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**PROPERTY RIGHTS: A CASE STUDY ON DANANAM SUMAN SURPUR  
AND ANOTHER V. AMAR AND OTHERS**

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**MANSI TYAGI<sup>1</sup>****ABSTRACT**

Let's start with a quick example:

Let's take one ball of green colour and other of blue colour tell that which is heavy? The red one is heavy the reason is that it is made up of red colour. Getting confuse okay than take another example: Let's take two pipes of same length or of same size but one made up of aluminium and other of copper now which one is longer answer is copper one is longer as it is made up of copper.

Now you are in dilemma of what's going on where all the logics gone. To clear you're all the doubts and confusion let's take the last but not the least example:

You have 2 children's a boy or a girl. Who have right on ancestral property? In accordance with Article 15 of IC: Right to Equality which prohibits the discrimination of citizens on the basis of religion, race, caste sex or place of birth. By the understanding we can say the rights are devolved by either the boy or the girl. But from ages the discrimination in inheritance rights or property on the basis of gender was maintained. However, since 2005 the law which give rights to daughter in ancestral property has given but there are still many confusions left regarding the law and was tried to clear by our judgment of Dananam Suman Surpur and another vs. Amar and other.

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## **Facts**

It is a case of Hindu joint family. Where Gurulingappa Savadi has a wife, two daughters and two sons named Arun Kumar and Vijay Kumar. Gurulingappa is the head of the family. In the year 2001 he died. In the year 2002 Mr. Gurulingappa Savadi's grandson named Arun Kumar brings a suit regarding the ancestral property<sup>2</sup> where he said or alleged that only the widow of Mr. Savadi and two sons were having the rights over the property of Mr Savadi. Further, he said that there were no rights on the property of the two married daughters of the Savadi. As they were born prior to Hindu Succession Act and that's why they were not having or entitled to have any coparcener's rights. The respondent is claiming that there is no right of the married daughter on the property as they get ornaments, clothes, interior and other items in the marriage ceremony.<sup>3</sup> On the other hand, daughters claiming the equal rights in the property. Trial court held that daughters weren't entitled to the property. Afterwards the appeal was made until it reaches the SC. Here the appellants are the daughters of the Mr. Savadi.

## **Argument Advanced in favor of appellant**

Here the first and main point kept or argued by the appellants are that they were entitled to the share that belongs to them in the property being the daughters of Mr. Savadi.<sup>4</sup>

## **Argument Advanced in favor of respondent**

The respondent argued that the house properties which belongs to the Joint Hindu Family was comprised by the plaint schedule C.

The shop property which belongs to the Joint Hindu Family was comprised by the schedule D.

Wherein all the moveables or the machineries related or belongs to Joint Hindu Family was comprise by the schedule E. And all the property of suit belongs to the property of Joint Hindu Family. And

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<sup>2</sup><https://www.legalserviceindia.com/legal/article-1523-case-analysis-on-danamma-v-amar-singh.html>

<sup>3</sup> Civil appeal nos. 188-189 of 2018

<sup>4</sup><https://www.lawyersclubindia.com/judiciary/case-analysis-on-danamma-vs-amar-4316.asp>

also stated that the defendant no 1,5 and 8 each share 1/3rd share in the schedule property of suit. Argued for having no share in property of the defendant 6 and 7<sup>5</sup>

### **Trial court held**

It held that the 1/8th share of the property were shared by the defendants no 2, 3 and 4. Mrs. Savadi (defendant no 8) was died during the trial so court state that property or share belongs to her comprised by the defendants no 1,2,3,4 and 5 only.

And denied the share to the appellent.<sup>6</sup>

### **Principal of law argued**

Here women's property rights, gender equality and the discrimination on the basis of sex was highlighted and advanced the rights to women. The decision clears all the doubts by briefing the 2005 amendment (recommendation of 174th law commission report on women's rights on property under Hindu law)<sup>7</sup> to the Hindu Succession Act, that regardless when the daughters were born, they get the share in the property same or equal to the son's partition after the amendment to the Act. Where the 2005 amendment Act, was made or enact section 6 to bridge the loopholes of the Hindu Succession Act 1956, by removing the gender discrimination or inequality. In amendment the coparcener's rights are given to the daughters. Here it was stated that the daughters are having the same rights as of the son in te ancestral property of Hindu Joint Family i.e. (coparcenary property). Also repealed section 23 and section 24 of the Hindu Succession Act, 1956<sup>8</sup>.

Prior to 2005 the male acquires the rights in the property through survivorship and the female descendants of the same family have no rights on the property according to the school of Mitakshara.<sup>9</sup> Now all the confusion were cleared by the latest landmark judgment Vineeta Sharma vs Rakesh Sharma,<sup>10</sup> 2020 of the apex court.

