

Case Comments

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

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Abstract: The Supreme Court of India made a crucial decision in 2020 regarding defining the issue of inheritance rights of women from their father's ancestral properties under Hindu Law. It had been in controversy even before this decision was reached about whether it was possible for women to claim their inheritance from their father's ancestral properties if their father died before the Communist Uniform Succession Act was passed. The Court held that both daughter and son become coparceners at birth. It therefore shall not affect whether their father died before or after coming into operation of the Hindu Succession (Amendment) Act, 2005. It had been held by the Court that Hindu Succession (Amendment) Act, 2005 is also retrospective in nature, and daughters by birth shall share equal rights with their brothers over their inheritance from their parents' ancestral properties. This decision is of immense importance because it leaves no ambiguity about whether daughters can claim their inheritance from their fathers' ancestral properties, and it provides equal treatment under the law for every woman, which is imperative toward ensuring gender equality under Hindu Personal Law.

Keywords: Coparcenary rights; daughter rights; ancestral property; Hindu succession act 1956; gender equality

1. Introduction

*Vineeta Sharma vs. Rakesh Sharma*¹ (Supreme Court of India, 2020) is an eminent case as far as the coparcenary rights of sisters of a Hindu Mitakshara Joint Family relating to their ancestral property is concerned as declared by the Supreme Court of India (Chakravorty and Pranav 2023). The conflict of decisions or ambiguity of the Supreme Court of India prior to this case had caused confusion to a large extent regarding whether a sister would become a coparcener by birth and whether she would be able to claim rights of their ancestral property irrespective of the death of their father. And whether this right would be retrospective was also a conflict of decisions of various courts even after the 2005 amendment of the Hindu Succession Act providing equal rights and liabilities of sisters and brothers of a Joint Hindu family to their ancestral property.

The Court was asked to interpret the amended Section 6 of the Hindu Succession Act², which thoroughly alters the traditional Hindu coparcenary system that historically favored male descendants (or) the male members. The judges are asked to decide if the amendment sought to establish a substantive birthright in daughters as opposed to a future benefit that could be availed only if their fathers were alive at the time of the enactment. The constitutional relevance in this case is that equality and freedom from discrimination are ensured in the constitutional framework as per the Articles 14 and 15.³

Ultimately, the aim of the Supreme Court was to offer clarity, consistency, and equity through the assessment of the legislative intent, the history of the Hindu coparcenary system, and the nature of a daughter's interest in a joint family. Indeed, the ruling not only clarified the previous inconsistencies but also upholds the fact that a daughter is an equal contributor to the joint family system.

2. Facts

A dispute arose in a Hindu Mitakshara Joint Family due to the appellant Vineeta Sharma's claim that she was entitled to a share in the ancestral property as a coparcener on the basis of amended Section 6 of the Hindu Succession Act of 1956. According to the appellant, due to the

Citation: M. Aravindhan and Saji Sivan. 2025. Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1. *Legal Research & Analysis* 3(2), 85-88. <https://doi.org/10.69971/lra.3.2.2025.154>.



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¹ (2020) 9 SCC 1

² Hindu Succession Act, No.30 of 1956, Sec.6 (as amended by the Hindu Succession (Amendment) Act, No.39 of 2005, India.

³ India Const. art.14-15

amendment of 2005, her rights matured on the date of her birth and did not depend on the status of her father's life on the date of the amended Section 6 of the Act of 1956. But the other family members rejected her claim that her father died before the year 2005 itself and that the amended Section 6 of the Act of 1956 could not have any retroactive effect on the rights of the appellant that did not exist during the lifetime of her father. This resulted in the filing of a legal proceeding.

Before the Supreme Court, this issue has been already decided by the lower courts, which refused to grant the benefit to the claimant based upon the previous decisions of the Supreme Court, which are *Prakash v. Phulavati* (2016).⁴ They indicated that for the daughter to be able to avail herself of the rights of coparcener based upon the 2005 amendment, the father must have been alive as of 9 September 2005, the date when the amendment became effective. As the father of the appellant had died before that date, the lower courts declared that the right couldn't be obtained by her. The claimant was not satisfied with this type of decision (or) interpretation. Therefore, the appellant challenged the judgment based upon the assumption that the legal position taken by the previous decisions is not appropriate, which goes against the intention of the amendment.

