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Daughters as coparceners – Has the judiciary finally figured out the 2005 amendment to the Hindu Succession Act?

The question for consideration before the full bench of the Bombay High Court in *Shri Badrinarayan* Shankar Bhandari & Ors. Vs. Omprakash Shankar Bhandari was whether the amendment to Section 6 of the Hindu Succession Act 1956 ("HSA") was prospective or retrospective in its operation.

Section 6 of the HSA was amended with effect from 09/09/05 (Certain states had made amendments prior to this date) to give daughters rights as coparceners by birth thereby providing them an equal share as that of a son in a joint family. There can be no dispute that the amended Section 6 is applicable to daughters born after 09/09/05 but the question that was now to be considered by the Full Bench was whether this amendment was applicable to (i) daughters born prior to the amendment but after the HSA came into force (i.e. prior to 09/09/05 but after 17/06/1956); and (ii) daughters born prior to the commencement of the HSA (i.e. prior to 17/06/1956).

The Full Bench came to the conclusion that the amendment to Section 6 was neither prospective nor retrospective but '***retroactive***' in nature i.e. it operates forward but it is brought into operation by a characteristic or status that arose before it was enacted. Therefore, the right in co-parcenary property will accrue to a daughter only on 09/09/2005, but as a consequence of an event that occurred prior to 09/09/2005, the event being her birth. Accordingly all daughters whether born before or after 1956 or 2005 are entitled to the benefit of the amendment to Section 6, provided they were alive as on 09/09/2005 (since that is the day the right accrued). Therefore, if a daughter had died prior to 09/09/2005, the heirs of such predeceased daughter cannot retrospectively claim the benefit of the amendment. Further, any notional partitions done under Section 6 i.e. if any male Hindu having a right in HUF property had died prior to 09/09/2005 and his property had devolved as per the pre-amended Section 6, the same would not be affected by this amendment. To arrive at this interpretation the Full Bench considered the object of enacting the amendment and the purpose and intent of the Legislature which was to foster equality as mandated under Article 14 of the Constitution of India.

By this decision, the Full Bench has overturned the decision of the division bench of the Bombay High Court in *Vaishali Satish Ganorkar & Anr. Vs. Satish Keshaorao Ganorkar & Ors.* (AIR 2012 Bom 101) which had held that the amended Section 6 only applies prospectively to daughters born after 09/09/05. The Full Bench held that to take this view would be to defeat the very purpose of the amendment and deprive entire generations of women from this benefit.

This decision has also circumscribed the wider view propounded by the division bench of the Karnataka High Court in *Pushpalatha N.V. vs. V.Padma* (AIR 2010 Kar 124) which made the amendment applicable only to daughters born after 1956 but had no additional condition that they have to be alive as on 09/09/2005. The Full Bench held that this decision of the Karnataka High Court was therefore not entirely correct as the amended Section 6 itself states that it would apply only "on and from the commencement of the Hindu Succession Act (Amendment) Act 2005.

Another interesting observation made by the Full Bench is regarding the explanation to Section 6 (which states that the amendment will not affect any registered partition deed or a partition effected by the decree of court). The Court noted that this does not mean that all and every oral or unregistered partition can be reopened because of the amendment. It is only where an oral partition or partition by an unregistered document is not followed by physical partition, evidenced by entries in the public record, that a daughter will be in a position to contend that the property remains coparcenary property.

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The sum and substance of the judgment seems to be that as of 9/9/2005 if there is coparcenary property available in a HUF, (or if there has been an oral partition or unregistered partition deed partitioning HUF property, if it has not been followed by an actual division by metes and bounds and reflected in public records), a daughter even if born prior to 9/9/2005, but alive as on that date, will have a share as coparcener. The interpretation given by the Bombay High Court no doubt leads to more certainty, and goes a long way in avoiding re-opening of settled divisions or devolutions which have taken place prior to 09/9/2005.However, it is questionable whether its interpretation (particularly about requiring daughters to be alive as on 09/9/2005 to have an equal share and in allowing oral partitions followed by actual divisions and recording in public registers to be saved from the provisions of the Amendment) is strictly justified by the wordings of the Amendment Act. The amended Section 6 of the HSA is quite verbose and complicated and the infinite number of scenarios that could possibly arise makes a general interpretation of the section rather problematic. An appeal against the judgment of the Karnataka High Court in Pushpalatha's case is pending consideration before the Supreme Court. It is likely that the judgment of the Bombay High Court will also be questioned before the Supreme Court. In the circumstances, it would be most desirable that the Supreme Court authoritatively pronounce on the issue at the earliest to end confusion.

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