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Regulatory Alert

August 27, 2020

Supreme Court upholds equal coparcenary rights of daughters in joint Hindu family property retroactively

The Supreme Court, in a landmark ruling[1], has settled the issue on the effective date of the amendment to Hindu Succession Act, 1956 in 2005 by holding that daughters have equal coparcenary rights in joint Hindu family property as sons, irrespective of the date of birth of the daughter or the date of demise of the father

Background

- Section 6 of the Hindu Succession Act, 1956 ('Succession Act') was amended vide Hindu Succession (Amendment) Act, 2005 ('2005 Amendment Act') with effect from September 9, 2005 to provide that a daughter of a coparcener shall by birth, become a coparcener in her own right in the same manner as the son. Coparceners are persons who by birth get an interest in the family property, and can seek/enforce a partition, whenever they like.
- Further, the 2005 Amendment Act also provided that a daughter would have the same rights in the family property and be subject to the same liabilities as that applicable to a son.
- The above amendment confers equal rights to daughters by entitling them to a share in the ancestral property and providing them a right to demand partition of joint family property.
- The 2005 Amendment Act also provided that the amendment shall not apply in case of a partition, which has been given effect to before December 20, 2004. The term "partition" for the purpose of section 6 of the Succession Act has been defined to mean any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court.
- There have however been conflicting verdicts rendered by two Division bench judgements of the Supreme Court regarding the

[1] *Vineeta Sharma* v. *Rakesh Sharma & Ors.* (Civil Appeal No. Diary No. 32601 of 2018)

interpretation of the amended section 6 of the Succession Act. In the case of **Prakash & Ors. v. Phulavati & Ors.**[2], the Supreme Court held that the rights under the amendment apply to living daughters of living coparceners as on September 9, 2005 irrespective of when the daughter was born. This meant that if the father had passed away before September 9, 2005, then the daughter will not have coparcenary rights in the family property.

- However, in the case of **Danamma Suman Surpur & Anr. v. Amar & Ors.**[3]**,** the Supreme Court held that the amendment in 2005 confers upon the daughter equal rights in the property as as the son. In this case, the father had died in 2001 i.e. prior to the date of amendment to the Succession Act and yet it was held that a daughter coparcener can also claim a partition in the family property.
- In view of conflicting verdicts, the matter was referred to a larger bench of Supreme Court comprising of three judges.
- The issue before the Supreme Court was to decide on the coparcenary rights of daughter in the family property, as provided by the 2005 Amendment Act, in cases where the daughter was born after September 9, 2005. The Court was to also decide whether such rights would be conferred upon the daughter where the father had died before September 9, 2005.
- Furthermore, the issue whether an oral partition can also be accepted as a recognised mode of partition under the rigors of provisions to explanation to Section 6(5) of the Succession Act was also placed before the Court.

Supreme Court Ruling

The key observations of the Supreme Court are summarised below:

- The provisions of the 2005 Amendment Act are retroactive in application. A retroactive statute is one whose operation is based upon the character or status that arose earlier. The amendment to Succession Act in 2005 makes available the benefits of succession to daughters at par with that of her male counter parts based on an antecedent event, i.e., her birth.
- Considering the retroactive applicability, the provisions contained in amended section 6 of the Succession Act confer status of coparcener on the daughter, whether born before or after the amendment, in the same manner as the son with same rights and liabilities. The coparcenary rights in the family property can hence be claimed even by daughters born before September 9, 2005 except in case of partition which had taken place before December 20, 2004. The conferment of coparcenary status on daughters would thus not affect any partition that may have occurred before December 20, 2004. However, where only a preliminary decree (including pending proceedings for final decree or in appeal) determining the share of family members in the property has been passed before such date, the daughters are eligible for their share in coparcenary equal to that of a son.
- A daughter is conferred the right of becoming a coparcener by birth. Hence, for the purpose of claiming any right in the family property by the daughter, it is not necessary that the father coparcener should be living as on September 9, 2005. As the right is conferred by birth and not by inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not on the date of amendment coming into effect. What is relevant for claiming the benefit of 2005 amendment is that the daughter should be alive on September 9, 2005.
- The intent behind introduction of the definition of 'Partition' under explanation to section 6(5) of the Succession Act is to ensure that the interest of the daughter is not jeopardized and to take care of sham or frivolous transaction set up unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The plea for oral partition cannot be accepted as a statutorily recognised mode

[2] *Prakash & Ors.* v. *Phulavati & Ors.* (2016) 2 SCC 36
[3] *Danamma Suman Surpur & Anr*. v. *Amar & Ors* (2018) 3 SCC 343

of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases, where a plea of oral partition is supported by public documents and partition is finally displayed in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and ought to be rejected outrightly.

- The Supreme Court also observed that suits/appeals with respect to applicability of amended section 6 of the Succession Act are pending before different High Courts and subordinate courts and that the matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by amended provisions. Hence, the Court requested that the pending matters be decided, as far as possible, within six months.

Dhruva Comments

- The Supreme Court verdict is a welcome ruling and marks a significant step towards gender equality. It puts to rest the debate regarding applicability of amendment to section 6 of the Succession Act by holding that daughters have equal coparcenary rights in a joint Hindu family property even if the father died before the Amendment Act came into force.
- The judgement confers the status of a coparcener on the daughter, whether born before or after the amendment, in the same manner as a son with the same rights and liabilities.
- It is also important to ensure that the partition is effected by way of a registered document and acted upon, failing which it may be regarded as sham or invalid in the court of law.
- The Succession Act and the joint family arrangements have historically been subject to significant litigation considering complex and archaic laws. Further, under a single HUF, co-parceners can extend over four generations. More often the family property held under HUF results in family feuds and disagreements in case of succession of property and co-parcener's share. Earlier HUFs were commonly used as a tax planning tool, however in today's scenario there are limited tax benefits and thus in view of the surrounding litigation it would be worthwhile to revisit existing HUF arrangements, seek a partition where necessary and/or rethink on migrating to more conducive holding structures to ensure smooth succession over generations.
- The process of partition/ winding up an HUF can be a complex exercise and can also have tax exposures. Also, if non-resident family members are involved, one needs to be careful from an exchange control perspective. One should seek appropriate expert professional advice to ensure that the process is carried out efficiently.

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