SECTION 29-A OF HINDU SUCCESSION ACT 1956 (INTRODUCED BY STATE AMENDMENT ACT OF 1985) — A CRITICAL STUDY

By

—**POOLLA SAMBASIVARAO**, Advocate,
Narsipatnam-531116

Whether Section 29-A of the Hindu Succession Act, 1956 introduced by State Amendment Act of 1985, placing twin restrictions or prohibitions on a daughter to claim equal rights in a copercenary property either with respect to the date of her marriage or partition is repugnant to the amended Section-6, Hindu Succession Act, 1956 (Central Act) as amended by Act 39 of 2005, placing no such restrictions and the daughter by birth, ifsofacto, whether married or unmarried becomes a coparcener and have the same rights as that of a son, is violative, of Articles 14, 19 and 31 of the Constitution and is liable to struck down either under Article 252 or 254 of the Constitution.

Sri *A.S.R. Ramachandra Murthy*, Senior Advocate, Kakinada, in his erudite article under the capton of

"Hindu Succession Act 1956, Defects and anomalies in the Amending Act 39 of 2005"

Since published in All India Law Digest Volume 4, February 2007, (ALD Publications) Journal Section at Page 17, adverting to Section 29-A of the Hindu Succession Act, State Amendment Act *vis-à-vis* Section 6 of the Hindu Succession Act as amended by virtue of Central Act 39/05, and similar State Amendments of Tamilnadu, Karnataka and Maharashtra, has focused three tire propositions, which are extracted as hereunder in order to get a hang over the matter, as can be seen in Paragraph 7 at Page 18.

"Now the question that have arisen on account of the amending Central Act are :

(a) What is the effect of the present Central amendment on Section 29-A of the Act ?

(b) Are the two provisions, *viz*., Section 29-A of the State Section 6 brought in by the Central Act 39 of 2005 in conflict with each other ?

(c) Which provision prevails in the above four States, Whether the local amended Section 29-A or, the new Section 6 substituted by Act 39 of 2005 ?

The learned author, consuming considerable industry made a comparative study of Section 29-A State Amendment and amended Section 6 of the Central Act in juxta position in Paragraphs 15 and 16 of the illustrious article at pages 20 and 21 which are extracted as hereunder.

"Para 15

As per Section 29-A in A.P. in a joint family governed by Mitakshara Law, the daughter is made a coparcener thus equating her position to that of a son, subject to the exception in clause (iv) of the section. Consequent on the treatment of daughter, as a coparcener, she is brought within the fold of pious obligation and rights of survivorship if, there are no children, and a right to a share in the joint family properties is conferred. The power do dispose of the interest by a will by the daughter is also there"

Para 16

Under the new Section 6.

(a) The daughter is made a coparcener with the incidence of right by birth just like a son

(b) Same rights as those of a son are given to the daughter

(c) Such rights are subject to the same liabilities as that of a son

(d) The scope of survivorship is modified.

Thus there is apparent conflict between the two provisions. In other words there is in-consistency between the two Acts. State Act 29-A placing some restrictions or prohibitions for a daughter's entitlement to be considered as a coparcener and the later Act without any such restrictions or prohibitions for a daughter to be considered as a coparcener.

A thread bare analysis of the two Acts makes it clear, daughter is treated as a coparcener just by birth on a par with the son with all incidents of rights and liabilities and there is no any sort of discrimination under the amended Section 6 of the Central Act *vis-a-vis* the twin restrictions or prohibitions placed under Section 29-A of the State Act.

As a matter of fact, Section 6 of the Central Act is a more beneficial legislation than that of Section 29-A of the State Amendment, which is subjected to certain restrictions *i.e.* that the daughter was unmarried by the date of amendment or that there was no partition by the date of amendment (please see 2004 (4) ALT 59). Thus Section 29-A puts certain restrictions for the daughter to be treated as a coparcener. There are no such restrictions under Section 6 of the Amended Central Act. Thus the position of a daughter is a secured right, right by birth and the question of date of marriage and partition does not arise. In other words, the daughter gets coparcenary right by birth under Section 6 of Amended Central Act, irrespective of the date of marriage whether married prior to 5-9-1985 or afterwards and marriage is not a disqualification. It can now be seen as a result of the amended Section 6 of the Central Act every married daughter also can now be claimed as a coparcener and the hostile discrimination between a married daughter and unmarried daughter is now removed.

Determination of Repugnancy

In order to consider whether there is any repugnancy and to decide the question of repugnancy between the two enactments Section 29-A of the State amendment and the amended Section 6 of the Central Act and the State Act 29-A is to be struck down, on grounds of repugnancy, it must be shown that the two enactments contain inconsistent and irrecondible provisions, so that they cannot stand together or operate in the same field. The tests laid down by the Supreme Court in AIR 1979 SC 898 in *M. Karunanidhi v. Union of India*, may usefully be referred.

Repugnancy between a law made by the State and by the Parliament may result from the following circumstances.

(1) Where the provisions of a Central Act, and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will became void in view of the repugnancy.

