A STUDY OF NEW SECTION 6 OF HINDU SUCCESSION ACT 1956, AS INTRODUCED BY HINDU SUCCESSION (AMENDMENT) ACT, 2005

By

—**DAMODAR RAO**, Advocate,
High Court of A.P., Hyderabad, A.P.

Revolutionary and drastic changes are brought about in Hindu Law concept of Coparcenery by virtue of amendment to Section 6 of the Hindu Succession Act, 1956 as Amended by The Hindu Succession (Amendment) Act, 1956, which came into force on 9th September, 2005. 'Coparceners' as per Hindu Law, are male members of the Hindu Joint Family. This concept of male members being coparceners was kept intact in Hindu Succession Act, 1956, while introducing female relatives as heirs or the male relatives claiming through such female relatives specified in the said class as specified in Class-I of the Schedule to the Act of 1956. The present Section 6, as per Amendment Act of 2005, has repealed the Section 6 of the parent Act *i.e.* The Hindu Succession Act, 1956. In this Article, reference will be made as new Section 6 for Section 6 of the Amendment Act, and Old Section 6 of the Hindu Succession Act, 1956, as appearing prior to the Amendment of 2005.

By virtue of new Section 6, daughter of a Coparcener shall by birth, be a coparcener as son, and any reference to Hindu Mitakshara Coparcener shall be deemed to include a reference to a daughter also. In short, a daughter of a Coparcener is treated on par with a son. Hitherto under the old Section 6, a daughter was made a heir, which means that she would inherit to the interest/share of the father in the Mitakshara coparcenary as a heir on the death of the father, while a son would be entitled to his share by birth, and the daughter would get as a heir in the share of the father. A son by birth gets his rights, that is, he need not wait for the death of the father. So now by virtue of the new Section 6, all the children irrespective of gender – sons and daughters of a coparcener would get their rights by birth as coparcener. This is, in short, the purport of the New Section 6 as introduced by the Hindu Succession (Amendment) Act, 2005. This Amendment Act of 2005 is prospective, it has no retrospective effect. Actually sub-section (1) of Section 6 of this Amendment 2005, elevates the position of a daughter to that of a son, and she is treated as a son by making her a coparcener.

In the case of *G. Seker v. Geetha and others*, reported in AIR 2009 SC 2649, (2 Judge Bench) Hon'ble Supreme Court of India has decided that the operation of the 2005 Amendment Act is prospective, that neither the Hindu Succession Act, 1956 nor the 2005 Amendment Act seeks to reopen vesting of a right when succession had already taken place. There are some conditions laid down in Section 6 of the Amendment Act of 2005; and that one condition being nothing contained in sub-section (1) of Section 6 of this Amendment Act of 2005 shall affect any alienation or partition or any testamentary disposition that had taken place prior to 20th December, 2004. So, while reading Section 6 of the Amended Act of 2005, this date 20th December, 2004 also has to be compulsorily kept in mind. Another condition as laid down in sub-section (4) of the new Section 6 is that after the commencement of this 2005 Amendment Act under pious obligation theory, no son, grandson or great grandson shall be made liable; and consequently as a necessary corollary it is also provided that any liability under pious obligation theory incurred prior to the commencement of this Amendment Act shall be dealt with against son, grandson and great grandson as if this Amendment has not been enacted.

The Hon'ble Patna High Court, in the case of *Ram Belas Singh v. Uttam Raj Singh and others,* reported in AIR 2008 Pat. 81 has held that Hindu Mitakshara coparcener shall now include daughter of coparcener also, giving her same rights and liabilities by birth as that of son, and the daughter would not have right to sue for partition against other coparceners including the father. Hon'ble Andhra Pradesh High Court in the case of *Damalanka Ganga Raju v. Nandipete Vijayalaxmi*, reported in 2007 (5) ALT 447, has held that Central Act [Hindu Succession (Amendment) Act, 2005] will prevail over the State Act, [Hindu Succession (Andhra Pradesh Amendment) Act 1986] which came into force with back date 5th September, 1985, and that State Act must be deemed to have been repealed by the Central Act. Hon'ble Madras High Court, in the case of *Smt. Bhagirathi and others v. S. Munivannan and another*, reported in AIR 2008 Mad. 250 (DB), has held that the Amendment Act, 2005 is prospective in the sense that a daughter is being treated as coparcener on and from the commencement of Hindu Succession (Amendment) Act, 2005. Hon'ble Orissa High Court in the case of *Prawat Chandra Patnaik and others v. Sanatchoudary Pattnaik and another*, reported in AIR 2008 Ori. 133, has held that Section 6 as Amended by Act 39 of 2005 gives a right to the daughter as coparcener, from the date of its commencement in the year 2005 irrespective of when they are born : they can claim for partition of the property which has not been partitioned earlier; the daughters are entitled to share each equal with the son.