The second significant aspect was that the concerned property belonging to the family was undoubtedly an ancestral property and an undivided joint family property in which the Mitakshara school of Hindu law was applicable. There was no registered partition and no judicial decree available prior to 20 December 2004. Hence, the appellant claimed her share based on this aspect as well. There was no documented partition available in support of her contention that the ancestral property was still a joint property. The above aspect was an essential factual consideration in relation to the application of Section 6 amended by the Act.

The daughter of a coparcener would, by birth, become a coparcener in her own right and be equal in rights and liability as a son. Additionally, sec.6(5) dealt with matters concerning the partition that was carried out before 20 December 2004, holding that only those that have been carried out through registered documents or court decisions are valid. The explanation under Section 6 explains that notion partition, also known as a hypothetical division concerning joint family property. A constitutional provision, under article 14 and article 15, also applies, as this amendment gets rid of gender discrimination that was otherwise inherent under Hindu coparcenary property.

3. Issues

Whether a daughter's coparcenary rights are dependent on the father being alive on September 9, 2005? Whether the 2005 Amendment to sec.6 of the Hindu Succession Act is retrospective, prospective or retroactive? Whether a daughter born before the 2005 amendment could claim equal rights in coparcenary property as son? Whether an oral partition of property could be considered a legally valid defense to deny a daughter her share? Whether pending partition suits could be affected by the 2005 amendment?

4. Legal Provisions Involved

This was mainly a case concerning the interpretation of Sec.6 of the Hindu Succession Act, 1956, which is amended by 2005. The Amendment states that this act declares that a daughter of a coparcener will, by birth, be a coparcener in her own right and will have the same rights and liabilities as a son. And sec.6(5) validates the partitions that were made before 20 December 2004, saying only partitions made by registered documents or court decrees will be valid. The Explanation to Sec.6 explains the notion on hypothetical division of the joint family property for the determination of the share of a deceased coparcener. Some important Constitutional aspects like article 14 & 15 also applied to this case, which attempts to put an end to gender bias existing within the traditional Hindu coparcenary system.

5. Arguments of The Parties

Appellant

The appellant argued that this section was amended in 2005 in order to eliminate gender discrimination and it must be construed in a manner consistent with its aim and objective. She further submitted that the right of coparcenary is a birthright under the Mitakshara School of law and it only supports and recognizes this birthright so as to bring daughters on an equal footing with sons. Also, it is irrelevant if the father is or is not present at the time of enactment of this section because this is a right based on birth and not based on the life of the father.

Moreover, she argued that such precedents were based on the wrong interpretation of the Act in the case of *Prakash v. Phulavati*. These precedents laid down the condition that the father must be alive, which is not at all found in Sec.6. The appellant relied on the fact that such an interpretation nullified the effectivity behind the amendment in removing discrimination in gender. The amendment shall have to be construed retroactively.

The other argument raised by the appellant is that, absent a valid partition prior to 20 December 2004, the ancestral property remained joint, and hence the appellant has the right to claim her share of the property. The appellant argued that the Supreme Court of India must apply the law as amended, which aimed at bringing about a structural change in the Hindu Joint Family system, entirely ignoring the beneficial aspect of the Hindu law asserted under the amendment if the judicial preference is further to narrow the same.

Respondents

The litigants also claimed that the amended Sec. 6 could never have operated retrospectively so as to bestow rights upon daughters whose fathers are no longer alive before the year 2005. That the coparcenary rights during the old law did not apply to daughters and that the amended section could not breathe life into a cause of action which did not subsist during the lifetime of the father. They cited that inheritance rights mature on the death of a coparcener and that if it happened before the amended section took effect, then the applicable rules of succession were already in place.

