

Coparcenary Rights of Women: A Journey from Non-Existence to Full Existence

Madhubala Sheokumar Shukla

Research Scholar, PHD Law

Email – madhubala1529@gmail.com.

Dr. Haider Ali

Research Guide

Head Legal Department

Institute of Legal Studies and Research

Mangalayatan University

33rd Milestone, Aligarh-Mathura Highway,

Beswan, Aligarh -202146 (U.P) India

ABSTRACT

As per jurisprudence and legal history, Hindu Law is a branch of Dharma and combination of morality and religion with legal principles. Female heirs are enumerated differently in different schools of Hindu Law. This Article is focussing on Mitakshara Law and its Schools and codification of Law and its amendments from time to time, coparcenary vis a vis female heirs and interpretation of legislation by Judiciary. Every member of a Mitakshara joint family, including their wives and unmarried daughters, is derived from a common ancestor. No female was a member of coparcenary. Then came the fragmentary Acts e.g. Hindu Women's Right to Property Act 1937 under which widow, widow of a predeceased son or widow of a predeceased son of a predeceased son are treated on the same level as the male issue of the last owner. However, the widow does not on that account become a coparcener. Constitution (1950) granted equal rights particularly Article 14 of the Constitution and Article 15 of the Constitution which prohibits any discrimination on the ground of religion or gender. Codification of Hindu Law has taken place keeping this avowed objective in mind. Under codified law i.e. Hindu Succession Act 1956 (old law will continue to remain applicable for which no provision is made in the Act of 1956) Section 6 as unamended affected the doctrine of Mitakshara Law of Coparcenary viz. if a Coparcener dies leaving behind any **female relative** specified in Class I of the Schedule to the Act or male relative specified in that class **claiming through such female relative**, i.e. around 12 preferential heirs, his undivided interest in the Mitakshara coparcenary property would devolve upon his heirs by intestate succession as per

159

Received: 2 April 2024

Revised: 22 April 2024

Accepted: 27 April 2024

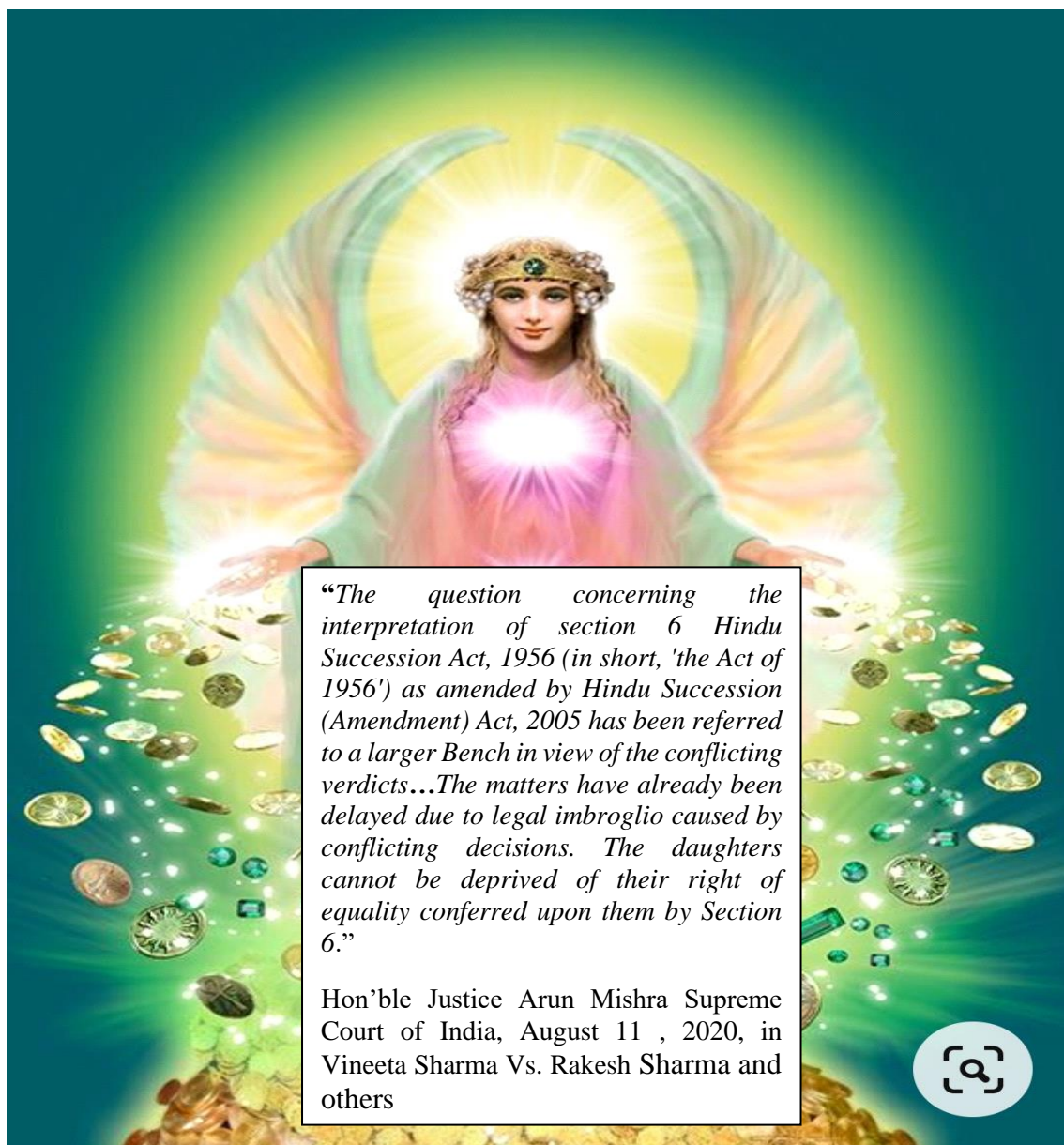
Copyright ♥ authors 2024

DOI: <https://doi.org/10.5281/zenodo.11209133>

section 8. The rules of Succession under 1956 Act are based on principle of equality enunciated in the Constitution however female was not a Coparcener. State Act i.e. **The Hindu Succession (Maharashtra Amendment) Act, 1994 added Chapter IIA**, Section 29A which mentioned that under Mitakshara Law, daughters shall become coparceners by birth in their own right and can claim by survivorship; however the said amendment Act is not applicable to daughters married before the commencement of Maharashtra Amendment Act 1994. The Hindu Succession Act amendments passed in 2005 granted daughters the same status as coparceners, which was justifiable and opened the door for the law's inclusive application—albeit in a weakened magnitude. Bombay High Court in Vaishali Satish Ganorkar matter(infra) observed *“The mischief that was remedied was the discrimination between the daughter and a son in a legislation that was enacted 6 years after the coming into force of the Constitution of India which granted equal rights to all persons irrespective of their sex. The discrimination prevailed for 50 years despite the constitutional mandate of equality.”* Legislation, amendments and interpretations to the same by Judiciary has resulted in situations which at times do not provide logically consistent answers and some anomalous circumstances and varying consequences are bound to result. Various opinions were evolved viz. 2005 amendment is having prospective effect, retrospective effect, retroactive effect etc. Accordingly various interpretations resulting in conflicting judgments were arrived at Eg. Bombay HC in **Vaishali Satish Ganorkar & Anr vs Mr. Satish Kesharao Ganorkar & ... on 30 January, 2012** has observed that -*“No interest can devolve in a coparcenary property except on the death of the coparcener....the interpretation* that rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Interpretation of Section 6 was referred to a **larger Bench** in view of the conflicting verdicts rendered in two Division bench judgments of Supreme Court in *Prakash & Others Vs. Phulavati & Ors.*, (2016) 2 SCC 36 and *Danamma @Suman Surpur & Anr. v. Amar & Ors.*, (2018) 3 SCC 343. Full Bench of Supreme Court (a landmark judgment) in **Vineeta Sharma vs Rakesh Sharma (on 11 August, 2020)** stated that provision is **retroactive i.e.** recognising an antecedent event for conferral of rights, prospectively and observed inter alia *“Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005”* and overruled the views to the contrary expressed in *Prakash v. Phulavati* and *Mangammal v. T.B. Raju & Ors.* The opinion expressed in *Danamma @ Suman Surpur & Anr. v. Amar* is partly overruled to the extent it is contrary to

this decision . Land Reform Laws / Land Acquisition Laws are not in uniformity with the personal Laws. Chhattisgarh High Court in **Sanjay K. Agrawal** (infra) (Dated Jan 21, 2016) has held, “*R&R Policy regarding employment being violative and discriminatory to the extent of excluding married daughter from consideration for employment, is hereby declared void and inoperative*”. Supreme Court in **Har Naraini Devi** (infra) (Dated Sep 20, 2022) has held “*31. ... there can be no challenge to the 1954 Act (Delhi Land Reforms Act) as the said legislation is included in the Ninth Schedule of the Constitution of India, this argument (Gender bias/women empowerment) also has no legs to stand.*” Supreme Court of India, in **Kamala Neti** (infra) dated **9 December, 2022** has observed “*in view of Section 2(2) of Hindu Succession Act and the appellant being the member of the Scheduled Tribe and as the female member of the Scheduled Tribe is specifically excluded, the appellant is not entitled to any right of survivorship under the provisions of Hindu Succession Act...*” In **Prakash vs Phulvati** the Hon’ble Supreme Court referred to the observations of Sahai, J. in (Sarla Mudgal vs. Union of India (1995) 3 SCC 635) that a climate was required to be built for a uniform civil code. Section 44 and Section 14 of the Constitution need to be implemented in letter and spirit . Recent laudable judgment of the Hon’ble Supreme Court in Vineeta Sharma vs. Rakesh Sharma is a giant leap in that direction .In the matter of **Charu Khurana v. Union of India** (2012) 7 SCC 248), Their Lordships of the Supreme Court while considering the question of gender justice observed as under:“ *... it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced.*”

