

All daughters can't claim equal inheritance rights

Benefits of Hindu Succession (Amendment) Act, 2005, are only available to daughters of the family prospectively

htestates

LEGAL REMEDIES

Sunil Tyagi

htestates@hindustantimes.com

In personal laws of Hindus, inheritance rights in Mitakshara Coparcenary property had for long been tilted in favour of males. Till 2005, only male members of the family were recognised as coparceners. Due to the exclusion of females from Mitakshara Coparcenary, female members could not inherit ancestral property like male coparceners. With the enactment of the Hindu Succession (Amendment) Act, 2005, significant changes have been made in Hindu inheritance laws. Daughters have now been recognised as coparceners in Mitakshara Coparcenary and placed on equal footing with sons. As per the Amendment (which came in force on September 9, 2005), in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall

by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had, if she had been a son. Inheritance rights of both daughters and sons are now at par in Mitakshara Coparcenary property.

However, after the Amendment in 2005, a lot of cases were instituted in courts where a daughter belonging to a joint Hindu family prayed for equal rights in the inheritance of the HUF property/Mitakshara Coparcenary property. In several cases the daughters claimed benefit of the Amendment with retrospective effect. Thus a question arose before various courts regarding the retrospective applicability of the Amendment in 2005 as to whether the benefit of equal share given to daughters would apply (i) only prospectively after the Amendment coming to force, or (ii) would also apply with retrospective effect.

The Supreme Court in the case of Prakash and Others vs. Phulavati and Others, which was decided on October 16, 2015, clubbed together various

cases involving similar issues and sorted out the question of retrospective applicability of the Amendment.

The facts of the case dealt with by the apex court were that the father of the plaintiff (daughter) died on February 18, 1988, prior to the commencement of the Hindu Succession (Amendment) Act, 2005. Thereafter the plaintiff filed a suit in the trial court for partition, claiming a share in her father's properties. The trial court decreed the suit in favour of the plaintiff (daughter) to the extent of certain shares in the father's self acquired properties. The trial court did not decree in favour of the plaintiff's share in her father's entire property as a coparcener. Not satisfied with the order of the trial court, the plaintiff approached the high court with the grievance that she had become a coparcener by virtue of the Amendment in 2005 and therefore she was entitled to coparcenary property equal to her brothers. The high court observed that the provisions of the Amendment were prospective, but since the proceedings in the present case, regarding partition

were pending in the court, the provisions of the Amendment would certainly apply and decreed the suit in favour of the plaintiff and affirmed that the plaintiff had right in coparcenary property equal to that of the sons.

Aggrieved by the order of the high court, the defendant filed an appeal before the Supreme Court. After hearing the arguments of the plaintiff and defendants the Supreme Court observed "that the text of the Amendment itself clearly provided that the right conferred on a 'daughter of a coparcener' was 'on and from the commencement of the Hindu Succession (Amendment) Act, 2005'. In view of plain language of the statute, there was no scope for a different interpretation."

The Supreme Court also rejected the contention of the plaintiff that the Amendment in 2005 should be read as retrospective since it was a piece of social legislation. It stated that even if it was a social legislation, it could still not be given retrospective effect unless it was expressly provided by the legislature in the Amendment.

After considering all the



above points and arguments by both the plaintiff and the defendant, the Supreme Court held 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. Dispositions or alienations including partitions that have taken place prior to 20th December 2004 as per the law applicable prior to such date will remain unaffected."

Thus benefit of Hindu Succession (Amendment) Act, 2005 was available to daughters of the family prospectively and not retrospectively.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com