

RULES OF INHERITANCE TO FEMALE'S PROPERTY- Aashi Prakash¹**ABSTRACT**

Under the Hindu Succession Act of 1956, it provided limited rights of a Hindu woman over property. So long as the woman is alive she will have an absolute right and power over the property inherited from her husband, but however, according to the rules of succession after the death or remarriage of the woman, the property would devolve upon the survivors of her husband. Whereas after the 2005 amendment act, a Hindu woman will have the power to dispose of the property by the way of will or by the way of Intestate succession, to her heirs. Therefore not only a married woman but the act also gave the unmarried daughter and a widow equal importance and succession right in her husband and father's property. But, for the purpose of intestate succession the source of the property is still having a marital obligation. This research paper aims to examine the ever-evolving concept of law of inheritance, in favour of women. The laws in India have often discouraged the passing of the property to a female in fear of its division once the woman is married, however with time the society recognized the importance of conceding the property right to a woman, and thus, this paper establishes a detailed analysis of contrasting verdicts given in cases that has evolved over time. Therefore, the present paper differentiates between the conservative approach laid down in early cases with the recent judgments regarding the evolving concept of inheritance right of women. The Hindu Succession Act in 2005 has made a revolutionary change in the law for the female Hindu dying intestate, which provided that a Hindu female will now be an absolute owner of the property, but still there are certain drawbacks faced, which has been illustrated through this paper, hence, this research paper provides some of the few important laws, judgments, and its analysis, in order to understand the rules of succession of the property in favour of a woman.

¹ Student at UPES Dehradun

Key words:

Hindu succession act , amendment 2005, landmark judgments, women inheritance, intestate succession.

INTRODUCTION

The modern Hindu law of succession it is much simpler than the Hindu law in the ancient period. In 1956 the Hindu succession act laid down a uniform law for the succession of all the Hindus. Inheritance of the property is a norm of passing the property, title right and obligation to the legal heir of an individual rather than transferring of the property. Such inheritance of the property is made by the way of will or through the rule of succession.

The Hindu succession act is the dual mode of devolution of the property under the mitakshara school of law. The coparcenary property devolves by the way of survivorship but if mitakshara coparcener dies intestate, his interest in the coparcenary property will devolve by his successors.

The Hindu succession act of 1956 states the rule of succession on the basis of the principle of propinquity, that is proximity of the relationship, referring to the legal heir under the Hindu law.

The extraordinary ancient law gives Manu and Baudhyana had described a woman as a profoundly non-self-sufficient self, cared by a father in her early life, by husband in her youth, and through her son in old age. Throughout the 19th-century, numerous debates, contradicting the norms of the ancient customs were dominating the cultural change. It was proved that a woman got here to be re-envisioned as a person with a core of inviolate autonomy, owning a cluster of entitlements and immunities, even if the relatives, the community, or the religious and cultural faith refused to accept them. The demand for the new laws stemmed across India.

However, the certain restrictions were imposed by the Hindu law on the proprietary rights of women depending upon her status, as an unmarried, married or a widowed woman. The various Hindu laws were codified on the basis of the customary practices, while in operation prior to the coming into force of the statutory Act, it was ruled that a woman's authority and ownership of property was encircled by certain drawbacks on her right of disposal of the property and also on the testamentary powers with respect of such property. A well

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established law was yet to grant a respectable status of woman in the society, where she was able to acquire, hold and dispose off the property in comparison to a Hindu male. The Hindu Succession Act, legislated in 1956, under Section 14, 15 and section 16 brought a fundamental change, upon the aspect of the right of a Hindu female over her property, and hence, this led to settled the disputed ambit in the hindu succession law.

