

Quadrant II - Notes

Paper Code: FML0510

Module Name: Succession to property of a Hindu male dying intestate under the provisions of the Hindu Succession Act 1956.

Module No: 11

Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

General rules of succession in the case of males. —The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

S. 9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

S. 10. Distribution of property among heirs in class I of the Schedule.—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—

Rule 1.— The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.— The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.— The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.— The distribution of the share referred to in Rule 3—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

S. 11. Distribution of property among heirs in class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

S. 12. Order of succession among agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1.— Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.— Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.— Where neither heirs is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

S. 13. Computation of degrees.—

(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

THE SCHEDULE (See section 8)

HEIRS IN CLASS I AND CLASS II

CLASS I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; 1[son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].

CLASS II

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughters' son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.