(2) Where however if law passed by the State comes into collusion with a law passed by the Parliament on an entry in the Concurrent List, the State Act will prevail to the extent of repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with the clause (2) of Article 254.

(3) Where the law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List, the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

(4) Where however, a law made by the State Legislature on a subject covered by the Concurrent List, is inconsistent with and repugnant to a previous law, made by the Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State is concerned, it will prevail in the State, and overrule the provisions of the Central Act in their applicability to the State only. Such State of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the provisions of Article 254.

Tests laid down for Determination of Repugnancy

In order to decide the question of repugnancy:

(1) It must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

(2) That there can be no repeal by implication unless the inconsistenancy appears on the face of the two statutes.

(3) That where the two statutes occupy a particular field but there is room or possibility of both the statutes operating in the same field without coming into collusion with each other, no repugnancy results.

In view of the discussion and applying the tests laid down by the Supreme Court in AIR 1979 SC 898 in *Karunanidhi v. Union of India*, it is apparent there is repugnancy between the State Act and the Central Act touching on the same field.

The only apprehension, mooted by the learned Advocate, Sri *A.S. Ramachandramurthy* as narrated by him in Paragraph 20 at Page 22 is :—

> "Section 29-A, with its non-obstinate clause, is still there as it is which means Section 29-A continue to except the applicability of Section 6 of the Act. The reason is now Section 6 of the Act is on lines with Section 29-A but Section 29-A is applying notwithstanding Section 6 can it therefore be said that the two sections would apply ? If Section 6 applies to whole of India, where is the need of retaining Section 29-A in the Act ? Therefore it looks as though that the Central amendment under Act 39 of 2005 is incomplete and requires to be remedied so as to harmonise that section with State amended Sections by taking necessary measures" Till then the apparent anomaly persists causing hardship to the sharers"

The problem posed by Sri *A.S. Ramachandramurthy*, Senior Advocate, Kakinada accelerated me to take up the issue about the desirability of seeking Section 29-A State amendment to be struck down.

In this background, it is asserted the State Act Section 29-A even at the risk of repetition, has placed certain restrictions as submitted supra, on the daughters to claim partition in joint family property on a par with their brothers by showing that they were unmarried and that there was no partition by the date of the amendment (Please see 2004 (4) ALT 59 = 2004 (3) ALD (NOC) 241) and as such the Act is repugnant in view of the tests laid down by the Supreme Court referred supra and cannot continue, and even if it can continue it is violative of Articles 14, 19 and 31 of the Constitution of India.

Having thus stated that there is repugnancy between the State Amendment and the later Central Act amending Section 6 of Hindu

Succession Act, is the State Act is liable to be struck down on grounds of repugnancy ?

The State Act 29-A became *void* in view of the provisions of Article 254(1) of the Constitution, which provides.

Article 254(1) Inconsistency between laws made by the Parliament and the laws made by the Legislature of States :

> "If any provision of law, made by the Legislature of a State is repugnant to any provisions of a law made by the Parliament which Parliament is competent to enact or to any provision of an existing law, with respect to one of the matters enumerated in the Concurrent List, then subject to the provisions of Clause (2) the law made by the Parliament whether passed before or after, the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Parliament whether such passed before or after the law made by the Legislature of the State, or as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be *void*."

The operation of Article 254 is not complex. The real problem that in practice arises is the problem of determining whether a particular State law is repugnant to Central Act. A number of judicial decisions (noted below) give guidance as to when repugnancy arises. The important rulings are :

(i) *Zaverbhai v. State of Bombay*, AIR 1954 SC 752.

(ii) *Tika Ramji v. State of U.P.*, (1956) SCR 393.

(iii) *Municipal Corporation v. Shiv Shankar*, AIR 1971 SC 815.

(iv) *Karunanidhi v. Union of India*, AIR 1979 SC 898.

(v) *Western Coalfields v. Special Area Development*, AIR 1982 SC 697.

(vi) *Reghubir v. State of Haryana*, AIR 1981 SC 2037.

Because of the repugnancy between the Central Act, and the State Act with certain restrictions, the State Act "29-A is *void*. It is therefore obvious in view of the repugnancy between the Central Act Section 6 as amended and the State Act Section 29-A in the Concurrent List are fully inconsistent and are absolutely irreconcilable. The Central Act amending Section 6 will prevail and the State Act Section 29-A is *void* in view of the repugnancy and will not survive and the Central Act only survivor.

In view of the threadbare analysis of the matter keeping in view Article 254(1) of the Constitution that on passing of the Central Act amending Section 6 of Hindu Succession Act 1956 and its extension to the whole of India, the State Act Section 29-A being repugnant to the Central Act, has become inoperative and *void* and is liable to be struck down.

SUITS FOR DECLARATION OF TITLES AND CONSEQUENTIAL INJUNCTION — APPLICABLE ARTICLES OF LIMITATION ACT — A CRITICAL STUDY

By

—POOLLA SAMBASIVARAO, Advocate,
Narsipatnam-531116

What is the relevant Article applicable for suits of declaration of title and for consequential injunction, whether Article 58 or Article 65, or the residuary Article 113 of the Limitation Act ?