Key Words – Mitakshara, Coparcenary, Daughters, conflicting, retroactive, Uniformity



Chapter 1

INTRODUCTION

“The underscoring of the rights of women to be in equali juria, under the Constitution, finds concrete shape in Hindu Succession Act 1956.”ⁱⁱ

Hindu law is rooted in Vedas , heard in Shrutis , remembered in Smritis, explained and expanded in large Commentaries and Digests, supplemented and diversified by approved

practices and usage. Judicial decisions renovated both textual and customary law. Hindu law to Hindus is derived from and regulated by certain statutes of the British Parliament and by imperial and provincial legislation passed during the period of British rule, which unless altered or repealed, are to continue in force under the express provisions of Article 372 of the Indian Constitution. The Hindu Law Committee appointed in 1941 presided over by Sir Benegal Narsing Rau known as the Rau Committee—made its report and presented a draft code. Ultimately the Code was split it into certain parts and moved in Parliament after placing each part separately before it. The Hindu Succession Act was enacted in June 1956. The rules of Succession under 1956 Act are based on principle of equality enunciated in the Constitution viz. No distinction between male and female heirs with regard to inheritance and succession, any property possessed by a female Hindu is held by her as her absolute property and she has full power to deal with it and can even dispose of it by will as she likes. The Hindu Succession Act amendments passed in 2005 granted daughters the same status as coparceners, which was justifiable and opened the door for the law's inclusive application—albeit in a weakened magnitude. As part of Hindu Law and usage remains unabrogated, it is essential to know the law as previously existed. The progression of the Hindu law has therefore demonstrated it as being reformist and not being averse to adapting itself to neoteric situations, seeking to blend the ancient with the contemporary, resulting in adaption to extant situations in modern society and redeeming itself from becoming archaic and stunted.

However legislation, amendments and interpretations to the same by Judiciary has resulted in situations which at times do not provide logically consistent answers and some anomalous circumstances and varying consequences are bound to result. State amendments to personal law have given rise to repugnancy between State and Union Law (Serial No. 5 in the Concurrent list). Further the land acquisition laws /payment of compensation are not in harmony with personal Law. A Uniform Civil code is the need of the hour in the matter of Succession as per Article 44 of the Constitution of India. Lex Loci Report of 1840 stressed the requirement of uniformity in the codification of Indian Law but as per Queen's Proclamation of 1859 the policy of non interference in the religious matters was followed. At present piecemeal legislation via Succession Act exists. section 4, gives overriding effect to the provisions of the 1956 Act. However

“Question may arise whether this Act is a complete code in the sense of comprehensive legislation dealing with every phase and aspect of the law of succession. ... in respect of matters

for which no provision is made in the Act, the old law must continue to remain applicable though such matters are indeed few.''ii

Chapter 2

POSITION OF WOMEN UNDER THE HINDU LAW PRIOR TO ENACTMENT OF ANY CODE

As per jurisprudence and legal history, Hindu Law is a branch of Dharma and combination of morality and religion with legal principles. Its sources are Shrutis, Smritis, Dharmashastras, Commentaries and digests, usage or custom, judicial decisions founded on Smritis, mainly on Commentaries considered as leading authorities, custom, piecemeal legislation and codification, principles of justice, equity and good conscience. Two principal schools of Hindu Law originated and developed Mitakshara and Dayabhaga inter alia with respect to Law of Inheritance. Mitakshara is a running Commentary on the Code of *Yajnavalkya* written by Vijnaneshwara in the later part of the eleventh century. The Dayabhaga School prevails in Bengal; the Mitakshara School prevails in the rest of India. *Dayabhaga* purports to be a digest of all codes and was written by Jimutavahana in the beginning of the twelfth century. The *Mitakshara* is sub-divided into four minor schools: (i) Benares School; (ii) Mithila School; (iii) Maharashtra or Bombay School (Western India); and (iv) Dravida or Madras School (Southern India).

These subschools differ in matters of inheritance in some aspects. In this Article Mitakshara law is dealt with.

❖ Mitakshara Law –

As per Mitakshara the joint family system comes first in the historical order. Generally speaking, only property held in absolute severalty by the last owner is covered by the law of inheritance, which is a later development, as distinguished from property held by a *Mitakshara* joint family. 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 father's family on marriage, and becomes a member of her husband's family.

“The basis of Hindu joint family was a common male ancestor and the properties of the family were held as a coparcenary property with male member of the family having a right to the property by virtue of birth and their interest in the coparcenary property would keep varying depending upon the death or a birth of a male in the joint Hindu Family. The property of a male coparcener on his death used to pass by survivorship in the Mitakshara School of

Hindu Law. No female is a member of the coparcenary though, she is a member of the joint Hindu family. The coparcenary would normally consist up to four degrees i.e. the common ancestor (coparcener), his son, grandson and great grand son."ⁱⁱⁱ

❖ **Status of Female under Mitakshara Law -**

- Female heirs are enumerated differently in different schools and subschools.
- No Female was a member of coparcenary. According to Mitakshara law, a widow, daughter, mother, etc. can never succeed to ancestral property, so long as a single coparcener is in existence;
- The Law as it existed referred to mainly two kinds of properties belonging to women, one which was her Stridhana and one which was not.
- The widow of a person governed by Mitakshara had only a right of maintenance in respect of coparcenary property in which the husband had interest.
- A mother cannot compel a partition so long as the sons remain united. However, if a partition takes place between the sons, between her son and the sons of a deceased son, she is entitled to a share equal to that of a son in the coparcenary property. The share allotted to a wife, mother or father's mother on partition is not her *stridhana*, unless it was given absolutely to her, and it descends on her death not to her heirs, but to the sons or grandsons out of whose portion it was taken. Daughter's, sisters, etc. are not entitled to a share on partition. However, on a partition, provision must be made for their maintenance and marriage expenses.
- Unchastity and remarriage of the Widow were disqualifications from inheriting Husband's estate.
- As held by Privy Council in *Debi Mangal Prasad v Madhadeo Prasad* (1912) 34 All 234 : 39 IA 121 : 14 IC 1000^{iv}, share obtained by widow on a partition of the joint family property was not stridhana. Importance of this distinction was with regard to succession and right of alienation. The relevant para of the Judgment is reproduced as under –

“18. The question now arises whether there is any substantial difference in principle between a woman's property acquired by inheritance and that acquired by partition. It is a question attended with some difficulties, especially in the construction of the Mitakshara, whatever view of it may be taken. ...the members of a joint family effecting a partition may agree that a portion of the property shall be transferred to the widow by way of absolute gift, as part of her stridhan, so as to constitute a provision for her

stridhan heirs; but, in the absence of any such intention, their Lordships do not feel justified in putting property acquired by a widow, on a partition of the joint estate, upon a footing different from that on which property coming to her by way of inheritance has been placed.“^v

Thus Widow gets a limited estate in the property on partition .