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<sup>5</sup><https://www.alec.co.in/judgement-page/danamma-at-suman-surpur-v-amar-2018>

<sup>6</sup>[https://main.sci.gov.in/supremecourt/2013/3186/3186\\_2013\\_Judgement\\_01-Feb-2018.pdf](https://main.sci.gov.in/supremecourt/2013/3186/3186_2013_Judgement_01-Feb-2018.pdf)

<sup>7</sup><https://www.lawyersclubindia.com/judiciary/case-analysis-on-danamma-vs-amar-4316.asp>

<sup>8</sup>[https://www.indiacode.nic.in/handle/123456789/1713?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1713?sam_handle=123456789/1362)

<sup>9</sup><https://www.legalserviceindia.com/legal/article-1523-case-analysis-on-danamma-v-amar-singh.html>

<sup>10</sup>(2020) 9 SCC 1

### **Obiter Dictum**

The court hold that in accordance with the section 6 of the Act that if any female relative, mentioned in Class 1<sup>11</sup> of Scheduled Act or a male relative left behind when coparcener dies claiming the undivided share in Mitakshara coparcenary property would not delegate upon the surviving coparcener by the survivorship act but can be devolved upon heirs by intestate succession. In accordance when section 6 states the interest of the departed in Mitakshara coparcenary property and assimilate into the sub. The abstraction of a partition. And the purpose behind the explanation 1 of the section 6<sup>12</sup> is to enable succession to and reckoning of an interest, which was else ways prone to devolve by survivorship and for the relatives mentioned in Class 1 of the Scheduled Act. In accordance to sect.6 explanation 1 of the act state an apparatus under which undivided interest of a deceased coparcener can be determined and i.e., that the interest of a person belongs to Hindu Mitakshara coparcenary shall be considered to have a share or status in the property that would have been administered to him if a partition of the property had contracted immediately prior to his death, regardless even if he was authorized to claim partition or not. It signifies for the cause of finding out undivided interest of a deceased coparcener.<sup>13</sup>

### **Ratio Decendi**

An order can be passed under or special status can be supplanted or augment with context to another statute only and only if a law subsists in special statute regarding the same.<sup>14</sup>

### **In accordance with the section 6 of HSA 1956 and amendment act 2005**

The Hindu Succession Act 1956,<sup>15</sup> is an act associate to the Succession and inheritance of property. This act put down a compendious and unvarying method which subsume both succession and inheritance. This act also called with undevise or reluctant succession. Therefore, this act amalgamates all the aspects of Hindu Succession and escort them into its extent. And testamentary succession is the succession of the property preside over by the attestation or a will then it is alluded

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<sup>11</sup> Civil appeal no. 188-189 Of 2018

<sup>12</sup>[https://www.indiacode.nic.in/handle/123456789/1713?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1713?sam_handle=123456789/1362)

<sup>13</sup>[https://main.sci.gov.in/supremecourt/2013/3186/3186\\_2013\\_Judgement\\_01-Feb-2018.pdf](https://main.sci.gov.in/supremecourt/2013/3186/3186_2013_Judgement_01-Feb-2018.pdf)

<sup>14</sup><https://blog.ipleaders.in/concept-notional-partition/>

<sup>15</sup>[https://www.indiacode.nic.in/handle/123456789/1713?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1713?sam_handle=123456789/1362)

to as testamentary succession. Under Hindu law a will for a property can be made by a male or a female in assistance of anybody. This ought to be cogent and lawfully enforceable. The dispensation will be under the provisions of the will and not along the law of inheritance. And if the will is not lawfully enforceable or not valid then the property can depute through the law of inheritance. Under Hindu Succession Act heirs are classified into 4 categories<sup>16</sup>.

. Class I

. Class II

. Class III (agnates)

. Class IV (cognate)

Class I heirs are described as:

. Sons

. Daughters

. Widows

. Mother's

. Son of a predeceased son

. Widow of a predeceased son

. Daughter of a predeceased son

. Daughter of a predeceased daughter

. Son of a predeceased daughter

. Daughter of a predeceased daughter of a predeceased daughter

. Son of a predeceased daughter

. Son of a predeceased daughter of a predeceased daughter

. Daughter of a predeceased daughter of a predeceased son

. Daughter of a predeceased son of a predeceased daughter

All of them will derive synchronously and despite being any of them is present, then the property would not go to the Class II<sup>17</sup> heirs 'posses' complete rights in the property and the division of a class I heir is disparate and no person can profess a right in the inherited property by birth. Up to the Hindu Succession (Amendment) Act 2005, the heir of Class I was twelve in number, in which eight were females and four were the males but later on the addition in heirs were done and this result in

<sup>16</sup><https://blog.ipleaders.in/concept-notional-partition/>

<sup>17</sup><https://blog.ipleaders.in/concept-notional-partition/>

the total of sixteen heirs including eleven female and five males. Acc. to section 6 of HSA 1956, there is a principle of survivorship which states that the male Hindu dies having an interest in Mitakshara coparcener property while section 6 of 2005 amendment act states devolves by testamentary or intestate succession under this act and not by survivorship.

