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TAKING THE VINEETA SHARMA JUDGMENT FORWARD TO PROTECT RIGHTS OF WOMEN IN TESTAMENTARY DISPOSITIONS

The 2005 amendment to section 6 of The Hindu Succession Act, 1956 significantly helped in promoting equality of women vis-a-vis men in the Hindu law of succession by recognizing the daughter as a coparcener by birth in a Joint Hindu Family governed by the Mitakshara law and giving her the same rights in the coparcenery property and subjecting her to the same liabilities in the said property as that of a son. However, a controversy arose whether a woman could claim as a coparcener if her father-coparcener had died before 09.09.2005 being the date on which the amendment to Section 6 came into force. The recent Supreme Court judgment in **Vineeta Sharma Vs. Rakesh Sharma**[1] has taken the cause of women forward by clarifying that a woman born before or after the amendment, would be entitled to share in coparcenery property from her birth even though her father-coparcener may not be alive on 09.09.2005.

However, what has been done is allowed to be undone by the provisions of Section 30 of the Act, which allows a Hindu to dispose of by Will or other testamentary disposition, any property capable of being so disposed of by him or her, including 'the interest of a male Hindu in a Mitakshara coparcenery property'.

In simple terms, if a Hindu dies intestate, the daughter will have the same rights to inheritance and succession as the son. However, by means of a Will, a person may choose to deprive his daughters of any share whatsoever, or at least a rightful share, in his property.

Admittedly, the initial wordings of Section 30 are gender neutral, i.e. a son stands as much chance of being deprived of a share in the paternal property as the

daughter. However, in the Indian context it is generally seen that in a Will, the prime properties are given to the son(s) and the daughters are not given an equal share, if at all. The reasons generally given for the discrimination are:

i. Huge marriage expenses (including dowry) are incurred at the time of daughter's marriage;
ii. A married daughter enjoys the properties of her husband/in-laws.

However, if we delve deeper, we find that the so-called marriage expenses (except for gold jewellery) are non-productive consumed expenses that do not provide any security to the married daughter, in case she is confronted with any crisis in life in future. The dowry generally provided in marriage like car or furniture etc. are again consumables used by the entire in-laws' family and often any cash dowry stands appropriated. As regards (ii) *supra*, the married daughter gets to use her in-laws' property but she rarely gets an asset in her own name.

The problem is of special significance in today's times with increasing incidences of divorce and also women choosing to remain unmarried. It is important that she should have some guaranteed share in her paternal property that should not be dependent on the whims and fancies of the *pater familias* expressed in a Will.

The problem is faced not only by women, but also by adoptees. Often a childless couple adopts a child and thereafter begets a biological child of their own. While making a Will, the adopted child is often discriminated against in favour of the biological child.

Searching for a possible solution

Before Section 30 was enacted, a person could create a Will only in respect of his separate property and not in respect of his interest/share in the ancestral property. With daughters now part of the coparcenary by birth, one possible solution could be taking out ancestral property from the ambit of Section 30. That is, a person be entitled to make a Will/ testamentary disposition only in respect of his separate properties and not his interest/share in ancestral property.

Another possible solution could be amending Section 30 of the Hindu Succession Act. 1956 to permit a Hindu testator to make a Will only in respect of a part (say one-half of one-third) of the property he is capable of disposing (to any person of his choosing – whether a heir or non-heir) while the remaining property goes by the existing law governing intestate succession. This will ensure protection of rights of all heirs, including daughters and adoptees. It is interesting to note that under the Muslim law, a person is entitled to dispose of by Will, only one-third of his property (to non-heirs) while the remaining two third goes to the heirs. [Of course, Muslim law places several conditions governing disposal of the one-third share as well as that governing inheritance of the balance two-third share, which are not required to be gone into at this stage, nor necessary to incorporate]. In fact, such a mix of Hindu law and Muslim law could be well considered while drafting a Uniform Civil Code on Succession.

Need for further amendment of the Explanation to Section 30

The Explanation to Section 30 of The Hindu Succession Act, 1956 reads as under:

> Explanation— The interest of a male Hindu in a 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 notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.

Since in terms of Section 6 of the Act, daughter of a coparcener has become a coparcener by birth and entitled to same rights and liabilities as a son, the words 'male Hindu' in the opening words of the Explanation, restricts the rights of a female coparcener to dispose of her interest in a Mitakshara coparcenery property through Will or testamentary disposition. The words 'male Hindu' have now become incongruous and the Explanation needs to be amended to remove the word 'male'.

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1. Judgment dated 11.08.2020 passed by Supreme Court of India in Civil Appeal Diary No. 32601 of 2020