- Daughters do not inherit until all the widows are dead.
- As between daughters, the inheritance goes first to the unmarried daughters, next, to daughters who are married and "unprovided for" i.e.indigent and lastly, to daughters who are married and are "enriched", i.e., possessed of means.
- Under Mithakshara Law a daughter who succeeds as heir to the property of a male Hindu takes only a limited estate in the property inherited by her and at her death the property passes not to her heir but to the next heir of the male from whom she inherited it.
- Unchastity, change of religion , physical and mental defects (disqualified heirs)

Bombay High Court has observed in **Devidas S/O Udhao Gaurkar And Ors. vs Smt. Vithabai W/O Laxman Dhengale** (on 17 April, 2008), Bench: C Pangarkar J that Grandfather and father having died in 1936 and 1935 respectively , a daughter cannot receive any share in the coparcenary property as per Hindu Law as the case will be governed by Customary or Shastrik Hindu Law.The relevant para is reproduced as under

“...Zolu the father of the plaintiff (daughter) having died prior to coming into force of the Hindu Succession Act, 1956 the case will be governed by the Customary or Shastrik Hindu Law. Therefore, his share in the coparcenary would devolve by survivorship and not by succession. Zolu did not hold any separate property admittedly and therefore, there was no question of property passing over by succession. ... The plaintiff due to the above proposition of law was not entitled to succeed to the estate of her father.” ^{vi}

Chapter 3

CHANGES BROUGHT ABOUT BY FRAGMENTARY ACTS

❖ Law prior to Hindu Succession Act-

The Hindu law had, prior to 1955, been modified in aspects of succession by the following Acts:

- The Indian Succession Act, 1925,^{vii}(Section 214 and Schedule III to the Act)

- The Hindu Inheritance (Removal of Disabilities) Act, 1928 ^{viii} does not apply to Dayabhaga Hindu Law . It contains a non obstante clause –
“ Notwithstanding any rule of Hindu law or custom to the contrary, no person governed by the Hindu law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect.”
- The Hindu Law of Inheritance (Amendment) Act, 1929.—This Act is applicable to persons governed by Mitakshara Law in respect of property of males not held in Coparcenary and not disposed of by Will. It alters the Order in which certain heirs of Hindu Male dying intestate are entitled to succeed to his estate. A son’s daughter, daughter’s daughter, sister, and sister’s son shall, in the order so specified, be entitled to rank in the order of succession next after certain heirs, a father’s father and before a father’s brother .This Act is now repealed by section 31 of the Hindu Succession Act, 1956.
- The Hindu Women's Rights to Property Act 1937 (Central Act, 18 of 1937).^{ix}—This Act is applicable to Hindus governed by any school of Hindu Law. The Act is amended by the Hindu Women's Rights to Property (Amendment) Act, 1938 (Central Act, 11 of 1938). Section 3 Subsection (1) -When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law, dies intestate leaving separate property, his widow or if there is more than one widow, all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son . Same provision shall apply mutatis mutandis to the widow of a predeceased son or widow of a predeceased son of a predeceased son. Subsection (2) -When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner. However, the widow does not on that account becomes a coparcener. There is suspension of rule of

survivorship but no disruption of joint family . If she requests a Partition , her spouse's interests will be taken into consideration, on her demise, the succession would be traced to her husband on the basis that the property was his separate property.

This Act is now repealed by section 31 of the Hindu Succession Act, 1956.

- The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.— A Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the grounds mentioned therein save and except when she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent Court for the restitution of conjugal rights. This Act is now repealed by section 29 of the Hindu Adoptions and Maintenance Act 1956.
- The Bombay Hindu Women's Rights To Property (Extension To Agricultural Land) Act, XIX of 1947 – Under Section 3 the term “Property” (in Act of 1937 and amendment Act of 1938) shall include agricultural land . Proviso that rule of succession prescribed for tenants' rights in agricultural land by any special law, are not affected.
- The Hindu Succession (Maharashtra Amendment) Act, 1994(22nd June 1994)(Assent of President on 25th December 1994) (Published in Mah. Govt. Gazette on 6th Dec. 1994) -

2. After Section 29, Chapter IIA added in Hindu Succession Act 1956- Section 29A-

- (i) In Joint Hindu Family governed by Mitakshara Law , daughters shall become coparceners by birth in their own right and can claim by survivorship.
- (ii) At a partition, the sons and daughters get equal share in a partition .(which include surviving child of predeceased son or daughter; child of such predeceased child of the predeceased son or daughter .) (not applicable to Partitions effected prior to commencement of Maharashtra Amendment Act 1994 .)
- (iii) All incidents of coparcenary ownership shall be applicable to a female Hindu including disposal of property by female Hindu by Will or Testamentary disposition .

- (iv) This Chapter is not applicable to daughters married before the commencement of Maharashtra Amendment Act 1994.

Section 29B – If a female Hindu dies having at the time of her death an interest in coparcenary property by virtue of Section 29A, her interest in coparcenary property shall devolve by survivorship;

Proviso; in case deceased has left a child or child of a predeceased child, where her interest in coparcenary property will devolve by testamentary or intestate succession under the Act.

Explanation II- Nothing contained in Proviso shall be construed as enabling a person who before the death of deceased has separated himself or herself from the Coparcenary or any of his or her heirs, to claim on intestacy a share in the interest in the Coparcenary property.

Section 29C – Where interest under Section 29A or 29B devolved upon two or more heirs, the other heir has a preferential right to acquire such interest in case other heir proposes to transfer such interest. The consideration in the absence of any agreement between the Parties shall be determined by the Court.

3. Partition effected on or after 22nd June 1994 and before date of publication of this Act in the official Gazette (i.e. 6th December 1994); which Partition is not in accordance with Principal Act read with present State Amendment Act, such Partition shall be deemed to be null and void.

Chapter 4

PROPERTY RIGHTS OF WOMEN AFTER PASSING OF HINDU SUCCESSION ACT 1956(AS UNAMENDED)

Piecemeal legislation sprang in anomalies and unanticipated situations. The evolution of Hindu women's property rights has been periodically improved, propelled by court decisions and legislations such as The Hindu Succession Act, 1956 which has from time to time, grown and bolstered the scope of its applicability. The Act applies to Hindus in the whole of India except the State of Jammu and Kashmir. Jammu and Kashmir Hindu Succession Act, 1956 (38 of 1956), was applicable there. After reorganization of the Jammu and Kashmir and Ladakh as Union Territories in 2019 now Hindu Succession Act has been applied to said Union Territories under Fifth Schedule (Section 95, 96) of The Jammu And Kashmir Reorganisation

Act 2019. Hindu Succession Act 1956 lays down a uniform and comprehensive system of inheritance and applies inter alia to persons governed by Mitakshara and Dayabhaga schools, as also to those in certain parts of southern India who were previously governed by the Murumakkattayam, Alyasanatana and Nambudri systems of Hindu law. Act does not have retrospective effect. Section 14 of the Act is having retroactive effect whereunder Hindu woman's limited estate is now abolished and any property held by a female Hindu howsoever acquired, is now held by her as an absolute property with full powers of disposal. Section 26 is also retrospective which affects the rights of the descendants of a convert from Hinduism. Now as per Supreme Court Judgment certain provisions of Section 6 as amended in 2005 are retroactive i.e. recognizing an antecedent event for conferral of rights, prospectively. Section 4 gives overriding effect to the provisions of the Act. With respect to matters for which provision is made in the Act, the prior law ceases to have effect to the extent laid down in that section. However, in respect of matters for which no provision is made in the Act, the old law will continue to remain applicable. By the Repealing and Amending Act, 2015, the legislature repealed certain Acts, amongst them being the Hindu Succession Amendment Act, 2005 and included in the 1st Schedule of the Act, it having served its purpose by amendment of the principal Act i.e., the Hindu Succession Act, 1956. Section 4 of the Repealing and Amending Act, 2015 states that the repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to.

Section 6 as unamended affected the doctrine of Mitakshara Law of Coparcenary, unobstructed heritage, rights of survivorship, the principle of Mitakshara Law that coparcener cannot make a valid gift or bequest of his interest in coparcenary property so as to defeat the rights by survivorship etc.

According to section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of the Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener by survivorship but upon his heirs by intestate succession as per section 8. 12 preferential heirs inherit that interest simultaneously (Section 9 and Schedule) and take it as tenants-in-common and not as joint tenants (section 19(b)).

Explanation 1 to section 6 of the Act provides a technique under which undivided interest of a deceased coparcener can be determined i.e. 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 i.e. a notional Partition is assumed immediately before his death, and his interest shall devolve upon his heirs by succession under section 8 which includes the surviving coparcener. However the surviving coparcener shall also be entitled to claim share in his undivided interest in coparcenary property on notional partition.

Section 8 provides uniform system of inheritance to separate or self-acquired property of a male intestate. The heirs are divided into four classes or categories. These are: (i) heirs in Class I of the Schedule; (ii) heirs in Class II of the Schedule; (iii) agnates; and (iv) cognates. The property devolves first on the 12 Simultaneous heirs mentioned in Class I of the Schedule to the Act, and failing such heirs upon the second, third and fourth class of heirs in the order as regulated by sections 8 and 9.

Male and female heirs are treated as equal. The distribution of property among these heirs in Class I and Class II is to be in accordance with the rules laid down in section 10,11. Order of succession is in accordance with the rules laid down in Section 9 and 12.

Section 14 of the Hindu Succession Act, 1956, is retroactive in operation. Subsection 1 mentions that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Such property includes by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana. Subsection (2) prescribes a restricted estate under certain circumstances.

Section 15 and 16 lays down the scheme of succession, computation of shares and manner of distribution of the property of a female Hindu who dies intestate after the commencement of the Act. Heirs are grouped in five categories. Two important exceptions (when female dies intestate without any issue) relate to property inherited by the female from her mother or father (will revert to the heirs of the father in existence at the time of her death and property inherited by her from her husband or father-in-law(will revert to the heirs of the husband in existence at the time of her death) .

Unchastity of certain female heirs, change of religion and loss of caste imposed exclusion from inheritance recognised by law. Section 28 of the present Act removes all these disqualifications save and except those expressly recognised by any provisions of the Act which are very less .

