



VINEETA SHARMA V. RAKESH SHARMA: REDEFINING DAUGHTER'S COPARCENARY RIGHTS IN HINDU SUCCESSION LAW

S. Abinaya* Harish. J*

INTRODUCTION

Affirmative action is one of the fundamental principles enshrined in our constitution of India that guarantees certain fundamental rights to its citizens. Article 14¹ Our constitution ensures the right to equality and equal protection before the law without any biases. Similarly, Article 15² Prohibits discrimination irrespective of caste, race, religion, and gender. In the purview of gender, the constitution provides equal rights for a woman as in the case of a man. In the arena of property rights, the mitakshara form of law prevents certain rights and liabilities for a woman. This article concerns the perspective of a hindu family in relation to the issue of daughters inclusion as heirs this practice was inapplicable prior to the enactment of the hindu succession act in 1956 for it appears that the mitakshara system of hindus dominated in most regions of india except in west bengal and assam the act of 1956 states in section 6 that the provision has to do with the enjoyment of property in regard to a deceased male hindus estate and the survivors rule but the fact that the family was joint in the first place did not give any right to child to inherit a fathers property there was a turning point with the 2005 amendment as it sought to provide justice to girl children by giving them equal rights to inheritance at birth together with boys however this turned out to be a much welcomed but half way measure most attempts at ameliorating gender-based deprivation have difficulties in practice for instance it raises questions as to whether it changes the previous or it creates the precedent the supreme court is engaged with such issues in a number of cases still there are a lot of cases that remain controversial a case in this respect which is quite central in the discussion vineeta sharma v rakesh sharma hardly raises such concerns but it resolves most of the issues while giving rise to new ones which relate to the operation of the laws concerned.

*BCOM LLB, SECOND YEAR, THE TAMIL NADU DR.AMBEDKAR LAW UNIVERSITY, TAMIL NADU.

*BCA LLB, SECOND YEAR, THE TAMIL NADU DR.AMBEDKAR LAW UNIVERSITY, TAMIL NADU.

¹ Constitution of India,1950, art 14

² Constitution of India,1950, art 15

FACTS OF THE CASE

In the present case the coparcener shri dev dutt sharma passed away on december 11 1999 leaving behind a widow a daughter and three sons one of his unmarried sons died on july 1 2001 the other family members rejected the plea arguing that since his father died in 1999 before the amendment came into force he could not be considered as a heir and therefore the family had no right to inherit the property they also argued that since he was married he was not part of the joint family and therefore he had no right to the property vineeta sharma sued her brothers rakesh sharma and satyendra sharma and their mother arguing that she entered the family at birth because the right to recognition of birth was the necessary basis for granting these rights balance she appealed to the delhi high court which upheld the trial courts decision and found that section 6 of the hindu succession act 2005 did not apply to her case because her father died before the amendment came into force the decision was based on the supreme courts decision in prakash v phulavati 2015 which held that for the amendment to be valid both the father and the daughter must be alive at the time of the amendment vineeta sharma was not satisfied with this decision and approached the supreme court of india seeking a new trial.

LEGAL ISSUES

- Whether the daughter has an equal status to a son in sharing the rights and liabilities of a coparcenary property who is born before 9 November 2005.
- Whether the amended provision of the Hindu Succession Act, 2005 has the effect of retrospective or prospective.
- Whether the father and the daughter need to be alive at the time of commencement of the amendment for the provisions to be applicable while deciding the shares in the coparcenary property.

OBSERVATION OF SUPREME COURT

The Court opined that it is not essential for a predecessor coparcener to be alive for the formation of a coparcenary or for an individual to be recognized as a coparcener; what matters is that a person is born within the degrees of coparcenary concerned. Additionally, the Supreme Court addressed the issue related to the interpretation of Section 6³ of the Hindu Marriage Act,

