



Women's right to coparcenary property is still a mirage? A travel from Vedic Age to Vineeta Sharma v. Rakesh Sharma

V. Nivedhitha

Ph.D. Research Scholar

University of Madras

INTRODUCTION:

Women constitute half of the world population. Women have a peculiar and important position in the society. Irrespective of the fact whether the country is developed, developing or under-developed women hold a unique position and this is because of the fact she plays an important role for a person in various stages of life such as, Mother, Daughter, Wife, Daughter in law, Sister, etc. A women faces severe barriers and impediments throughout her life inspite of playing in an important role. Even in this era, she is oppressed and dominated by patriarchal society. A society reaches a maturity level and a sense of responsibility, if the women maintains a status. One of the institutions for accessing the status of the women is Property. The term Property comprises of both movable and immovable property. When the property is physically attached to the land, it becomes a personal property and at this juncture the phrase "Right to Property" becomes meaningful.

The inheritance right of a women are determined primarily by the values and norms which are generally acceptable as well as the mechanisms of intra-household decision making and distribution. The law of property of a Hindu female is marked by vicissitudes starting from the Vedic society when female enjoyed equal status economically and wife enjoyed equal rights in husband's house¹ although she did not possess any property right in that golden era but, even then, she was treated like 'Devi' and had a respectable and upper place in the family.

¹ Sir Gooroodas Bannerjee in Marriage and Stridhana, remarks, "nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own". P.V. Kane has quoted some passages from the Vedas which support the view that women owned property in those times, Kane HDS, Vol. III (1968). Ch. XXX.

There are various Conventions and Declarations in support of Women Right to Property. UN Convention on Elimination of All Forms of Discrimination Against Women, 1979 needs a specific mention in this regard. Article 16 of the convention, "The State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on a basis of equality of men and women the same rights to enter into marriage and the same rights of both spouses in respect of the ownership,, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration." CEDAW goes a step further and warns that a women should not be discriminated on the basis of role in procreation.

India is a party to the above mentioned convention and in our Country the problem started to prevail when the inheritance rights were connected to do with immovable property. There was problem in inheriting the property by women because of the patriarchal society and to keep the properties intact within the family.

PRE-CONSTITUTION PERIOD

The status and the position of the women in the society or within the family was comparatively better during the Vedic period. They were provided with education, equal rights with men in philosophical discussion and right to choose either married life or to involve in religious and metaphysical studies. In spite of giving them all the rights they were not provided with property rights. This status of the women got deteriorated in the late vedic period or Medieval period and during the invasion of Muslim there were further deterioration and the women were suffered the most. During this period, women were considered as part of the entertainment.

During the British period, legislations were enacted to uplift the conditions of the women. Many reforms such as widow remarriage, prohibition of child marriage and women's right in property were recognized. The efforts of Raja Ram Mohan Roy, Sir William Bentinck, Ishwar Chand Vidya Sagar and Swamy Vivekananda should be appreciated and considered for enabling the upliftment of the women. Swamy Vivekananda said "There is no chance for the welfare of world unless the condition of women is improved. It is not possible for a bird to fly on only one wing".² The passing of the Hindu Widows Remarriage Act, 1856 is the first step by the British for the protection of women by enacting a law.

² Cited by J S Verma, *The New Universe Of Human Rights*(Universal Publication, New Delhi 2004)at p.277
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In many scenarios, the inheritance of women estate was questioned before the Privy Council. In the cases such as *Keerat Singh v Kooluhulul Singh*³, *Bhagwan Deen v Mayna Bai*⁴ and *Shiv Shankar v. Devi Sahai*⁵, it was time and again decided as the women right to the inherited property is limited and after her death it will be reverted back to the persons from whom it was inherited. It does not devolve upon the legal heirs of the women. This resulted in the enactment of Hindu Women's Right to Property Act of 1937 since the female's right to property was not clear and in ambiguous state. This act was considered as the first chapter of the Hindu Women Right to property.

The Hindu Women's Right to Property Act of 1937 is prospective in operation. This act does not apply to the property of any Hindu who died intestate and to the widow of any coparcener who died before the commencement of the Act. Further the economic condition of the women was improved by enacting the Hindu Women's Right to Property Act of 1937. As per this Act, a widow can claim partition and right of enjoyment of the property during her lifetime. Even though this gives only a limited ownership to her husband's property, but she was able to survive without being dependent on the members of the husband family. Though this act brought in lot of positive changes in the status of the women in society, it indeed has a number of inconsistencies and controversies. To overcome this the Government of India formed a committee, known as Rau Committee for which B.N. Rau was the Chairman to frame a Hindu Code for the law of succession and law of marriage.

