Redefining coparcenary rights of daughters under the Hindu Succession Amendment Act 2005 in light of Vineeta Sharma v. Rakesh Sharma (2020)9 SCC 1: A Case Comment

I. Abstract

The present case comment is the landmark judgment rendered by a three-judge bench of the Supreme Court of India in Vineeta Sharma v. Rakesh Sharma, decided on the 11th August 2020. The case arose from the conflicting precedent on the interpretation of Section 6 of The Hindu Succession Act, 1956, as substituted by The Hindu Succession Amendment Act, 2005, which conferred coparcenary rights upon a daughter in a Mitakshara Hindu joint family. The primary question before the court was whether the amended Section 6 operates retrospectively and whether the father-coparcener must be alive on the date of commencement of the Amendment Act, 9th September 2005, for the daughter to claim coparcenary rights. The Supreme Court's 2015 judgment in Prakash v. Phulavati held that the 2005 Amendment to the Hindu Succession Act is prospective, requiring the father to be alive on 9 September 2005 for the daughter to claim coparcenary rights. This interpretation was overruled in 2020 by Vineeta Sharma v. Rakesh Sharma, which clarified that daughters have coparcenary rights by birth, irrespective of the father's status on the amendment date. This judgment represents a transformative moment in Hindu succession law, decisively settling a decade-long legal controversy and reinforcing the constitutional guarantee of gender equality under Articles 14 and 15 of the Constitution of India.

Key words

Hindu Mitakshara coparcenary; Section 6 of the Hindu Succession Act, 1956; Hindu Succession (Amendment) Act, 2005; Right of the daughter as a coparcener.

Case Details

Title: Vineeta Sharma v. Rakesh Sharma

Citation: (2020) 9 SCC 1

Court: Supreme Court of India, Civil Appellate Jurisdiction

Date of decision: 11 August 2020

Judge: Hon'ble Arun Mishra

Hon'ble S. Abdul Nazeer

Hon'ble MR Shah.

Case Number: Civil Appeal No. (Diary No.32601 Of 2018)

II. Introduction

The Hindu Succession Act 1956[1] codified and reformed the law of intestate succession among Hindus. However, its original section 6, which governed the devolution of the interest in Mitakshara coparcenary property, perpetuated a deeply gendered structure by limiting coparcenary rights exclusively to males. Daughters, irrespective of their birth in a joint Hindu family, were denied the status of coparceners and consequently excluded from ancestral property rights by birth, which sons enjoyed automatically from birth and by operation of law.

The Hindu Succession (Amendment) Act 2005[2] was enacted after the 174th Report of the Law Commission of India and successful State-level experiments, and substituted Section 6 with a progressive provision declaring daughters of coparceners to be coparceners by birth, with the same rights and liabilities as sons. Despite this legislative reform, two Division Bench decisions of the Supreme Court, Prakash v. Phulavati (2016)[3] and

[1] The Hindu Succession Act 1956, No. 30 of 1956 (India).
[2] The Hindu Succession (Amendment) Act, No 39 of 2005 (India).
[3] Prakash v. Phulavati, (2016) 2 SCC 36 (India).

Danamma @ Suman Surpur v. Amar (2018)[4], arrived at conflicting conclusions on the scope and retroactivity of the amended provision, creating widespread judicial uncertainty. In this background, a three-Judge Bench in Vineeta Sharma was constituted to resolve the conflict. The judgment, authored by Justice Arun Mishra, is one of the most consequential decisions in Indian family law, firmly establishing daughters' equal coparcenary rights and providing comprehensive guidance on the law of partition under the amended Section 6.

III. Legal provision

A. Section 6 Hindu Succession Act, 1956 (Pre-Amendment)

Before the 2005 Amendment, Section 6 provided that when a male Hindu died after the commencement of the Act, his interest in Mitakshara coparcenary property would devolve by survivorship upon the surviving members of the coparcenary. An exception existed: if the deceased had left a surviving female relative specified in Class I of the Schedule, his interest would devolve by testamentary or intestate succession. The Explanation provided for a notional partition to ascertain the deceased coparcener’s share.

