

**Summary of Workshop Paper**

**(A) Right of daughter as coparcerner in the Hindu Joint Family and coparcenary property u/s 6 of the Hindu Succession Act, as amended in the year 2005 with reference to recent case laws.**

**(B) Framing of issues.**

In the ancient times, the woman could hold property but in practice, in comparison to men's holding, her right to dispose of the property was qualified. This was the situation prior to 1937 when there was no codified law. The Hindu Women's Right to Property Act, 1937 was one of the most important enactment that brought about changes to give better rights to women. The said Act was the outcome of discontent expressed by a sizeable section of society against the unsatisfactory affairs of the women's right to property. Even the said act did not give an absolute right to women. Under the said Act a widow was entitled to a limited interest over the property of her husband-what was to be termed as Hindu widow's estate. The Act was amended in 1938 to exclude the widow from any interest in agricultural land.

On codification of Hindu law the Hindu Succession Act was enacted in the year 1956 and the daughters were denied the status of coparceners as against the sons. It was contemplated to give them share in the property out of the share falling to the share of their father. It clearly states that in the case of joint family property, known as coparcenary property [ancestral], the interest of a

male Hindu, on his death, would devolve by survivorship upon the surviving members of the coparcenary and not by succession. Coparcenary consists of grandfather, father, son and son's son. However, if the deceased had left him surviving a female relative [daughter, widow, mother, daughter of a predeceased son, widow of a predeceased son, daughter of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son] the interest of the deceased in the coparcenary shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

The Constitution of India provides that every person is entitled for equality before law and equal protection of the laws and thereby prohibits discrimination on the basis of caste, creed and sex. It enshrines the principle of gender equality in its Preamble and Parts III, IV and IV-A pertaining to a Fundamental Rights, Fundamental Duties and Directive Principles respectively. It not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women.

Gradually a demand started gaining the momentum that the daughters should be given equal property rights at par with sons. It attracted attention of the law makers who felt the need of incorporating appropriate provisions to calm down the social clamour. Initially Maharashtra Government amended Hindu Succession Act as applicable in the State of Maharashtra in the year 1994 with effect from 22/6/1994. It declared the daughters coparceners treating them at par with sons. However, a rider was

put that they should be unmarried on the date of commencement of the Act and it shall not be applicable to partitions which were effected prior to 22/6/1994.

To remove gender bias out of the provisions of Hindu Succession Act, 1956 the parliamentarians fought over 49 years and then came with Hindu Succession [Amendment] Act, 2005 which came into force on 9<sup>th</sup> September, 2005. It gives the following rights to daughters in a joint Hindu family.

- By birth she shall become a coparcener in her own right in the same manner as the son.
- Shall have the same rights in the coparcenary property as she should have had if she had been a son.
- Shall be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu coparcener shall be deemed to include a reference to a daughter of a coparcener.

5. The newly amended section 6 has abolished all the discriminations i.e. difference based on schools, forms of marriages and nature of Stridhan. The Hindu Succession Act made a revolutionary change in the law for female Hindus. For the first time, a Hindu female could become an absolute owner of property. She could inherit equally with a male counterpart and a widow was given importance regarding the succession of her husband's property as also to her father's property. The daughter of a coparcener in a joint Hindu family governed by the Mitakshara Law shall, by birth, become a coparcener in her own right in the same manner, as her son, having the same rights and liabilities in respect of the said property as that of a son.

Earlier under the provisions of Section 6 of the Hindu Succession Act, 1956, the share of the daughter was less as compared to son, but now after the Amendment Act, 2005, this discrimination is also removed and now, daughter has become an absolute owner of all property, which was in her possession at the time of passing of Act, 1956 and for all the properties acquired of the passing of the Act by virtue of Section 14[1]. So, in the Hindu Law also the concept of limited interest has been abolished and the daughter has full control over the property.

It is not in dispute that a son of a coparcener becomes a coparcener by birth and is entitled to sue for partition even against his own father. Now, by the amendment of the Hindu Succession Act, 2005, same rights in the coparcenary property as that of a son have been given to a daughter of a coparcener and hence, she has become a coparcener in her own right by birth, which automatically entitles her to have a right to sue for partition against other coparceners including her father.