POST-CONSTITUTION PERIOD

The emergence of independence enabled a new era of social justice and human rights. Framing of the Constitution is a huge milestone and to give a national agenda status to the social justice. Gender equality finds a place in the Constitution of India in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Through the Constitution of India a State is empowered to take measures of positive discrimination in favour of women. For the welfare and advancement of the women in various spheres there are various plan, programmes and policies. Constitution sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs.⁶ Our Constitution consists of provisions enabling equality before law and equal protection of laws⁷. It also

³ (1939) 2 MIA 331

⁴ (1867) MIA 487

⁵ (1903) 25 All. 468.

⁶ Wade and Philips, *Constitution Law* 1 (1946).

⁷ Article 14 of Constitution of India.

enables to make special provisions for women.⁸ Right to equality provision under Constitution of India is considered as beacon lights to guide our land to the Constitutional goals. Though there are these provisions, gender discrimination still prevails and it is carried from womb to the tomb.

The Part IV of the Constitution of India enumerates the Directive Principles of State of Policy. Though they are non-enforceable rights, States are expected to apply this as guiding principles while framing laws. There are few Principles such as right to an adequate means of livelihood for men and women equally⁹, equal pay for equal work for both men and women¹⁰, protection of the health and strength of workers – men, women and children from abuse and entry into avocations unsuited to their age and strength¹¹ and just and human conditions of work and maternity relief¹². Article 44 of the Constitution of India directs for establishing Uniform Civil Code throughout the territory. Right to property was a fundamental right and it was ceased in the 44th amendment and was substituted as a Constitutional right under Article 300 A. Article 300 A of the Constitution of India envisages that no person shall be deprived of his or her property except by the authority of law.

HINDU SUCCESSION ACT, 1956

Women as a class has been recognized through Article 14 of the Constitution of India. The judiciary has opined that women as a class is different from men as a class and to remove the disability attached to a women, the legislature has enacted Hindu Succession Act, 1956.¹³

Profoundly there are two schools of thought namely Mitakshara School of thought and Dayabhaga School of thought. The law of inheritance under Mitakshara School of thought follows the principle of propinquity. The principle of propinquity means nearness of blood relation. Whereas under Dayabhaga School of thought the law of inheritance is based upon the principle of religious award.

The Hindu Succession Act has brought major and deep-seated changes in the succession law. The Hindu Succession Act depends on the basic rule of propinquity i.e. preference to heirs on the basis of proximity of relationship. The rule of exclusion of females has been done away with. Through this Act a Hindu Female limited estate was enlarged and the reversionary rights was abolished.

⁸ Article 15(3) empowers the State to make special provisions in favour of women and children.

⁹ Article 39 (a)

¹⁰ Article 39 (d)

¹¹ Article 39 (e)

¹² Article 42

¹³ Kaur Singh v. Jaggar Singh, AIR 1961 Punj 489; Joginder Singh v. Kehar Singh, AIR 1965 Punj 407

Section 6 of the Hindu Succession Act, 1956 is an important section in the Act which was amended in the year 2005 due to gender disparities it had. This section deals about coparcenary property under Mitakshara. A coparcener is a person who has a capacity to assume a legal right over his ancestral property by birth. Section 6 of the Old Act laid down that after the commencement of the Act, whenever a male Hindu having an interest in a Mitakshara coparcenary property dies his interest in the property shall devolve by the Mitakshara rule of survivorship and not in accordance with this Act. It also stated that the interest in property will devolve according to either testamentary succession under Section 30 of the Act or by Intestate succession under Section 8 of the Act when a Mitakshara coparcener dies leaving behind Class I Female legal heir or a male heir claiming through a female heir. The rule of survivorship does not apply when a Mitakshara coparcener dies leaving behind a female heir of Class I or a male heir claiming through a female heir. The operation of this section is retrospective in nature.

There are two modes of devolution of property as per Mitakshara Law. They are survivorship and succession. The survivorship rule applies to the coparcenary property whereas the rule of succession applies to separate property acquired by a male Hindu who is part of joint family. For the first women were granted rights of succession through Section 6 of the act but not rule of survivorship. The rule of survivorship was substituted by rule of succession for female in the Class I legal heirs. Following the section, the judiciary in the case *Ramesh Verma v. Lajesh Saxena*¹⁴ held that daughter would take equal share along with others in the property of the deceased where all the legal heirs left behind are Class I heirs.