A coparcener under Mitakshara law had no power to dispose of his coparcenary interest by Will . The preamble of the Act only mentions law relating to intestate succession among Hindus. However , as per section 30 of Hindu Succession Act 1956 , the interest of a male hindu in Mitakshara Coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall be deemed to be property capable of being disposed of by him or by her, by Will or other testamentary disposition (Indian Succession Act 1925); subject to the right of maintenance of any heir specified in Schedule . (pl refer Sections 18, 21,22 of the Hindu Adoption and Maintenance Act).

The doctrine of pious obligation does not apply to the wife and a wife who receives a share on partition cannot be liable to the creditor.

Under Section 16 of the Hindu Marriage Act a child of void or voidable marriage is treated as legitimate for the purpose of succession.

Certain provisions of the Hindu Adoption and Maintenance Act, 1956, also have bearing on the rules relating to property like Hindu Wife's right to separate residence and maintenance , rights of adopted child and that of the adoptive parents etc.

Section 6 and the proviso along with section 8 of the Act would be inapplicable in cases of the rule of primogeniture mentioned in Section 5(ii) of the Act.

India's Mitakshara legislation, which governs Hindu joint families, was not uniform. A number of states, including Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra, amended the Act to grant girls in Mitakshara coparcenaries equal rights.

Chapter 5

COPARCENARY RIGHT OF WOMEN UNDER HINDU SUCCESSION (AMENDMENT) ACT 2005

- Daughters were not given equal status under old Section 6. By virtue of the amendment of 2005, the daughters of a coparcener are included as coparceners along with his sons and are recognized as coparceners in their own right. The amendment is retroactive i.e.

recognising an antecedent event for conferral of rights, prospectively. The implications of these are manifold –

- (a) The coparcenary rights can be claimed by daughters born before or after amendment in the same manner as son with same rights and liabilities
 - (b) It cannot be ruled out that daughter can also be Karta or Manager.
 - (c) She has the right to seek partition of the coparcenary property.
 - (d) A notional partition has been introduced. On such Notional Partition, the daughter takes a share equal to that of a son.
 - (e) Other legal Heirs defined are surviving child of the predeceased son or a predeceased daughter; child of predeceased child of the predeceased son or a predeceased daughter
 - (f) There is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place.
 - (g) In case there is a widow or daughter also, it would be treated as joint family property.
 - (h) Any disposition, alienation, testamentary disposition, partition made before 20 December 2004 are excluded.
 - (i) A daughter can assert the right on and from 9.9.2005.
 - (j) It has also been stipulated that a partition means one made by execution of a deed duly registered or a partition effected by a decree of the court. Other modes of partition are not recognised.
 - (k) Sub-section (2) of section 4 dealing with non-applicability of the Act to statutes dealing with prevention of fragmentation of agricultural holdings or fixation of ceilings or devolution of tenancy rights in respect of such holdings, has been omitted with effect from 9/09/2005.
- By 2005 amendment, Section 23 of the Hindu Succession Act, 1956 mentions right of the daughter to seek partition of the dwelling house in her own right.
 - Section 24 of the Act dealing with the disability of a widow of a predeceased son, the widow of a predeceased son of a predeceased son or the widow of a brother, to succeed to the property in case of such widow's remarriage has been deleted,

Chapter 6

CASE LAWS GIVING INTERPRETATIONS TO THE CHANGING LAWS RELATING TO PROPERTY RIGHTS OF WOMEN

❖ Rights of Women in Joint Family Property before 1956 (before HSA 1956) – Precedents -

Serial No.	Act	Court	Details of Case Law	Ratio of the Judgment
1	Hindu Law - Mitakshara	Bombay HC	Pratapmull Agarwalla vs Dhanabati Bibi on 4 November, 1935 Equivalent citations: (1936) 38 BOMLR 323 ^x	“34. ... (iii) Partition between male coparceners entitles the wife, mother, and grandmother to a share in the joint property; they are not entitled to any such share until partition.... 41. The result of the abovementioned conclusion is that inasmuch as the preliminary decree in the partition suit was not carried out and no actual division of the joint family property was made, Dhanabati did not become the owner of the share mentioned therein.”
2	Hindu Women's Rights to Property Act, 1937 (Act 18 of 1937), Section 3(2) (3).	Madras HC- Horwille J.	Natarajan Chettiar vs Perumal Ammal And Anr. on 18 August, [1942 (1942) 2MLJ668] ^{xi}	Held – “The effect of Section 3, clauses (2) and (3), may be regarded as a survival of the husband's persona in the wife, giving her the same rights as her husband had except that she can alienate property only under certain circumstances. As the widow did not inherit her right, no succession certificate is necessary.”
3	Hindu Women's Rights to Property Act (18 of 1937) <u>Section 3(2)</u>	Madras High Court	Movva Subba Rao And Anr. vs Movva Krishna Prasadam Minor By ... on 27 March, 1953 ^{xii} [AIR 1954 Mad 227, (1953) 2 MLJ 561]	HELD - “9. To sum up, Section 3(2) of the Act does not operate as severance of interest of the deceased coparcener; the right which a widow gets under that section is not as heir of her deceased husband; it is a statutory right based on the recognition of the principle that a widow is the surviving half of her deceased husband; that the incidents of that right are those specified in the Act; that such right is one personal to the widow and comes to an end on her

				death, that the estate which the widow takes under Section 3(2) does not, on her death, devolve on her husband's heirs; and that the right of the coparceners to take by survivorship is suspended as against the widow of a deceased coparcener and such right reasserts itself on her death.
4	Hindu Women's Rights to Property Act, 1937 (Act 18 of 1937)	Bombay High Court	Mahadu Kashiba Varnekar vs Gajarabai Shankar Varnekar on 1 December, 1953, [AIR 1954 Bom 442, (1954) 56 BOMLR 387, ILR 1954 Bom 885] ^{xiii}	<p>Held -Established propositions of Bombay HC-“5....(1) The interest which a widow takes, upon the death of her husband, in her husband's property is a fluctuating interest...</p> <p>(2) ... Her interest is, like the interest of her husband, an un-divided interest in the joint family properties, and even though she is entitled to file a suit for partition, the interest does not get separated, at any rate, until the suit for partition is filed by her....</p> <p>7...After devolution, it is an' interest which unlike a coparcener's interest can be predicated with certainty. In that event, as a property, it carries with it the incidents of transferability at the hands of its holder either limited or absolute.'...</p> <p>...there is ample foundation for the power of the manager to alienate family property for necessity in spite of the widow joining the coparceners as an owner.”</p>
5	Hindu Law	Supreme Court	Jaisri Sahu vs Rajdewan Dubey And Others on 28 April, 1961[1962 AIR 83, 1962 SCR (2) 553] ^{xiv}	<p>Held - “When a widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis.. ...Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. Her powers in this regard are, as held in a series of decisions beginning with Hanooman Persaud v. Mussamat Ba- booe (2),_those of the manager of an infant's estate or the</p>

				<p>manager of a joint Hindu family. In <i>Venkaji v. Vishnu</i> {(1894) I.L.R. 18 Bom. 534} it was observed that-</p> <p>"A widow like a manager of the family, must be allowed a reasonable latitude in the exercise of her powers, provided..... she acts fairly to her expectant heirs'."</p>
6	Hindu Women's Rights to Property Act, 1937 (Act 18 of 1937)-	Supreme Court	Potti Lakshmi Perumallu vs Potti Krishnavenamma on 13 August, 1964, Equivalent citations: 1965 AIR 825, 1965 SCR (1) 26 ^{xv}	<p>Held-</p> <p>"(iii)According to the theory underlying the Hindu law the widow of a deceased Hindu is his surviving half and therefore as long as she is alive he must be deemed to continue to exist in her person. This surviving half had, under the Hindu law texts, has no right to claim a partition of the property of the family to which her husband belonged. But the Act of 1937 has conferred that right upon her.</p>
7	Hindu Women's Rights to Property Act (18 of 1937) Section 2, 3(3)	Supreme Court	Satrughan Isser vs Smt. Subujpari & Others on 4 August, 1966 ^{xvi}	<p>Held :</p> <p>"...by the operation of section 3 of Act 18 of 1937, C was invested with her husband's interest in the Coparcenary property. ...The right which the widow may claim is not different from the right which her husband could claim if he had been alive; therefore the right of the coparceners to take the joint property by survivorship on the death of the coparcener does not survive a demand for partition by the widow in the coparcenary.</p>
8	Hindu Law-Mitakshara Law of the Benares School	Supreme Court - Ramaswami, V. J.	Shiromani & Ors vs Hem Kumar & Ors on 4 April, 1968,[1968 AIR 1299],	<p>According to the Mitakshara Law of the Benares School a wife is entitled, on partition between her sons, to a share equal to that of a son.</p>
9	Hindu Women's Rights to Property Act, 1937 (Central	Supreme Court	Vaijanath & Ors vs Guramma & Anr. on 18	<p>Held –</p> <p>"....on an interpretation of the Hindu Women's Right to Property Act, 1937 as enacted by the State of Hyderabad, the Act covers agricultural lands. ... This Act also received the assent of the President</p>

