

## The Hindu Succession (Amendment) Act, 2005

### A Misnomer

Though the Act is Hindu Succession Amendment Act, there is nothing new qua daughters' rights of succession. Equal rights by way of succession were already given to daughters as that of with sons by Section 8 of Hindu Succession Act, 1956 r/w The Schedule.

### **Section 8 : General rules of succession in the case of males -**

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter -

- (a) Firstly, upon the heirs, being the relatives specified in class I of the Schedule;

### **THE SCHEDULE**

#### CLASS - I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son.

#### CLASS - II

- I. Father.
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

Only addition is conferring succession rights on great grandson and great granddaughter through daughter/female. However, while amending the Schedule only four such descendants are included in Class-I, who are in entry No.II S.No.2 and entry No.III S.No.2to4 of Class-II, whereas there are six such descendants, two are in entry No.II and four are in entry No.III of Class-II. Those are at S.No.1 entry No.II and S.No.1 entry No.III of Class-II are not mentioned in amended Class-I of Schedule.

Chance of getting such right is very very less i.e. remote. However, before amendment great grandson/daughter through son i.e. only through male descendants were included in Class-I of the Schedule. Now, by way of amendment, great grandson / great granddaughter even through female descendants are included in the Schedule so as to grant them right of succession.

### **Birth Rights**

Major amendment is qua substitution of new Section 6 for Section 6 of Principal Act of 1956.

New Section 6 (1) is qua conferring birth right on the daughter of a coparcener. Hence, no right of succession is conferred by that sub-section 1 of Section 6.

Sub-section 2 of Section 6 is qua nature of the property acquired by the said daughter under sub-section 1. Hence, not concerned with succession.

Sub-section 3 of Section 6 is in respect of succession.

Sub-section 3 reads as “Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and -

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

**Explanation** :- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition

of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

However, what is provided by sub-section 3(a) & (b) was already provided by proviso to Section 6 of Principal Act and by Section 8 & Schedule of Principal Act. Hence, nothing new is in clause (a) & (b) of sub-section 3 of Section 6 of the Act of 2005.

Clause (c) of sub-section 3 of Section 6 provides right of succession to great grandson / great granddaughter through female descendants. This clause only provides new right of succession. Schedule is accordingly amended, however, two categories of descendants who are coming under Clause (c) sub-section 3 of Section 6 are not included in Class-I of amended Schedule.

- Important right conferred by Amendment Act on the daughter of a coparcener is the birth right and not right by succession.

It is germane to note that the coparcenary birth right is conferred on the daughter of a coparcener and not on all the daughters.

The words “the daughter of a coparcener” are very important for interpreting the provision.

Wording “the daughter of a coparcener” is used in the provision. Only the daughter or a daughter is not used in the provision. It means all daughters shall not by birth become coparceners, but only the daughter of a coparcener shall by birth become coparcener.

Now the question remains who is “the daughter of a coparcener”? For that it is to be seen who is a coparcener?

Son, grandson and great grandson of a male hindu form the coparcenary and they all inclusive of said male hindu are coparceners. 5<sup>th</sup> generation is not part of coparcenary and the person of 5<sup>th</sup> generation is not a coparcener. When the person of 1<sup>st</sup> generation dies then he ceases to be a coparcener and person of 5<sup>th</sup> generation will be included in the coparcenary and he will be coparcener. It means as soon as person dies he ceases to be a coparcener.

The wording used in the Amendment Act is the daughter of a coparcener. It means what is contemplated in the provision is the daughter of a person who is coparcener. Unless a person is alive he cannot be a coparcener. On his death he ceases to be a coparcener. Hence, the daughter of a person, who ceased to be a coparcener, is not the daughter of a coparcener. Such daughter is the daughter of the deceased coparcener. Thus, it is very clear that the daughter whose father is alive on the date of commencement of the Amendment Act, 2005 is the daughter as contemplated in the provision. The daughter whose father is not alive on the commencement of the Amendment Act, 2005 is not the daughter of a coparcener as her father ceased to be a coparcener on his death.