B. Section 6, Hindu Succession Act, 1956 (Post 2005- Amendment)

The Hindu Succession (Amendment) Act, 2005, substituted Section 6 with the following provision:

> Section 6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that

[4] Danamma @ Suman Surpur v. Amar, (2018) 3 SCC 343(India).

nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

The proviso to Section 6(1) safeguards dispositions, alienations, and partitions effected before 20 December 2004. Section 6(2) provides that property to which a female Hindu becomes entitled under sub-section (1) shall be held with the incidents of coparcenary ownership. Section 6(3) abolishes devolution by survivorship for deaths occurring after 9 September 2005 and provides for deemed partition. Section 6(4) abrogates the pious obligation doctrine. Section 6(5) defines 'partition' as one effected by a registered deed or by a decree of a court, and declares that Section 6 shall not apply to any partition effected before 20 December 2004.

Other relevant provisions

Articles 14 and 15 of the Constitution of India guarantee equality before the law and prohibit discrimination on the grounds of sex. Section 8 of the Hindu Succession Act, 1956, governs the general rules of succession for male Hindus dying intestate. The 174th Report of the Law Commission of India (2000) provided the legislative foundation for the 2005 Amendment, recommending the adoption of the Kerala model of abolishing gender-based discrimination in coparcenary.

IV. Facts

The matter arose from a civil appeal (Diary No. 32601 of 2018), Vineeta Sharma v. Rakesh Sharma, concerning the claim of a daughter to coparcenary rights in ancestral property under the amended section 6. The connected matters raised the following factual scenarios: In Balchandra v. Smt. Poonam[5]. The question arose whether a daughter could become a coparcener when her father, who was a coparcener, had died before the Amendment Act of 2005 came into force.

[5] Balchandra v. Smt. Poonam, SLP (C) No. 35994 of 2015 (India).

In Sistia Sarada Devi v. Uppaluri Hari Narayana[6],the issue was whether daughters could claim redistribution of shares under amended Section 6 in pending partition proceedings where a final decree had not yet been passed.

In Girijavva v. Kumar Hanmantagouda[7],the issue was whether Section 6, as substituted, was prospective in a case where the father died in 1994, well before the 2005 Amendment.

The conflicting Division Bench decisions which precipitated the reference were: (i) Prakash v. Phulavati (2016), holding Section 6 to be prospective and requiring both the coparcener-father and his daughter to be alive on 09.09.2005; and (ii) Danamma @ Suman Surpur v. Amar (2018), holding that daughters were entitled to equal coparcenary rights even when the father died before 09.09.2005.

V. Issues

1. Whether the amended Section 6 of the Hindu Succession Act 1956 operates retrospectively, retroactively, or only prospectively?
2. Whether the father-coparcener must be alive on 09.09.2005 (the date of commencement of the Amendment Act, 2005) for the daughter to claim coparcenary rights under amended Section 6?
3. Whether an oral partition or an unregistered partition deed, claimed to have been affected before 20.12.2004, constitutes a valid 'partition' under the Explanation to Section 6(5) to defeat a daughter's coparcenary rights?
4. Whether pending partition proceedings, including cases where a preliminary decree has been passed but no final decree has been passed, can be reopened or modified to give daughters their coparcenary share under the amended Section 6?
5. Whether the statutory fiction of partition under the unamended Section 6 (notional partition) constitutes an actual partition for the proviso to Section 6(1) and Section 6(5)?

[6] Sistia Sarada Devi v. Uppaluri Hari Narayana, SLP (C) No. 38542/2016 (India).
[7] Girijavva v. Kumar Hanmantagouda, SLP (C) No. 6403/2019 (India).

VI. Judgment

Issue 1: Retroactivity of Section 6

The Supreme Court held that the daughter's right in the coparcenary is by birth and, accordingly, the amended Section 6 has retroactive (though not retrospective) operation. The Court distinguished between 'retrospective' (reopening concluded past transactions) and 'retroactive' (attaching new consequences to past events for future purposes). While the amendment does not reopen past transactions, it retroactively recognises daughters born before 9 September 2005 as coparceners with effect from that date. The Court expressly overruled the contrary view in Prakash v. Phulavati, which had treated the amendment as purely prospective.

A. Issue 2: Father Need Not Be Alive On 09.09.2005

The Court decisively held that the father-coparcener need not be alive on 9 September 2005 for the daughter to claim coparcenary rights. Since coparcenary is a right by birth, constituting unobstructed heritage (apratibandha daya), it is not contingent upon the owner's existence. The Mitakshara coparcenary does not automatically terminate on the death of a coparcener; it continues with the surviving members, and the daughter's birthright in it is not extinguished by her father's prior death.

