

Hindu Succession Act, 1956

Dear Students,

First part of e-content, I have given some information regarding characteristics feature of Hindu Succession Act, 1956. I have also supplied some matter regarding List I and List II heirs.

Now we move further,

As I told you that if a male Hindu dies intestate, his property will be devolved according to the Section 6 and Section 8 of Hindu Succession Act, 1956. On this juncture I want to clear you that we are discussing Hindu Succession Act, 1956 and so you that there has been drastic amendment in this Act after the passing of Hindu Succession Amendment Act, 2005. So right now we are focusing 1956 Act. Because it is necessary for all of us to know first what was the provisions and thereafter what has been amended in it.

When a male Hindu dies intestate first we will see whether has possessed coparcenary property or not? if he has, then Section 6 will be applicable. If he has no coparcenary property, he has separate property then section 8 will be apply.

Section 6 of the Hindu Succession Act, 1956 talk about devolution of interest in coparcenary property or joint family property.

The Supreme Court in a case of State Bank of India v. Ghamandi Ram (AIR 1969 SC 1330) elaborated system of Mitakshara law. The Court stated that the textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living thereafter, to be born. The incidents of coparcenership under the Mitakshara law are :

First, the lineal male descendants of a person up to the third generation acquired on birth ownership in ancestral properties of such person

Secondly, that such descendants cannot any time work out their rights by asking partition.

Thirdly, that till partition each members has got ownership extending over the entire property, conjointly with rest,

Fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common

Fifthly, that no alienation of the property is possible unless it to be for necessity without the concurrence of the coparceners and

Sixthly, that the interest of a deceased member lapses on his death to be survivors.

Now come to the Section 6 of the Act, although it does not interfere with the special rights of those who are members of a Mitakshara coparcenary, recognizes, without abolishing joint family property, the right upon death of a coparcener, of certain members of his preferential heirs to claim an interest in the property that would have been allotted to such coparcener if a partition of the joint family property had in fact taken place immediately before his death.

Thus, the Section 6 of the Act, while recognizing the rule of devolution by survivorship among the members of the coparcenary, makes an exception to the rule in the proviso. According to the proviso, **if the deceased has left a surviving female relative specified in Class I of the Schedule I** or a male relative specified in that Class who claims through such female relation, the interest of a deceased in Mitakshara coparcenary property shall devolve by testamentary of intestate succession under the Act and not as survivorship.

It is important to note here that Proviso is become more important than main provision of this Act.

Notional Partition :¹

A notional partition is not similar to an actual partition. It is a partition in imagination, i.e., a supposed partition, which takes place (in mind) in law and not in fact, with a view to determine and fix the share of a deceased coparcener. It is done with a view, only to demarcate the share of a female, if there is any and entitled to a share, but once the demarcation is done, she like other co-sharers does not actually take the share.

It envisages a legal fiction of the partition of the coparcenary immediately before his death. The share which would have been allotted to him as a result of partition would be taken as his interest in the coparcenary property. It is made clear that even if a coparcener had no right to

¹ Recommended book, R.C.Nagpal, Modern Hindu Law or Kusum, Family law etc

ask for partition under the Hindu law, he would be deemed to have been separated immediately before his death.

Now, the problem arises whether these females are entitled to their respective shares on the notional partition of the coparcenary property. This problem was faced by the Supreme Court in *Gurupad v. Hirabai*.² The facts of the case were that one Khandappa died survived by his widow, two sons and three daughter. Khandappa and his sons constituted a coparcenary. As he died survived by some female relatives specified in Class I of the schedule, his interest was to descend by intestate succession and not to go to the surviving coparceners by the rule of survivorship. The question arose as to how much property his widow was entitled. If she were given her share as per the rules of partition, she would be at the first instance entitled to get $\frac{1}{4}$ share of the whole coparcenary property as the property has to be equally distributed among her husband, two sons and herself. After that she would get along with the two sons and three daughters, $\frac{1}{6}$ of the $\frac{1}{4}$ share of her husband, i.e., $\frac{1}{24}$ of the whole coparcenary property. Thus she would get $\frac{1}{4}$ share as her own share plus $\frac{1}{24}$ as inheritance from her husband, i.e., $\frac{7}{24}$ of the coparcenary property. If on the contrary she were not entitled to $\frac{1}{4}$ share, she would get only $\frac{1}{24}$ of the coparcenary property. In this case Supreme Court held :

The fiction created by Explanation I has to be given its due and full effect. Once the assumption is made that there was partition immediately before the death of the deceased, it must permeate the entire process of ascertainment of the ultimate share of the heirs through all its stages. All the consequences which flow from a real partition have to be logically worked out ... it has to be treated and accepted as concrete reality.... the inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death in addition to the share which he or she received or must be deemed to have received in the notional partition.³

After the whole discussion now we can realised that if a male Hindu died intestate having possessed of coparcenary property, then Section 6 will be applied. We have already discussed in detail of Section along with its all proviso.

² AIR 1978 SC 1239

³ *Neelawwa v. Basappa*, AIR 1982 Kant 126

And the last if a male Hindu died intestate leaving behind his separate property then Section 8 will be applied. Under Section 8, it is very simple, first property will go to Class I, then Class II of the Schedule, then Agnates and last cognates.

Now next e-contents we will discuss if a female Hindu died intestate, who will be her heirs.

And the last but not least, pl. stay yourself at the home and prohibits other family members not to go outside at any circumstances as per the appeal of our Hon'ble PM at 8 pm O'clock message today. Have a nice day.