Section 15 of the Hindu Succession Act provides a definite plan to progress to the property of a female Hindu who passes intestate. There are likewise precludes set in Section 16 of the Act which accommodates the request for progression and the way of appropriation among the successors to a female Hindu. While, section 14 of the Act was to cure the constraint of a Hindu lady who couldn't guarantee outright interest in the properties acquired by her yet just had a daily existence interest in the property so acquired

Under the Hindu succession act, 1956-The Succession of the property of a Hindu female Can be made by the way of will or through succession of the property by her legal heirs. Although the limited right of a Hindu woman over property has been abolished and so long as the woman is alive she will have an absolute right and power over all type of property. Therefore a Hindu woman will Have the power to dispose of the property by the way of will or by the way of Intestate succession. However for the purpose of intestate succession the source of the property is still having a marital obligation.

Therefore the succession of the property of a Hindu female takes place by the way of :

1. Property inherited by a female from her father or her mother
2. Property inherited by a female from her husband or father in law.
3. Property obtained by her from any other source by the way of inheritance or otherwise.

After amendment act of the 1956, in the year 2005, the daughters are also considered as coparceners and will have equal rights as the son, in the coparcenary property. Hence, if a daughter dies before the partition of her father's ancestral property, and even she is a mother, the descendants of the pre-deceased daughter will have a right in the ancestral property of their maternal grandfather and can claim over partition, of the property.

CASE ANALYSIS:**MEENAKSHI AMMAL AND ANOTHER V. MURUGAYYA MOOPANAR²1939****FACTS:**

Dharmu Ammal, who died on the 27th April 1921. Dharmu Ammal was the legitimate daughter of one Murugayi Ammal, who left stridhanam property. The appellants claim that under Hindu law they are the closest successors to Murugayi, who was likewise made due by Venkatachalam Chetti, the grandson of her sister. It isn't unexpected ground that in the event that the appellants are not successors to Murugayi the individual qualified for the property is Venkatachalam. The suit out of which this appeal arises was filed by the appellants in the Court of the District Munsif of Tiruvadi. The appellants' were the heirs of Murugayi and decreed the suit but on best his decision was reversed on appeal by the District Judge of West Tanjore. The appellants then appealed to this Court and their appeal was heard by Varadachariar J., who confirmed the decree of the District Judge. Varadachariar J.

ISSUE: The question raised in this appeal is whether the illegitimate daughters of a Hindu woman are entitled to succeed to the stridhanam of their mother's mother, the family being governed by the ordinary Hindu law and not by rules based on custom as in the case of dancing girls.

DECISION:

It was made clear, in this case that there is no authority which extends the right of an illegitimate daughter to succeed beyond the right to succeed to her mother's stridhanam. The court, upheld the decision of Varadachariar, J. and that the appellants are not entitled to have the alienation set aside. They are not heirs of Murugayi and the person who is entitled to her property is Venkatachalam, who was responsible for the alienation to the respondent's predecessors-in-title.

The appeal will be dismissed with costs.

ANALYSIS:

² (1940) 1 MLJ 288

As provided under the section 15(2) of the Hindu Succession Act states that: "any property which has been inherited by a female Hindu from her father or from her mother shall devolve, upon any son or daughter of the deceased (including the children of any pre-deceased son or daughter) such son and the daughter can be interpreted as both legitimate and illegitimate." but, in the instant case, the appellants were the illegitimate daughters of the deceased mother, and thus claiming upon the property of their mother's mother. The judgement given in this case was one of the earliest cases and hence, it gave a much **conservative approach** upon whether the illegitimate daughters of a Hindu woman are entitled to succeed to the stridhanam of their mother's mother. The court recognized the ordinary Hindu law while analyzing the case. Even though an illegitimate daughter was entitled to inherit her mother's property according to customary rules, but not recognized under any act or law. Under the Hindu Succession Act 1956 was codified much later to this case, where it has been clearly mentioned that the illegitimate children of the predeceased daughter will be entitled to inherit her property. According to section 3(j) of the act states that illegitimate children are related to the mother that is they are the children of the mother.