B. Issue 3: Oral Partition and Section 6(5)

The Court held that under the Explanation to Section 6(5), a 'partition' recognized for the purpose of saving past transactions must be either by a registered deed or by a court decree. An oral partition or unregistered partition deed cannot ordinarily be accepted. The Court imposed a heavy burden of proof on the party asserting an oral partition, requiring it to be supported by cogent, impeccable, and contemporaneous public documentary evidence. The intendment of the Explanation is to prevent fraudulent or sham defenses set up to deprive daughters of their coparcenary rights. However, the Court carved out a narrow exception: in exceptional cases where the oral partition is

conclusively proved through public documents and is given full effect as if by a court decree, it may be recognized.

C. Issue 4: Pending Proceedings and Preliminary Decrees

The Court held that daughters are to be given their share equal to that of a son in pending proceedings for the final decree, even if a preliminary decree has already been passed. A preliminary decree declares shares but does not affect partition; only a final decree affects actual partition. Hence, in any matter where the final decree has not been passed as on 09.09.2005, the daughters' coparcenary rights under amended Section 6 must be given effect.

D. Issue 5: Notional Partition Under Unamended Section 6

The Court clarified that the statutory fiction of partition under the proviso to unamended Section 6, created only for the purpose of ascertaining the share of a deceased coparcener, did not bring about an actual disruption of the coparcenary. This notional partition is not covered by the proviso to amended Section 6(1) or Section 6(5), and its registration requirement does not apply to a partition by operation of law.

VII. Court Decisions

The Supreme Court answered the reference in five specific terms. First is that the provisions of substituted Section 6 confer the status of coparcener on a daughter born before or after the amendment, in the same manner as a son, with the same rights and liabilities. Second, the Rights can be claimed by the daughter born earlier with effect from 09.09.2005, with savings as provided in Section 6(1) as to disposition, alienation, or partition taking place before 20.12.2004. Third, since the right in coparcenary is by birth, the father-coparcener doesn't need to be living as on 09.09.2005. Fourth, the statutory fiction of partition created by the proviso to the unamended Section 6 did not affect an actual partition or disrupt the coparcenary. Notwithstanding a preliminary decree, daughters are to be given a share equal to that of a son in pending final decree proceedings. Fifth, in view of the Explanation to Section 6(5), a plea of oral partition is not to be accepted

as a recognized mode of partition. However, in exceptional cases where such a plea is supported by public documents and the partition is finally evinced in the manner of a court decree, it may be accepted. The Court overruled the contrary views expressed in Prakash v. Phulavati (2016) and Mangammal v. T.B. Raju & Ors[8]. The opinion in Danamma @ Suman Surpur v. Amar was partly overruled to the extent it was contrary to this decision.

VIII. Conclusion

The substituted Section 6 of the Hindu Succession Act, 1956, confers the status of coparcener on a daughter born before or after the amendment, in the same manner as a son, with the same rights and liabilities. Rights can be claimed by a daughter born earlier with effect from 9 September 2005, with savings as provided in Section 6(1) for dispositions, alienations, partitions, or testamentary dispositions which had taken place before 20 December 2004. Since the right in coparcenary is by birth, the father-coparcener need not be living as on 9 September 2005. The statutory fiction of partition created by the proviso to the original Section 6 did not affect an actual partition or disrupt the coparcenary; it was only for ascertaining the share of a deceased coparcener. Accordingly, even if a preliminary decree has been passed, daughters are to be given a share equal to that of a son in pending final decree proceedings or in appeal. A plea of oral partition cannot be accepted as a recognized mode of partition under the Explanation to Section 6(5). However, in exceptional cases where public documents support it and are finally evinced in the manner of a court decree, it may be accepted. Vineeta Sharma v. Rakesh Sharma is a watershed in Indian succession law. By anchoring daughters' coparcenary rights firmly in birth—irrespective of the father's survival on the amendment date—the Supreme Court gave full effect to the legislature's reformist intent and constitutionally mandated gender equality. The judgment eliminates the anomaly whereby a daughter's rights turned on an accident of her father's longevity, and provides definitive guidance to courts adjudicating pending partition proceedings across the country.

[8] Mangammal v. T.B. Raju, (2018) 15 SCC 662(India).