

**III RD LEGAL WORKSHOP**  
**OF THE DISTRICT JUDICIAL OFFICERS,**  
**AKOLA**

**PAPER ON CIVIL LAW TOPIC**

**“SUCCESSION TO WOMEN WITH REFERENCE TO**  
**2005 AMENDMENT TO HINDU SUCCESSION ACT”**

**Old law prevailing before the Hindu Succession (Amendment)**  
**Act, 2005**

In order to properly understand women's right in the coparcenary property recognized in the **Hindu Succession (Amendment) Act, 2005**, it is necessary to understand the legal position prevailing immediately prior to the said Amendment.

The Hindu Succession Act, 1956 (for short ‘The Act’) came into force on 17 June, 1956. It amended and codified the law relating to intestate succession among Hindus and brought about some fundamental and radical changes in the Law of Succession.

**Overriding effect of Hindu Succession Act, 1956.**

Section 4 of the Hindu Succession Act, 1956 is of vital importance and gives overriding effect to the provisions of the Act. It abrogates all the rules of the law of succession hitherto applicable to

Hindus, whether by virtue of any text or rule of Hindu law or any custom or usage having the force of law, in respect of all matters dealt with in the Act. The Act also supersedes any other law, contained in any central or state legislation in force immediately before it came into operation in so far as such legislation is inconsistent with the provisions contained in the Act.

Retention of Mitakshara Coparcenary in an attenuated (weaker or less effective) form under the Hindu Succession Act, 1956

It prescribes that where a coparcener dies without making a will or intestate, Mitakshara Coparcenary does not necessarily become disrupted. According to the true notion of an undivided family governed by Mitakshara law, no individual member of the Coparcenary, while the family remains joint and undivided, can state that he has a definite share in the joint family property. His interest is always fluctuating, capable of being enlarged by deaths in the family and liable to diminish by births in the family. It is only on partition of the joint family property that he becomes entitled to a defined share. Although it does not interfere with the special rights of members of a Mitakshara Coparcenary, Section 6 recognises, without abolishing joint family property, the right of some of the preferential heirs of a coparcener upon his death to claim an interest in the property that would have been allotted to such coparcener if a partition of the joint family property had in fact taken place immediately

before his death. Section 6 of The Hindu Succession Act, 1956 state about devolution of interest in Coparcenary property as under :-

"Section 6:- Devolution of interest in coparcenary property - when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act;

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1 - For the purposes of this 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.

Explanation 2 - Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

The provision of section 6 of The Hindu Succession Act, 1956 deals with the question of coparcener in a Mitakshara Coparcenary dying (after coming into force of this Act) without making any testamentary disposition of his undivided share in the joint family property.

The Hon'ble Supreme Court held in Gurupad V/s. Hirabai (AIR 1978 SC 1239) that the widow's share must be ascertained by adding the share to which she is entitled at a notional partition during her

husbands life time and the share which she would get in her husbands interest upon his death. K, who was a member of Mitakshera Coparcenary (in state of Bombay) consisting of himself and his two sons G and S died, leaving his widow H, the two sons, and three daughters surviving him. In a suit for partition by H in the above mentioned case it was held by the hon'ble Supreme Court that she was entitled to seven-twenty fourth share of the Coparcenary property, one-fourth on the footing of partition between the husband and the two sons, in addition to one-twenty fourth share as an heir of K as visualised in the proviso & Explanation I.

In State of Maharashtra v/s. Narayan Rao (AIR 1985 SC 716) the court carefully considered the above decision in Gurupadi case (Supra) and pointed out that when a female member who inherits an interest in joint family property under section 6 of the Act files a suit for partition expressing her willingness to go out of the family, she would be entitled to both the interest she has inherited and the share which would have been notionally allotted to her as stated in Explanation I to section 6 of the Act. **It was also pointed out in this later decision of the hon'ble Supreme Court that the decision in Gurupad's case has to be treated as an authority for Explanation I to section 6 of the Act.**

### Joint Hindu family under Mitakshara law

A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A daughter ceases to be a member of her fathers family on marriage, and becomes a member of her husband's family. The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. A joint or undivided Hindu family may consist of a single male member and widows of the deceased male members. The existence of at least one male member is essential for constituting a joint family with other members.

