

## DEVOLUTION OF MITAKSHARA COPARCENARY PROPERTY UNDER HINDU SUCCESSION ACT

This monograph deals with the law relating to devolution of Mitakshara coparcenary property under Hindu law, pins out its lacunas and submits certain suggestions to remove its existing anomalies.

The law dealing with this subject is embodied under section 6 of the Hindu Succession Act 1956, which reads as:

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.

The incidents of this section are:

- (i) a male Hindu;
- (ii) dying after the commencement of this Act;
- (iii) leaving an interest in a Mitakshara coparcenary property; and
- (iv) application of the law of survivorship.

This section comes to operate if a male Hindu dies after the commencement of this Act, i.e., after 17th June, 1956 and leaves behind his interest in the Mitakshara coparcenary property. If he leaves behind his self-acquired property or property governed by Dayabhaga school of law then this provision will not apply. If a female dies leaving behind some property that will be dealt under the provisions of sections 14, 15 and 16 of the Act.

## MITAKSHARA COPARCENARY PROPERTY

So far as Hindu males are concerned, Hindu law describes property either as 'joint family' or 'coparcenary property' or 'separate property.' A joint and undivided Hindu family is a body consisting of persons, male or female, who are the *sapindas* of each other by birth, marriage or adoption. A coparcenary is a narrower body or an inner circle within the joint family circle consisting of the male members who are related to the head of the family within four degrees. Coparcenary property means and includes:

- (i) Property which is acquired with the aid or assistance of joint family property or is acquired jointly by two or more coparceners as joint family property;
- (ii) Property which is regarded as 'ancestral' in Hindu law;
- (iii) Property of the separate ownerships of a coparcener but thrown by the owner into the common stock of the family voluntarily;
- (iv) joint family property lost to the family when recovered with the aid or assistance of family property;
- (v) in ancestral property a male issue acquires an interest by birth.

Separate property, on the other hand, means all property other than joint family property, that is, all property belonging to a Hindu which he does not have to share with the joint family of which he may be a member.<sup>1</sup>

The separate property of a male Hindu is the principle subject matter of this Act (particularly sections 8 to 13); coparcenary property of a joint family governed by the Mitakshara school is the subject matter of section 6.

## DEVOLUTION OF MITAKSHARA COPARCENARY PROPERTY BY SURVIVORSHIP

The Mitakshara recognizes two modes of devolution of property, namely, survivorship and succession. The rule of survivor-

1. S. V. Gupta, *Hindu Law of Succession*, (1972), 468.

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.

This proviso creates an exception to the general rule of devolution by survivorship in regard to coparcenary property in the Mitakshara school. Its main ingredients are that if a male governed by Mitakshara law dies:

- (i) leaving coparcenary or joint family property, and
- (ii) leaving
  - a) any of the female heirs mentioned in class I of the schedule to the Act, or
  - b) a male relative specified in that class who claims through such female (such as a son of the predeceased daughter)

his interest in the coparcenary property would devolve under the provisions of this Act and not by survivorship.

The heirs specified in class I of the Schedule are classed as:

- (i) Primary heirs: primary heirs are son, daughter, widow and mother.
- (ii) Secondary heirs: It is further classified as:
  - a) predeceased son's family, i.e., his son, daughter and widow;
  - b) predeceased daughter's family, i.e., her son and daughter;
  - c) predeceased grandson's family, i.e. his son, daughter and widow.

These are twelve in number. Out of these twelve eight are women, i.e., mother, widow, daughter, daughter and widow of a predeceased son, daughter of a predeceased daughter, daughter and widow of a predeceased grandson. Law further includes son of a predeceased daughter and numbers nine in total. If the deceased is survived, *inter alia*, by any of these nine female heirs the rules of succession will operate. It means the presence of

be confined within the framework of that purpose. It neither effects a severance of status nor does it demarcate the interest of the other coparceners or of those who are entitled to a share on partition. It has to be used to demarcate the interest of the deceased coparcener, once that is done, rest should be forgotten. Allotment of shares to the coparceners in a notional partition is a fiction, though a necessary fiction, without the aid of which it would be impossible to demarcate the interest of the deceased coparcener. The quantum of the share of the deceased coparcener will be on the footing of the coparcenary property existing at the date of his death and not as it may exist when properties are actually allotted to his heirs.<sup>3</sup>

Now the question is, how notional partition is to be made? The formula is, had there been an actual partition immediately before the coparcener died what he would have got. In other words, shares are to be allotted (though nominally) to all persons who would have been entitled to a share on a real partition. On the basis of this allotment, we get the share of the deceased coparcener. It is this share which will go by inheritance. For example, X and his two sons Y and Z are members of a Mitakshara coparcenary. X dies leaving him surviving Y, Z and his daughter S. To determine X's share — notional partition takes place and on partition he gets 1/3rd share. For partition old law continues to apply which excludes daughter. But X's 1/3rd share will be inherited equally by his two sons Y and Z and daughter S.

