CHANGING DIMENSIONS OF HINDU COPARCENARY AND SECTION 6, HINDU SUCCESSION ACT, 1956*

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This article seeks to examine various aspects of traditional concepts of Hindu Coparcenary as affected by Section 6, Hindu Succession Act, 1956 and its amendment by Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) (in short "Amendment Act, 2005") in the light of law laid down by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717.***

INTRODUCTORY

At the out-set, it is necessary to notice certain ***basic principles pertaining to Hindu Coparcenary which were prevailing under the traditional Hindu Law .***

(I) Concept of Hindu Coparcenary is peculiar to ***Mitakshara School of Hindu Law.***

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(II) Mitakshara School recognises ***two kinds of property*** which a male Hindu can hold:

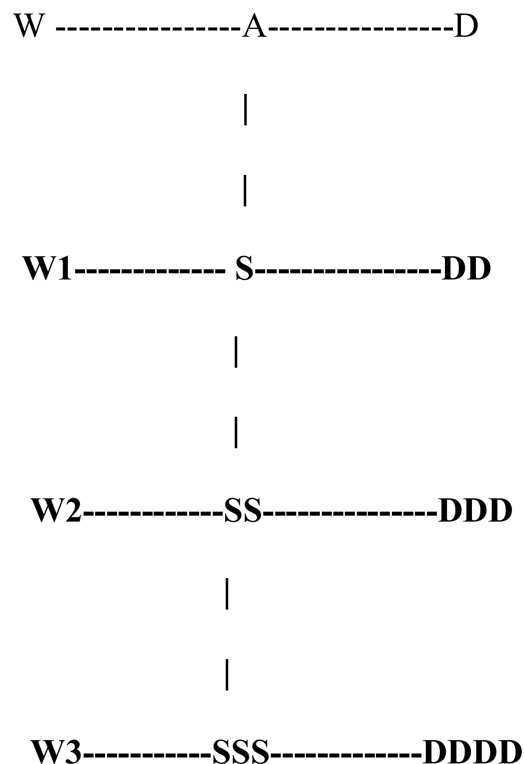
1. Ancestral property.
2. Separate property.

Ancestral property (also known as Coparcenary property) means a property inherited by a male Hindu from his three immediate lineal male ascendants, i.e., his father (F), grand-father (FF) and great grand-father (FFF). See Table below:

FFF
|
|
FF
|
F
|
|
A

Separate property is a property inherited by a male Hindu (A) from a relation other than the above three (i.e., relation other than his father, grand-father or great grand-father), or is property which is self-acquired by such male Hindu.

(III) To appreciate the meaning of Hindu Coparcenary, it is necessary to understand the meaning of Hindu Undivided Family. Hindu Undivided Family consists of common ancestor "A", all lineal descendants of 'A' (e.g., S, SS,……..), wives of 'A' and of all lineal descendants of 'A', and unmarried daughters of 'A' and of all lineal descendants of 'A'. This will be clear from the Table below:



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Hindu coparcenary consists of a male Hindu (A), his son (S), grand-son (SS) and great grand-son (SSS). See Table below:

A

|

|

S

|

|

SS

|

|

SSS

Members of coparcenary are called ***coparceners***. It will be noticed that as per the traditional concept, only males could be coparceners.

(IV) A coparcener acquires ***by birth*** an interest in the ***ancestral or coparcenary property***. As noted above, if a male Hindu (A) has inherited any property from his father (F), grand-father (FF) and great grand-father (FFF), then such property being ancestral or coparcenary property in hands of A, his (i.e. A's) son (S), grand-son (SS) and great grand-son (SSS) will get by birth an interest in such property. This is also known as ***Unobstructed Heritage***, as existence of A is not obstruction to his son, grand-son and great grand-son getting an interest in ancestral or coparcenary property.

However, this principle of acquisition of interest by birth is not applicable to ***separate property*** of male Hindu A. Inheritance to separate property opens on the death of A. This is also known as ***Obstructed Heritage,*** as existence of A is obstruction to his son etc. getting any interest in separate property.

(V) Devolution to ancestral or coparcenary property (i.e., unobstructed heritage) is by ***survivorship***. Accordingly, if a coparcener in a coparcenary dies, then his share in coparcenary property goes to the remaining coparceners constituting the coparcenary by survivorship, and not to the heirs of the deceased coparcener by succession. For example, suppose a coparcenary consists of father (F) and his three sons (S1, S2

and S3). Son S1 dies. His share in ancestral or coparcenary property would go to the remaining coparceners, viz., F, S2 and S3.

On the other hand, devolution to separate property (i.e., obstructed heritage) of a male Hindu (A) is by succession. In other words, on death of male Hindu (A), his separate property goes to his (A's) heirs by succession.

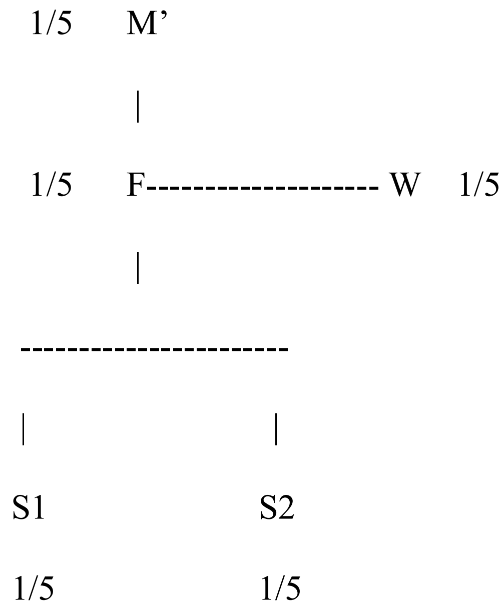
(See Articles 212, 213, 216, 218 & 235 Mulla on Hindu Law; 16th Edition)

(VI) Share of a coparcener in coparcenary property is fluctuating. It increases by the death of a coparcener and decreases on the birth of coparcener. Hence, when the family is joint, the extent of the share of a coparcener cannot be definitely predicated.

(VII) There is community of interest and unity of possession among coparceners. Each coparcener is entitled to joint possession and enjoyment of coparcenary property.

(VIII) A coparcener has a right to claim partition of coparcenary property. On partition, share of such coparcener becomes definite and ceases to be fluctuating.

(IX) As seen above, coparcenary consists of only males, and a coparcener can get the coparcenary property partitioned. Females do not have a right to get coparcenary property partitioned. But if there is a partition of coparcenary property between father (F) and sons (S1 and S2) then the wife (W) of father (F) as well as widowed mother (M') of father (F) gets one share equal share to that of a son (S1 or S2).



(See Articles 315, 316 and 317, Mulla on Hindu Law; 16th Edn.)

Effect of The Hindu Women's Rights to Property Act, 1937

The Hindu Women's Rights to Property Act, 1937 was enacted to amend the Hindu law to give better right to women in respect of property. Section 3 of the Act dealt with the devolution of property when a Hindu died intestate.

Sub-section (1) of Section 3, inter-alia, dealt with devolution to ***separate property*** of a Hindu belonging to the Mitakshara School dying intestate. This is not relevant for the subject-matter of the present article.

Sub-section (2) Section 3, inter-alia, dealt with the situation when a Hindu governed by the Mitakshara School died having at the time of his death an interest in Hindu joint family property, i.e., coparcenary property. In such a case, widow of such Hindu would have in Hindu joint family property (i.e., coparcenary property) the same interest as he himself had. In view of sub-section (3) of Section 3, interest devolving on a Hindu widow would be the ***limited interest known as a Hindu Woman's estate.*** However, such widow would have the same right of claiming partition as a male owner.

Therefore, in view of the aforesaid Act, 1937, on the death of a coparcener, his interest in coparcenary property would go to his widow, and not to other coparceners by survivorship. However, the widow would continue as before to be a member of the joint family. Widow would have the same right of claiming partition of the coparcenary property in the same way as any other coparcener entitled to do so under the general law.

It is to be noted that even though the widow would get the same interest in coparcenary property as her deceased husband/coparcener had, such ***widow would not become coparcener in the coparcenary***.

As noted above, the widow would have the same right to claim partition of coparcenary property as any other coparcener had. Now ***if*** the widow did ***not*** get her interest in coparcenary ***partitioned*** in her life-time, her interest would go to other coparceners by survivorship on her death. However, ***if*** the widow got her interest in coparcenary ***partitioned*** in her life-time, such interest would stand separated from coparcenary and would go to the heirs of her husband on her death.

[Article 35; Mulla on Hindu Law; 16th Edition]

Repeal of The Hindu Women's Rights to Property Act, 1937 and Enactment of The Hindu Succession Act, 1956

The Hindu Succession Act, 1956 (Act No. 30 of 1956) was enacted to amend and codify the law relating to intestate succession among Hindus. By Section 31 of the Hindu Succession Act, 1956, the aforesaid Hindu Women's Rights to property Act, 1937 was repealed.

However, in view of Section 6 of the General Clauses Act X of 1897, rights acquired and liabilities incurred under the Hindu Women's Rights to Property Act, 1937 were not affected.