### Hindu Coparcenary under Mitakshara law

A Hindu Coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or Coparcenary property. These are sons, grandsons and great-grandsons of the holder of the joint family property for the time being, in other words, the three generations next to the holder in unbroken male descent. However after the amendment of Hindu Succession Act, in 2005, a daughter of a Coparcener has been included as Coparcener alongwith the sons of the coparcener.

Effect of Hindu Succession (Amendment) Act, 2005

In order to see effects of Hindu Succession (Amendment) Act, 2005, (for short '2005 Amendment Act') it is necessary to reproduce amended section 6 which is as under:-

S. 6. Devolution of interest of 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 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.

- (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

- (3) 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 the 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 9 of 72 SA.566.2011 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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005\*, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect--

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. --For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who 10 of 72

SA.566.2011 was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004."

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

By virtue of this provision a daughter of a Coparcener governed by Mitakshara Law now becomes a Coparcener in her own right. Since daughter now stands on an equal footing with son of a Coparcener, she is now invested with all the rights, including the right to seek partition of the Coparcenary property. Under the old law a female could not act as a Karta of the family, but as a result of new provision, she could also become Karta of the joint Hindu family. However, the legislature has added a proviso to sub-section (1) of the amended section 6. The object of the proviso is to ensure that partitions, alienations or testamentary dispositions which have taken place before 20<sup>th</sup> December 2004 are not affected by the Amendment to Hindu Succession Act in 2005.

The landmark authority on the point of 2005 Amendment Act is Ganduri Koteswaramma & Another v/s. Chakiri Yanadi & Anr. decided on 12-10-2011 in Civil Appeal No. 8538 of 2011 by the hon'ble Supreme Court. In this authority the question before the hon'ble Supreme Court was : whether the benefits of Hindu Succession

(Amendment) Act, 2005 are available to the appellants (i.e. daughters of the Hindu Coparcener). Facts of this authority are as under :-

(i) There were total five persons i.e. father, two sons & two daughters in the family. One son filed suit for partition making his father as defendant no.1, his brother as defendant no.2, & his two sister as defendant no. 3 & 4 respectively & claiming  $\frac{1}{3}$  share each for himself, his father, his brother in the schedule properties A, C & D (i.e. coparcenary property) and further claiming  $\frac{1}{5}^{\text{th}}$  share each for himself his father, his brother & his two sisters in schedule B property (i.e. mother's property),

(ii) During the pendency of the suit the first defendant i.e. father died in the year 1993. The learned trial Court by its judgement & Preliminary decree dated 19 March 1999 declared that plaintiff was entitled to  $\frac{1}{3}$  share in the Coparcenary properties & further entitled to  $\frac{1}{4}^{\text{th}}$  share in the  $\frac{1}{3}^{\text{rd}}$  share left by 1<sup>st</sup> defendant (i.e. plaintiff's father). It was further declared in that preliminary decree that plaintiff was entitled to  $\frac{1}{5}^{\text{th}}$  share in his mother's property i.e. schedule B property. There was no controversy in respect of mothers property, but controversy was there in respect of Coparcenary property.

iii) The above Preliminary decree was amended on 27 September, 2003 declaring that plaintiff was entitled to equal share alongwith 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup>

defendants in  $1/5^{\text{th}}$  share left by the  $1^{\text{st}}$  defendant (i.e. father) in schedule B property.

iv) Plaintiff's application for final decree was pending & in the meantime Hindu Succession (Amendment) Act, 2005 came into force on 9 September 2005.

v) Having regard to 2005 Amendment Act both the daughters i.e. present appellants (original defendant no. 3 & 4) made application for passing preliminary decree of the Coparcenary properties into four equal share for both daughters and both son's. Plaintiff opposed that application but defendant no. 2 admitted the claims of his two sister (i.e. defendant no. 3 & 4).

vi) The learned trial Court by its order dated 15 June, 2009 held that they were entitled for  $1/4^{\text{th}}$  share each in the Coparcenary properties However plaintiff (i.e. present respondent) challenged that order by filing appeal before hon'ble Andhra Pradesh High Court & that appeal was allowed & the order of the learned trial Court was set aside.

vii) Thereafter both the daughters i.e. defendant no. 3 & 4 (i.e. present appellants) challenged that judgement of hon'ble High Court by filing this appeal before hon'ble Supreme Court. Hon'ble Supreme Court set aside the judgement of hon'ble Andhra Pradesh High Court & restored

the order of the learned trial court. Hon'ble Supreme Court made following observations in para no. 12,14 &20 of this authority as under:-

12. 1956 Act is an Act to codify the law relating to intestate succession among Hindus. This Act has brought about important changes in the law of succession but without affecting the special rights of the members of a Mitakshara Coparcenary. The Parliament felt that non-inclusion of daughters in the Mitakshara Coparcenary property was causing discrimination to them and, accordingly, decided to bring in necessary changes in the law. The statement of objects and reasons of the 2005 Amendment Act, inter alia, reads as under :

".....The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and

Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property."