GURBACHAN SINGH V/S KHICHAR SINGH AND ANOTHER³

FACTS:

Mehar Singh was a Subedar in the Indian Army for several years, later he was married to Smt. Sant Kaur and during their wedlock they had a son Jung Singh. Mr. Mehar Singh died during his service and his son Jung Singh was allotted with some land in Pakistan. But, Jung Singh also died after few years and the land was further allotted to Smt. Sant Kaur who was the widow of Mehar Singh. She later entered into a contracted Karewa marriage with Kishan Singh brother of the deceased husband and during the wedlock with Kishan Singh, plaintiff of this case was born. Jung Singh did not leave any issue behind and on partition of the countries, India and Pakistan, the land was allotted to Smt. Sant Kaur in lieu of the land left under her name in Pakistan. She therefore, continued in possession of the land until the Hindu Succession Act came into force in 1956. Smt. Sant Kaur also died in 1956, and a dispute about inheritance arose between the plaintiff and defendants who were the other sons of brother.

³ Gurbachan v. Khichar Singh-AIR-1971-Punj-240; Narayani v. Govinda-AIR-1975-Mad-275

The plaintiff claimed to succeed to the estate of Smt. Sant Kaur on the ground that he is her son and entitled to succeed under Sec15 (1)(a). Defendants resisted this suit .

ISSUE: whether Khichar Singh plaintiff-respondent is entitled to succeed to the estate of Smt. Sant Kaur.

DECISION:

It was held that, The expression "son" under Sec 15(1)(a) includes both natural and adopted sons. And hence, it can be inferred that If a female remarries after the death of her first husband or after her divorce, her son born from the second husband would be her natural son as the child in born biologically, during the wedlock. It can be implied that the son may even be illegitimate, when the mother is not the lawfully wedded wife of the person during whose life such son is born but still he will be considered as a natural son of his mother when the question of succession on her dying intestate arises.

ANALYSIS:

In this case a wider interpretation of the word "son" and "daughter" are used. Unlike the case of MEENAKSHI AMMAL AND ANOTHER V. MURUGAYYA MOOPANAR, where it was stated that an illegitimate daughters of a Hindu woman are not entitled to succeed to the stridhanam of their mother's mother, it failed to recognize the rights of an illegitimate child, but a contrary judgement was given in the instant case where, the court held that the son and daughter provided under sec 15(1)(a) also include son and daughter born naturally - legitimate or illegitimate, or adoptive, legitimate or illegitimate. Thus, even children born out of void or voidable marriage is also inclusive expression of son and daughter. This case was decided after the commencement of the Hindu Succession act 1956, and thus, the decision had a modern ideology, the rights of an illegitimate child was upheld and the judgement was in consonance, to provisions of hindu succession act. Thus, the interpretation given in the instant case was wider as well as had liberal approach.

AMAR KAUR VS RAMAN KUMARI AND ORS. ON 17 JANUARY, 1984⁴

FACTS:In this case, Ram Chand was the actual holder of a property, which was later transferred to his wife. he died on 6th December. 1946 leaving his property to his widow

⁴ AIR 1985 P&H 86

Smt. Dhanti and his two daughters Shankari and Amar Kaur. upon his death the agricultural property owned by him was passed in favour of his wife Smt. Dhanti. In 1948 Smt. Dhanti gifted the whole property in favour her two daughter and the transfer of the gift was successfully made. Both the daughters had survived during the commencement of Hindu Succession Act, 1956. In 1972, Smt. Shankari one of the two daughters deceased without a descendant. Her portion of the property was henceforth, transferred in favour of her sister Amar Kaur, who was left with the other portion of the property. But, At the time of death of Shankari her husband had another son, from another wife who was alive at the time of the transfer, but later in 1972 died, leaving his widow and his children. Later, His widow and the children filed the present petition before the court claiming the succession of the property of Smt. Shankari on the basis that the property is a gift from her mother and claimed that the inheritance to her was to be governed by S. 15(1) of the Act.