³ Hindu marriage act, 1955, sec 6

1956. In the revised Section 6,⁴ the phrase “daughter of a living coparcener” is not included. Section 6(1)(a) grants rights to daughters by their birth. The Declaration of Rights established on 9.9.2005 stipulates that daughters born into a coparcenary hold equal rights and bear the same liabilities as mentioned in Section 6(1)(c). Any mention of a coparcener also encompasses references to a coparcener's daughter. The terms outlined in Section 6(1) do not support the idea that the coparcener must have been alive on 9.9.2005 for the daughter to claim her rights. The apex court cited various rulings that addressed similar issues. It considered the case *Lokmani & ors v. Mahadevamma & ors* (2018),⁵ where the Karnataka High Court determined that the amended provisions possess retrospective effects, thereby enabling daughters to obtain equal coparcenary rights. The court further noted that oral partitions and those enacted through unregistered deeds should be excluded from the definition of "partition." In light of the case *Balchandra v. Smt. Poonam & ors* (2015)⁶, the matter regarding the retrospective application of the revised Section 6 was examined. The Supreme Court referenced a decision made by a division bench in the case of *Prakash v. Phulavati* (2015),⁷ indicating that the retrospective effect applies only to scenarios where both the coparcener and his daughter were living at the time the amendment act came into force in 2005.

DECISION

The judgment was delivered by Justice Arun Mishra who 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* case⁸, 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*”. The court clarified that the creation of a joint venture or a person becoming a partner does not require the existence of the joint venture itself; what matters is that the term "neighbor's daughter" is not mentioned in Section 6⁹. The *Danamma* case¹⁰ refers to a return or future situation. The inheritance rights of a daughter were recognized starting September 9, 2005, and these rights are established from the daughter's birth. The court explained that the amendment to Section 6

⁴ *ibid*

⁵ *Lokmani & ors v. Mahadevamma & ors* (2018) 12 SCC 684

⁶ *Balchandra v. Smt. Poonam & ors* (2015) 2 SCC 681

⁷ *Prakash v. Phulavati* (2015) 2 SCC 36

⁸ *ibid*

⁹ *ibid*

¹⁰ *Danamma suman surpur v. amar* (2018) 3 SCC 343

of the law should be viewed as a change, not an actual amendment. In Purvati's case, the court overturned the previous decision, ruling that the joint property passes directly from father to daughter, not from co-heirs to surviving daughters. On September 9, 2005, the court also ruled that the joint property of a Hindu family is inalienable, and the right to partition is absolute. The daughter's right to joint ownership exists from birth, regardless of whether the father is alive or deceased. The court held that claims related to the joint venture will not be extinguished and that partitions made after December 20, 2004, must be registered as a final decree to prevent fraudulent actions that could violate the daughter's rights. The court emphasized that the partition must be legitimate and valid. Generally, verbal classification cannot serve as a defense unless the classification is made according to the proper criteria, with the exception being if the verbal classification is accurate. The burden of proving the legality and authenticity of verbal sharing rests with 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 judgments and triumphant in the interpretation of the legislation by its object to whittle down the preferential bias of males over females about inheritance and succession. The judgment pronounced in this case has ended the vagueness and ambiguity in the interpretation of Section 6 of the Hindu Succession (Amendment) Act, 2005 which aimed at granting equal rights to daughters, like sons, in ancestral property. The judgment aligned with the constitutional spirit of the right to equality under Article 14 of our Indian Constitution of 1950¹¹. However, the applicability of this judgment is limited in the sense that it applies to Hindu Undivided Families or Ancestral property only and not concerning 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 stood as the watchdog of the Fundamental Right to Equality enshrined under Article 14 of the Constitution of India, 1950 which has always provided a bedrock of assurance to the disadvantaged in this miraculous country of diversity. It has contributed to the empowerment of women in the society. In this judgment, the Supreme Court has specifically

¹¹ Constitution of india,1950, art 14

overruled the Phulvati case and partially overruled the Danamma case. The object of the legislation was to rectify a fault in law, which has also been interpreted by the Supreme Court. This judgment was effective in settling all the confusion that ensued from the two contradicting judgments preceding it. Secondly, it also agreed on the prospective aspect of the provision in the Danamma case, though it had held Section 6[1] of the Act of 2005 to be retrospective in character. It has clarified that this portion is not an amendment but a substitution. The daughter has been held to have coparcenary rights by birth in the ancestral property irrespective of the status of the father as to whether he is alive or not as of 9th September 2005. In case of the daughter being not alive, she shall also be entitled to the same as it shall devolve upon her legal heirs. The Court further held that any sham partition for depriving the daughter of claiming her property right shall not be entertained.