⁴ (2015) 9 SCC 618

They based their argument on the earlier judgment of the Supreme Court, namely the *Prakash v. Phulavati*, in which it was held that only if the father was alive on the date of the amendment, then and then only can the daughter demand rights to be a coparcener. The two cases quoted above give a stable interpretation, and this should be maintained. Moreover, they asserted that the alteration was strictly prospective. Furthermore, the petitioners also claimed that the reopening of the succession matters in the past could result in chaos and disruption of the property status in countless numbers of families in India. Additionally, they submitted that allowing daughters to assert their rights is likely to result in increased litigations, thereby interfering with the normal working of the joint family system in the Hindu community. As such, the Court must therefore retain the prospective approach.

6. Court's Analysis

The Supreme Court began its deliberations by examining the historical basis of the coparcenary system in the Mitakshara school of Hindu law. It was also made clear that coparcenary is in itself a birthright that will be created as soon as a child is born into a joint Hindu family. This was previously applicable only to sons; but in 2005, daughters too got the same right through an amendment in this act. It was made clear that nothing in the amended Section 6 necessitated the father to be living at the time of this amendment. Such a clause will be contrary to the very structure of coparcenary and will amount to adding words to the Act that the Parliament never intended.

The Court then elucidated its observations on the nature of this modification and stated that this retroactive modification has effect on an existing right or relationship, but that right or relationship would have effect only as of the date of its modification. The Court explained that retroactive is not retrospective: The right of daughter is based on birth, an event that happened in the past, and its exercise is feasible only after 2005 modification.

The modification does not unravel resolved successions and/or has not affected any of the transactions that had been determined before 20th of December 2004. The bench then analyzed the inconsistency in the earlier decisions. The Vineeta Sharma court held that in the case of *Prakash vs. Phulavati*, the Court held that the daughter will not be able to assert a coparcenary right in the absence of the father before the year 2005. The court held that the above reasoning is flawed in that it puts the life status of the father as the determining factor for the daughter's right, which runs contrary to the principle of birth and not the father's life. Also, the Court held that in *Danamma vs. Amar*⁵, despite the daughters getting the benefit of the decision, the reasoning of the judgment is flawed in that it did not grapple with the issue of the father's death before the year 2005.

The Court also analyzed the legal effect of the partitions in the joint family. All the partitions prior to 20th December 2004 will be valid only if done through a registered division deed or as a result of a court order. The judges noted that in a large number of families, the partitions are done through oral partitions or in the form of unregistered partitions, which cannot be employed to destroy a daughter's legal rights unless they are supported in a manner that is strong, credible, and convincing. Noted that the law does not encourage people to float fabricated claims of partitions in order to strip women of their rightful share in their ancestral properties.

And then finally, "The Court accorded significant importance to the constitutional value underpinning this amendment. It was further observed that it was "sine qua non to women's economic security, to women's dignity, to women's autonomy, that property rights should be guaranteed to them". "Denying women equal rights is to perpetuate the harmful tradition of patriarchal values, which the Constitution specifically rejects". The Court further stated that this provision was "transformative, seeking to dismantle the inequalities which have been ingrained in the Hindu Personal Laws through centuries". Therefore, "any interpretation of Sec. 6 must always hold fast to the principle of ensuring gender equity, social justice, and equity". The Court emphasized that persons can never again have to withstand inequality if personal laws are interpreted in such a manner that they comply with Article 14 & 15, because "daughters should be placed on an equal pedestal with sons in every respect concerning coparcenary properties".

7. Judgment

The Apex Court declared clearly that a daughter is a coparcener by birth and her rights do not depend on the father's status being alive on 9 September 2005. The Court stated that Sec.6 Amendment makes all daughters coparceners by bringing them on par with sons. The Court stated that this right applies to all sisters whether born before or after the amendment. And this succession is possible only after partition or notional partition, and not after the father's death. The Court further declared that in case of partitions prior to 20 December 2004, they would be recognized only in registered documents or by decrees of courts. Oral partitions or unregistered agreements would not affect the daughters' claims unless and until it is accompanied by strong and compelling evidence. The apex court of India ordered that all courts in India are required to follow the aforementioned principles in adjudicating cases involving ancestral property and coparcenary rights. This decision ensured uniformity over all the provinces by making it sure that the daughters would not be denied their rightful portion in their ancestral properties merely on account of the Technical Interpretations/ Papatoyal customs. This decision has been an immense step towards achieving equality between genders in Hindu personal law.