14. The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

20. ....In Phoolchand<sup>1</sup>, this Court has stated the legal position that C.P.C. creates no impediment for even more than one preliminary decree if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree. The court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for

partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that once a preliminary decree has been passed, it is not capable of modification. It needs no emphasis that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings.

- Application of 2005 Amendment Act Prospective, retrospective or retroactive.

After the 2005 Amendment Act was brought into force a question arose as to whether this new provision is having retrospective effect. On this point it is necessary to consider the view of hon'ble Division Bench in the case of Vaishali S. Ganorkar & others v/s. Satish Keshavrao Ganorkar & other 2012 (5) Bom C.R. 210. In the case of Vaishali Ganorkar (Supra) facts are as under:-

- i) Appellants (Plaintiffs) in that case were daughters of Respondent no. 1 (father). Respondent no. 1 (father of appellants) had taken loan from the bank and mortgaged the property to the bank in the year 2008. As Respondent no. 1 (father) failed to repay the loan, the bank initiated recovery proceeding under the Securitization Act. The daughters (i.e. Appellants) then filed the suit claiming to be entitled to 2/3<sup>rd</sup> share in the Coparcenary property. It was the case

of daughters (appellants) that property which had been mortgaged by the father (Respondent no. 1) was Hindu Undivided family property as it was purchased from the nucleus of the joint family property.

- ii) The hon'ble single Judge refused to grant ad-interim reliefs to the appellants (plaintiffs). In appeal the hon'ble Division of Bombay High Court held that Appellants (plaintiffs) are not entitled to 2/3<sup>rd</sup> interest in the suit property as section 6 of the Principle Act was not retrospective in operation. Hon'ble Division Bench concluded that a daughter born on or after 9 September, 2005 would be entitled to Coparcenary right by birth while daughter born prior to 9 September, 2005 would be entitled to Coparcenary property only on Succession i.e. death of a Coparcener to whose interest the daughter Succeeds. Moreover hon'ble Supreme Court in G. Shekhar v/s. Geeta (2009)6 SCC 99 & Sheeladevi v/s. Lalchand and others (2006) 8 SCC 581, wherein it was held that Amendment Act of 2005 is prospective and would have no application where succession opened prior to the Amendment Act of 2005 coming into force.
- iii) An appeal filed against the order of hon'ble Division of Bombay High Court in Vaishali S. Ganorkar (Supra) was dismissed by the

Hon'ble Supreme Court by passing order as under:- "Dismissed. However the question of law is kept open."

Thereafter in the case of Badrinarayan Shankar Bhandari and others v/s. Omprakash Shankar Bhandari, hon'ble single Judge of hon'ble Bombay High Court made reference by raising doubt on the correctness of the decision of hon'ble Division Bench in the case of Vaishali S. Ganorkar(Supra). Therefore Full Bench was constituted on the said reference. Hon'ble Full Bench of Bombay High Court in the case of Badrinarayan Shankar Bhandari and others v/s. Omprakash Shankar Bhandari decided on 14 August, 2014 in Second Appeal no. 566 of 2011, considered the statement of objects & reasons for amending the principal Act. In Para no. 2 & 3 of statement of object and reasons it is mentioned as under:-

"2.. The law by excluding the daughter form participating in Coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of quality guaranteed by the constitution.....

3. It is proposed to remove the discrimination in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara Coparcenary property as the sons have....."

The hon'ble Full Bench considering the statement of object and reason for amending the principal Act and by placing reliance upon the ratio laid down in the case of Ganduri Koteswaramma & Anr (Supra),

held that the decision of the Division Bench in Vaishali Ganorkar's case (Supra) is per incuriam the hon'ble Supreme Court decision Ganduri Koteshwaramma (Supra).