Here it is pertinent to note Section 14 of the Hindu Succession Act, 1956, which lays down as under:

"14. Property of a female Hindu to be her absolute property.—

(1) 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.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu 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 immediately before the commencement of this Act."*

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the

gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

[Emphasis supplied]

In view of sub-section (1) of Section 14 of the Hindu Succession Act, 1956, the interest of her deceased husband/coparcener which the widow got in coparcenary property as Hindu woman's limited estate by virtue of sub-section (3) of Section 3 of the Hindu Women's Rights to Property Act, 1937, would become her absolute property irrespective of whether such interest was got partitioned by the widow before the commencement of the Hindu Succession Act, 1956, or not.

SECTION 6, HINDU SUCCESSION ACT, 1956 (BEFORE THE AMENDMENT ACT, 2005)

Before the Amendment Act, 2005, Section 6, Hindu Succession Act, 1956 provided as under:

*"**6. Devolution of interest in coparcenary property**.—When a male Hindu dies after the commencement of this Act, having at the time of his*

death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, 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.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

Section 8 of the Hindu Succession Act, 1956 deals with General Rules of succession in the case of Hindu males. Section 8 is reproduced below:

"8. General rules of succession in the case of males.—*The property of a male Hindu dying intestate shall devolve according to the provisions of this CHAPTER—*

(a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

Section 9 of the Hindu Succession Act, 1956 deals with order of succession among heirs in the Schedule, and reads as under:

"9. Order of succession among heirs in the Schedule.—*Among the heirs specified in the Schedule, those in Class I shall take simultaneously*

and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession."

Section 10 of the Hindu Succession Act, 1956 deals with distribution of property among heirs in Class I of the Schedule:

*"**10. Distribution of property among heirs in Class I of the Schedule.—**The property of an intestate shall be divided among the heirs in Class I of the Schedule in accordance with the following rules :*

Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions."

The Schedule to the Hindu Succession Act, 1956, prior to the Amendment Act, 2005, insofar as is relevant, provided as under:

"THE SCHEDULE

(See Section 8)

HEIRS IN CLASS I AND CLASS II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son.

Class II

…………………………………………………………………………………….

………………………………………………………………………………………..."

An analysis of Section 6 of the Hindu Succession Act, 1956, as it existed prior to the Amendment Act, 2005, shows the following:

(1) Main Section 6 read as follows: "*When a male Hindu dies after the commencement of this Act, having at the time of his death*

an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :" Therefore, according to this provision, if a male Hindu died after the commencement of the Hindu Succession Act, 1956 and he had an interest in a Mitakshara coparcenary property at the time of his death, then his interest in such coparcenary property would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Hindu Succession Act, 1956.

It will thus be seen that even after the commencement of the Hindu Succession Act, 1956, the traditional concept of Mitakshara coparcenary consisting of males only continued to be recognised. Further, the principle of survivorship also continued to be recognised. Therefore, on the death of a male coparcener, his interest in coparcenary property would go to surviving coparceners according to the principle of survivorship, and not according to the rules of intestate succession laid down in the Hindu Succession Act, 1956.

(2) Proviso to Section 6, Hindu Succession Act, 1956 laid down an exception to the above general rule laid down in the main

Section 6. The said Proviso read as follows: "*Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.*"

Accordingly, if male coparcener mentioned in the main Section 6 died after the commencement of the Hindu Succession Act, 1956 leaving him surviving ***a female relative*** *specified in* ***Class I of the Schedule*** *to the Hindu Succession Act, 1956* ***or*** *a* ***male relative specified in that class who claimed through such female relative,*** then *the* ***interest*** *of such deceased coparcener* ***in the Mitakshara coparcenary property would devolve by testamentary or intestate succession****, as the case may be, under the Hindu Succession Act, 1956.****and not by survivorship***.

Therefore, if the deceased male coparcener had left him surviving a female relative of Class I of the Schedule or a male relative mentioned in that Class claiming through such female relative, then the interest of such deceased coparcener in the Mitakshara coparcenary property would ***not*** devolve by survivorship on surviving coparceners, but would devolve by

testamentary or intestate succession, as the case may be, under the Hindu Succession Act, 1956. Hence, in a situation falling in the Proviso, the rule of survivorship would stand superseded.

Thus, if a male coparcener died after the commencement of the Hindu Succession Act, 1956 leaving behind female heir of Class I of the Schedule (namely, daughter; widow; mother) or male heir claiming through such female heir (namely, son of a pre-deceased daughter), then Mitakshara coparcenary interest of the deceased would not go by survivorship to surviving coparceners, but would go by testamentary or intestate succession.

It is pertinent to note here that Section 30 of the Hindu Succession Act, 1956 read with Explanation thereto gave right to a male Hindu to dispose of his interest in Mitakshara coparcenary property by Will "*notwithstanding anything contained in this Act or in any other law for the time being in force.*"

Consequently, if a Hindu coparcener died after the commencement of the Hindu Succession Act, 1956 without leaving any Will in respect of his interest in Mitakshara coparcenary property, then the provisions of intestate succession would come into play, and such succession would be according to the provisions of Sections 8, 9 and 10 of the Hindu Succession Act, 1956.

Hence, if a male coparcener died ***intestate*** after the commencement of the Hindu Succession Act, 1956 leaving behind female heir of Class I of the Schedule (namely, daughter; widow; mother) or male heir claiming through such female heir (namely, son of a pre-deceased daughter), then the provisions of intestate succession would come into play, and such succession would be according to the provisions of Sections 8, 9 and 10 of the Hindu Succession Act, 1956.

Let us appreciate the above position by taking illustrations.

Suppose a coparcenary consisted of father F and his two sons S1 and S2. F died intestate in 1960 leaving behind only his two sons S1 and S2. In such a case, undivided coparcenary share of F would go by survivorship to S1 and S2. Proviso to Section 6 would not come into play.

Let us take another illustration. Father F had two sons S1 and S2 and one daughter D. Coparcenary consisted of males only, i.e., F, S1 and S2. F died intestate in 1960 leaving behind his two sons S1 and S2 and daughter D. As daughter D is female heir of Class I of the Schedule, Proviso to Section 6 would apply, and coparcenary share of F would not go by survivorship to S1 and S2, but would by intestate succession to heirs of F according to Sections 8, 9 and 10 of the Hindu Succession Act, 1956. Accordingly, S1, S2 and D being Class I heirs of F would inherit coparcenary interest of F in equal shares, i.e., 1/3rd each.

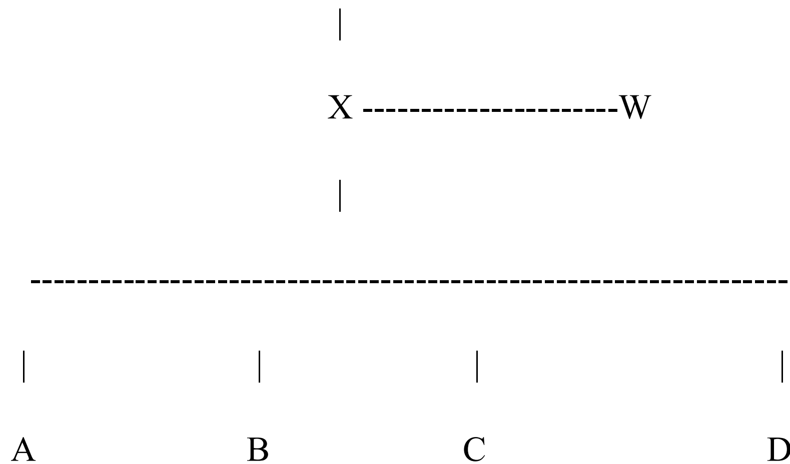
(3) As noted earlier, the interest of a coparcener in coparcenary property is fluctuating and is not fixed. Question arises as to how to determine the interest of a male deceased coparcener in coparcenary property for the purposes of Section 6. Answer is provided by Explanation I to Section 6 which reads as under:

"*Explanation 1.—For the purposes of this section, 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.*"

Thus a deeming provision was made for determining the interest of the deceased Hindu Mitakshara coparcener for the purposes of Section 6. Accordingly, for determining the interest of the deceased Hindu Mitakshara coparcener in coparcenary property for the purposes of Section 6, it would be assumed that a notional partition of coparcenary property had taken place immediately before his death, and the share which would have been allotted to such deceased coparcener at such notional partition would be his interest in coparcenary property for the purposes of Section 6.

To appreciate the above principles, let us take an illustration:

M



X died intestate in 1960 leaving behind his widowed mother M, his wife W, his three sons A, B and C, and his daughter D.

Thus, prior to death of X, coparcenary consisted of X, A, B and C, i.e., males only. D, M and W were not coparceners.

On the death of X, his share in coparcenary property would be determined by assuming a notional partition in coparcenary immediately before the death of X. A partition would thus be assumed between father X and his sons A, B and C immediately before the death of X. In such deemed partition, widowed mother M of X, and wife W of X would also get share with X, A, B and C, in view of the principles discussed earlier.

Therefore, the share of X in notional partition immediately before his death would be 1/6, while M, W, A, B and C would get 1/6 share each.