	Act, 18 of 1937)		November, 1998 ^{xvii}	<i>under Article 254(2) and, therefore, it will prevail.</i> ^{xviii}
--	------------------	--	--------------------------------	---

❖ Rights of Women in Joint Family Property for the period 1956 to 2005 – Precedents

Serial No.	Act	Court	Details of Case Law	Ratio of the Judgment
1	Section 3(2) of Hindu Women's Right to Property Act 1937, Section 14(1) of the 1956 Act	Madras HC -- (Division Bench)	Mothi Mondhi Ambalam v. Alagammal, (1975) 88 Mad LJ 551	Held – “ <i>the mere absence of a demand for partition or the fact that such a widow secured her interest in a partition prior to 1956,, would not make any difference in so far as the nature and value of her vested right acquired under Section 3(2) of the Act is concerned. ... the right which a Hindu widow got under Section 3(2) of the Act gets automatically crystallised on the commencement of Central Act XXX of 1956, and that right gets enlarged by operation of Section 14(1) of the 1956 Act.</i> ”
2	Hindu Succession Act 1956 prior to amendment of 2005 , section 6	Supreme Court of India, Bench: Y.V. Chandrachud, P.N. Shingal , V.D. Tulzapurkar	Gurupad Khandappa Magdum vs Hirabai Khandappa Magdum And Ors on 27 April, 1978	Held “.... <i>The operation of the notional partition and its inevitable corollaries and incidents, however, is to be only for the purposes of this section namely, devolution of interest of the deceased in coparcenary property and would not bring about total disruption of the coparcenary as if there had, in fact, been a regular partition and severance of status among all the surviving coparceners. It has been appropriately said that legal fictions have legal frontiers.</i> ”
3	Hindu Succession Act 1956 prior to amendment	Supreme Court of India	State Of Maharashtra vs Narayan Rao Sham Rao Deshmukh &	Held “.... <i>There is no doubt that the right of a female heir to the interest inherited by her in the family property, gets fixed on the date of the death of a male member under section 6 of the Act but she cannot be</i>

	of 2005 , section 6		Ors on 19 March, 1985	<i>treated as having ceased to be a member of the family without her volition."</i>
4	Hindu Women's Rights to <u>Property Act</u> , 1937 (Act 18 of 1937),Section n 3(3). Hindu Succession Act 1956	Andhra High Court	M.P. Obanna And Others vs K.B. Anjaneyulu And Others on 4 August, 1999 ^{xix} [1999 (5) ALD 597, 1999 (5) ALT 414]	Held- "12. From the law laid down by the Hon'ble Supreme Court (in Potti Lakshmi Perumallu v. Potti Krishnavenamma), it is clear that Hindu Women's Estate recognized her pre-existing Hindu law right to claim maintenance, and the legislature did not intend to create a new kind of interest in her favour nor intended to make her to become a coparcener, though her interest in the family property is to be the same as that of her deceased husband, except that it becomes the estate of a widow. If the widow also died without there being any partition during her life time, the coparcenary rights of her husband would automatically stand devolved upon the other surviving coparceners of the family. In other words, whatever the rights Nagamma had as a widow under Hindu Women's Rights to Property Act, do not stand in abeyance to be inherited by the plaintiff (Widow's daughters) after the commencement of the Hindu Succession Act, 1956. But, they devolve upon the other surviving coparceners" Satrugan Isser v. Subujpari-followed.
5	<u>ACT - Section 8 (1) (a)(d), 8(2)(c) of the Mysore Act</u> Proviso to Section 6 of Hindu Succession Act 1956	Supreme Court of India Bench: A.P.Mi sra, Ruma Pal	Thimmaiah And Ors vs Ningamma And Anr on 25 August, 2000	Held - "Section 4 of the 1956 Act gives overriding effect to the 1956 Act in so far as any law governing Hindus is inconsistent with the provisions of the 1956 Act. Reading the proviso to section 6 of the 1956 Act with section 8 of the Mysore Act, it is clear that where the female members sought to be protected under Section 8 of the Mysore Act are in fact Class I heirs of a deceased coparcener, his interest in the joint family property cannot pass by survivorship at all. Thus the question of it passing subject to the rights of any class of females under Section 8 (1) (d) of the Mysore Act does not also arise."

6	Hindu Succession Act 1956 prior to amendment of 2005, section 4, 8, 19, 6, 30	Supreme Court Of India, Bench: <u>R.F. Nariman</u> , <u>Kurian</u> , <u>Joseph</u>	Uttam Versus Saubhag Singh & Ors. - Civil Appeal No. 2360 Of 2016 [Arising Out Of SLP (Civil) No.6036 Of 2014] ,dated 2/03/2016, [AIR 2016 SUPREME COURT 1169]	Held - “21. Applying the law (Section 4,8,19 of the Hindu Succession Act 1956 prior to amendment of 2005) to the facts of this case, it is clear that on the death of Jagannath Singh in 1973, the joint family property which was ancestral property in the hands of Jagannath Singh and the other coparceners, devolved by succession under Section 8 of the Act. This being the case, the ancestral property ceased to be joint family property on the date of death of Jagannath Singh, and the other coparceners and his widow held the property as tenants in common and not as joint tenants. This being the case, on the date of the birth of the appellant in 1977 the said ancestral property, not being joint family property, the suit for partition of such property would not be maintainable.”
---	---	--	--	--

Chapter 7

CASE LAWS GIVING INTERPRETATION RELATING TO COPARCENARY RIGHTS OF WOMEN UNDER HINDU SUCCESSION (AMENDMENT) ACT 2005

- **(Bombay High Court), Smt. Roshan Dalvi J., “Sadashiv Sakharan Patil v Chandrakant Gopal Desale, (Appeal From Order No. 265 of 2011 on: 6 September 2011) -**

Held “14.... all daughters born to coparceners in a Hindu joint family living at the time the Act came into force would become coparcener. ... If such interpretation is not given the words "on" and "from" "the commencement of the Hindu Succession (Amendment) Act, 2005" would lose their significance all together and would be rendered otiose.”

- **Supreme Court of India, Bench: Jagdish Singh Khehar, R.M. Lodha, Ganduri Koteswaramma & Anr vs Chakiri Yanadi & Anr on 12 October, 2011[AIR 2012 SUPREME COURT 169]**

Held “14.... 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.”

“16.... If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another

preliminary decree redetermining the rights and interests of the parties having regard to the changed situation. ...

- **Bombay High Court**

Ms. Vaishali Satish Ganorkar & Anr vs Mr. Satish Keshaorao Ganorkar & ... on 30 January, 2012^{xx}

ACT- Hindu Succession Act 1956 , Section 6, The amended provision under Section 6 of the Hindu Succession Act effective from 9 September 2005

Held-

“ No interest can devolve in a coparcenary property except on the death of the coparcener. ... ”

“ It may be mentioned, therefore, that ipso facto upon the passing of the Amendment Act all the daughters of a coparcener in a coparcenary or a joint HUF do not become coparceners. The daughters who are born after such dates would certainly be coparceners by virtue of birth, but for a daughter who was born prior to the coming into force of the amendment Act she would be a coparcener only upon a devolution of interest in coparcenary property taking place. ”

“It may be mentioned that prior to the amendment Act (aside from the State Amendment Act of 1995 which amended Section 29 of the HSA) indeed the daughter was not a coparcener; she had no interest in a coparcenary property.”

“She had, therefore, no interest by virtue of her birth in such property. This she got only "on and from" the commencement of the amendment Act i.e, on and from 9 September 2005. The basis of the right is, therefore, the commencement of the amendment Act. ... ”

“27. A reading of Section as a whole would, therefore, show that either the devolution of legal rights would accrue by opening of a succession on or after 9 September 2005 in case of daughters born before 9 September 2005 or by birth itself in case of daughters born after 9 September 2005 upon them.”

“8. The prospectivity of the Act is clear. It is not made expressly retrospective by the legislature. Further it has specified not to affect transactions prior to the specified date in the proviso. Even the intention of the legislature in keeping in tact the rights vested upon any disposition or alienation is clear and hence further supports the mischief that the amendment Act sought to remedy and the mischief that it sought to prevent. It would seek to undo transactions entered into by those coparceners with third parties, such as respondent No.2 Bank in this case. It would not be known to respondent No.2 at the time the equitable mortgage was created that any part of the mortgaged property would be let off consequent upon a subsequent claim by the daughters of the mortgagors who were not known to the Bank or shown to be coparceners.”

“(e) The absurdity of making all the daughters born before or after the commencement of the amendment Act included in the amendment Act would not only be directly against and

diametrically different from the express provision of making the section applicable to daughters who shall be coparceners by birth only on and after the amendment, but would make the applicability of the Act so all-pervasive that the entire populace who are Hindus and have any HUF property of the family would be encompassed setting at naught various transactions entered in to by coparceners creating vested rights as in this case.”

