

Hello friends, I'm Sonali Naik.. I'm an Assistant

Professor at G.R. Kare College of Law, Margao, Goa. The name of my

module for today's videorecording is, 'Devolution of

Interest in the Mitakshara Coparcenary with reference to the

provisions of the Hindu Succession Act of 1956'.

The outline of this topic, Succession to the Mitakshara Coparcenar's interest under the

Hindu Succession Act of 1956 (Section 6)

The learning outcomes

of this topic. This topic will familiarize students with

Section 6 of the Hindu Succession Act of 1956. It will

provide an insight into the mode of devolution of interest of a

coparcener in the Mitakshara Coparcenary after the commencement

of the Hindu Succession Act of 1956, it will also give the

students an idea of the Hindu

Succession. Amendment Act of 2005, which has brought about

significant changes.

Introduction:

Section 6 of the Hindu Succession Act of 1956 introduced significant

modifications to the law of succession. It gave a death

blow to the doctrine of survivorship, which happened to

be the bedrock of the Hindu Law of Joint Family property and

succession. The section recognizes without abolishing the joint family property, the right upon the death of a coparcener, of some of his preferential heirs, to claim an interest from the joint family property of what would have been allotted to such a coparcener had a partition taken place just before his death.

What does Section 6 provide? Section 6 provides when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in the Mitakshara coparcenary, his interest in the property shall devolve by survivorship upon his surviving coparcener and not in accordance with this Act. However, there is a Proviso to this section. The proviso lays down that if a Mitakshara coparcener dies, leaving behind at the time of his death a female relative specified in Class I of the schedule or a male relative claiming through a female in Class I of the schedule, his undivided interest shall devolve by testamentary or intestate succession, as the case may be, but not in accordance with the doctrine of survivorship.

Therefore, when does the section operate? the section would operate when a Mitakshara coparcener dies without leaving behind a testamentary disposition of his property, and when he dies, leaving behind a

female relative specified in Class I of the schedule or a

male relative claiming through a female and specified in Class

I of the schedule. The crucial question is, what is the

Mitakshara coparcenar interest in the Mitakshara coparcenary property at the time of his death?

The explanation I to Section 6 provides us the

answer. It provides that the interest of the coparcener in

the Mitakshara coparcenary property at the

time of his death would be the same as would have been allotted

to him had a partition of the joint family property taken

place before his death. The second question which comes to

our mind is, how do we ascertain the share of the deceased

coparcener? For this the Legislature was left with no

other option but to import a fiction of law. That is notional

Partition. Notional partition is not a real partition, it's an imaginary partition,

a deemed partition which is effected for the purpose of ascertaining the

share of the deceased. Once a notional partition is done, we

assume that the purpose is served and we forget about it.

Now let me go to some examples for the purpose of demarcating

the shares of the coparcener. If A', a Mitakshara coparcener' dies, leaving behind two sons, 'B' and 'C'

and a daughter, 'D', How would we effect a notional partition?

Now for this we first have to assume that 'A' is living. If a partition had to take place during the lifetime of 'A', the shares that would have been allotted to the members of this coparcenary would be as such: 'A' would be entitled to $\frac{1}{3}$. 'B' would be entitled to $\frac{1}{3}$ and 'C' would also be entitled to $\frac{1}{3}$. 'D' not being a member of the coparcenary would not be entitled to any share. Therefore each of these coparceners that is, the male members in the family would be entitled to $\frac{1}{3}$ each. Now this $\frac{1}{3}$ is the share of the deceased coparcener in the joint family property at the time of his death, and this is the share which will devolve by way of succession and not by way of survivorship upon either female heirs specified in Class I of the Schedule or male heirs claiming through the female and specified in Class I of the schedule. Since he has left him surviving 'D', that is a daughter who is a female relative specified in Class I of the schedule. His interest will devolve by succession and not by survivorship. Therefore, this $\frac{1}{3}$ share will further be divided between his two sons, that is, 'B' and 'C' and his daughter, 'D'. That is, each heir would get $\frac{1}{3}$ of $\frac{1}{3}$, that is $\frac{1}{9}$. Thus the female heirs share in the property. That is the daughter share in the property would be $\frac{1}{9}$.

Let me give you another example. If 'A' dies leaving behind two sons, 'B' and 'C' and a son of a predeceased daughter, then in such a situation if a notional partition is effected, 'A' would get 1/3, B would get 1/3 and 'C' would also get 1/3 and the son of a predeceased daughter would not be entitled to any share here since he is not a member of this coparcenary. Now this share, which is allotted to 'A' on notional partition that is the 1/3 will go to his two sons 'B' and 'C' and the son of a predeceased daughter. This is so because the son of the predeceased daughter is a male heir specified in Class I of the schedule, but claiming through a female.

Now let us go to one unique situation where a woman inherits and benefits doubly.

'A' dies leaving behind an adopted son, 'B' and a widow. Now if we effect a notional partition, we have to assume that 'A' is living, right? And since we assume that 'A' is living his widow will not be considered as a widow. But she would be considered as a wife. Now if we effect a notional partition at this stage, it will mean that each would be entitled to 1/3, 'B' being the adopted son, and almost akin to that of a natural born son would also be entitled to 1/3 and his wife would also be entitled to 1/3 since she is a female entitled to a share on partition under

the rules of partition. Therefore in this notional

partition, all would be entitled to $\frac{1}{3}$.

But this $\frac{1}{3}$ share, which is the interest of the coparcener

at the time of his death, would be divided

between 'B', his adopted son and his widow. Therefore, in this

situation, the widow would benefit doubly, she would be entitled to

$\frac{1}{3}$, which is her share in partition and she would be also

entitled to $\frac{1}{6}$, which is half of $\frac{1}{3}$, that is the share in the coparcener's

interest in the coparcenary property at the time of his death.

Therefore, this is one

unique situation in which a woman would benefit doubly

section 6 of the Hindu Succession (Amendment) Act of 2005

brought about a significant change. It substituted the

original provision and brought about social justice for women,

giving daughters equal rights along with sons

Since under the traditional law, women were excluded from

inheritance and even after the passing of the Hindu Succession

Act of 1956, they were allowed

only limited participation in the coparcenary property.

Therefore, Section 6 of the Hindu Succession Amendment Act

of 2005 is a welcome change as this reform introduced

parity between genders. It helped in strengthening the constitutional ideals and aspirations of equality, justice and fairness.

Thank you.