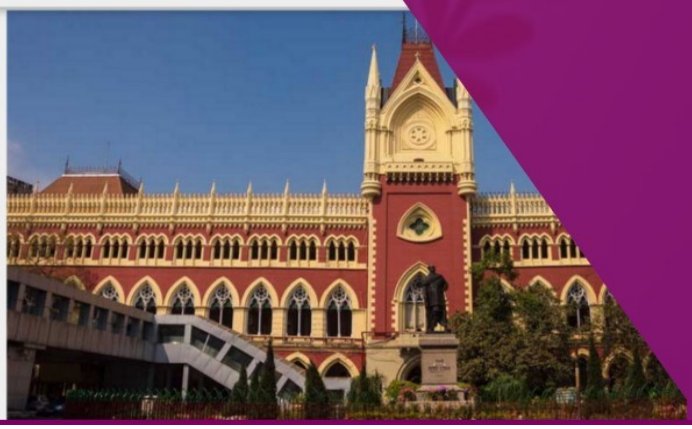

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Vineeta Sharma v. Rakesh Sharma

(*Decided on 24 August 2020 by the Supreme Court in Civil Appeal No. Diary No. 32601 of 2018*)

Tuheena Singh*

Overview

The present case of *Vineeta Sharma v. Rakesh Sharma*[1] is in relation to the daughter's coparcenary right in ancestral property under the Hindu Succession (Amendment) Act, 2005.

Prior to 2005, females were deprived of the right to inherit and own the property of Joint Hindu Family. The Hindu Succession Act, 1956 bases its rule of succession on Mitakshara law and laid down the *'rule of survivorship'* – inheritance of ancestral property up to four generations of male lineage. The Hindu Succession (Amendment) Act, 2005 abrogated the rule of survivorship and replaced it with the rule of *'testamentary'* and *'intestate'*, providing the daughters with coparcenary rights by birth as well. This amendment was based on 174th Report of Law Commission of India[2] which aimed to achieve constitutional objective of gender equality.

However, the question arose as to whether the provisions of this Act have retrospective effect or prospective effect? The same has been conciliated in this case.

Keyword: *Daughter's coparcenary right, Ancestral property, Succession, right to equality, Hindu Undivided Family, Retroactive, Section 6 of the Hindu Succession (Amendment) Act, 2005*.

BACKGROUND AND FACTS OF THE CASE:

Hindu Succession Act, 1956: The Hindu Succession Act, 1956 lays down comprehensive provisions regarding succession and inheritance of property among Hindus, Jains, Buddhists and Sikhs. It has categorized property in two types: Ancestral Property and Self-Acquired Property. Section 6 of the Act of 1956 provides for the devolution of ancestral property to the male lineage up to four generations in the Hindu Undivided Family. It conferred full coparcenary rights, after the death of a male member, to them by birth precluding the female members. This rule of survivorship was discriminatory in nature and was, thus,

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[2] Law Commission, *Property Rights of Women: Proposed Reforms under Hindu Law (Law Com No 204,2008)*

violative of Article 14 of the Constitution of India, 1950[3]. as it barred the females to be coparceners. This criticism led to the amendment in 2005.

Hindu Succession (Amendment) Act, 2005: This Act came into effect and was enforceable from *9th September 2005*. It abolished the 'rule of survivorship' and substituted it with the 'testamentary succession' and 'intestate succession'. The main objective behind this amendment was to bring male and female at equal footing with respect to inheritance and succession. Now, after the amendment, Section 6(1)(a) endows upon the females to have coparcenary rights in ancestral property by birth. It provided widows and daughters with the equal rights subject to certain liability in property as that of sons.

Although the legislative intent with respect to the Amendment Act was clear but there was considerable ambiguity on whether the provisions of this Act was applicable retrospectively or prospectively as a proviso was added which provided that the rights conferred on the daughters shall not invalidate or affect any alienation or partition or testamentary disposition of property that took place before 20th December 2004, the date on which the Amendment Bill was tabled and presented before the Rajya Sabha. This provision led to the different interpretations and conflicting verdicts as to whether father need to be alive on 9th September 2005 in order to effectuate the provisions of this Act or not.

In *Prakash & Ors. v. Phulvati & Ors.*[4], the Supreme Court held the provisions of the Act to have prospective effect and confers the coparcenary right on the living daughter of a living coparcener as on 9th September 2005. This means that to reap the benefits of coparcenary right both the father and daughter must be alive as on 9th September 2005.

Contrary to the earlier judgement, in the case of *Danamma @ Suman Surpur & Anr. v. Amar & Ors.*[5], the coparcener died in 2001 and was not alive on 9th September 2005. The Supreme Court held the provisions of the Act to have retrospective applicability and conferred the daughters with the coparcenary right in property. This means that the daughter who has taken birth before the enactment of the Amending Act 2005 are coparceners in the joint family property and has the right to claim for her share in the property even if the father had passed away prior to the enactment of the Amending Act of 2005.

Conflicting verdicts had been pronounced in both the cases which had conflicting *ratio decidendi*. This ambiguity was

[3] "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"

[4] (2016) 2 SCC 36.
[5] (2018) 3 SCC 343.