“49. ... in so far as the pending matters are concerned, be it suit or an appeal, the change effected by the Central Act of 2005 will have to be taken note of and hence, in respect of the pending proceedings, the Central Amendment Act of 2005 brought into force w.e.f. 9.9.2005 will have to be applied”

“50...Section 6-A(d) of the Karnataka Amendment Act 1990, cannot, but be termed as repugnant to the Central Act of 2005 and as such, the said provision contained in Section 6-A(d) which excludes a daughter, married prior to coming into force of the Karnataka Amendment Act, 1990, from being entitled to be treated as a co-parcener, is void and ceases to have any affect.”

- **Bombay High Court , R. G. Ketkar J., Shri Ashok Gangadhar Shedge vs Ramesh Gangadhar Shedge on 9 June, 2014^{xxi} Second Appeal No. 25 Of 2013**

ACT- Hindu Succession Act 1956 , Section 6, as amended in 2005

Held –

*“.... **I.** Section 6 of the Principal Act was substituted by Section 6 of the Amendment Act. In view thereof, for all intents and purposes, amended Section 6 is there from 17.06.1956, being the date of commencement of the Principal Act.*

***II.** The daughter of a coparcener who is born before or after 17.6.1956 has by birth become a coparcener in her own right in the same manner as a son in terms of clause (a) and has the same rights in the coparcenary property as she would have had if she had been a son in terms of clause (b) and is subject to the same liabilities in respect of the said coparcenary property as that of a son in terms of clause (c) of subsection(1) of amended Section 6.*

***III.** The rights under clauses (a) and (b) and liabilities under clause (c) of sub-section (1) of amended Section 6 are recognized for the first time on and from 09.09.2005, being the date of commencement of the Amendment Act.*

***IV.** ..., the same shall not affect or invalidate any disposition or alienation including any partition which is duly registered under the Registration Act, 1908 or effected by decree of a Court or testamentary disposition of property which had taken place before the 20 December 2004.*

***V.** The decision of the Division Bench in the case of Vaishali Ganorkar is not per incurium of Gandori Koteshwaramma and others.*

For all these reasons, I respectfully disagree with the view expressed by the Division Bench of this Court in the case of Vaishali Ganorkar.”

The matters were referred to a Larger Bench.

- **Bombay High Court, Bench: Mohit S. Shah, C.J. And M.S.Sanklecha And M.S.Sonak, JJ, Shri Badrinarayan Shankar Vs Omprakash Shankar Bhandari on 14 August, 2014^{xxii}**

The Full Bench had been constituted on the reference made by a learned Single Judge of Bombay High Court (R.G.Ketkar, J.). This reference was made as the learned Judge doubted correctness of the decision rendered by Division Bench of Bombay High Court in *Vaishali S. Ganorkar & Others v/s. Satish Keshavrao Ganorkar & Others*.

The Full Bench of the Bombay High Court answered the reference as under:-

“(I) Question (a) – Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act of 2005 is retroactive in operation, as explained in this judgment. In brief : Clause (a) of sub-section (1) of amended section 6 is prospective in operation; clause (b) and (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;

(II) Questions (b), (c) and (d) – Amended section 6 applies to daughters born prior to 17 June 1956 or thereafter (between 17 June 1956 and 8 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;

(III) Question (e) – Yes. Decision of the Division Bench of this Court in Vaishali S. Ganorkar is per incuriam the Supreme Court decision in Ganduri Koteswaramma case .”

- **Supreme Court of India, Bench: Adarsh Kumar Goel , Anil Dave JJ. , Prakash vs Phulavati . on 16 October, 2015 and connected matters ^{xxiii}**

**Act– Hindu Succession Act 1956 as amended by Hindu Succession (Amendment) Act, 2005
Held-**

*“22. In this background, we find that the proviso to Section 6(1) and sub-section (5) of Section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 20th December, 2004 on which date the Bill was introduced. **Explanation cannot permit reopening of partitions which were valid when effected. S. Sundaram Pillai vs. R. Pattabiraman (1985) 1 SCC 591 Keshavji Ravji & Co. vs. CIT (1990) 2 SCC 231 Page 16 , Civil Appeal No.7217 of 2013 etc. Object of giving finality to transactions prior to 20th December, 2004 is not to make the main provision retrospective in any manner. Main provision of the Amendment in Section 6(1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the appellants are not intended to be done away with for period prior to 20th December, 2004. In no case statutory notional partition even after 20th December, 2004 could be covered by the Explanation or the proviso in question.”***

“23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain

unaffected. Any transaction of partition effected thereafter will be governed by the Explanation."

- **Supreme Court , Bench: Ranjan Gogoi, N.V. Ramana, JJ., Shreya Vidyarthi v. Ashok Vidyarthi And Others ,Civil Appeals Nos. 3162-63 of 2010, decided on December 16, 2015**

Act- Hindu Women's Rights to Property Act, 1937, Hindu Succession Act 1956 and amendment of 2005, Insurance Act, 1938

Held "24....*the legal position which recognises a Hindu widow acting as the manager of the HUF in her capacity as the guardian of the sole surviving minor male coparcener. Such a role necessarily has to be distinguished from that of a karta which position the Hindu widow cannot assume by virtue of her disentitlement to be a coparcener in the HUF of her husband. Regrettably the position remains unaltered even after the amendment of the Hindu Succession Act in 2005.*"

- **Delhi High Court, Justice Najmi Waziri, Mrs. Sujata Sharma vs Shri Manu Gupta on 22 December, 2015**

Act – Hindu Succession Act 1956 as amended in 2005.

Held "27. ... *the impediment which prevented a female member of a HUF from becoming its Karta was that she did not possess the necessary qualification of co-parcenership. Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu women should be denied the position of a Karta. ... The Court finds no restriction in the law preventing the eldest female co-parcener of an HUF, from being its Karta.*"

- **Supreme Court Of India , Bench: A.K. Sikri, Ashok Bhushan Jj, Bench: A.K. Sikri, Ashok Bhushan Jj, Danamma @ Suman Surpur & Anr. Versus Amar & Ors. [Civil Appeal Nos. 188-189 Of 2018 [@Slp(C) Nos. 10638-10639 Of 2013], dated 1/02/2018,**

Held -

"24) *One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. Hence, the **rights of coparceners emanate and flow from birth** (now including daughters) as is evident from sub-s (1)(a) and (b).*"

"27) *In the present case, no doubt, suit for partition was filed in the year 2002. However, during the pendency of this suit, Section 6 of the Act was amended as the decree was passed by the trial court only in the year 2007. Thus, the rights of the appellants(daughters) got crystallised in the year 2005*"

"....*amended Section 6 applied to daughters born prior to June 17, 1956 (the date on which Hindu Succession Act came into force) or thereafter (between June 17, 1956 and September 8, 2005) provided they are alive on September 9, 2005 i.e. on the date when Amended Act, 2005 came into force. Orissa, Karnataka and Delhi High Court have also held to the same effect....22) The controversy now stands settled with the authoritative pronouncement in the case of Prakash & Ors. v. Phulavati & Ors.*"

- **Madras High Court, Bench: N.Sathish Kumar J., Mr. G. Nataraj vs Mrs. Sellammal , Second Appeal No.936 of 2012 & M.P.No.1 of 2012, Dated 25/04/2019**

Act- Section 6 of the Hindu Succession Act, 1956 as amended by Central Act 39 of 2005, Act 1 of 1990 of Tamilnadu.

Held -

*“22. Admittedly, the suit property is an ancestral property The plaintiffs are married much prior to the Act 1 of 1990 of Tamilnadu. Therefore, they are not entitled to any share as per the Tamilnadu Act. Thereafter, the original co-parcener died in the year 2002 itself. When the co-parcener has already died, notional partition has to be assumed. **The plaintiffs can claim equal share, only if the father is alive on the date of commencement of the Act 39 of 2005 and the Act is prospective in nature.**....Since, the succession already opened, the right is already vested by operation of law due to unamended provision. Therefore, this Court is of the view that the plaintiffs are certainly not entitled to equal share as that of their brothers. ...”*

- **Supreme Court , Bench: J. (Arun Mishra), J. (S. Abdul Nazeer), J. (M.R. Shah), Civil Appeal No. Diary No.32601 Of 2018 ,Vineeta Sharma vs Rakesh Sharma on 11 August, 2020**

Act - Hindu Succession Act 1956 as amended in 2005

Issue- The question concerning the interpretation of Section 6 of the Hindu Succession Act 1956 as amended by Amendment Act of 2005 has been referred to a larger Bench in view of the conflicting decisions rendered in two Division Bench Judgments of Supreme Court namely Prakash and Others Vs Phulvati and others and Danamma @Suman Surpur and another Vs. Amar and others . Reference was answered as under.

Held-

“129.