Now as X left behind M, W and D, i.e., female heirs of Class I, 1/6 share of X would go by intestate succession (as X did not leave any Will) in view of the Proviso to Section 6. Such intestate succession would be according to the provisions of Sections 8, 9 and 10 of the Hindu Succession Act, 1956 as under:

A, B, C (Sons), M (Widowed Mother), W (Widow) and D (Daughter) would be one share each in 1/6 share of X.

Therefore, each would get 1/6 of 1/6, i.e., 1/36 share.

As noted above, in the notional partition, M, W, A, B and C got 1/6 share each.

Hence, total share of M = 1/36 + 1/6 = 7/36.

Total share of W = 1/36 + 1/6 = 7/36.

Total share of A = 1/36 + 1/6 = 7/36.

Total share of B = 1/36 + 1/6 = 7/36.

Total share of C = 1/36 + 1/6 = 7/36.

Total share of D = 1/36.

A question arose regarding extent of legal fiction contemplated under Explanation I to Section 6 of the Hindu Succession Act, 1956….Whether notional partition contemplated under Explanation I to Section 6 resulted in complete disruption of Hindu

Undivided Family, OR notional partition was for the purpose of ascertainment of the share of the deceased coparcener but would not result in complete disruption of Hindu Undivided Family.

In ***Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, AIR 1978 SC 1239:(1978) 3 SCC 383***, it was held that the deeming provision referring to partition of property immediately before the death of the coparcener was to be given due and full effect in view of settled principle of interpretation that a provision incorporating legal fiction must be given full effect and taken to its logical conclusion. It was observed*: "What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable ……..All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased."*

Therefore, in view of the above decision in ***Gurupad case (supra),*** on the death of a coparcener in a situation contemplated in the Proviso to Section 6, his coparceners including heirs of Class I would get the following:

(a) Respective share of each allocated as a result of deemed partition immediately before the death of the coparcener.

(b) Share which each would inherit in the share of the deceased as determined on the basis of deemed partition.

After getting the aforesaid (a) and (b), each coparcener as well as each heir of the deceased coparcener would stand separated, and Hindu Coparcenary would cease to exist. In other words, there would be complete disruption of Hindu Undivided Family.

This would be clear from the above illustration where X died intestate in 1960 leaving behind his widowed mother M, his wife W, his three sons A, B and C, and his daughter D.

As noted above, in notional partition immediately before death of X, the share of X would be 1/6, while M, W, A, B and C would get 1/6 share each.

As per intestate succession in respect of share of X, A, B, C (Sons), M (Widowed Mother), W (Widow) and D (Daughter) each would get one share in 1/6 share of X.

Therefore, each would get 1/6 of 1/6, i.e., 1/36 share.

Hence, total share of M = 1/36 + 1/6 = 7/36.

Total share of W = 1/36 + 1/6 = 7/36.

Total share of A = 1/36 + 1/6 = 7/36.

Total share of B = 1/36 + 1/6 = 7/36.

Total share of C = 1/36 + 1/6 = 7/36.

Total share of D = 1/36.

According to ***Gurupad case (supra),*** each of M, W, A, B, C and D would get his/her total share as mentioned above, and there would be complete separation, and Hindu Undivided Family would stand disrupted.

The above view taken in ***Gurupad case (supra)*** was followed in ***Shayma Devi v. Manju Shukla, (1994) 6 SCC 342*** and in ***Anar Devi v. Parmeshwari Devi, AIR 2006 SC 3332: (2006) 8 SCC 656.***

However, it is relevant to note that in ***State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and Others, AIR 1985 SC 716: (1985) 2 SCC 321,*** the Supreme Court explained the above decision in ***Gurupad case (supra)*** and observed that the decision in ***Gurupad case (supra)*** "has to be treated as *an authority for the position that when a female member who inherits an interest in the*

joint family property under Section 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which have been notionally allotted to her, as stated in Explanation I to Section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. To illustrate, if what is being asserted is accepted as correct it may result in the wife automatically being separated from her husband when one of her sons dies leaving her behind as his heir. Such a result does not follow the language of the statute. In such an event she should have the option to separate herself or to continue in the family as long as she wishes as its member though she has acquired an indefeasible

<u>interest in a specific share of the family property which would remain undiminished whatever may be the subsequent changes in the composition of the membership of the family.</u> ………There was no action taken by either of the two females concerned in the case to become divided from the remaining members of the family. It should, therefore, be held that notwithstanding the death of Sham Rao the remaining members of the family continued to hold the family properties together though the individual interest of the female members thereof in the family properties had become fixed.”

(Emphasis supplied)

From the above decision in ***State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and Others(supra),*** it followed that:

(i) Share of the deceased coparcener would be determined on the basis of notional partition giving respective shares to surviving coparceners as well as female members of the Hindu Undivided Family (namely, widowed mother and widow of the deceased

coparcener) who would be entitled to share in case of partition between father and sons.

(ii) Share of deceased coparcener so determined would be inherited by Class I heirs of the deceased coparcener (including coparceners who fall under Class I) as per the provisions of Sections 8, 9 and 10 of the Hindu Succession Act, 1956. Respective shares so inherited by Class I heirs of the deceased coparcener (including coparceners who fall under Class I) would become definite, indefeasible and fixed, and would no longer be subject to fluctuations. Further, respective shares allocated to female members of Hindu Undivided Family (namely, widowed mother and widow of the deceased coparcener) would also become definite, indefeasible and fixed, and would no longer be subject to fluctuations.

(iii) Hindu Undivided Family would not be disrupted, and would continue with all the surviving coparceners as well as Class I heirs of the deceased coparceners including widowed mother and widow. Hindu Coparcenary would continue to exist with the rider that the shares which had become definite and fixed under (ii)

above, would no longer be subject to fluctuations on account of subsequent events in the family.

To appreciate the above position, let us revert to the illustration referred to above where X died intestate in 1960 leaving behind his widowed mother M, his wife W, his three sons A, B and C, and his daughter D.

As noted above, in notional partition immediately before death of X, the share of X would be 1/6, while M, W, A, B and C would get 1/6 share each.

As per intestate succession in respect of share of X, A, B, C (Sons), M (Widowed Mother), W (Widow) and D (Daughter) each would get one share in 1/6 share of X.

Therefore, each would get 1/6 of 1/6, i.e., 1/36 share.

This 1/36 share of each of A, B, C (Sons), M (Widowed Mother), W (Widow) and D (Daughter) would become definite, indefeasible and fixed, and would not be subject to fluctuation by subsequent events.

Further, 1/6 share allocated to M and 1/6 share allocated to W on notional partition would also become definite, indefeasible and fixed, and would not be subject to fluctuation by subsequent events in the family.

Hence,

Share of A……1/36 (by inheritance).

Share of B…….1/36 (by inheritance).

Share of C…….1/36 (by inheritance).

Share of M…1/36 (by inheritance) + 1/6 (by notional partition) = 7/36.

Share of W....1/36 (by inheritance) + 1/6 (by notional partition) = 7/36.

Share of D……...1/36 (by inheritance).

As noted above, the afore-mentioned respective shares of A, B, C, M, W and D would become definite, indefeasible and fixed, and would not be subject to fluctuations by subsequent events in the family.

However, Hindu Undivided Family would not be disrupted, and would continue with all the surviving coparceners as well as Class I heirs of the deceased coparceners including widowed mother and widow. Hindu Coparcenary would continue to exist with the rider that the shares which had become definite and fixed as mentioned in the above illustration, would no longer be subject to fluctuations on account of subsequent events in the family.

As will be seen in the subsequent part of this article, the above view expressed in ***State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and Others, AIR 1985 SC 716: (1985) 2 SCC 321,*** has been

followed by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717(supra).*** In ***Vineeta Sharma case*** (Paragraph 101 of the said AIR), it has been observed:

"101. When the proviso to unamended section 6 of the Act of 1956 came into operation and the share of the deceased coparcener was required to be ascertained, a deemed partition was assumed in the lifetime of the deceased immediately before his death. Such a concept of notional partition was employed so as to give effect to Explanation to section 6. The fiction of notional partition was meant for an aforesaid specific purpose. It was not to bring about the real partition……………."

It has also been observed in ***Vineeta Sharma case*** (paragraph 66 of the said AIR):

"*As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of section 6. Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, 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. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has*

now been done away with by amending the provisions in consonance with the spirit of the Constitution."

(Emphasis supplied)

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 AND ITS EFFECT

The Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) (in short "Amendment Act, 2005) was enacted to amend the Hindu Succession Act, 1956. The Bill corresponding to the Amendment Act, 2005 received the assent of the President on 5th September, 2005, and the ***Amendment Act, 2005 came into force on 9th September, 2005.***

By Section 3 of the Amendment Act, 2005, Section 6 of the Hindu Succession Act, 1956 was substituted. ***Substituted Section 6 of the Hindu Succession Act, 1956 reads as under:***

> '***6. Devolution of interest in coparcenary property.—(****1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*
>
> *(a) by birth become a coparcener in her own right in the same manner as the son;*

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener :

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this

Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, 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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the

pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt :

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.'.

Let us analyse the above substituted Section 6.

<u>Sub-section (1) of substituted Section 6</u>

As noted earlier, under the traditional concept of Mitakshara Hindu Coparcenary as well as under the pre-amendment Section 6 of the Hindu Succession Act, 1956, only males could be coparceners, and Coparcenary consisted of common ancestor, son, grand-son and great grand-son.