### SEPARATED MEMBER

When partition takes place between members of a joint family every coparcener is entitled to a share. But a partition between coparceners may be partial as, for instance, when one coparcener separates himself from others. This rule is embodied in explanation II as:

Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself

3. Paras Diwan, *Modern Hindu Law*, (1974), 368.

that of the son, that is one-half, was available for partition between the next heirs. So widow was given only 1/10.

In *Ranubai v. Laxman Lalji Patil*,<sup>5</sup> the facts are Lalji Patil dies leaving behind his wife and adopted son. The widow filed the present suit claiming 1/2 share in the property and so was granted. J. Patil, who was the member in deciding both the cases, dissented from *Shirambai's* decision and held in the present case that widow is entitled to get a share at the partition and further more to succession of her husband's share..

*Sindrappa v Laxmi Bai*,<sup>6</sup> case are: a joint Hindu family consisted of B and his two sons J and S. B died in 1923 leaving his widow. J died in 1961 leaving behind him his two widows. J's widows sued for partition and possession of a 1/3 share. They contended explanation II to Section 6 provides that a person to whom a share is allotted at a partition could not again become entitled to a share by inheritance. J's mother has got her share on partition so is separated and is no more heirs to J's share. The court held that 1/3 share of J which he got on partition of the suit property belongs to his widows only.

In *Sushilabai v. Narayanrao*,<sup>7</sup> a son died in December 1956 leaving behind his mother, father and widow. In 1957, mother also died. Her daughter Narayanrao brought a suit for partition and separate possession of her share in moveable and immoveable property. Father too died during the pendency of the suit making a will whereby he disposed of his interest in the family property in favour of a society. Under these circumstances Court granted her 1/4 share. As on notional partition mother gets 1/3 and 1/6 as an heir of her son. Out of this 1/2 share, 1/4 goes to the daughter Narayanrao.

*Gurupad Khandappa v. Hirabai Khandappa*,<sup>8</sup> the facts of this case are that Khandappa died in 1960 leaving his interest

5. A.I.R. 1966 Bom. 169.

6. Mysore Law Journal 1965, (1) p. 625.

7. A.I.R. 1975 Bom. 251.

8. A.I.R. 1978 S.C. 1239.

or husband, as the case may be, while the son would have to hold it 'quo' his male issue as ancestral property.<sup>9</sup>

By retaining the Mitakshara principle of survivorship in the Hindu Succession Act, the Parliament has left a grave lacuna which is not suited to the present day social needs of the Hindu society.

The Act has tried to introduce some other heirs and has further tried to simplify the rule of succession, but despite all that it is not enough. It provides that in case of a coparcener dies leaving a daughter, a widow, mother or daughter's son or daughter, the rule of survivorship will not apply but provisions of succession embodied in this Act would come to operate. One wonders what was the necessity of making exception in this manner, when it could have been said that Mitakshara system was hereby replaced by the Dayabhaga system, and that there was neither any right by birth nor any rule of survivorship. True it is that the hard effect of that system has been considerably mitigated by certain provisions, yet the fact remains that the Mitakshara coparcenary continues to be part and parcel of the Hindu law.<sup>10</sup> It would have been in accordance with the social needs, had the Parliament abolished the Mitakshara system in one sweep. It would have avoided the confusion, complications and the spate of litigation within joint families.

In the original Bill (No. XIII of 1954) all joint family property or any interest therein, which devolved by survivorship on the surviving members of a coparcenary in accordance with the old law, was excluded from the operation of this Act by Clause 5 of the Bill and no exception to such exclusion or of the nature provided in the present proviso to section 6 was made in the Bill. The present section is clearly a half-hearted attempt to preserve the old rule of survivorship.

## CONCLUSION

In view of the above study on the subject, the following suggestions are submitted.

9. *Supra*, n. 1 p. 472.

10. Parcs Diwan, "The Hindu Succession Act, 1956" S.C.J. 1956, p. 282