



**CASE COMMENT ON VINEETA
SHARMA v. RAKESH SHARMA &
ORS. (2020) 2020 SCC ONLINE SC 641**

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Introduction

The Hindu law relating to succession has been codified by the Hindu Succession Act, 1956, which deals with the aspect of devolution of interest in joint and self acquired property of a Hindu dying intestate. However, the most contentious issue regarding the succession is the devolution of the interest in joint family property. The concept of joint hindu family is wider than that of a Hindu coparcenary. It comprises of all persons who are lineal descendants of a common ancestor and it also includes their wives and unmarried daughters. On the other hand, a hindu coparcener is a narrow body which comprises of propositus and his three lineal descendants meaning thereby, that coparcenary property is the property which is inherited by a hindu from his father, grandfather or great-grandfather. In other words, it consists of only male members up to three generations from the last male common ancestor inclusive of him thereby consisting of fathers' son, sons' son and sons' sons' son. The property which is inherited by individual from any other person cannot be regarded as a coparcenary property. Therefore, any person who is inheriting the estate of a common estate equally with others would be termed as a coparcener.

Section 6 of the Act, deals with the concept of devolution of the interest of male hindu in coparcenary property and recognized the rule of devolution of coparcenary property by way of survivorship before the Amendment in 2005. Upon the marriage, the daughter ceased to be a member of her fathers' family rather she becomes a member of her husbands' family. The unamended section 6 of the Act did not confer any rights to the daughters to lay claim upon the coparcenary property of the male hindu. The Law Commission of India in its report sought to propose reforms in the proprietary rights of women under the Hindu Law in order to remove the discrimination contained under Section 6 and giving equal rights to daughters in the Hindu Mitakshara Coparcenary property. Thus, before the Amendment Act of 2005, only sons were treated as coparceners, however, by virtue of the substitution of section 6 with effect from 09.09.2005, daughters have been equally recognized as coparceners by birth, like a son.

No sooner did the Amendment Act of 2005 become operational, than controversy arose as to whether the provisions of the Amendment Act were prospective or retrospective in operation. The Supreme Court in *Prakash v. Phulwati*, had categorically laid down that Section 6 of the Act is not retrospective in operation, meaning thereby that in order to avail the benefit of Section 6, it is essential that both the coparcener as well as the daughter should be alive as on 09.09.2005, which is the date, when the Amendment Act, 2005 came into force. However, in *Danamma v. Amar Singh*, the Apex Court observed that the provisions of Section 6 of the Act, after Amendment, are retrospective in operation and they confer full



rights upon the daughter to be coparcener since birth. The Court further observed that even if the coparcener (father) was not alive on the date when the Amendment Act came into force, still the daughters will have right over the coparcenary property. Both the aforementioned judgments caused widespread conflict relating to the coparcenary rights of daughters to inherit the coparcenary property of her deceased father. The said controversy was ultimately settled in the case of *Vineeta Sharma v. Rakesh Sharma*.

Observation of Supreme Court:

The Apex Court in the instant case has elaborately analysed the aspect of devolution of Mitakshara coparcenary property of hindu male. It held that the provisions of section 6, after the amendment, has done away with the discrimination meted out to the daughters of the coparceners by granting them equal proprietary rights in the coparcenary property by birth. The object of gender justice as laid down in the Constitution was sought to be achieved thereby. Prior to the amendment, upon the death of a hindu, his coparcenary interest devolved by way of survivorship, upon the surviving members of the coparcenary, however, by virtue of the amendment in 2005, the coparcenary rights of a male hindu are now devolved by way of testamentary or intestate succession. The amendment has done away with the concept of survivorship. Now, after the amendment in section 6, the daughter has been conferred the right to inherit the coparcenary property of his deceased father. The said conferral of right is vested by birth, though the said rights could be claimed from the date when the Amendment came into force, which is 09.09.2005. However, the provisions are of

retroactive application. The Court further distinguished between a retrospective statute and a retroactive statute. The retrospective statute operates backwards and takes away or impairs vested rights acquired under the existing laws, whereas a retroactive statute is the one that does not operate retrospectively but it operates in future. Its operation is based on the character and status earlier. In view of the principle of coparcenary that a person is conferred the rights in the coparcenary property by birth and daughters have been recognized and treated as a coparcener, it is not necessary that the father of the daughter should be living on the date when the amendment Act came into force. The daughter would step into the shoes of coparcenary akin to a son, by virtue of her birth, before or after the Act, but daughter born prior to the Amendment, can claim these rights only from the date when the amendment came into existence, which is 09.09.2005, subject to the exceptions enunciated by way of the proviso appended to section 6(1) read with section 6(5). The coparcenary status of a daughter remains unaffected by the death of the father or other coparcener, as the said right accrues to her, by virtue of her birth in the family. This would not lead to any uncertainty in law as the provision of Section 6 makes the share of surviving coparceners uncertain till actual partition takes place. The explanation appended to section 6(5) explains the term partition to mean the partition effected by any registered deed or by decree of Court. The legislative intent was to avoid sham or bogus transaction of oral partition in order to defeat the rights of coparcener conferred upon the daughters.

Analysis of the Decision



The Court in the instant case has laid down that by virtue of amendment in the Act, the coparcenary status has been conferred upon the daughter born either before or after the amendment in the same way, that of son, subject to same rights and liabilities. The daughter who is born before the commencement of the Amendment Act, is also entitled to claim her rights subject to the provisions of section 6(1) dealing with disposition, alienation, partition taking place prior to 20.12.2004. As the coparcenary right is conferred by birth, it is not essential that the father coparcener should be living as on 09.09.2005, which is the date when the Amendment came into force. The concept of father/coparcener and daughter to be alive on the date, when the amendment Act came into force as laid down in *Phulwati's* case was expressly over-ruled by the Court.

By virtue of the decision in *Vineeta Sharma case*, the uncertainty relating to the devolution of coparcenary right of daughter after the amendment act of 2005 has been removed. The law has been made more certain and crystallised in this aspect. The court has dealt with the conflicting judgments dealing with the effect of daughter's right over the coparcenary property and the status of living coparcener viz-a-viz, the amendment Act, The court in unequivocal and explicit terms has laid down that for the daughter to inherit the coparcenary property of her father, it is not essential that the coparcener must be living on the date when the Amendment Act came into force. The coparcenary status conferred upon the daughter is by virtue of birth and is unaffected by the living status of her father as on the date of amendment. This decision has further brought clarity as to the operation of the amended provisions of Section 6 to be in

the nature of retroactive legislation and directions were issued to the Courts throughout the country to expedite the matters dealing with the said concept in accordance with the decision of the case. The judgment becomes important for another reason as it guarantees gender parity by treating son and daughter on same footing. The condition of living status of father was not even required in case of male coparcener whereas it was mandatory for a female coparcener which was an utter disregard to the spirit of gender equality as envisaged under Articles 14 and 15 of the Constitution of India.

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