Sub-section (1) of substituted Section 6 makes a drastic departure from the said concept.

Sub-section (1) of substituted Section 6 deals with *the daughter of a coparcener in a Joint Hindu family governed by the Mitakshara law.* According to sub-section (1), *on and from the commencement of the Hindu Succession (Amendment) Act, 2005,* such daughter of a coparcener shall, --

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son.

As regards phrase "*on and from the commencement of the Hindu Succession (Amendment) Act, 2005",* it has already been noticed that ***the Hindu Succession (Amendment) Act, 2005 came into force on 9th September, 2005.***

Clause (a), as noted above, provides that daughter of a coparcener in Hindu Undivided Family governed by Mitakshara law shall *by birth become a coparcener in her own right in the same manner as the son.*

As discussed earlier, under the traditional concept of Mitakshara Coparcenary as well as under pre-amendment Section 6 of the Hindu Succession Act, 1956, son of a coparcener would become coparcener by birth. Clause (a) of sub-section (1) of substituted Section 6 now provides that

daughter of coparcener shall by birth become a coparcener in her own right in the same manner as the son.

Clause (b), as noted above, lays down that daughter of a coparcener in Hindu Undivided Family governed by Mitakshara law shall *have the same rights in the coparcenary property as she would have had if she had been a son.*

As discussed earlier, under the traditional concept of Mitakshara Coparcenary as well as under pre-amendment Section 6 of the Hindu Succession Act, 1956, son of a coparcener would get an interest in the coparcenary property by birth, and would have consequential rights accordingly vis-à-vis coparcenary property.

Now, in view of clause (b) of sub-section (1) of substituted Section 6, daughter of a coparcener would get an interest in the coparcenary property by birth like son, and would, like son, have consequential rights accordingly vis-à-vis coparcenary property.

Clause (c), as noted above, provides that lays down that daughter of a coparcener in Hindu Undivided Family governed by Mitakshara law shall *be subject to the same liabilities in respect of the said coparcenary property as that of a son.*

Under the traditional concept of Mitakshara Coparcenary as well as under pre-amendment Section 6 of the Hindu Succession Act, 1956, son of a coparcener would become coparcener by birth and would

get an interest in the coparcenary property by birth. Son of a coparcener was also subject to various liabilities in respect of the said coparcenary property.

Now, in view of clause (c) of sub-section (1) of substituted Section 6, daughter of a coparcener would *be subject to the same liabilities in respect of the said coparcenary property as that of a son*

Proviso to sub-section (1) of substituted Section 6 provides as under:

> "*Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.*"

As noted above, under sub-section (1) of substituted Section 6, daughter of a coparcener in Hindu Undivided Family governed by Mitakshara law would by birth become a coparcener in her own right in the same manner as the son, would have the same rights in the coparcenary property as she would have had if she had been a son, and would be subject to the same liabilities in respect of the said coparcenary property as that of a son. These rights conferred and liabilities imposed on daughter of a coparcener on and from the commencement of the Hindu Succession (Amendment) Act, 2005 could have impact on disposition or

alienation including partition or testamentary disposition of coparcenary property already made, and this would have led to chaos and confusion.

In order to avoid such consequences, Proviso to sub-section (1) has been made. It may be mentioned that the Hindu Succession (Amendment) Bill was introduced in Rajya Sabha on 20th December, 2004.

Proviso to sub-section (1) provides that *nothing contained in sub-section (1) shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.* Therefore, if any disposition or alienation including any partition or testamentary disposition in respect of coparcenary property had taken place before the 20th December, 2004 (i.e., date of introduction of Bill in Rajya Shabha), then nothing contained in sub-section (1) shall affect or invalidate the same.

Sub-section (2) of substituted Section 6

Sub-section (2) of substituted Section 6 provides: "*Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained*

in this Act, or any other law for the time being in force, as property capable of being disposed by her by testamentary disposition."

As noted above, sub-section (1) gives rights to female Hindu (daughter) in respect of coparcenary property.

Sub-section (2) provides that any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be ***held by her with the incidents of coparcenary ownership***.

Sub-section (2) further provides that such property shall be regarded as property capable of being ***disposed by her by testamentary disposition.*** This will be so "*notwithstanding anything contained in this Act, or any other law for the time being in force,"*

As noted earlier, Section 30 of the Hindu Succession Act, 1956 read with Explanation thereto, prior to the Amendment Act, 2005, gave right to a male Hindu to dispose of his interest in Mitakshara coparcenary property by Will "*notwithstanding anything contained in this Act or in any other law for the time being in force."*

By Section 6 of the Amendment Act, 2005, Section 30 of the Hindu Succession Act, 1956 has been amended as under:

"In Section 30 of the principal Act, for the words "disposed of by him", the words "disposed of by him or by her" shall be substituted."

This amendment in Section 30 of the Hindu Succession Act, 1956 has been necessitated as sub-section (2) of the substituted Section 6 gives power of testamentary disposition to female in respect of coparcenary property.

Sub-section (3) of substituted Section 6

Sub-section (3) of substituted Section 6 provides:

"Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to

the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, 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.”

Following points may be noted:

(A) As noted earlier, unamended Section 6 of the Hindu Succession Act recognised the principle of survivorship. Deviation from the principle of survivorship occurred when *the deceased coparcener had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claimed through such female relative.* ***In such a situation****, the interest of the deceased in the Mitakshara coparcenary property used to devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.*

Sub-section (3) of the substituted Section 6 completely abolishes the principle of survivorship, and provides that “*Where a Hindu dies after the commencement of the Hindu*

Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship,..".

It is to be noted that sub-section (3) of the substituted Section 6 applies where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005. In such a case, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under the Hindu Succession Act, 1956, ***and not by survivorship.***

(B) Explanation to sub-section (3) of substituted Section 6 lays down as to how interest of deceased Hindu coparcener in the property of a Joint Hindu family governed by Mitakshara law (i.e. coparcenary property) is to be determined for the purposes of sub-section (3). Explanation to sub-section (3) reads as follows: "*For the purposes of this sub-section, 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."*

The above Explanation is similar to Explanation I of the unamended Section 6 which has been discussed in detail above.

Thus for the purposes of sub-section (3) of substituted Section 6, 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.* Accordingly, for determining the interest of the deceased Hindu Mitakshara coparcener in coparcenary property for the purposes of sub-section (3) of substituted Section 6, it would be assumed that a notional partition of coparcenary property had taken place immediately before his death, and the share which would have been allotted to such deceased coparcener at such notional partition would be his interest in coparcenary property for the purposes of sub-section (3) of substituted Section 6.

(C) Sub-section (3) in its main part further provides as under:

"the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be."

The words "*the coparcenary property shall be deemed to have been divided as if a partition had taken place"* indicate that this portion of sub-section (3) is in the context of Explanation to sub-section (3) noted above.

Clauses (a), (b) and (c) have been incorporated in order to allot shares in notional partition to such persons who were not allotted such shares prior to the Amendment Act of 2005.

Thus, in notional partition as contemplated in Explanation I to unamended Section 6 of the Hindu Succession Act, 1956, daughter was not allotted any share in the notional partition. However, as the Amendment Act of 2005 confers status of coparcener on a daughter, the above Clause (a) provides that in such notional

partition, *the daughter would allotted the same share as is allotted to a son.*

As regards the above Clauses (b) and (c), it is necessary to refer to the amendment made in Class I of the Schedule to the Hindu Succession Act, 1956 by the Amendment Act of 2005.

By Section 7 of the Amendment Act of 2005, Schedule to the Hindu Succession Act, 1956 was amended as under:

"Amendment of Schedule*.—In the Schedule to the principal Act, under the sub-heading "Class 1", after the words "widow of a pre-deceased son of a pre-deceased son", the words "son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son" shall be added."*

Consequently, Class I of Schedule to the Hindu Succession Act, 1956, as amended by the Amendment Act of 2005, reads as under:

"*Class I*

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-

deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son ***[son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son]****.”*

Thus, the Amendment Act, 2005 has expanded the field Class I heirs by including certain other persons as Class I heirs.

Accordingly, Clauses (b) and (c) have been incorporated in sub-section (3) of substituted Section 6 allotting shares in the notional partition to persons mentioned therein.

Thus, Clause (b) provides that “*the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving* ***child*** *of such pre-deceased son or of such pre-deceased daughter.”*

Similarly, Clause (c) provides that “*the share of the pre-deceased* ***child*** *of a pre-deceased son or of a pre-deceased daughter, as such child would have got had* ***he or she*** *been alive at the time of the partition, shall be allotted to the* ***child*** *of such*

pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be."

(D) As noted above, Explanation to sub-section (3) of the substituted Section 6 contemplates notional partition for determining the share of the deceased coparcener. The said Explanation is similar to Explanation I to unamended Section 6.