- The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.*
- The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.*
- Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.*
- The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The*

provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

- (v) *In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly....*

we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B. Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar is partly overruled to the extent it is contrary to this decision."

The Court observed that it is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively. (retroactive effect).

The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar was partly overruled to the extent it is contrary to this decision, namely the view "the rights under the amendment are applicable to living daughters of living coparceners as on 9-9- 2005 irrespective of when such daughters are born" was overruled.

CHAPTER 8

CONFLICTING OPINIONS AND CREATION OF ANOMALOUS SITUATIONS

There are conflicting Judgments regarding interpretation of the provisions of Section 6 of Hindu Succession Act 1956 on its journey of amendment in legislation and judicial interpretations.

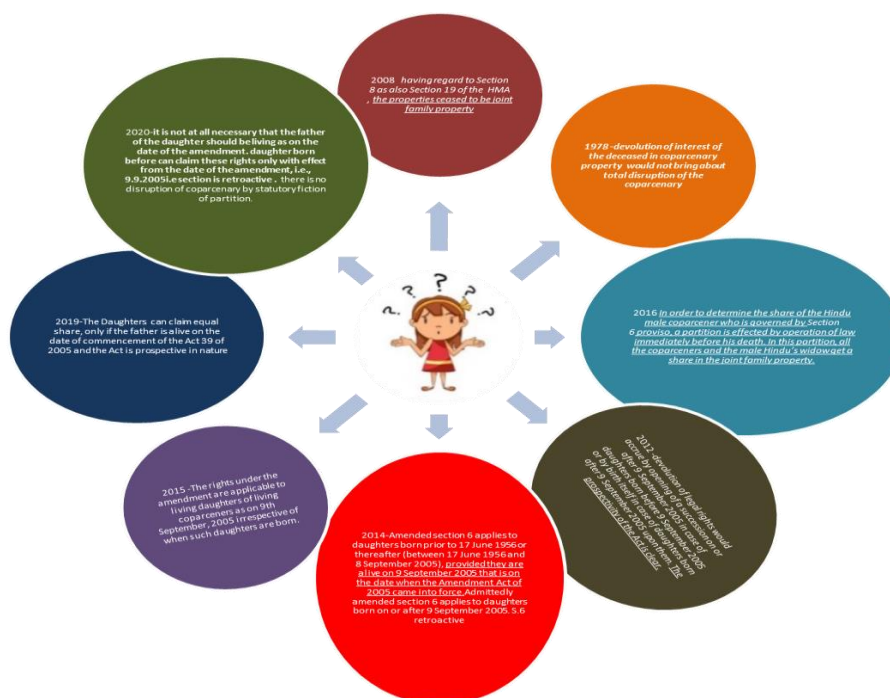
*** Supreme Court of India, Bench: P.N. Bhagwati, A.C. Gupta, Syed Murtaza Fazalali, V. Tulasamma & Ors vs V. Sesha Reddi (Dead) By L. Rs on 17 March, 1977-**

"... If there is a close inter action between the adjudicatory wing of the State and a dynamic and ever alert authority or body which responds swiftly to the draw backs and deficiencies in the law in action, much of the time and money which is at present expended in fruitless litigation, would be saved and law would achieve a certain amount of clarity, certainty and simplicity which alone can make it easily intelligible to the people...."

Constitution granted equal rights particularly Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and Article 15 of

the Constitution which prohibits any discrimination on the ground of religion or gender; keeping in mind these avowed objectives, codification of Hindu law has taken place from time to time . However Interpretation of the provisions has resulted in conflicting decisions as mentioned in the previous chapters particularly Chapter 6 and 7. Following Figure gives a bird eye view of the conflicting interpretations and cropping up questions –

Figure



- Whether transactions based on one or the other interpretations can be reopened ? For eg. In *Prakash vs Phulavati* (16/10/2015) it was held that rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. If a transaction has taken place in 2015 after *Phulvati* judgment on the basis that since father was not alive on 9th September, 2005 , amendment to Section 6 is not applicable and daughter will not get the status of Coparcener and hence daughter had a reduced share. Whether the transaction can be reopened on the basis of the Judgment of Hon'ble Supreme Court in *Vineeta Sharma vs Rakesh Sharma* on 11 August, 2020 under which their Lordships have categorically mentioned that “ *it is not at all necessary that the father of the daughter should be living as on the date of the amendment.* ”

- Statement of Objects and Reasons [The Hindu Succession (Amendment) Act, 2005]
Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. Where the Coparcenary property has devolved upon the surviving male coparceners as per then prevailing Hindu Mitakshara law, as father died prior to commencement of 1956 Act, and family continues joint till amendment of the Section 6 in 2005, whether Daughter can be considered as Coparcener capable of demanding her share in the Coparcenary Property after commencement of 2005 Act ?.
- The judgments of Hon'ble Supreme Court are binding on all Courts as per Art. 141 of the Constitution. If in an earlier proceeding, the shares of the daughter are determined on the basis of earlier interpretation of Law and the Suit decreed, after the Judgment of Hon'ble Supreme Court in Vineeta Sharma vs Rakesh Sharma, Can Appeal be filed by the Daughter that she is entitled to enhanced share as Coparcener as per the recent Judgment ?
- For a Daughter coparcener, there is ambiguity regarding the mode of intestate succession. Section 14 and 15 do not include the coparcenary property of daughters.
- The provisions of Section 6(1)(a) (b) (c) and 6(2) which deal with coparcenary property of daughters viz. "*shall be held by her with the incidents of coparcenary ownership*", cannot partake the character of absolute Property as contemplated under Section 14 and 15 of Hindu Succession Act.
- Cases can be imagined where the rules laid down in the section 6 and the proviso and *Explanation* I will bring up some issues that might not have logically consistent solutions and some unusual circumstances that will undoubtedly have different outcomes.

Chapter 9

LAND ACQUISITION LAWS AND OTHER LAWS NOT IN HARMONY WITH PERSONAL LAW

- In proceedings under the J & K Displaced Persons (Permanent Settlement) Act, 1971 and J&K Allotment of Land to Displaced Persons Rules, (1974), it has been held that since a married daughter is excluded from the "family" under that actment, she will not

be entitled to succeed under the Hindu Succession Act, 1956 as succession would be as per the provisions of the Displaced Persons Act, 1971.

❖ **Supreme Court Of India , Bench: Aniruddha Bose, Vikram Nath, Har Naraini Devi . V. Union Of India, Dated Sep 20, 2022, C.A. No.-022957-022957 / 2017,[2022 SCC ONLINE SC 1265]**

Act- S.50 of the Delhi Land Reforms Act, 1954

Hindu Succession Act 1956 and its Amendment in 2005 , Section 4(2) of Act of 1956

Article 254 Constitution Of India

Article 31a And 31 B Constitution Of India

Schedule 9 of the Constitution of India

Held “21. In the present case, 1954 Act is not referable to any matter enumerated in List III but it is referable to Entry 18 of List II. Thus, no question of repugnancy would arise in view of Article 254 of the Constitution.

28. The deletion of Section 4(2) took place w.e.f 09.09.2005. Therefore, the effect of the deletion can only be in respect of successions which opened on or after 09.09.2005. ... In the present case, it is to be held that succession has opened prior to 09.09.2005, the rights of the descendants in terms of Section 50 became crystallized on account of the said Section read with Section 4(2) of the 1956 Act. Therefore, the deletion of Section 4(2) cannot have retrospective effect.

29... 1954 Act, as held above is a special law, dealing with fragmentation, ceiling, and devolution of tenancy rights over agricultural holdings only, whereas the 1956 Act is a general law, providing for succession to a Hindu by religion as stated in Section 2 thereof. **The existence or absence of Section 4(2) in the 1956 Act would be immaterial.**

30... this Court in the judgment of Vineeta Sharma has given retrospective application only to Section 6 of the 1956 Act as amended in 2005. There is no declaration regarding deletion of Section 4(2) being retrospective.

31. Once it is upheld that there can be no challenge to the 1954 Act as the said legislation is included in the Ninth Schedule of the Constitution of India, this argument (Gender bias/women empowerment) also has no legs to stand.”

❖ **Supreme Court of India , Bench: Krishna Murari, M. R. Shah, Kamala Neti (Dead) Thr. Lrs. vs Special Land Acquisition Officer, Civil Appeal No. 6901 OF 2022, dated 9 December, 2022**

“in view of Section 2(2) of Hindu Succession Act and the appellant being the member of the Scheduled Tribe and as the female member of the Scheduled Tribe is specifically excluded, the appellant is not entitled to any right of survivorship under the provisions of Hindu Succession Act....To deny the equal right to the daughter belonging to the tribal even after a period of 70

years of the Constitution of India under which right to equality is guaranteed, it is high time for the Central Government to look into the matter and if required, to amend the provisions of the Hindu Succession Act by which the Hindu Succession Act is not made applicable to the members of the Scheduled Tribe.”

