

**VINEETA SHARMA VS RAKESH SHARMA AND ORS MANU/SC/0582/2020**

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**Soudip Das\*****FACTS**

Vineeta Sharma filed a case against her family as well as her brother Rakesh Sharma to claim coparcenary rights on her ancestral property. The High Court upheld the case of <sup>1</sup>Prakash Vs Phulavati which stated that section 6 is not retrospective in operation and required the coparcener and the daughter to be alive at the date of the commencement of the amendment act. Since her father died before the commencement of the Hindu Succession (Amendment) Act, 2005 she could not claim coparcenary rights on her ancestral property. Later she approached the Apex Court with the issue.

**ISSUES RAISED**

- Whether Section 6 of the Hindu Succession (Amendment) Act, 2005 require the father to be alive as of 9<sup>th</sup> November 2005?
- Whether the amendment to Section 6 is retrospective, prospective, or retroactive.
- Can women be given equal rights as coparceners?

**RELATED CASES**

Prakash Vs. Phulavati, the respondent claimed partition and possession of a certain percentage of her ancestral properties, which were acquired by her father. The respondent's father acquired the ancestral property on 18<sup>th</sup> February 1988. The supreme court rejected her claim stating that the legislature has expressly made the amendment act applicable from 9<sup>th</sup> November 2005 and only if the death of the coparcener in question is after the said date, The Amendment would be applicable. There is no scope for any other interpretation because of the express language of the Amendment Act.

<sup>2</sup>Danamma Vs. Amar, Gurulingappa Savadi died in the year 2001 leaving behind two daughters, two sons namely Arunkumar and Vijay, and his widow Sumitra. After his death, Amar, son of Arunkumar filed the suit for the partition and separate possession of the suit

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<sup>1</sup> CIVIL APPEAL NO.7217 OF 2013

<sup>2</sup> CIVIL APPEAL NOS. 188-189 OF 2018

property. Stating that 2 sons and a widow were the coparceners of the property and asserted that Mr. Savadi's daughters were not entitled to any share of the property, since they were born before the Hindu Succession Act, and could not be treated as coparceners. The trial court agreed that the daughters cannot be treated as coparceners. Later the case reached the supreme court. The supreme reversed the judgment of the lower stating the amendment states that any daughter of a coparcener by birth becomes a coparcener and is entitled to the same rights and liabilities to the property as a son.

## **CONTENTION**

### **ARGUMENTS BY THE APPELLANT**

The Daughters have been given the right of coparceners to bring them to par with the Sons. The exclusion of this right would lead to discrimination, oppression of daughters, and violation of fundamental rights. Section 6 of the Hindu Succession (Amendment) Act, 2005 is not retrospective but retroactive, it enables the daughters to exercise their coparcenary rights on the commencement of the Amendment Act. Even though the right of a coparcener accrued to the daughter by birth, a coparcenary is a birthright. From the date of enforcement of the Amendment Act, the daughters became coparceners by birth, in their own right with the same liability in the coparcenary property as if she had been a son.

The decision in Prakash v. Phulavati to the effect that there should be a living daughter of a living coparcener on 9<sup>th</sup> November 2005 the date of the commencement fails to appreciate that coparcenary rights are by birth. Thus, the decision in Phulavati cannot be said to lay down the correct law. The daughter of a coparcener does not mean that the daughter of a living coparcener. The death of the coparcener doesn't lead to the end of the coparcenary, as it continues with the other coparceners alive at that time. Thus, the coparcener from whom the daughter is inheriting by her being a coparcener need not be alive at the time of the commencement.

### **ARGUMENTS BY THE RESPONDENT**

There is no conflict between Prakash Vs. Phulavati and Danamma Vs. Amar. In both decisions the provision of section 6 has been held to be of prospective application. The amendment is a prospective one. The declaration by section 6 that the daughter will be a coparcener is prospective, the daughter is treated as a coparcener under the amendment Act and not because of the daughter's birth before the amendment. The Prakash Vs. Phulavati adopted the correct

interpretation of the provision. Married daughters are not considered a part of their father's joint family. They are recognized as class 1 heirs and that does not make them a part of their father's joint Hindu family. A married daughter ceases to be a part of her father's family and becomes a part of their husband's family.

By the use of the words "on and from" in section 6(1) of the Hindu Succession (Amendment) Act, 2005, the law indicates that the daughter becomes a coparcener from the commencement of the act, that is 9<sup>th</sup> November 2005. The daughter needs a living coparcener from whom she can inherit to become a coparcener, as on the death of a coparcener, his interest would have merged with the surviving coparcenary, and hence, on the death of a coparcener father, there will be no surviving coparcener from whom the daughter can succeed. The daughter cannot challenge the past transaction that took place before 20.12.2004 and the daughter should be alive at alive on the date of the amendment. There should be a 'living coparcener' to whom the daughter can inherit to become a coparcener herself.

### **RATIONALE**

The Supreme Court overruled the judgment of the high court and passed a landmark judgment and has agreed on some points of law in Danamma but has partially overruled it as well because according to Danamma the provision of section 6 has a prospective effect. The apex court stated that the Hindu Succession (Amendment) Act, 2005 will have a retrospective effect. The section was amended to align with the constitutionality belief of gender equality. The daughter of the coparcener by birth shall become a coparcener in the same manner as the son. The 2005 amendment intended to give daughters the same rights as son in the coparcenary property. The Supreme court overruled the judgment of Prakash Vs. Phulavati and <sup>3</sup>Mangammal Vs. T.B Raju. The judgment reassured equal treatment of sons and daughters by law for the purposes of succession. As stated by Justice Arun Mishra, "Once a daughter, always a daughter. A son is a son till he gets married. The daughter shall remain a coparcener throughout her life, irrespective of whether her father is alive or not". With this, the daughters got equal rights in their ancestral assets.

### **DEFECTS OF LAW**

Few critics of the law state that the court has failed to see that the daughter when married gets double beneficiaries of these laws, The woman inherits from her father's lineage as well as

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<sup>3</sup> CIVIL APPEAL NO. 1933 OF 2009

from her marriage. Whereas the men only inherit from their father's lineage. There has been a social injustice towards men, as they don't get the benefit of double beneficiaries.

## INFERENCE

The landmark judgment of Vineeta Sharma Vs Rakesh Sharma and ors case is particularly relevant today when <sup>4</sup>women around the world still own less than 20 percent of the world's land. It clarified once and for all the nature of section 6 of the Hindu Succession (amendment) act, 2005, the law is retroactive and the daughter gets to be a coparcener a birth as a son would be. The judgment addresses the unequal treatment of a girl child and a male child in a Hindu joint family.

Often, we see sons get more preferential treatment because it is believed that a daughter after marriage is not a part of her father's family but her husband's. This notion is entirely false as Justice Arun Mishra once said, "Once a daughter, always a daughter. A son is a son till he is married". This judgment empowered daughters around the country by providing them equal rights to their father's property. Daughters can now be fairly treated in matters of property as it would have been done in the case of a son. Women have been treated unfairly in our society for far too long. The law needs to change and evolve faster for them to be treated equally. In recent years the world as a whole has taken many steps for strengthening women's rights to property, land, and other resources. The government needs to particularly address discriminatory laws and practices still going on around the country today.

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<sup>4</sup> Monique Villa, 'Women own less than 20% of the world's land. It's time to give them equal property rights' (weforum.org 11th Jan, 2017) <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights> accessed 25th October 2022