The explanation I to the Section 6 of the Act lays down about Notional partition. A notional partition is not similar to an actual partition. It is a partition in imagination, i.e., a supposed partition, which takes place (in mind) in law and not in fact, with a view to determine and fix the share of a deceased coparcener. It is done with a view, only to demarcate the share of a female, if there is any and entitled to a share, but once the demarcation is done, she like other co-sharers does not actually take the share. It envisages a legal fiction of the partition of the coparcenary immediately before his death. The share which would have been allotted to him as a result of partition would be taken as his interest in the coparcenary property.

¹⁴ AIR 1988 MP 46

HINDU SUCCESSION AMENDMENT ACT, 2005

To overcome the gender disparity and to give equal status to women in the inheritance laws the Government amended the Hindu Succession Act, 1956. The Amendment Act, 2005 changed the existence of exclusive right of sons to be coparceners in a Hindu Joint Family to include daughter as well in the coparcenary property as a right by birth. This amendment has basically altered the nature of Mitakshara coparcenary. Through the amendment it is understood that any reference to Hindu Mitakshara coparcenary property includes both sons as well as daughters. In *Pushpalatha v. V.Padma*,¹⁵ it was observed that though the amended act has conferred right upon the daughter as a coparcener in the Mitakshara coparcenary, it is applicable only for the daughter born after the commencement of Act, i.e., 17-06-1956. Consequently a daughter born to a coparcener gets a special status. The Parliament has carried out this amendment carefully by keeping in mind the State amendment carried out by Andhra Pradesh, Karnataka, Tamil Nadu and Maharashtra. These states even before the amendment act of 2005, conceded for equal share or interest in ancestral property.

In *Prakash & Others Vs. Phulavati & Others*,¹⁶ the judiciary that the amendment made in 2005 act is prospective by nature and held that the coparcener have to be alive as on the date of commencement of the act for claiming rights over the property. This law would be applicable only to living daughters of living coparceners. In this case, the coparcener had died prior to 2005 amendment and hence, it was held that the daughter is not entitled as she was not a daughter to the living coparcener. This ruling was upheld in *Mangammal v. TB Raju*.¹⁷

This judgment was reversed and a contradictory view was given in *Danamma @ Suman Surpur & Another Vs. Amar & Others*¹⁸. In this case, the judiciary recognised the right of a daughter whose father died already in the year 2001. The issue in this case was pertaining to the birth of the daughter. The court took an affirmative action and held that it is the birth that creates the coparcenary right.

A contradicting views were expressed in both the above cases. In an appeal, *Vineeta Sharma v. Rakesh Sharma*¹⁹, similar question were considered before Supreme Court and considering the contradicting views the matter was referred to larger bench. The issues before the Supreme Court were whether the property would devolve upon

¹⁵ AIR 2010 Karn 124

¹⁶ (2016) 2 SCC 36,

¹⁷ (2018) 15 SCC 662

¹⁸ (2018) 3 SCC 343

¹⁹ (2020) 9 SCC 1

only “living daughters of living coparceners” and whether the amended Section 6 of the act is prospective or retrospective. The Supreme Court after referring to various concepts of Hindu Law, both codified and customary, being concepts such as Coparcenary and Joint Hindu Family and unobstructed and obstructed heritage came to a conclusion that whether the coparcener is alive or not on the commencement of the amendment act is immaterial for conferring equal rights to the daughter as same as the son and that the rights of coparcenary are conferred on daughter by birth. The court observed that joint Hindu family property is unobstructed heritage. In the case of joint family property, the right of partition is absolute and it is available by virtue of his/her birth. Whereas the separate or a property acquired by individual is known as obstructed heritage, in which right of the property depends upon the owner of the property.

CONCLUSION

By the guiding light of the above mentioned discussion, the right to coparcenary property is created by the birth of the daughter and it is not necessary or immaterial if the father who is the coparcener is alive or not on the date in which the amendment was effected. The Court overruling the previous judgment held that the Section 6 of the Amendment Act, 2005 is neither prospective nor retrospective, but retroactive. Its operation is based upon the birth of the daughter which is an antecedent event.

The Hindu Succession Amendment Act, 2005 along with the verdict of Vineeta Sharma v. Rakesh Sharma has crystallized the legislative intent that the daughter rights to coparcenary property are equal with that of son. As a matter of right by birth. Presently, it is on the hands of the society which is expected to broaden its perspective in line with the above law and rulings of the court and to eradicate all the evils faced by women in different spheres of life.