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cleared and settled down in *Vineeta Sharma v. Rakesh Sharma* by three judge constitutional bench.

In this particular case, Shri Dev Dutt Sharma, the father, had one wife, one daughter and three sons. The father died on 11th December 1999. His one of the sons too expired on 1st July 2001, who was unmarried. The daughter Vineeta Sharma claimed for her one-fourth share in the coparcenary property. She was denied the right to claim as the other members argued that since the father died in 1999, before the enactment of Amendment Act 2005, she is not entitled to have share in the property her father and that after her marriage she will cease to be the member of the Joint Hindu Family.

Vineeta Sharma (Appellant) brought suit against her brothers: Rakesh Sharma and Satyendra Sharma and her mother (Respondents) and claimed for her coparcenary rights in her father's property.

The Hon'ble Delhi High Court observed and ruled that the Section 6 of the Hindu Succession (Amendment) Act 2005 will not be applicable to the Appellant as the father, the coparcener, was not alive on 9th September 2005. It disposed of the appeal.

The Appellant made an appeal in the Supreme Court.

BENCH:

Arun Mishra J., Abdul Nazeer J. and MR Shah J.

ARGUMENTS:

Arguments Advanced by Shri Tushar Mehta, learned Solicitor General of India, appearing on behalf of Union of India:

- The Hindu Succession (Amendment) Act, 2005 is retroactive in nature and not retrospective.
- The coparcenary right conferred upon the daughter did not hindered the rights which got crystallized by partition before 20th December 2004.
- Section 6 does not intimates the daughter to be the daughter of a living coparcener. The coparcener need not to be alive on 9 September 2005 in order to affect the provisions of the Act.
- Explanation to Section 6(5) requiring the partition deed to be registered is directory and not mandatory in nature.

Arguments Advanced by Shri R. Venkataramani, learned Senior Counsel and amicus curiae:

- There is no clash between the verdict given in *Phulvati case*[6] and

[6] ibid 2.

Danamma case[7] as in both cases Section 6 was held to be prospective in nature. Thus, the Amended Act is prospective one.

- There must be a living coparcener, or else no coparcenary interest will be left for the daughter to succeed from.
- The incidence of the birth of a coparcener before the amendment is of no consequence.
- If the daughter will be treated and considered as a coparcener before 2005, it will bring an 'enormous uncertainty' in the 'working of the law'. The intention of the Parliament was to have forward looking approach and not to resurrect the past.

Arguments Advanced by Shri V.V.S. Rao, learned Senior Counsel and amicus curiae:

- The daughters who have taken birth before or after 2005 should be considered as a 'coparcener' as Section 6(1)(a) declares daughter to be coparcener by birth.
- Under Section 6(1), the phrase 'on and from the commencement of the amendment Act 2005', 'shall have the same rights' indicates the Parliament's intention to apply the provisions prospectively.
- The daughter declared as coparcener from 9th September 2005 will have right in coparcenary property only from 9th September 2005.
- Registration of partition deed is not mandatory but oral partition should be backed by a bonafide evidentiary value.
- The coparcener's position and status conferred on a daughter cannot affect and influence the past transaction of alienation, disposition and partition, oral or written.
- The daughter must be alive on the date of amendment and there must be a living coparcener, from whom the daughter can inherit to become a coparcener.

Arguments Advanced by Shri Sridhar Potaraju, learned counsel, on behalf of Respondent:

- The Amended Act is prospectively applicable.
- Daughter of a coparcener suggests the daughter of an alive coparcener and she has the status of coparcener on and from the commencement of the Act.
- A preliminary decree of partition is sufficient to effect the partition as it brings severance of 'jointness' of the Hindu family.

[7] ibid 2.

- A property becomes a self-acquired property in a statutory partition and there is, thus, no more existence of any coparcenary right. Therefore, all the past and former transactions should remain unaffected by the amendment.

Arguments Advanced by Shri Amit Pai, learned counsel:

- Section 6 includes all living daughters of coparceners, irrespective of the fact whether he is alive or not on the date of the amendment.

Arguments Advanced by Shri Sameer Srivastava, learned counsel:

- Necessity of both the coparcener and the daughter to be alive on the date of amendment will defeat the objective of the Amended Act to bring the daughter and son at equal footing.
- Coparcenary rights are endowed upon daughters by birth and thus creates interest. However, adoption can be the only exception to this rule.
- If the partition has already been effected then daughters cannot seek partition in it.

ISSUES:

1. Whether the amended section 6 of the Hindu Succession (Amendment) Act of 2005 retrospective or prospective?
2. Whether the coparcener need to be alive as on 9th September 2005?
3. Whether the daughter born before 9th September 2005 can claim coparcenary rights?
4. Whether the statutory partition provided by proviso to Section 6 of the Hindu Succession Act, 1956 bring actual partition or impede the coparcenary and can plea for oral partition after 20th December 2004 be considered as statutory partition?

JUDGEMENT:

The judgement was authored by Arun Mishra J. where it stated that the daughters who are born before or after the amendment shall be deemed to be the coparceners in the ancestral property.

