

# LEGALFOXES LAW TIMES

## CASE COMMENTARY - VINEETA SHARMA VS. RAKESH SHARMA: THE VERDICT TOWARDS GENDER EQUALITY

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### ABSTRACT:

The definition of the Hindu joint family is famously flexible. It cannot be defined in a few appropriate words. However, Hindu joint family is an extended arrangement of a family which has immense legal importance in India and the coparcenary right has always been a confusing concept. In this case of *Vineeta Sharma vs. Rakesh Sharma*<sup>1</sup>, the author tries to throw light on the division of coparcenary property of which can be entitled by daughters. In this particular case analysis, it marks one of the greatest histories for the coming years which has exterminated gender inequality. This is a landmark judgement that benefits the Hindu daughter including the Sikhs, Buddhists and Jains.

### FACTS:

This case marked its beginning out of the judgement delivered by Delhi High Court which also granted the certificate to appeal. The Delhi High Court observed the contradictory views in case of *Prakash and ors vs. Phulavati and ors* and in the case of *Danamma @ Suman Surpur vs. Amar* with respect to interpreting Section 6 of Hindu Succession Act, 1956 and Section 6 of Hindu succession (amendment) Act, 2005<sup>2</sup>. However, the court followed the judgement in

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<sup>1</sup>Civil appeal no:32601 of 2018.

<sup>2</sup>The amended provisions of section 6(1) provide that the daughter is conferred with certain rights. Section 6(1)(a) makes a daughter a coparcener "in her own right" and "in the same manner as the son.", by birth. Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son".

Prakash vs Phulavati and in the light of the facts of the case the amendment made does not favour the plaintiff as her father passed away in December 1999.

### **HISTORY OF THE CASE:**

The birthplace of this case is the controversial views between two cases of *Prakash and ors vs. Phulavati and ors*<sup>3</sup> and *Danamma @ Suman Surpur vs. Amar*. So, the judgement of these cases has to be familiar to proceed with the case of *Vineeta Sharma vs. Rakesh Sharma*.

While analysing the case of *Prakash vs. Phulavati* with respect to *Vineeta Sharma vs. Rakesh Sharma* the court settled that rights under the amendment are available to living daughters of living coparcener on the date of the amendment (9/9/2005), irrespective of when they were born. Such that only the daughter of a living coparcener can claim coparcenary property. Therefore it should be apparent that both the sons and the daughters of a living coparcener have been conferred the right of becoming coparceners by birth.

Whereas, in the case of *Danamma @ Suman Surpur vs. Amar*<sup>4</sup> the court held that, the share of the father who died in 2001 and also devolved upon his two daughters who were entitled to share in the property.



This judgement was the exact contradictory view of the *Prakash vs Phulavati case*, such that in this case though the coparcener is dead, prior to 2005, the daughter is entitled to get the property. Thus an appeal to these cases was made in the case of *Vineeta Sharma vs. Rakash Sharma*.

### **ISSUES RAISED:**

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<sup>3</sup> (2016) 2 SCC 36.

<sup>4</sup> (2018) 3 SCC 343.

Keeping in mind the two said previous cases where to contrasting views existed by the co-equal benches to settle the prevailing confusions the reference was made to a larger bench consisting of three judges the important questions raised to were,

1) Whether **Section 6 of the Hindu succession (amendment) Act 2005** requires a coparcener to be alive for a daughter to claim rights?

2) Section 6 of the Hindu succession (amendment) Act 2005 is retrospective, prospective or retroactive?

### JUDGEMENT:

The court held that,

1) The coparcenary right of a daughter will arise from date of birth itself and not from the execution date of amendment Act also it is irrespective of the father is alive or not before the amendment Act. As such, the decision in *Phulavati case* is overruled and the decision in *Danamma case* is partly overruled to the effect where it said that the coparcener father has to be alive as on 09.09.2005.