Hon'ble Madras High Court in the case of *Smt. Bhagirathi v. Manivannan and another*, reported in AIR 2008 Mad. 250, has held that if a Hindu dies after commencement of Hindu Succession (Amendment) Act, 2005, his interest in the property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship.

Hon'ble Orissa High Court in the case of *Santilata Sahu v. Sabitri Sahu*, reported in AIR 2008 Ori. 86, has held that daughters are entitled to a share in ancestral properties as coparceners.

Hon'ble High Court of Karnataka in the case of *Pushpalatha N.V. v. V. Padma*, reported in AIR 2010 Karn. 124 (DB), had held that as per Section 6 of Hindu Succession Act, 1956 as amended by Act of 2005, a daughter is conferred right as coparcener, the section confers right on daughter by birth but date of birth should be after the Parent Act came into force *i.e.* 17.6.1956. Provision is retroactive…..

Devolution of interest in coparcenary property – Amended Section 6 gives a go by, once and for all, to concept of survivorship.

Hon'ble Supreme Court of India in the case of *Gauduri Koteswaramma and another v. Chakiri Yanadi and anther*, reported in AIR 2012 SC 169, has held that right of daughters in coparcenary property are not lost by passing of preliminary decree for partition before stipulated date; partition suit does not stand disposed of by passing of preliminary decree; preliminary decree can be amended.

Hon'ble Bombay High Court in the case of *Mrs. Vaishali Satish Gauorkar and another v. Satish Keshorao Gauorkar and others*, reported in AIR 2012 Bom. 101 (DB), has held that the daughters born on and from 9.9.2005 would be coparceners and would get that right, entitlement and benefit together with liabilities. Daughters born on and from 9.9.2005 would be coparceners only upon devolution of interest taking place in coparcenary property. The devolution of interest is condition precedent for any claim in coparcenary. It is from the date 9.9.2005 that the daughter would become a coparcener which she would not until then. For any disposition including testamentary

disposition and for any alienation including partition prior to 20th December, 2004, the daughter of a coparcener would not be entitled to claim her interest in the coparcenary property.

That the Hon'ble Karnataka High Court has held in the case of *Miss R. Kautha v. Union of India*, reported in AIR 2010 Karn. 27, that the Central Amendment Act No.39 of 2009 [Hindu Succession (Amendment) Act of 2005] prevails over the State Act No.23/1994 [Hindu Succession (Karnataka Amendment) Act]. That with the passing of the Amendment Act of 2005, the concept of survivorship is given a go by once and for all.

Sub-section (5) of the Amended Section 6 provides that nothing in this Amended Section 6 shall apply to a partition which has been effected before the 20th day of December, 2004. The explanation appended to this sub-section says that partition for the purposes of this section means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908, and it also means Partition effected by a decree of a Court.

It may be seen that among Hindus, partition of properties can be effected orally also; Partition can be inferred by Family arrangement/settlement which has been acted upon by the parties, in addition to, of course, effected by registered partition deed or by decree of Court. So it is suggested that the Explanation needs to be deleted. This explanation is, therefore not in keeping with the tenets of Hindu Law with regard to partition of properties which can be by oral partition as stated supra.

As per sub-section (2) of Amended Section 6, the property held by female Hindu with the incidents of a coparcenary ownership and she will be capable of disposing it by will. So, by virtue of sub-section (2) of Section 6, equality is achieved with a male coparcener, who is vested with the power to make a Will by virtue of Section 30 of the Hindu Succession Act, 1956.

ACCOSTING LEGITIMACY IN FAMILY RELATIONS

By

—MADHURI IRENE,
Assistant Professor of Law,
K.V. Ranga Reddy Law College,
Hyderabad, A.P.

Introduction:

Though law is not a panacea for all the maladies, it is certainly a consoling consortium for all the needy living beings. It is the last resort and hope of crying kittens. Law stands above the assumptions and presumptions of individuals and groups for its jurisdiction are wholesome. Unfortunately, in the realm of legal literature, certain pseudo terms entered into family law to defile the sanctity of family jurisprudence. Terms like 'illegitimate child' and 'bastard' created confusion in the minds of neutral thinkers and started questioning the jurisprudential rationale. Should the brunt of mischief or recklessness of matured adults be borne by the innocent offspring? When a man and woman unite without complying with the social or legal norms and give birth to a child, should that child be cursed with the crown of thorns? It took centuries of