As mentioned earlier, the view of the Supreme Court in ***State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and Others, AIR 1985 SC 716: (1985) 2 SCC 321,*** has been followed by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717(supra).*** Accordingly, notional partition contemplated in Explanation to sub-section (3) of substituted Section 6 is for the purpose determining the share of the deceased coparcener. After such share is determined, the same would be inherited by the heirs of the deceased coparcener according to the Hindu Succession Act, 1956 if deceased has not left any Will. Such inherited shares would become fixed, indefeasible and definite. However, there would be no disruption of Hindu Undivided Family, and the Family would

continue with the rider that the inherited shares of heirs would not be subject to fluctuations.

Sub-section (4) of substituted Section 6

Sub-section (4) of substituted Section 6 provides as under:

"(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt :

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the

Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005."

In order to appreciate the above-quoted provisions of sub-section (4) of substituted Section 6, it is necessary to refer to the traditional concept of "Debts" prevailing in Mitakshara School of Hindu Law which has been as under:

"***Pious obligation of son, grandson and great-grandson to pay ancestor's debts.---*** (1) Where the son (which expression throughout includes son's sons and son's son's sons) are joint with their father, and debts have been contracted by the father in his capacity of manager and head of the family *for family purpose*, the sons *as members of the joint family a*re bound to pay the debts to the extent of their interest in the coparcenary property.

Where the sons are joint with their father, and debts have been contracted by the father *for his own personal benefit*, the sons are

liable to pay the debts *provided* they were not incurred for an illegal or immoral purpose. The liability to pay the debts contracted by the father, though for his own benefit, arise from an *obligation of religion and piety* ***(pious obligation)*** which is placed upon the sons under the Mitakshara law to discharge the father's debts, where the debts are not tainted with immorality. The fact that the father was not the *karta* or manager of the joint family or that the family consisted of other coparceners besides the father and sons, does not affect the liability of the sons in any way. It exists irrespective of these facts. The application of the doctrine of pious obligation extends to all debts not tainted by illegality or immorality and is not confined to only antecedent debts of the father."

Thus, "sons, grandsons and great-grandsons are liable to pay the debts of their ancestor if they have not been incurred for an immoral or unlawful purpose. ***Their liability, however, is confined to their interest in the coparcenary property; it is not personal liability*** so that a creditor of the ancestor cannot proceed against the person or against the separate property of the sons, grandsons or great-grandsons."

"(2) The pious obligation of sons, grandsons, great-grandsons to pay the ancestor's debts to the extent of their interest in the joint family property is not abrogated by the Hindu Succession Act, 1956."

[Mulla on Hindu Law, 16th Edition, Articles 290 and 301].

As noted above, the above-stated traditional position continued to exist even after the enforcement of the Hindu Succession Act, 1956, as it existed prior to the Amendment Act, 2005.

Reverting to ***sub-section (4) of substituted Section 6***, the said sub-section abolishes the doctrine of the pious obligation, and lays down that *after the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather* ***solely on the ground of the pious obligation under the Hindu law****, of such son, grandson or great-grandson to discharge any such debt.* Therefore, after the commencement of the Amendment Act, 2005, no court shall recognise the doctrine of pious obligation.

Proviso to sub-section (4) of substituted Section 6, however, saves the debts contracted prior to the commencement of the Amendment Act, 2005, and such debts would continue to be governed by the traditional law of Mitakshara School of Hindu Law pertaining to the doctrine of pious obligation. Accordingly, proviso to sub-section (4) provides: "*Provided that in the case of any debt contracted*

before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

*(a) the **right of any creditor** to proceed against the son, grandson or great-grandson, as the case may be; or*

*(b) **any alienation made in respect of or in satisfaction of, any such debt,** and any such right or alienation shall be enforceable under the **rule of pious obligation** in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.*

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005."

Thus, ***clause (a) of the proviso*** to sub-section (4) provides that in the case of any debt contracted before the commencement of the Amendment Act, 2005, nothing contained in sub-section (4) shall affect the **right of any creditor** to proceed against the son, grandson or great-grandson, as the case may be. Any such right shall be enforceable under the **rule of pious obligation** in the same manner

and to the same extent as it would have been enforceable as if the Amendment Act, 2005 had not been enacted.

Explanation to sub-section (4) provides: "*For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005."* Thus in clause (a) of the proviso to sub-section (4), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Amendment Act, 2005.

Clause (b) of the proviso to sub-section (4) provides that in the case of any debt contracted before the commencement of the Amendment Act, 2005, nothing contained in sub-section (4) shall affect ***any alienation made in respect of or in satisfaction of, any such debt,*** and any such alienation shall be enforceable under the ***rule of pious obligation*** in the same manner and to the same extent as it would have been enforceable as if the Amendment Act, 2005 had not been enacted.

Sub-section (5) of substituted Section 6

Sub-section (5) of substituted Section 6 of the Hindu Succession Act, 1956 lays down as under:

"(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

Thus, sub-section (5) provides that nothing contained in substituted Section 6 shall apply to a partition, which has been effected before 20th December, 2004 (i.e., date on which the Bill corresponding to the Amendment Act, 2005 was presented in Rajya Sabha). Explanation to substituted Section 6 provides that for the purposes of Section 6 "partition" ***means*** (i) any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908), or (ii) any partition effected by a decree of a court.

Decision in Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra).

On account of conflicting opinions of two Division Benches of the Supreme Court, the question concerning the ***interpretation of the Section 6 of the Hindu Succession Act, 1956 as substituted by the Amendment Act, 2005***, the matter was referred to a larger Bench in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra).***

Following main questions, amongst others, were considered by the Supreme Court :

(I) Whether substituted Section 6 of the Hindu Succession Act, 1956 would apply to cases where male coparcener had already died prior to the commencement of the Amendment Act, 2005?

This question would be relevant for the purposes of interpreting sub-sections (1), (2) and (3) of substituted Section 6 of the Hindu Succession Act, 1956.

(II) ***Liability of daughter for the debts contracted by the deceased coparcener.*** This aspect would be relevant for the purposes of interpreting sub-section (4) of substituted Section 6 of the Hindu Succession Act, 1956.

(III) What is the interpretation, scope and impact of sub-section (5) of substituted Section 6 of the Hindu Succession Act, 1956?

Let us now consider the decision of the Supreme Court on the above questions.

Whether substituted Section 6 of the Hindu Succession Act, 1956 would apply to cases where male coparcener had already died prior to the commencement of the Amendment Act, 2005?

There were two conflicting views on the above question One view was that substituted Section 6 of the Hindu Succession Act, 1956 would apply to cases where male coparcener dies after the commencement of the Amendment Act, 2005 (i.e., 9.9.2005). Other view was that substituted Section 6 of the Hindu Succession Act, 1956 would *also* apply to cases where male coparcener had already died prior to the commencement of the Amendment Act, 2005.

In ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra) (paras 55, 63, 64 and 129),*** the Supreme Court held has that for the applicability of substituted Section 6 of the Hindu Succession Act, 1956, it is not necessary that male coparcener must be alive on the date of commencement of the Amendment Act, 2005 (i.e., 9.9.2005). Hence, it follows that substituted Section 6 of the Hindu Succession Act, 1956 is not confined to cases where male coparcener dies after the

commencement of the Amendment Act, 2005. Substituted Section 6 also applies to cases where male coparcener had already died prior to the commencement of the Amendment Act, 2005.

In order to appreciate the ratio of the Supreme Court decision in ***Vineeta Sharma v. Rakesh Sharma & Others (supra),*** it is necessary to understand the difference between *prospective statute, retrospective statute and retroactive statute* as explained by the Supreme Court in the said decision. It has been observed (***paragraph 56 of the said AIR***):

*"The **prospective statute** operates from the date of its enactment conferring new rights. The **retrospective statute** operates backward and takes away or impairs vested rights acquired under existing laws. A **retroactive statute** is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act."*

(Emphasis supplied)

Interpreting sub-section (1) of substituted Section 6 of the Hindu Succession Act, 1956, the Supreme Court has opined as under (***paragraph 55 of the said AIR***):

"The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener 'in her own right' and 'in the same manner as the son'. 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'. The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, with effect from 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated."

(Emphasis supplied)

It has further been observed by the Supreme Court as follows (***paragraph 63 of the said AIR***):

"Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Section 6(1)(a) and 6(1) (b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter

born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5)."

(Emphasis supplied)

The Supreme Court has further observed (***paragraph 64 of the said AIR***):

"*………… Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).*"

(Emphasis supplied)

Explaining sub-section (3) of substituted Section 6, the Supreme Court has observed (***paragraph 61 of the said AIR***):

"With respect to a Hindu who dies after the commencement of the Amendment Act, 2005, as provided in section 6(3) his interest shall pass by testamentary or intestate succession and not by survivorship, and there is a deemed partition of the coparcenary property in order to ascertain the shares which would have been allotted to his heirs had there been a partition. The daughter is to be allotted the same share as a son; even surviving child of predeceased daughter or son are given a share in case child has also died then surviving child of such predeceased child of a predeceased son or predeceased daughter would be allotted the same share, had they been alive at the time of deemed partition. Thus, there is a seachange in substituted section 6. In case of death of coparcener after 9.9.2005, succession is not by survivorship but in accordance with section 6(3)(1). The Explanation to section 6(3) is the same as Explanation I to section 6 as originally enacted…………..."