Hindu Joint Family is a normal condition of the Hindu society. Its origin traced in ancient patriarchal system where the patriarch or the head of the family was the unquestioned ruler. In Hindu Joint Family there consists coparcenary. These are group of persons related with blood and adoption. Female members are not treated as coparceners, because the females invariably leave the father's house and assume domestic and spiritual duties in their

husband's house. Thus daughters had no right as per son in Hindu law.

In **Prema Vs. Nanje Gowda AIR 2011 Supreme Court 2077** prior to the date of applicability of the Karnataka Act the preliminary decree was already passed. During the pendency of the final decree proceeding the new amended section 6 came into force. In the light of the said facts, the Honourable Apex Court has ruled that unmarried daughters can seek partition equal to that of son in final decree proceeding also. This view has been reiterated in **Ganduri Koteshwaramma Vs. Chakiri Yanadi AIR 2012 Supreme Court 169**.

In **Vaishali S. Ganorkar Vs. Satish Keshavrao Ganorkar 2012[3] Mh.L.J.669** our Hon'ble High Court held that amended Act is a prospective and not retrospective. Subsequently in another matter **Badrinarayan Shankar Bhandari Vs. Omprakash Shankar Bhandari 2014[5] Mh.L.J. 434** which was referred to Full Bench in the light of judgment in **Vaishali S. Ganorkar** and **Ganduri Koteshwaramma** [cited supra]. The Full Bench held the decision in the case of **Vaishali S. Ganorkar** [cited supra] as *Per Incurium* in view of the dicta in **Ganduri Koteshwaramma** [cited supra]. It is held that Section 6 of the Hindu Succession Act as amended is retrospective in operation. It is also held that Clause [a] of the Amended Act of Section 6 of Hindu Succession Act is prospective and Clauses [b] and [c] of Section 6[1] as well as sub section [2] of Hindu Succession Act are retrospective in operation. It is also held that daughter of the coparcenar must be alive on the date of the amendment and the property in question must be available as a

coparcenary property on the date of the amendment. It is further held that, Section 6[1] and 6[2] of Hindu Succession Act operate in different field than sub Section [3]. It is held that case of a coparcenar who died before amendment would be governed by pre amended Section 6[1] of the Hindu Succession Act. If the coparcenar dies after amendment, then Section 6[3] of the Hindu Succession Act will apply. Section 6[3] of the Hindu Succession Act will not curtail the rights of the daughter born before 9<sup>th</sup> September 2005.

### **FRAMING OF ISSUES.**

#### **Meaning:**

Issues are the process of formulation of controversy of the parties as emerges from the pleading and it is in question form the answer of which enables the Court to adjudicate and finally decide the controversy so far as the Court framing such issues is concern.

#### **Significance:**

Framing of issues involves application of mind by the Court. The stage of framing of issues separates the stage of trial from other stages viz. inquiry. Framing of proper issues in the matter not only enables the parties as to what case they are suppose to meet but also facilitate them to understand the nature and extent of burden to prove their respective case.

#### **Procedure:**

Order 14 of the Civil Procedure Code deals with various rules applicable to proper framing of issues. In view of Para 84 containing in Chapter 6 of the Civil Manual, the guideline is provided which directs that the Court may ascertain what is necessary in order to frame the issues firm; interrogatories, discovery, inspection of the documents (Order 11 CPC), admissions (Order 12 CPC) and production of documents (Order 13 CPC). It is also directed that the Judges and Lawyers should make themselves thoroughly acquainted with these provisions and endeavour to make use of them. Further in view of Para 83 of Civil Manual, examination of parties under Order 10 R 2 of C.P.C. should be conducted so as to clear up the points in dispute and ascertain fully and accurately the matters on which the parties are to go to trial.

**Types of Issues:**

Besides Order XIV of the Code of Civil Procedure, in certain cases where any interim application is pending and the defendant raises plea of jurisdiction then as per Maharashtra Amendment in Code of Civil Procedure Section 9[A] the Court has to decide such preliminary issue before deciding any interlocutory or interim application. In view of Sub-Section [2] of Code of Civil Procedure the Court has power to pass appropriate orders on the interim application till disposal of Preliminary issue.