While overruling the *Prakash v. Phulvati case*, the court held that:

"It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends… In substituted Section 6, the expression 'daughter of a living coparcener' has not been used. Right is given under Section

6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9.9.2005 and as provided in Section 6(1(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9.9.2005 through whom the daughter is claiming."[8]

The Court partly overruled the *Danamma case* and observed that:

"In Danamma...Daughters were given equal rights by this Court. We agree with certain observations made in paras 23 and 25 to 27 (supra) but find ourselves unable to agree with the earlier part approving the decision in Prakash v. Phulvati and the discussion with respect to the effect of the statutory partition. As a matter of fact, in substance, there is a divergence of opinion in Prakash v. Phulvati and Danamma with respect to the aspect of living daughter of a living coparcener. In the latter case, the proposition of the living daughter of a living coparcener was not dealt with specifically. However, the effect of reasons given in para 23 had been carried out to logical end by giving an equal share to the daughter."[9]

The Court held Section 6 of the Amended Act to be retroactive in nature. It overruled the verdict of *Phulvati case* and partly overruled the *Danamma case* of it having retrospective or prospective effect. The coparcenary rights are bestowed upon the daughters on and from 9th September 2005 but it has been created on and by the birth of the daughter.

It went further and clarified that the Section 6 of the Amended Act is not an amendment but only a substitution.

The Court overruled the judgement given in *Phulvati case* and held the coparcenary right does not pass from a living coparcener to a living daughter rather from 'father to a daughter'. It ruled the Joint Hindu Family property to be unobstructed heritage where the right of partition is absolute and is thus created by the birth of the daughter. It is immaterial whether the father of the daughter was alive or deceased on 9th September 2005.

The Court further ruled that the death of the daughter does not ceases her right to claim for coparcenary right in the property. If she is not alive then it will be passed to her nominee or legal heirs.

[8] Supra Note 1 at p. 73, para 75.

[9] Supra Note 1 at p. 74, para 78.

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The Court ruled that a daughter possess the right to claim for her own share in the Joint Hindu Family Property even if the notional partition had been taken place before 9th September 2005 because this notional partition has been created to discern the share of each coparcener and is thus not an actual partition. So, the coparcenary property will not cease to exist in such case.

It held the pending cases before the Courts regarding this matter to be decided within three months.

The Court in clear terms held that "a preliminary decree is not final by metes and bounds". It observed that the Court is obligated with the responsibility and is duty-bound to contemplate the amendments in the law before issuance of final decree, irrespective of the fact that preliminary decree has been passed. Therefore, even if the preliminary decree has been passed, the daughter can still claim for her coparcenary right in the property.

The Court laid down that the partition must be duly registered which is effectuated after 20th December 2004 or any partition which have been effectuated by the decree of the Court, should be a final decree. This was held in order to eschew fake partitions aimed at depriving daughter of their rights. It further observed that the partitions must be an authentic and a genuine one. As a general rule, if the partition is not effected in the above-mentioned manner, then oral partition shall not be taken as a defence. But there is an exception to this general rule. There may be some oral partitions which can be taken as a defence provided it must be a real one. The burden of proof to prove the legality and genuineness of the oral partition lies on the defendant.

ANALYSIS:

On studying the present case thoroughly, it can be opined that the Supreme Court has successfully been able to eradicate the lacuna in the previous contradicting judgements and triumphant in the interpretation of the legislation in accordance with its object to whittle down the preferential bias of males over females with regard to inheritance and succession.

The judgement pronounced in this case has ended the vagueness and ambiguity in the interpretation of the Section 6 of the Hindu Succession (Amendment) Act, 2005 which aimed at granting of equal rights to the daughters, like sons, in an ancestral property. The judgement was in consonance with the constitutional spirit of right to equality under Article 14 of our Indian Constitution of 1950.

But the applicability of this judgment is limited in the sense that it is applicable to

Hindu Undivided Family or Ancestral property only and not with respect to Self-acquired property. Today, most of the Hindu Undivided Families have been dissolved and very few of them are in existence. In fact, in reality, mostly these inheritance rights are held in the names of the male lineage, that is patriarch.

CONCLUSION:

The judiciary has always played a pivotal role in upholding the Fundamental Right to Equality under Article 14 of the Constitution of India, 1950. It has helped in the upliftment of women in the society.

In this case, the Supreme Court has absolutely overruled the Phulvati case and partially overruled the Danamma case. It has agreed on the point of the provision having prospective effect in Danamma case although it held the Section 6 of the Act of 2005 to be retroactive in nature. It has cleared that this section is not an amendment but a substitution. It held the daughter to have coparcenary rights in ancestral property by birth irrespective of the fact whether the father is alive or not as on 9th September 2005. Even if the daughter is not alive, she is still entitled for the same as it shall pass to her legal heirs. The Court further laid that any sham partition aimed to deprive daughter's right in the property shall not be entertained.

Therefore, it can be concluded that this case has opened gates for similar cases related to the daughter's right to property under Hindu Succession Act, 2005 to grant daughters the equal right in property as that of sons and in case of infringement of their right, they are free to knock at the door of the Court to get the justice.