SANCTUM LAW

UPDATE ON THE SUPREME COURT'S JUDGMENT IN *VINEETA SHARMA v. RAKESH SHARMA* ON RETROSPECTIVE OPERATION OF RIGHTS OF DAUGHTERS IN HINDU COPARCENARY PROPERTY

The Hon'ble Supreme Court of India, on 11 August 2020, delivered a landmark judgment in the matter of ***VINEETA SHARMA Vs. RAKESH SHARMA & ORS*. [CIVIL APPEAL NO. DIARY NO.32601 OF 2018] ("Vineeta Sharma's case")**. The judgement which has far reaching consequences, deals with the operation of the amended Section 6 of the Hindu Succession Act, 1956 ("**HSA**") which deals with the rights of daughters on Hindu coparcenary (hereditary/family) property.

BACKGROUND

- ***Legislative history***
  - The HSA, in its original form, from the time of enactment in 1956 until 2005, only considered male heirs, i.e., sons to be part of the Hindu coparcenary family and to be entitled to all the rights and liabilities associated with the Hindu coparcenary property, and excluded daughters from the purview and ambit of succeeding to coparcenary property or having rights therein. It may be worthwhile to note that coparcenary property refers to hereditary/family property and not self-acquired property.

  - The Government of India, *vide* the Hindu Succession (Amendment) Act, 2005 ("**HSA Amendment Act**") brought into effect from **09/09/2005** *inter alia* amended Section 6 of the HSA. The amended provision granted equal rights to the daughters in the Hindu

coparcenary family system, and put daughters on the same pedestal as sons insofar as inheritance and succession to the Hindu coparcenary property was concerned.

- ***Judicial history***

  With respect to the operation of the amended Section 6 of the HSA, different benches of the Hon'ble Supreme Court had taken completely conflicting stances, notably:

  - In ***Prakash & ors. v. Phulavati & Ors.*** **(2016) 2 SCC 36**, it was held that Section 6 is not retrospective in operation, i.e., the amended Section 6 insofar as daughters' rights on coparcenary property would be applicable only when both coparceners and his daughters were alive on 09/09/2005 (i.e., commencement of the HSA Amendment Act).

  - In ***Danamma @ Suman Surpur & anr. v. Amar & ors.*** **(2018) 3 SCC 343**, it was held that any coparcener, be it son or daughter, who was alive could claim a right over the coparcenary property even if their predecessor had died before 09/09/2005 (i.e., commencement of the HSA Amendment Act).

In light of the conflicting position rendered by different benches of the Hon'ble Supreme Court and various High Courts of the country in a host of matters, it became imminent for the Hon'ble Supreme Court to settle the law once and for all in relation to the operation of the amended Section 6 of the HSA.

HIGHLIGHTS OF THE JUDGEMENT DATED 11 AUGUST 2020 IN VINEETA SHARMA'S CASE

- ***Daughters are equal coparceners of Hindu coparcenary family***
  - Daughters (female heirs) granted the status of coparceners from 09/09/2005 (i.e., commencement of the HSA Amendment Act) and daughters can claim partition.

  - Daughters born before or after 09/09/2005 (i.e., commencement of the HSA Amendment Act) can claim coparcenary rights.

- ***Pre-conditions for daughter claiming partition***
  - There are two pre-conditions for any daughter claiming partition:

    i) The coparcenary property should have been in existence as on 09/09/2005;

    ii) No disposition or alienation, partition or testamentary disposition should have taken place in respect of the coparcenary property before 20/12/2004 (i.e., day when bill was placed before Rajya Sabha). Here, partition refers to only partition done through a registered partition deed or partition executed by a decree of a court.

- ***Date of death of the predecessor coparcener is irrelevant***
  - It is not at all necessary that the father of the daughter should be alive as on 09/09/2005 for the coparcenary right to accrue on the daughter.

- Right on coparcenary property is by birth and not by inheritance, i.e., it is irrelevant whether the predecessor on whose daughter coparcenary rights are conferred was alive or not on 09/09/2005. Therefore, inheritance would be by survivorship if death of predecessor coparcener happened before 09/09/2005.

- In case the predecessor coparcener died after 09/09/2005, the inheritance of coparcenary rights would be through intestate (non-will) or testamentary (will) succession, and not by survivorship. However, in such a case, there is a deemed partition. In that event, 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.

➢ ***Enlargement of coparcenary family***

- Only adopted son of a coparcener predecessor will become a coparcener, and shall have all the rights and liabilities similar to that of a natural son. However, an adopted daughter will have no such rights.

➢ ***Effect on pending proceedings***

- Even if a preliminary decree has been passed dividing the property only as between the sons and excluding the daughters, notwithstanding it, in a final decree or appeal, even the daughters

should be afforded equal coparcenary shares similar to that of the sons.

- ***Oral partition without documentary evidence is not recognised in law***
  - An oral partition cannot be accepted as the statutorily recognized mode of partition similar to a deed of partition effected by registration under the Registration Act, 1908 or decree of court.

  - Only in exceptional cases, a plea of oral partition can be accepted if supported by public documents 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 and partition is finally evinced in the same matter as decree of a court.

  - A plea of partition based on oral evidence alone cannot be accepted and is to be rejected outrightly.

- ***Mere filing of partition suit does not result in severance of coparcenary property***
  - A 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, and coparcenary property shall continue to exist in joint form until such date.

- ***Presumption as to joint family***
  - Even if one coparcener has separated, the non-separating members can remain joint and enjoy as members of joint family. No express agreement is required to remain joint.

OUR COMMENT

The judgement in Vineeta Sharma's case, while indeed conforming to the present day liberal norms of gender justice and emerging societal trends, may well be a case of "*One step forward, two steps backward*", a decision well intended, but lacking in prudent forethought, for the following reasons:

- Assigning retrospective operation to the amended Section 6 of the HSA will lead to exponential increase in family litigations from families of married daughters and add additional burden to the already overburdened Indian judicial system;

- Family disputes will tangentially grow leading to general societal unrest and also may lead to vexatious and frivolous litigations, along with extortionist litigations on genuine purchasers;

- Uncertainty and confusion regarding the partition status, especially of families having daughters would set in during title due diligence, and this may lead to decrease in land-related transactions, thereby affecting the general revenues of the state

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