8. Impact

However, this decision had brought about a revolutionary change in the Hindu Succession Act because it laid rest to all the ambiguities in regards to the daughter's status as a coparcener. Prior to this decision, there were always some doubted judgments on that particular aspect or cases that led to the uncertainty whether the daughter could assert rights as a coparcener in case she had not had any opportunity due to the death of her father before the 2005 amendment. However, by confirming that the daughter becomes a coparcener automatically through birth, irrespective of whether the father is alive on 9th September 2005 or not, the Supreme Court in India brought about harmony in the law. It led to many cases in regards to disputes over properties reaching their end. The

⁵ (2018) 3 SCC 343

judgment has also led to a significant change in the social and economic status of women in the Hindu Undivided Family setup. Historically, the coparcenary system existed as if it was a malechauvinistic system, where only sons had the right to become automatic owners of the ancestral properties. But fixing daughters as equal and same as sons, the Supreme Court has struck down or abolished the age-old patriarchal notion that existed under the Hindu personal laws, as well as furthered the promise of equality as enshrined in the Constitution. This historic judgment has emboldened women to stake their claim to their properties, has further improved their economic independence, as well as ensured that daughters are not discriminated against for accessing the ancestral properties as per the outdated customs or practices, as if they are "marry and leave" kin for the families. Another major implication of this ruling is that it affects the internal affairs of managing the HUF (Hindu Undivided Family) property, as well as how the family members conduct themselves. Notably, given the fact that daughters have obtained the right to demand a partition, valid alienations, account, and decision participation within the context of decisions involving ancestral property, and the fact that males, in particular, are unable to unilaterally dispose of the ancestral property without transparency, families are compelled to ensure all the necessary documentation is in place so as not to conduct oral or unprocedural partitions with regards to the ancestral properties. This ruling has thus ensured greater responsibility is instilled in family settings by ensuring that within the framework of managing ancestral property, the rights of all coparceners, including the daughters, are upheld.

9. Personal Opinion

In our personal opinion, one of the most progressive and properly construed judgments in the history of Hindu Family Law rules was given in this particular case. The Supreme Court in this case not only delivered a just interpretation of the law, but it also dealt with an historical wrong done in the traditional Hindu coparcenary system. Further, by declaring that daughters have the same rights as sons since birth, the Court brought the personal laws in tune with equality, dignity, and justice enshrined under Articles 14 and 15 of the Indian Constitution. This particular judgment also shows that courts can play an important role in removing the inequalities embedded in our personal laws and in making our old personal laws compatible with our modern society. Personally speaking, I feel that this decision has spread an immense impact and has given a very important social message, which is that the importance of a daughter in a family does not depend upon her gender or marital status or upon what the society thinks of her. It again strengthens that daughters are a constant member of a family and also deserve the same amount of respect and financial security as is being given to the same sons. Regardless of this decision potentially having implications in terms of family disputes, no facet surpasses financial empowerment of women or building or improving constitutional morality. This decision will always be an inspiration for generations and generations of women and will assure them that they will definitely get their due share in their ancestral properties without any hesitation or compromise.

10. Conclusions

Vineeta Sharma vs. Rakesh Sharma is one of the landmark decisions that revolutionized (or) transformed the landscape of the Hindu Succession Act by ensuring clarity, consistency, and equality within the legal framework for managing ancestral property. Ultimately, the Supreme Court put an end to the conflicting interpretations of precedents and clarified that the right to ancestral property for a daughter applies at birth and not at the time of the birth of her father. Additionally, by holding the amendment of 2005 to be retroactive, only legal partitions made prior to 20th December 2004 could limit this right. Furthermore, the decision ensured gender equality within the constitutional framework. The decision went beyond just clarifying an aspect of the law, instead signaling a period of five hundred years of patriarchal denial, granting women equal rights to share family wealth. In conclusion, this was more than just an interpretation of a part of the law but indicated a significant step towards gender equality for women in India.

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