In order to clearly understand the ratio laid down by the hon'ble Full Bench in the case of Badrinarayan Shankar Bhandari & others (Supra), it would be proper to reproduce the questions raised by the Hon'ble Single Bench while making reference and the opinion given by the hon'ble Full Bench on those questions. The questions raised by Hon'ble single Judge while making reference and the opinion given by the hon'ble full Bench in Badrinarayan Shakar Bhandari & others (Supra) are as under :-

**“a) Whether section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 is prospective or retrospective ?**

**Answer:-** In our view the correct legal position is that section 6 as amended by the 2005 Amendment Act is retrospective in nature meaning thereby the rights under section 6(1) (b) & (c) and under Sub-Rule (2)[it may be Sub-Section (2)] are available to all daughters living on the date of coming into force of the 2005 Amendment Act, i.e. on 9 September, 2005, though born prior to 9 September 2005. Obviously the daughter born on or after 9

September, 2005 are entitled to get the benefits of Amended section 6 of the Act under clause

(a) of Sub-Section (1). In other words the heirs of daughters who died before 9 September 2005 do not get the benefits of amended section 6. Section 6 of Hindu Succession Act, 1956 as amended by the Amendment Act of 2005 is retrospective in operation as explained in this judgement in brief :

Clause (a) of Sub-Section (1) of amended section 6 is prospective in operation;

Clause (b) & (c) and other parts of Sub-Section (1) as well as Sub-Section (2) of amended section 6 are retroactive in operation, as indicated hereinafter.

**b) whether section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act 2005 applies to daughters born prior to 17-06-1956 ?**

**c) whether section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies to daughters born after 17-06-1956 and prior to 09-09-2005 ?**

**d) whether section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies only to daughters born after 09-09-2005 ?**

**Answer :-** So far as questions b), c) & d) are concerned, Amended section 6 applies to daughters born prior to 17 June 1956 or thereafter (between 17 June 1956 and 08 September 2005),

provided they are alive on 9 September 2005 that is on the date when the Amendment Act of 2005 came into force. Admittedly amended section 6 applies to daughters born on or after 9 September 2005;

**e) whether the decision of the Division Bench in the case of Vaishali Ganorkar is per incurium of Ganduri Koteshwaramma and others ? ”**

**Answer :-** Yes. Decision of the Division Bench of this Court in Vaishali S. Ganorkar 2012 (5) Born C. R. 210 is per incurium the Supreme Court decision in Ganduri Koteshwaramma case (2011)9 SCC 788.

**One sentence in Badrinarayan Bhandari’s case (Supra) with respect requires reconsideration :-**

In Para no. 76 of the authority of Badrinarayan Shankar Bhandari and other (Supra) hon’ble Full Bench has observed as under :-

**“76. As indicated by us earlier, the case of Coparcener who died before 9 September 2005 would be governed by pre-amended section 6 (1) of the Act.....”**

It is submitted with respect that aforesaid observation of the hon’ble Full Bench is not in consonance with the ratio laid down in the Ganduri Koteshwaramma case (Supra) Because in the case of Ganduri Koteshwaramma. The Coparcener (i.e. father) of Appellants / daughters

(i.e. defendant no. 3 & 4) expired during the pendency of suit in the year 1993 (i.e. before the coming into force of the 2005 Amendment Act), even then hon'ble Supreme Court held that Appellants / daughters are having equal share (i.e. 1/4 share each for both the daughters & both the sons) in the Coparcenary property.

In short, even though the Coparcener (i.e. father) died in the year 1993, the daughters (Appellants) got the benefits of 2005 Amendment Act and their case is not governed by the Pre-amended section 6(1) of the Act.

Under the Circumstances, with respect it is submitted that the observation of the hon'ble Full Bench requires reconsideration in view of the ratio laid down in Ganduri Koteshwaramma's case.

**Authorities referred & relied upon :-**

- 1) Ganduri Koteshwaramma & others v/s. Chakari & others (2011)9 SCC 788.
- 2) Vaishali S. Ganorkar & others v/s. Satish Keshavrao Ganorkar & others (2012)5 Bom CR 210
- 3) Badrinarayan Shankar Bhandari & others v/s. Omprakash Shankar Bhandari decided on 14-08-2014 by full Bench of hon'ble Bomblay High Court in Second Appeal no. 566 of 2011....)
- 4) Sheeladevi v/s. Lalchand & others (2006)8 SCC 581.
- 5) G. Shekhar v/s. Geeta (2009)6 SCC 99.
- 6) Gurupad v/s. Hirabai (AIR 1978 SC 1239)
- 7) State of Maharashtra v/s. Narayan Rao (AIR 1985 SC 716)