(Emphasis supplied)

Following propositions, amongst others, follow from the above-quoted paragraphs of the Supreme Court decision:

(A) Sub-section (1) of the substituted Section 6 of the Hindu Succession Act, 1956 recognises a joint Hindu family governed by Mitakshara law.

(B) The coparcenary must exist on 9.9.2005, i.e., the date of commencement of the Amendment Act, 2005.

(C) The daughter has been recognised and treated as a coparcener by birth, with equal rights and liabilities as of that of a son.

(D) It is not necessary that a coparcener whose daughter is conferred with the rights is alive or not on the date of commencement of the Amendment Act, 2005. The daughter would step into the coparcenary as that of a son by birth.

(E) *Though* the daughter would step into the coparcenary as that of a son by birth whether the daughter is born before the commencement of the Amendment Act, 2005 or after the commencement of the Amendment Act, 2005, *but* the daughter born before the commencement of the Amendment Act, 2005 can claim coparcenary rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).

(F) In case a coparcener living on the date of commencement of the Amendment Act, 2005 (i.e., 9.9.2005) dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

Liability of daughter for the debts contracted by the deceased coparcener.

As noted earlier, in view of sub-section (4) of substituted Section 6 of the Hindu Succession Act, 1956, the doctrine of pious obligation of sons, grandsons and great grandsons to discharge the debts of their ancestor's debts, where debts are not tainted with immorality, has been abolished. However, the doctrine of pious obligation continues to remain operative in respect of debts contracted by the ancestor prior to the commencement of the Amendment Act, 2005. Question is whether daughter, grand-daughter and great grand-daughter can be held liable for the debts contracted prior to the commencement of the Amendment Act, 2005 on the basis of doctrine of pious obligation. In ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)***, the Supreme Court has held that the daughter, grand-daughter or great grand-daughter, as the case may be, would be bound to discharge any such debt on the basis of doctrine of pious obligation.

It has been observed by the Supreme Court (***paragraph 60 of the said AIR***):

"Section 6(2) provides when the female Hindu shall hold the property to which she becomes entitled under section 6(1), she will be bound to follow rigors of coparcenary ownership, and can dispose of the property by testamentary mode."

(Emphasis supplied)

The Supreme Court has further observed (***paragraph 61 of the said AIR***):

"……..... Section 6(4) makes a daughter liable in the same manner as that of a son. The daughter, granddaughter, or great granddaughter, as the case may be, is equally bound to follow the pious obligation under the Hindu Law to discharge any such debt. The proviso saves the right of the creditor with respect to the debt contracted before the commencement of Amendment Act, 2005. The provisions contained in section 6(4) also make it clear that provisions of section 6 are not retrospective as the rights and liabilities are both from the commencement of the Amendment Act."

(Emphasis supplied)

What is the interpretation, scope and impact of sub-section (5) of substituted Section 6 of the Hindu Succession Act, 1956?

As noted earlier, sub-section (5) of substituted Section 6 of the Hindu Succession Act, 1956 provides that nothing contained in substituted Section 6 shall apply to a partition, which has been effected before 20th December, 2004 (i.e., date on which the Bill corresponding to the Amendment Act, 2005 was presented in Rajya Sabha). Explanation to substituted Section 6 provides that for the purposes of Section 6 "partition" ***means*** (i) any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908), or (ii) any partition effected by a decree of a court.

Interpreting sub-section (5) of substituted Section 6 and Explanation to substituted Section 6, the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)***, has observed as under (***paragraph 62 of the said AIR***):

"The proviso to section 6(1) and section 6(5) saves any partition effected before 20.12.2004. However, Explanation to section 6(5) recognises partition effected by execution of a deed of partition duly registered under the Registration Act, 1908 or by a decree of a court.

Other forms of partition have not been recognised under the definition of 'partition' in the Explanation."

It is pertinent to note various aspects dealt with by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra),*** in regard to sub-section (5) of substituted Section 6 and Explanation to substituted Section 6:

(A) It has been held that the daughter has now become entitled to claim partition of coparcenary with effect from 9.9.2005 like a son. The Supreme Court has observed (***paragraph 79 of the said AIR***):

"*The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9.9.2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under section 6(1) and 6(2), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away."*

(B) As noted earlier, under the law pertaining to partition as existing prior to the Amendment Act, 2005, if there would be a partition of coparcenary property between father (F) and sons (S1 and S2) then the wife (W) of father (F) as well as widowed mother (M') of father (F) would get one share equal share to that of a son (S1 or S2). This position continues to exist as is evident from the observation made in the last portion of the above-quoted paragraph 79 of the Supreme Court decision. Hence, if there is a partition of coparcenary property between father and sons (and now also daughters), then wife of father as well as widowed mother of father would get one share equal share to that of a son (or a daughter).

(C) Under Mitakshara School of Hindu Law, a member of a joint Hindu Family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. Thus, the institution of a suit for partition by a member of a joint family is a clear intimation of his intention to separate, and there was consequential severance of the status of jointness. Question before the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)*** was : in case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any

legislative amendment or any subsequent event takes place which results in enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be into consideration and given effect to while passing final decree in the partition suit. The Supreme Court has held that even though filing of partition suit brings about severance of status of jointness, such legislative amendment or subsequent event will have to be taken into consideration and given effect to in passing final decree in the partition suit. This is because, the partition suit can be regarded as fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu Family takes place by metes and bounds. (See ***paragraphs 83 to 95, and paragraphs 98, 106, 125 and 128 of the said AIR***).

The Supreme Court has observed (***paragraph 99 of the said AIR***):

"*Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of*

actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and changes due to the subsequent event can be taken into consideration."

(D) Prior to the Amendment Act, 2005, partition in joint Hindu Family could be made by oral partition or oral family settlement/family arrangement. If *subsequently* terms of such oral partition or oral family settlement/family arrangement could be recorded in a Memorandum. Such Memorandum was not required to be registered. [See: ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra) (paragraphs 107, 108, 111, 112, 113, 117 and 122)***].

As noted above, Explanation to substituted Section 6 provides that for the purposes of Section 6 "partition" ***means*** (i) any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908), or (ii) any partition effected by a decree of a court.

The Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)*** has considered the impact of the aforesaid Explanation on the oral partition or oral family settlement/family arrangement made prior to 20th December, 2004.

The Supreme Court has opined (***paragraph 116 of the said AIR***):

"The intendment of amended Section 6 is to ensure that daughters are not deprived of their rights of obtaining share on becoming coparcener and claiming a partition of the coparcenary property by setting up the frivolous defence of oral partition and/or recorded in the unregistered memorandum of partition. The Court has to keep in mind the possibility that a plea of oral partition may be set up, fraudulently or in collusion, or based on unregistered memorandum of partition which may also be created at any point of time. Such a partition is not recognized under Section 6(5)."

(Emphasis supplied).

The Supreme Court has further held (***paragraph 127 of the said AIR***):

"A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the

interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the Court has to be very extremely careful in accepting the same, and only if very

cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intendment of Explanation to Section 6(5). It has to be remembered that courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place."

(Emphasis supplied).

ANSWER GIVEN BY THE SUPREME COURT TO REFERENCE IN *Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)*

The Supreme Court has answered the Reference in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)*** as under (***paragraph 129 of the said AIR***):

"Resultantly, we answer the reference as under:

(i) 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.

(ii) 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.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) 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 recognised 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."

CONSEQUENCES

It will be interesting to examine certain consequences of the substitution of Section 6, Hindu Succession Act, 1956 by the Amendment Act, 2005, and the interpretation of the substituted Section 6 by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra)***:

(I) In order to appreciate the effect of the substituted Section 6, Hindu Succession Act, 1956 on allocation of shares in the event of death of a coparcener, let us consider certain illustrations:

Illustration (i):

X died intestate in the year 2006 leaving behind his widowed mother M, his wife W, his three sons A, B and C, and his daughter D.

Now position prior to the Amendment Act, 2005

Prior to the Amendment Act, 2005, D would not be coparcener.

In notional partition immediately before death of X, the share of X would be 1/6, while M, W, A, B and C would get 1/6 share each.

As per intestate succession in respect of share of X, A, B, C (Sons), M (Widowed Mother), W (Widow) and D (Daughter) each would get one share in 1/6 share of X by inheritance.

Therefore, each would get 1/6 of 1/6, i.e., 1/36 share. This 1/36 share of each of A, B, C (Sons), M (Widowed Mother), W (Widow) and D (Daughter) would become definite, indefeasible and fixed, and would not be subject to fluctuation by subsequent events. Further, 1/6 share allocated to M and 1/6 share allocated to W on notional partition would also become definite, indefeasible and fixed, and would not be subject to fluctuation by subsequent events in the family.

Hence,

Share of A……1/36 (by inheritance).

Share of B…….1/36 (by inheritance).

Share of C…….1/36 (by inheritance).

Share of M…1/36 (by inheritance) + 1/6 (by notional partition) = 7/36.

Share of W....1/36 (by inheritance) + 1/6 (by notional partition) = 7/36.

Share of D……...1/36 (by inheritance).

As noted above, the afore-mentioned respective shares of A, B, C, M, W and D would become definite, indefeasible and fixed, and would not be subject to fluctuations by subsequent events in the family.