Thus, only the daughter whose father is alive on the date of commencement of the Amendment Act, 2005 shall by birth become a coparcener. Hence, the only daughter whose father is alive on the date of commencement of the Amendment Act, 2005, acquires birth right as coparcener.

The question, Whether the Amendment Act is retrospective or prospective in operation? is often raised. In view of the wordings of the provision, there is no question of retrospective or prospective operation. Operation of the Amendment Act, 2005 particularly amended Section 6 depends upon the facts of the case.

On commencement of the Amendment Act, 2005 operation of the Amendment Act, 2005 starts. It will apply to some cases which are covered by provision of Section 6 of The Amendment Act, 2005 and not to other cases. It can be explained properly by way of illustrations.

**Illustration :-**

- (i) The father of the girl 'X' was alive on the commencement of the Amendment Act, 2005. Hence, 'X' being the daughter of a coparcener acquires status of coparcener on the commencement date of the Act, hence acquires birth right in ancestral / coparcenary property on that day.
- (ii) The father of the girl 'Y' was not alive on the commencement of the Amendment Act, 2005. Hence, 'Y' being "not the daughter of coparcener" (whose father ceases to be a coparcener due to death prior to commencement of the Amendment Act, 2005) does not and cannot acquire status of coparcener, hence, does not and cannot acquire birth right in ancestral / coparcenary property.

Thus, the Amendment Act, 2005 is operative since the date of commencement of the Amendment Act, 2005 qua the property contemplated in the Act and the daughters contemplated in the Act.

### **Equal rights to daughters**

Intent of Legislature appears to give equal rights as that of son in the coparcenary property to the daughter of a coparcener. However, the rights given to the daughter are much more than the son. It is clear from the position that when son gets any property as a coparcener then that property does not remain his exclusive property but his children get equal share in it in view of the nature of the property and effect of the law. Whereas, if the daughter gets any property as a coparcener that will be her exclusive property. Her children will not get any share in it.

The position can be explained properly by way of illustration.

#### **Illustration :-**

A person 'X' has wife 'Y', son 'S' and daughter 'D'. 'X' has 40 acres ancestral land.

Prior to the amendment Act, 2005; 'X' & 'S' were having equal rights in the land being coparceners.

On commencement of the Amendment Act, 2005, 'D' also becomes coparcener and acquires birth right in that land equal to as that of 'S'. Thus, 'X', 'S' & 'D' being coparceners have equal rights in the land. On the demand of partition by 'S', the land will be equally divided amongst 'X', 'Y', 'S' & 'D'. The reason is that as per law mother gets equal share as that of son in case of

partition of ancestral property. Thus, out of 40 acres land 'X', 'Y', 'S' & 'D' each will get 10 acres land. That prima-facie shows equality between son & daughter. However, there is no equal rights of 'S' & 'D'. Reason is that 10 acres land acquired by 'S' on said partition is not his exclusive property but his children acquire birth right in that 10 acres land. If 'S' has wife 'W', son 'S1' and daughter 'D1', then 'S1' & 'D1' acquire equal birth rights in that 10 acres land and on partition, 'S', 'W', 'S1' & 'D1' each will get 2½ acres land.

As far as 10 acres land acquired by 'D' remains her exclusive property as her children are not her coparceners and hence, cannot acquire birth right in that 10 acres land. Thus, the son 'S' will be exclusive owner of 2½ acres land whereas the daughter 'D' will be exclusive owner of 10 acres land.

The Act of 2005 confers birth right on the daughter of a coparcener and no new right by way of succession was conferred on the daughters. Hence, the name of the Act "The Hindu Succession Amendment Act 2005" is A Misnomer. The name of the Act should have been "The Hindu Daughters' Birth Right to Coparcenary Property Act".

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