ISSUE: whether, Smt. Amar Kaur's pleading that Shankari has succeeded to the property of her mother/father and, therefore S. 15(2) of the Act will be applicable and not S. 15(1) of the Act, inasmuch as the gift has to be considered as acceleration of succession, is correct?

DECISION:

In the appeal filed by Smt. Amar Kaur It was chosen by the court underneath was-in the wake of recording the discoveries of the suit, based on endowment of the property from her mother and father, shankari turned into the proprietor of the property and consequently, it was expressed that the gift didn't add up to speed increase of progression, and it couldn't be held that the property was acquired by her from her mother or father, and, in this way S. 15(2) of the Act was not applicable, in the instant case. And the appeal was dismissed.

Therefore, according to sec.15(1) on failure of the heirs in rule 1, the property will devolve on the heirs as provided under the rule 2: that is upon the heirs of the husband - this refers that the property will devolve as if the it is the property of the husband. The word husband here refers to the last husband with whom the deceased lawfully married. Since the property is deemed to be that of her husband, the inheritance will be determined by the scheme laid down in the act relating to the succession to the property of Hindu male.

ANALYSIS:

From Sec.15(1)(b) of the hindu succession act 1956, it can be analysed that, a Hindu woman dying intestate, her peroperty will Devolved on basis of the source from which property was inherited by such woman - thus, if Property inherited by her from her mother the, it will Devolves upon to sister i.e. upon the legal heirs of her father but, not upon the brother of the pre-deceased husband. Even under sec. 15(2) when the property is inherited from father or mother, In this category, it may be noted, husband is not an heir. Stepson would also be not heir if the property was inherited by woman from her father. Hence, the property devolves upon the heirs of father, i.e., as if it was property of the father. Where, in this case the court failed to recognize that the property was inherited by the woman from her father/mother and hence the property cannot devolve upon the heirs of the husband but, upon the heirs of the father. Thus, the interpretation in this case should have been made from the perspective of section 15(2) of the hindu succession act.

In this case the apeal was dissmised, stating that the apeal was devoid of merit and therefore, it was dismissed with no order passed in relation to the cost.

Smt. Amar Kaur v. Smt. Raman Kumari, AIR 1985 Punj and Har 86, was later Overruled, and it was held that, If the property held by a woman has been inherited from her father or her mother, therefore, in the absence of her any son or daughter of the deceased female will include the children of any pre-deceased son and daughter, it would only devolve upon the heirs of the father hence, her sister who was the only legal heir of her father will get the property.

Thus, it can be said that a much narrow interpretation was given in this case, in comparison to the GURBACHAN SINGH V/S KHICHAR SINGH case where a much wider scope of the provision was put forward. In this instant case the court failed to derive consonance with the the rules provided under the hindu succession act.

BHAGAT RAM (DEAD) BY LRS VS TEJA SINGH (DEAD) BY LRS ON 6 NOVEMBER, 2001⁵

FACTS:

⁵ 2002 (1) UC 203

The learned counsel for the respondent, in this case, Mr. Jaspal Singh, contested that Smt. Santi held property, transferred from her mother, Smt. Kirpo, died in the year 1951, and at that instance, Smt. Santi only had a limited right over the property transferred, but, in accordance of section 14(1) of the Hindu Succession Act, 1956, she became the absolute owner of the property and upon her death, the property would be legally inherited by her lawful heirs as per the provision set out in section 15(1) of the HSA. The learned counsel, hence further contested that earlier to the commencement of the Hindu Succession Act, Smt. Santi had only a limited right over the property, but in accordance to the section 14(1), inserted within the Act, it would have reverted to the reversion and such limited right was converted to a full right and the property is therefore treated as her own property, having an absolute ownership over it. Any property acquired by a female Hindu, are to be understood as property acquired by a female Hindu after the initiation of the Act.

