

Women can't be denied rights as HUF heads

A woman, by virtue of being the first born in a Hindu Undivided Family, can be a karta, says Delhi HC

Sunil Tyagi

htestates@hindustantimes.com

The Hindu Succession Act, 1956, codifies the law relating to intestate succession among Hindus. However, it was observed that some rights provided to women under the Act were not equal to the rights of men under the same statute. The enactment of the Hindu Succession (Amendment) Act, 2005, brought about significant changes in the Hindu inheritance laws.

A Hindu Undivided Family (HUF) is considered a separate legal entity which can be created by members, either lineal ascendants or descendants. They are called coparcenary. Prior to the Amendment, the eldest male member of the HUF was called the karta of the family. The position of karta is that of the manager who has control of the HUF and assets in name of the HUF. Before the Amendment to the Act, a woman in an HUF could not be a coparcener and therefore had no right to seek partition of a HUF property. The Amendment in 2005 changed women's position. They could be coparceners and were now provided the same rights as male members of the HUF.

However, in a recent case in the Delhi High Court, the position of the eldest member of the family, a female, as karta, was

questioned. The High Court of Delhi in its judgment on December 22, 2015, in the matter of Sujata Sharma (plaintiff) vs Manu Gupta (defendant) empowered the women to be a karta of the HUF.

In this case, the court had to decide whether the plaintiff, being the first-born amongst the coparceners of the HUF property, would by virtue of her birth, be entitled to be its karta. Her claim was opposed by a few members of the family while the others said they had no problems with her being the karta. The suit property was an immovable residential HUF property and some other movable properties and shares.

On behalf of the plaintiff, it was contended that a daughter after the Amendment to Hindu Succession Act in 2005 was a coparcener in the HUF, therefore she had equal rights as a son and that all the rights now devolved to the daughter from birth in the same manner as devolved upon the son.

In contrast, it was contended on the behalf of the defendant that the Amendment in 2005 only recognised the rights of a female member to be equal to those of male members but it did not extend to granting them right in the management of the HUF property.

The court held that it was rather an odd proposition that while females would have

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- Her claim was opposed by a few members of the family while the others said they had no problems with her being the karta. On behalf of the plaintiff, it was contended that a daughter after the Amendment to Hindu Succession Act in 2005 was a coparcener in the HUF, therefore she had equal rights as a son

equal rights of inheritance in an HUF property, this right could nonetheless be curtailed when it came to the management of the same. The court observed that the clear language of the Amendment did not stipulate any such restriction.

The court also opined that 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. The court said that the Amendment was

a socially-beneficial legislation and it gave equal rights of inheritance to Hindu males and females and that the objective of the Amendment was to recognise the rights of female Hindus as co-parceners and to enhance their right to equality

about succession. The court said that courts would be extremely vigilant regarding any endeavour to curtail or fetter the statutory guarantee of enhancement of their rights. Therefore, since the disqualification had been removed by the 2005 Amendment, there was no reason why Hindu women should be denied the position of a karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a karta, so can a female member.

The court observed that it found no restriction in the law preventing the eldest female coparcener of an HUF, from being its karta. The plaintiff's father's right in the HUF did not dissipate but was inherited by her. Nor did her marriage alter the right to inherit the co-parcenary to which she succeeded after her father's demise in terms of the Amendment which only emphasised the statutory rights of females.

Accordingly, the suit was decreed in favour of plaintiff and she was declared to be the karta of the HUF.

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.