However, Hindu Undivided Family would not be disrupted, and would continue with all the surviving coparceners as well as Class I heirs of the deceased coparceners including widowed mother and widow. Hindu Coparcenary would continue to exist with the rider that the shares which had become definite and fixed as mentioned in the above illustration, would no longer be subject to fluctuations on account of subsequent events in the family.

Position after the Amendment Act, 2005

As a result of the Amendment Act, 2005, daughter D would be coparcener by birth along with sons A, B and C.

Therefore, in the above illustration, share of X in case of assumed partition immediately before his death would be determined as under:

X, A, B, C and D as coparceners would get one share each. Further, M and W would also get one share each along with A, B, C and D.

Therefore, share of X would be 1/7.

This 1/7 share of X would go by intestate succession (as X died intestate) according to Sections 8, 9 and 10, Hindu Succession Act, 1956 as under:

A, B, C (Sons), M (Mother), W (Widow) and D (Daughter) would get one share each.

Therefore, each would get 1/6 of 1/7, i.e., 1/42 share.

Hence,

Share of A……1/42 (by inheritance).

Share of B…….1/42 (by inheritance).

Share of C…….1/42 (by inheritance).

Share of M…1/42 (by inheritance) + 1/7 (by notional partition) = 7/42, i.e., 1/6.

Share of W....1/42 (by inheritance) + 1/7 (by notional partition) = 7/42, i.e., 1/6.

Share of D……...1/42 (by inheritance).

As noted above, the afore-mentioned respective shares of A, B, C, M, W and D would become definite, indefeasible and fixed, and would not be subject to fluctuations by subsequent events in the family.

Hence,

Share of A……1/36 (by inheritance).

Share of B…….1/36 (by inheritance).

Share of C…….1/36 (by inheritance).

Share of M…1/36 (by inheritance) + 1/6 (by notional partition) = 7/36.

Share of W....1/36 (by inheritance) + 1/6 (by notional partition) = 7/36.

Share of D……...1/36 (by inheritance).

As noted above, the afore-mentioned respective shares of A, B, C, M, W and D would become definite, indefeasible and fixed, and would not be subject to fluctuations by subsequent events in the family.

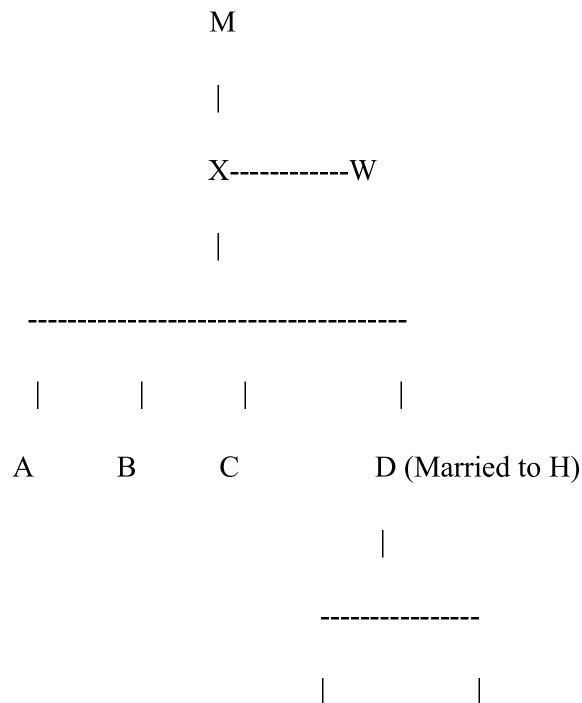
However, Hindu Undivided Family would not be disrupted, and would continue with all the surviving coparceners as well as Class I heirs of the deceased

coparceners including widowed mother and widow. Hindu Coparcenary would continue to exist with the rider that the shares which had become definite and fixed as mentioned in the above illustration, would no longer be subject to fluctuations on account of subsequent events in the family.

Illustration (ii):

X has three sons A, B and C. W is wife of X. M is widowed mother of X. D is married daughter of X. D is married to H who belongs to another Joint Hindu Family.

Now married daughter D dies intestate leaving her husband H and children (Son DS and Daughter DD).



DS DD

(Son) (Daughter)

Before proceeding further, it is relevant to note that in case of death of a female Hindu, intestate succession is governed by Sections 15 and 16 of the Hindu Succession Act, 1956, which are reproduced below:

"15. General rules of succession in the case of female Hindus*.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,—*

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section

(1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

*“ **16. Order of succession and manner of distribution among heirs of a female Hindu**.—The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place, according to the following rules, namely :*

Rule 1.—Among the heirs specified in sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate’s death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

Let us now revert to the illustration under consideration.

Position prior to the Amendment Act, 2005

Prior to the Amendment Act, 2005, only X and his three sons A, B and C were coparceners. D, i.e., married daughter of X was not a coparcener.

As D was not coparcener, there was no question of any share of D in coparcenary property. Therefore, her son (DS), daughter (DD and husband (H) would not get any thing in coparcenary property.

Position after the Amendment Act, 2005

A reading of clause (b) and (c) of sub-section (3) of substituted Section 6 of the Hindu Succession Act, 1956 shows that married daughter would also become coparcener.

Therefore, in the above illustration, married daughter D would be coparcener along with X and his sons A, B and C.

Now share of D in coparcenary on the basis of assumed partition immediately before her death would be as under:

X, A, B, C and D as coparcener would get one share each. Further, mother M and wife W of X would get one share each.

Therefore, share of D in coparcenary would be 1/7.

Now this 1/7 share of D would go by intestate succession (as there is no Will). Such intestate succession, as noted above, would be according to Sections 15 and 16 of the Hindu Succession Act, 1956.

Accordingly, son SS, daughter DD and husband H would inherit 1/7 share of D.

Therefore, each would get 1/3 x 1/7 = 1/21.

Hence, consequences would be:

(ci)' Husband H of D, though belongs to another family, would get 1/21 share in coparcenary of his wife D.

(cii)' A reading of clauses (b) and (c) of sub-section (3) of substituted Section6 of Hindu Succession Act, 1956shows that children of D (i.e.,

son DS and daughter DD) would become coparceners in coparcenary of X. This is because, death of D would not disrupt the Joint Hindu Family of X. However, shares of heirs of D, as inherited, would become definite in coparcenary of X and would not fluctuate.

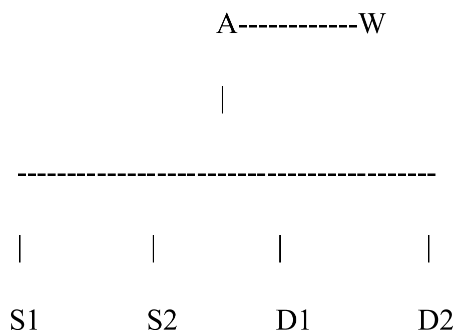
(ciii)' Son DS of daughter D would become coparcener in coparcenary in Joint Hindu Family of X. Further, son DS as son of husband H of D would also be a member of coparcenary in Joint Hindu Family of husband H.

Therefore, son DS would simultaneously be member of two distinct coparcenaries in two different Joint Hindu Families.

Similar will be the position of daughter DD of D and H.

<u>*Illustration (iii):*</u>

A died intestate in the year 2003 leaving behind his widow W, two sons S1 and S2 and two daughters D1 and D2.



Position prior to the Amendment Act, 2005

As A died leaving female heirs of Class I, his share in coparcenary would go by intestate succession (as A did not leave any Will).

Share of A would be determined on the basis of assumed partition immediately before his death in the year 2003.

Widow would be allocated one share equal to son or daughter.

Therefore, share of A = 1/6.

This 1/6 share would go by intestate succession as under:

W = 1/5 of 1/6 = 1/30.

S1 = 1/5 of 1/6 = 1/30.

S2 = 1/5 of 1/6 = 1/30.

D1 = 1/5 of 1/6 = 1/30.

D2 = 1/5 of 1/6 = 1/30.

Further, W would also get her allocated share on assumed partition, i.e., 1/6.

Therefore, share of W = 1/30 + 1/6 = 6/30 = 1/5.

Now, these shares (i.e., W = 1/5; S1 = 1/30; S2 = 1/30; D1 = 1/30; D2 = 1/30) would become fixed, indefeasible and definite—These would not be subject to fluctuations.

Hindu Undivided Family would not be disrupted, and would continue with W, S1, S2, D1 and D2. However, coparcenary would consist of S1 and S2.

Coparcenary property would consist of

$$1 - [1/5 + 1/30 + 1/30 + 1/30 + 1/30]$$

$$= 1 - [10/30]$$

$$= 1 - 1/3$$

$$= 2/3.$$

Position after the Amendment Act, 2005

X died intestate in the year 2003, as seen above.

As regards shares obtained by W, S1, S2, D1 and D2 on the death of A in the year 2003, these would be determined on the basis of position existing prior to the Amendment Act, 2005, as mentioned above.

Therefore,

W would get 1/5.

S1 would get 1/30.

S2 would get 1/30.

D1 would get 1/30.

D2 would get 1/30.

These shares of W, S1, S2, D1 and D2 would become fixed, indefeasible and definite, and would not be subject to fluctuations.