2) Also, the court rightly held that **Section 6 (1) (a)**, daughter is to be a coparcener by birth hence, there is no question of being prospective or retrospective but **retroactive**.

### CASE COMMENT:

This verdict is a historic one and the one to be highlighted. Also, this judgement is made taking into consideration all the concepts in Mitakshara schools and the Union Act. However, In Mitakshara school, the concept of coparcenary is based on the notion of the birthright.

In the Hindu succession Act, 1956 main criticism faced was that the act is discriminatory and violates the right to equality. To solve the criticism many state legislations were passed that is, Andhra Pradesh passed the Hindu Succession (Andhra Pradesh Amendment) Act, 1986; Tamil

Nadu passed Hindu Succession (Tamil Nadu Amendment) Act, 1989; Karnataka passed Hindu Succession (Karnataka Amendment) Act, 1990; Maharashtra passed Hindu Succession (Maharashtra Amendment) Act, 1994.

The amendment was made stating that daughters also have the coparcenary rights on their birth itself. But this amendment was only confined to the unmarried daughters which was again a flawed section. To curb all the flawed section totally amending Section 6 of Hindu succession Act, 1956 was the need of an hour to uplift the position of daughters by securing the coparcenary status and it was finally achieved in the case of *Vineeta Sharma vs. Rakesh Sharma*.

Here, in this case, the nature of the coparcenary right of a daughter is the same as the son and then considering the daughter treated like son where daughter will have an equal share in the coparcenary property as of son in its true sense. To Claim the coparcenary rights the daughter is vested with whole power even if the coparcener is deceased.

Having said that Section 6 of Hindu succession (amendment) Act, 2005 is retroactive effect and daughters shall have equal coparcenary rights as the son by birth outrightly. Looking at all the interpretations and the contentions made it is clear that prospective statute operates from the date of its enactment conferring new rights whereas, retrospective operates backwards and takes away vested rights under the existing laws, but it is retroactive which does not act retrospectively but that it operates in future.

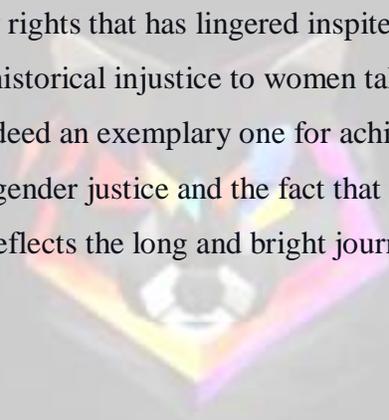
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Thus, this significant change would remain the milestone ever. Prior to the development of equality in the world male heirs were given preferences. Though after the establishment of the concept of equality, female heirs were never given the same importance as that of the male heirs. Particularly throwing attention over the Hindu undivided joint family, the sons were kept at the top where daughters were always degraded. To put a complete dot to this, the case of *Vineeta Sharma vs. Rakesh Sharma* was one of the verdict that speaks volume on gender equality. Prior to this, there were several cases which embodied inequality in coparcenary property but this judgement expresses the intention to overrule the discrimination and oppression application over women of the original statute.

In my perspective, this verdict is clearing the last hurdle towards gender equality in coparcenary property and also fulfils the true spirit of Article 14 of the Indian constitution.

### CONCLUSION:

In the ruling, the court emphasized the origin of coparcenary rights and the purpose of the relevant amendment was to ensure gender injustice as constitutionally protected. Also that, this case has decreased numerous confusions by granting equal rights to daughters in Hindu undivided family with retroactive effect and the supreme court has removed the large gender discrimination in the coparcenary rights that has lingered inspite of a change in the law. The case has addressed, significantly, the historical injustice to women taking place overages. Ultimately, *this case of Vineeta Sharma* is indeed an exemplary one for achieving the Noble and necessary objective of gender equality and gender justice and the fact that this controversy took nearly 15 years to finally settle that really reflects the long and bright journey towards justice.



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