### **Jurisprudential Value of the judgment**

The women's rights in property in joint Hindu Family is a huge issue of the Hindu Succession Act 1956. This made a dynamic change by modifying the act by amendment or giving women the rights or the status of having share as the coparceners.

The honourable Supreme Court in the case *V. Tulasamma and ors. Vs. Seesha Reddi*<sup>18</sup> set down section 14(1) and (2) by the right to the property was established via her right to be maintained.

In landmark judgement of *Commissioner of Wealth Tax vs Chander Sen*<sup>19</sup>, it was held that by thorough analysis of section 4, 6 and 8 of Hindu Succession Act 1956 that it comprised self-acquired property of the issue whether the share is comprised in coparcener or self-acquired property. The Supreme Court in *Sheela Devi vs Lal Chand*<sup>20</sup> said that the honour to have right in the property was conferred to female heirs.

High Court of Bombay by analysing Hindu Succession (Amendment) Act 2005 in case of *Vaishali Satish Ganorkar vs Satish Kesharao Ganorkar*<sup>21</sup> held that the act of 2005 shall apply only to the daughters who were born later the year of the amendment i.e. (2005). Later on, the same was overruled by stating that the Amended Act was necessary to be alive of the daughter and father on the particular date when the amendment was coming in force.

In case of *Badrinarayan Shankar Bhandari vs Om Prakash Shankar Bhandari*<sup>22</sup>:

The issue of the case belongs to the rights of daughter in property who were born before the amendment of 2005. By going through various judgements. The court held that the ones who have been born prior to June 1956 or alive on the enactment date of the 2005 amendment have the rights or status in the coparcener's property. Later on, it was upheld by Karnataka and Orissa High Court.

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<sup>18</sup> 1977 3 SCC 99: AIR 1977 SC 1944

<sup>19</sup> 1986 AIR 1753 1986 SCR (3) 254 1986 SCC (3) 567 1986 SCALE (2) 75

<sup>20</sup> 2006 8 SCC 581

<sup>21</sup> AIR 2012 Bom 101

<sup>22</sup> AIR 2014, 2014

Which was settled by the court in the Prakash and Ors. Vs Phulavati and Ors<sup>23</sup> case where the court held that all the rights mentioned the Hindu Succession (Amendment) Act 2005 was confuse by the women's on and from the commencement of the act.

### **Application of Law in contemporary times**

Some observations of courts and judgments of the courts are presented to brief the scenarios of the present time.

In Prakash and other Vs Phulavati<sup>24</sup> and others, the Supreme Court state that the ruler of amendment act 2005 was appeal upon the daughters who were alive coparcener or who are alive at the time of amendment of 2005 regardless of the fact that when daughters were born.

In Danamma Suman surpur and anothers vs amar and other <sup>25</sup>the court state that the daughters confer the rights of coparceners of the one who had died prior to 2005 amendment act.

Also state that the amendment section is applied retroactive and the suit of the section is construct on the events occur in past.

In Veeneta Sharma Vs Rakesh Sharma,<sup>26</sup> the court held that under the provisions or laws of the act daughters were given the status of being coparceners. And thus, status was not given before to the daughters.

Also held that the acc. to the sect. 6 that daughters have right to be coparcenary only after that it was not furthermore applied on daughters.

Finally, the court said that the women were given the rights to be coparceners as equal to the sons in the property by the amendment 2005.

This diluting the ambit of misreckoning of the pertinent legal provisions by the lower courts. Danamma is particularly relevant today, as 20 % of the women of the world were still own less than 20% of the world's land. By effectively addressing all the practices which are discriminatory in nature, the UN bodies and Human rights mechanism have stands firm for strengthening the rights of the women to property, land and other resources.

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<sup>23</sup> 2016 2 SCC 36

<sup>24</sup> 2016 2 SCC 36

<sup>25</sup> Civil Appeal nos. 188-189 of 2018

<sup>26</sup> 2020 9 SCC 1

In recent years there have been notable development seen in various countries like Nigeria, Tanzania, and South Africa and specifically in Africa with sub. To gender equality and customary laws relating to succession.

### **LIST OF CASES**

*V Tulasamma and Ors v. Seesha Reddy*

*Commissioner of Wealth Tax v. Chander Sen*

*Sheela Devi v. Lal Chand*

*Badrinarayan Shankar Bhandari v. Om Prakash Shankar Bhandari*

*Prakash and Ors. v. Phulavati and Ors*

*Veeneta Sharma v. Rakesh Sharma*