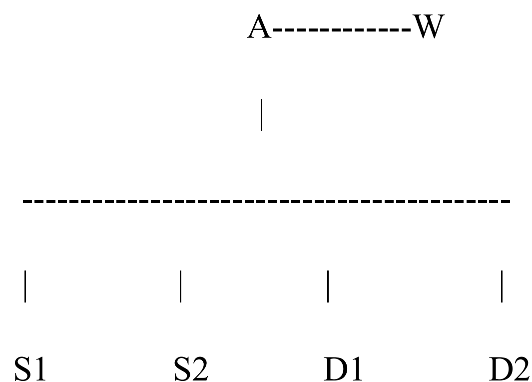
Hindu Undivided Family would continue with W, S1, S2, D1 and D2.

Now in view of substituted Section 6, Hindu Succession Act, 1956, daughters D1 and D2 would become coparceners by birth. However, their becoming coparceners by birth would not affect the shares of W, S1, S2, D1 and D2 which became vested in them on death of X in the year 2003. [See: Proviso to sub-section (1) of substituted Section 6, read with sub-section (5) of substituted Section 6 of Hindu Succession Act, 1956].

Therefore, D1 and D2 would become coparceners with S1 and S2, and coparcenary property would consist of 2/3 which would remain subject to fluctuations.

(II) A is Karta of Joint Hindu Family which is basically located in Kanpur (Uttar Pradesh)

. A dies intestate leaving behind his widow W, two sons S1 and S2 and two married daughters D1 and D2. D1 is married to H1, and resides in Bangalore (Karnataka). D2 is married to H2, and resides in Amritsar (Punjab).



Now in view of sub-section (1) of substituted Section 6, Hindu Succession Act, 1956, the daughter of a coparcener shall,—

(*a*) by birth become a coparcener in her own right in the same manner as the son;

(*b*) have the same rights in the coparcenary property as she would have had if she had been a son;

(*c*) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

Thus, while giving the same rights in the coparcenary property as a son, the daughter has been subjected to the same liabilities in respect of the said coparcenary property as that of a son. A married daughter, such as D1 or D2 in the above illustration, who is residing in a far off place with her husband, may find it difficult to discharge her liabilities as a coparcener on a regular basis.

(III) A is Karta of Joint Hindu Family basically located in Kanpur (Uttar Pradesh). A dies leaving behind eldest married daughter D and three younger sons S1, S2 and S3. D is married to H, and resides with her husband in Bangalore (Karnataka).

A

|

D	S1	S2	S3

After death of A, his married daughter D, being eldest, would become Karta of Joint Hindu Family.

Now such married daughter D, who is residing at far off place, may find it difficult to discharge the responsibilities as Karta of Joint Hindu Family.

(IV) As noticed earlier, according to traditional concept of Hindu Law, ***Ancestral property (also known as Coparcenary property)*** means a property inherited by a male Hindu from his three immediate lineal male ascendants, i.e., his father (F), grand-father (FF) and great grand-father (FFF).

Even though the rule of survivorship has been abolished by substituted Section 6 Hindu Succession Act, 1956, but the traditional concept of Ancestral property has not been affected.

However, it is submitted that an analysis of substituted Section 6, Hindu Succession Act, 1956 and its interpretation in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020***

***SC 3717 (Supra)*, the concept of ancestral property would stand expanded and would now include property inherited from females also.** This is because, the daughter is now coparcener by birth. A married daughter, who is a coparcener, would in due course become mother with the birth of child (male or female), then grandmother with the birth of grand-child (male or female), and then great grandmother with the birth of great grand-child (male or female). Married daughter with her child, grand-child and great grand-child would constitute coparcenary. Property inherited by child, grand-child or great grand-child from such married daughter would be ancestral property in the hands of such child, grand-child or great grand-child, respectively.

(V) From various consequences noticed above, it will be seen that substituted Section 6, Hindu Succession Act, 1956 would lead to gradual dilution of cohesion of Joint Hindu Family.

THE REPEALING AND AMENDING ACT, 2015 (NO. 17 OF 2015) AND ITS EFFECT

The aforesaid Repealing and Amending Act, 2015 (No. 17 of 2015) was enacted by the Parliament to repeal certain enactments and to amend certain other amendments.

Section 2 of the aforesaid Act No. 17 of 2015 provides that "the enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof". ***Reading the said Section 2 with the entries in the First Schedule shows that by the aforesaid Act No. 17 of 2015, the whole of the Hindu Succession (Amendment) Act, 2005 has been repealed.***

Question arises as to whether repeal of the Hindu Succession (Amendment) Act, 2005 by the aforesaid Act No. 17 of 2015 would result in revival of the unamended Hindu Succession Act, 1956 including unamended Section 6 thereof. Answer is evidently in the negative for the following reasons:

(A) ***Statement of Objects and Reasons*** accompanying the Bill which has been passed as the Repealing and Amending Act, 2015, states as under:

> ***"Statement of Objects and Reasons***.- *This Bill is one of those periodical measures by which enactments which have ceased to be in force or have become obsolete or the retention*

whereof as separate Acts is unnecessary are repealed or by which the formal defects in enactments are corrected.

2. *The notes which follow explain the reasons for the amendments suggested in such of those items of the Bill in respect whereof some detailed explanation is necessary.*

3. *Clause 4 of the Bill contains a precautionary provision which it is usual to include in the Bill of this kind."*

(B) Section 4 of the aforesaid Act No. 17 of 2015 provides as follows:

"The repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any

indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment provide or restore any jurisdiction, office or custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."

The wide language of the above-quoted Section 4 of the Act No. 17 of 2015 shows that repeal of the Hindu Succession (Amendment) Act, 2005 by the Act No. 17 of 2015 would not result in revival of the unamended Hindu Succession Act, 1956 including unamended Section 6 thereof.

(C) In ***Regular First Appeal No. 58 of 2014; Lokamani & Others v/s Mahadevamma & Others; Decided On, 07 September 2015,*** a Division Bench of the Karnataka High Court repelled the contention that the repeal of the Hindu Succession (Amendment) Act, 2005 by the Repealing and Amending Act No. 17 of 2015 would revive the unamended Hindu Succession Act, 1956 including unamended Section 6 thereof. The Division Bench held as under:

"27. The Repealing and Amending Act, 2015 does not disclose any intention on the part of the Parliament to take away the status of a co-parcener conferred on a daughter giving equal rights with the son in the co-parcenary property. Similarly, no such intention can be gathered with regard to restoration of Section 23 and 24 of the Principal Act which were repealed by the Hindu Succession (Amendment) Act, 2005. On the contrary, by virtue of the Repealing and Amending Act, 2015, the amendments made to Hindu Succession Act in the year 2005, became part of the Act and the same is given retrospective effect from the day the Principal Act came into force in the year 1956, as if the said amended provision was in operation at that time.

28. The main object of a Repealing and Amending Act is only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. In other words, the Repealing and Amending Act is enacted not to bring in any change in law, but to remove enactments which have become unnecessary. Thus, the Repealing and Amending Act, 2015 only expurgates the Hindu Succession (Amendment) Act, 2005 (Act No. 39/2005) along with similar Acts, which had served the purpose.

29. The repeal of an amending Act, therefore, has no repercussion on the parent Act which together with the amendments remains unaffected. The general object of a repealing and amending Act is stated in Halsbury's Laws of England, 2nd Edition, Vol.31, at p.563, thus:

'A statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisos.'

30. In KHUDA BUX V. MANAGER, CALEDONIAN PRESS, A.I.R. 1954 CAL. 484 CHAKRAVARTTI, C.J., neatly brings out the purpose

and scope of such Acts. The learned Chief Justice says at p. 486 as under:-

Such Acts have no Legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts, which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care,......'.

31. This view has been affirmed by the Supreme Court in the case of JETHANAND BETAB vs THE STATE OF DELHI [AIR 1960 SC 89].

32. The Repealing and Amending Act, 2015 which repeals the Hindu Succession (Amendment) Act, 2005 in whole, therefore, does not wipe out the amendment to Section 6 from the Hindu Succession Act. The existence of the Hindu Succession (Amendment) Act, 2005 since became superfluous and did not serve any purpose and might lead to

confusion, the Parliament in its wisdom thought of repealing the said Amendment Act. It is only a case of legislative spring-cleaning, and not intended to make any change in law.

33. The amended Section 6 has already been substituted in the Hindu Succession Act, 1956 as if it was in the enactment from its inception. When the amending provision takes the place of the earlier provision, the object of the Amendment Act is fulfilled and thereafter the Amendment Act serves no purpose. Therefore, such an Amendment Act requires to be repealed and that is what has been precisely done by Act No. 17/2015. Accordingly, Point No. 1 is answered in the negative."

(Emphasis supplied)

It may be mentioned that against the aforesaid decision of the Karnataka High Court, S.L.P. (C) No. 684 of 2016 (Lokmani & Ors. v. Mahadevamma & Ors.) was filed before the Supreme Court. The said S.L.P. was included in the matters referred to the larger Bench in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra) (See paragraph 2 of the said AIR).*** Conclusions drawn by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Others, AIR 2020 SC 3717 (Supra),*** as discussed in detail above, show that the view of the Karnataka High Court stood upheld by the Supreme

Court.