Apart from aforesaid basic two types, one more type of issue is " issue of mixed question of law and facts". Generally the issues of limitation, *res judicata* or any bar of suit involving formal

proof of some of the facts before operation of such bar, are mixed question of law and fact. Such issues may not be framed as preliminary issue. But if the material on record is sufficient to try and decide such issue then before deciding any other issue, such issue may be decided first.

A reference may be had to Order 15 Rule 3 of Code of Civil Procedure which provides that where the parties are issue on some question of law or fact and issues have been framed by the Court, if the Court is satisfied that no further argument or evidence is required then the parties can not adduce is required upon such of the issues as may be sufficient for decision of the suit and that no injustice will result from the proceeding when the suit forthwith, the Court may proceed to determine such issue and if finding thereon is sufficient for the decision, may pronounce the judgment accordingly. Further in view of Order 20 Rule 5 of C.P.C. also enables the Court to dispose of the suit on determination of any such one or more issue if the finding thereon is sufficient for the decision of the suit.

The controversy about the question of limitation as a preliminary issue while deciding interim application was before the Honourable High Court in the case of **Sudesh Sushilkumar Handa Vs. Abdul Ajiz Umarbhai 2001[1] Mh.L.J. 324**. It is held that issue of limitation is to be framed as preliminary issue before proceeding to decide with any other issues. Again in **Fedroline Anthoney Joseph Vs. Vinod Vishanji Dharod 2002[3] Mh.L.J. 865** wherein it is held that the issue on limitation can not be framed as a preliminary issue. In **Meher Singh Vs.**



**Deepak Sawhny 1998[3] Mh.L.J. 940** wherein the object of adding Section 9[A] of the Code of Civil Procedure has been dealt with. It is held that Section 9[A] of the Code of Civil Procedure is a complete Code in itself and therefore, preliminary issue is to be framed and an opportunity should be given to the parties to lead evidence on regarding it.

In some cases, issues about jurisdiction or bar created by law though framed is not tried as a preliminary issue as per Order XIV Rule [2] of Code of Civil Procedure. The parties do not move application to decide it as a preliminary issue. The question arose whether the suit is to be dismissed or plaint is to be returned for presenting it to the proper Court. The Hon'ble High in **Kusumkant Vs. Mariyambee 2005[1] All MR 255** and **Jagdish Thatte Vs. Municipal Corporation Bombay 2007[2] AIR Bombay Reporter 256** held that parties went on to full trial taking risk of the question of jurisdiction and in that case the Court shall dismiss the suit and shall not return the plaint. Hon'ble Apex Court in the case of **Ramrameshwari Devi Vs. Nirmala Devi 2011[6] Mh.L.J. 116** has authoritatively held that it is the bounden duty of the Court to take due care, caution, diligence while framing the issues.

In **Shakuntala Balwant Gadgil Vs. Shubhada Suhas kulkarni 1985 Mh.L.J. 77** it was held that where in a suit for eviction if the plea is taken that Bombay Rent Act is applicable and so suit is not maintainable then such an issue is to be tried as a preliminary issue as per Order XIV Rule [2] of the Code of Civil Procedure. Again in the case of **Arjun Dada Gadage Vs. Mallappa Gurappa Chougule 2003[4] Mh.L.J. 256** it has been held that issue of jurisdiction is to be decided at the threshold before proceeding with the matter on any other issue. In **Usha Sales Ltd. Vs. Malcolm Gomesh AIR 1984 Bombay 60** it is held that in Order XIV Rule [2] of Code of Civil Procedure, the word is used as "it may try" which indicates that the discretion lies with the Court to frame any

particular issue as a preliminary issue and decide it. Again the Division Bench of the Bombay High Court in the case of **Pravin Pandurang Patil Vs. Executive Engineer 2013[1] Mh.L.J. 800** held that if the objection as to jurisdiction is taken at the time of deciding application for temporary injunction or appointment of Court receiver, then the Court has to decide the said objection by framing preliminary issue and giving chance to the parties to lead evidence.

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