❖ **Chhattisgarh High Court, Sanjay K. Agrawal, J., Sadhna Bai v. State of Chhattisgarh, Writ Petition (S) No. 1762 of 2014, Dated Jan 21, 2016, [2016 SCC ONLINE CHH 299]**

“Magnificent question of law that has cropped up for consideration in this writ petition is whether the State Government is justified in impliedly excluding married daughter of the affected/displaced family from consideration for employment under the Chhattisgarh State Model Rehabilitation Policy, 2007, as amended, on the ground of her marriage.

clause 2.1 (c) of the R&R Policy regarding employment being violative and discriminatory to the extent of excluding married daughter from consideration for employment, is hereby declared void and inoperative.”

❖ In the matter of **Charu Khurana v. Union of India** ((2012) 7 SCC 248), Their Lordships of the Supreme Court while considering the question of gender justice observed as under:

“ ... it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced.”

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly in 1979. As a signatory to this convention, India is committed by international law to abide by it.

CHAPTER 10

Uniform Civil Code in the matter of Succession to property

- Article 44 of the Constitution of India, 1950 “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.’
- In *Prakash vs Phulvati* the Hon’ble Supreme Court

*“referred to the observations of Sahai, J. in *Sarla Mudgal vs. Union of India* (1995) 3 SCC 635 that a climate was required to be built for a uniform civil code. Reference was also made to observations in *Madhu Kishwar vs. State of Bihar* (1996 (5) SCC 125 to the effect that the court could at best advise and focus attention to the problem instead of playing an activist role. (2001) 7 SCC 740 Page 27”.*

- **Supreme Court of India, Ashwini Kumar Upadhyay v Union of India, T.P.©1249-1250/2020, Bench : D.Y. Chandrachud CJI, P.S. Narasimha J, J.B. Pardiwala J, Date 20/02/2023**

Petitions are filed before the Hon'ble Supreme Court challenging the personal laws on the grounds that they violate fundamental rights (Art. 14,15 and 21 of the Constitution) and directive principles in the Constitution. These petitions cumulatively aim to secure a Uniform Civil Code (UCC). The Petitions were dismissed on 20/02/2023 on the ground that case fell into the legislative realm.

- As of now, Goa and Uttarakhand are the States in India with UCC.

Chapter 11

CONCLUSION

1. In the words of Roscoe Pound as appearing in his celebrated treatise, "*The Ideal Element in Law*, that 'the law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and the need of change',
2. Numerous Disconnected pieces of legislation have resulted in a number of Rules which lack coordination and given rise to a sea of litigation.
3. Hindu Succession Act 1956 was enacted with the objective of bringing equality as enshrined in the Constitution under Art. 14 and remove gender discrimination as enshrined in Art. 15 of the Constitution in respect of Coparcenary Property and its devolution. With the same object it was amended in 2005. However the provisions gave rise to numerous conflicting interpretations.
4. Questions have cropped up due to ambiguities in various provisions of Hindu Succession Act as amended regarding Coparcenary Property and intestate succession viz. Section 6,14 and 15. Various Petitions have been filed on the ground of inequality and gender discrimination with respect to various provisions of Hindu Succession Act. viz. In Phulwati (supra) it was stated that "*the matter(of gender discrimination) needs consideration as the issue relates not merely to a policy matter but to fundamental rights of women under Articles 14, 15 and 21 and international conventions and covenants.*"

5. Applicability of provisions to pending proceedings at the stage of Suit, Appeal etc., transactions happened on the basis of a particular interpretation, reopening of closed transactions etc. adversely impacting vested rights, upsetting titles, and questioning the legality of previous transactions.
6. Due to conflicting interpretations and ambiguities in various provisions of Hindu Succession Act as amended, anomalous and mind boggling situations may result bereft of any consistent and logical conclusions.
7. Land Reform Laws / Land Acquisition Laws are not in uniformity with the personal Laws, thus depriving of the rights accrued under personal Laws.
8. Hindu Succession Act as amended in 2005 has given rise to various conflicting interpretations regarding the Coparcenary rights of daughters, which are set at rest by the recent laudable judgment of the Hon'ble Supreme Court in Vineeta Sharma vs. Rakesh Sharma.
9. Section 2(2) of Hindu Succession Act -Act is not applicable to members of Scheduled tribe, thus daughters of Scheduled Tribe do not have equal rights.
10. As a step toward a Uniform civil code, a consistent and comprehensive system of inheritance that recognizes an equitable allocation of property between male and female heirs is the need of the hour.

REFERENCES

ⁱ Mulla, Hindu Law

ⁱⁱ Mulla, Hindu Law

ⁱⁱⁱ Bombay High Court, Shri Badrinarayan Shankar ... vs Omprakash Shankar Bhandari on 14 August, 2014, Mohit S. Shah, C. J. and M. S. Sanklecha and M. S. Sonak, JJ

^{iv} Privy Council in Debi Mangal Prasad v Madhadeo Prasad (1912) 34 All 234 : 39 IA 121 : 14 IC 1000

^v Allahabad High Court, Debi Mangal Prasad Singh vs Mahadeo Prasad Singh on 2 February, 1912, Equivalent citations: (1912) ILR 34 All 234, Bench: Macnaghten, Robson, J Edge, A Ali

- vi Bombay High Court, Devidas S/O Udhaio Gaurkar And Ors. vs Smt. Vithabai W/O Laxman Dhengale ... on 17 April, 2008, Bench: C Pangarkar J
- vii The Indian Succession Act, 1925
- viii The Hindu Inheritance (Removal of Disabilities) Act, 1928
- ix The Hindu Women's Rights to Property Act 1937
- x Bombay High Court Pratapmull Agarwalla vs Dhanabati Bibi on 4 November, 1935 Equivalent citations: (1936) 38 BOMLR 323, Author: L Sanderson Bench: Thankerton, L Sanderson, G Rankin
- xi Madras High Court Natarajan Chettiar vs Perumal Ammal And Anr. on 18 August, 1942 Equivalent citations: (1942) 2 MLJ 668, Author: Horwill J
- xii Madras High Court
Movva Subba Rao And Anr. vs Movva Krishna Prasad Minor By ... on 27 March, 1953
Equivalent citations: AIR 1954 Mad 227, (1953) 2 MLJ 561, Bench: Rajamannar, V Ayyar
- xiii Bombay High Court, Mahadu Kashiba Varnekar vs Gajarabai Shankar Varnekar on 1 December, 1953, Equivalent citations: AIR 1954 Bom 442, (1954) 56 BOMLR 387, ILR 1954 Bom 885, Bench: Bavdekar, Chainani.
- xiv Supreme Court of India, Jaisri Sahu vs Rajdewan Dubey And Others on 28 April, 1961, Equivalent citations: 1962 AIR 83, 1962 SCR (2) 553 Author: T V Aiyar, Bench - Aiyar, T.L. Venkatarama, Gajendragadkar, P.B. Wanchoo, K.N. Gupta, K.C. Das
- xv Supreme Court of India, Potti Lakshmi Perumallu vs Potti Krishnavenamma on 13 August, 1964, Equivalent citations: 1965 AIR 825, 1965 SCR (1) 26, Bench: Mudholkar, J.R., Subbarao, K. Ayyangar, N. Rajagopala
- xvi Supreme Court of India, Satrugan Isser vs Smt. Subujpari & Others on 4 August, 1966, 1967 AIR 272, 1967 SCR (1) 7, Author: Shah, J.C., Bench: Shah J.C., Wanchoo K.N., Bachawat R.S.
- xvii Supreme Court of India, Vaijanath & Ors vs Guramma & Anr on 18 November, 1998, Bench: Sujata V. Manohar, G.B. Pattanaik.
- xviii Law Finder Live, Hindu Women's Right To Property Act, 1937 : A Path Not So Paved Avnish Mittal, Advocate, Punjab and Haryana High Court, Chandigarh, Email Id: avinsh@avnishmittal.com, Date :04/08/2022 Location : House No. 115, Sector 16A, Chandigarh, +91 9872000579
- xix Andhra High Court M.P. Obanna And Others vs K.B. Anjaneyulu And Others on 4 August, 1999 Equivalent citations: 1999 (5) ALD 597, 1999 (5) ALT 414 Bench: B Raikot
- xx Bombay High Court, Ms. Vaishali Satish Ganorkar & Anr vs Mr. Satish Kesharao Ganorkar & on 30 January, 2012, CORAM: MOHIT S. SHAH, C.J. AND MRS. ROSHAN DALVI, J.
- xxi Bombay HC, Shri Ashok Gangadhar Shedge vs Ramesh Gangadhar Shedge on 9 June, 2014, R. G. Ketkar J. , Second Appeal No. 25 Of 2013

^{xxii} Bombay High Court, Shri Badrinarayan Shankar ... vs Omprakash Shankar Bhandari on 14 August, 2014, (AIR 2014 Bom 151), Ench-Mohit S. Shah, c.j. And M.S. Sanklecha And M.S. Sonak, JJ

^{xxiii} Supreme Court of India, Prakash vs Phulavati. on 16 October, 2015 And connected matters, Author: A K Goel