DECISION:

Justice R.S. Sarkaria, held that the present case would fall under the ambit of section 15 this is because S died without any issue and descendants. Thus, the interest in the property was inherited by her husband and the property would be transferred to the heirs of her husband, as if the property was of her husband. The High Court, however held that the property which has been inherited by a Hindu female from her husband will become an absolute property for her, acc. to section 14 and the property would be therefore devolve upon, as provided under section 15(1). The reasoning can be found in clause 17, which reads as follows: provided that, "properties inherited by the woman from her father will revert back to her father's family in case of absence of any issue and hence, on the other hand property inherited by the woman from her husband or father-in-law will revert back to the heirs of the husband."

ANALYSIS:

In this case, the court carefully analysed the suit in hand and thus, provided that any property which has been inherited by a female from her father/mother shall devolve upon, in the absence of any son or daughter of the deceased, upon the heirs of the father and hence, any property inherited by a Hindu female from her husband or from her father-in-law shall devolve upon, in the absence of any inherent of the deceased upon the heirs of the husband. Thus, a clarification was drawn out through the decision given in the instant case, the court interpreted the provisions of Hindu Succession Act in a much harmonious construction. Unlike

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the decree given in the case of AMAR KAUR VS RAMAN KUMARI AND ORS. Where, in this case the court failed to recognize that the property was inherited by the woman from her father/mother, and therefore dismissed the appeal.

The interpretation carried in the instant case did not only relied upon the literal meaning of the provisions but, analysed the objective behind the provision. Hence, the court presented a much liberal approach while giving the decision as it was able to inspect the legislative intent.

SHRI. SHAHAJI KISAN ASME & ORS. V. SHRI. SITARAM KONDI ASME & ORS.⁶

FACTS:

In Shahaji Kisan Asme v. Sitaram Kondi Asme, four children were born of the marriage of a Hindu man S, with a second woman W, while the first marriage was subsisting, He later died and was survived by his parents, F and M, a brother S,, both of his wives and these four children, SS,,SS, SS, and D. The children, mother, M and the first wife W inherited his property. The children could do so in light of Sec. 16 of the Hindu Marriage Act, 1955. but, it was contested that :However when the grandmother of these children that is M died, it was held that S and F, only would get the property and the children of her predeceased son would not inherit as they were illegitimate . Even Sec. 16 could not protect their inheritance rights as they are deemed to be related only to their parents and not to any of the relations of the parents.

ISSUE: whether the illegitimate children will get the entitlement of the property?

DECISION: On account of Shri. Shahaji Kisan Asme and Ors. v. Shri. Sitaram Kondi Asme and Ors. it was held that Taking into account the arrangements of Section 3(1)(j) read with Section 15(1)(a) illegitimate children might acquire the property of their mother and father on the grounds that they are considered to be connected with one another they might prevail to one another too. Notwithstanding, there could be no other arrangement in the Hindu Succession Act under which illegitimate children can prevail to the property of some other individual with the exception of their mother or themselves.

ANALYSIS: Where a son or a daughter dies during the lifetime of their mother leaving behind a child, such child will be the primary heir and would inherit along with the living son

⁶ 2011(1) ALL MR 339

and daughter of the intestate, if any. However, in order to be eligible for inheritance, such grandchildren must be legitimate offsprings of their parents, and born out of a valid marriage. Thus, the relationship in case of children born of a void or voidable marriage, as in the present case where the son had children from second woman, while his first marriage was persisting, such child born out of the relationship will be illegitimate, according to the HAMA and Hindu marriage act. Hence, such child will be purely personal between the parents and the children and they are not deemed to be related to any other relative of either. Therefore, in the above situation the decision given was completely valid, and in consonance to the Hindu succession act 1956, it was duly established by the court that, when the grandchildren are born of a void or voidable marriage, will not be eligible to inherit the property of the intestate.

VINEETA SHARMA V. RAKESH SHARMA 2020⁷

ISSUES BEFORE THE SUPREME COURT: Whether the amended act of Section 6 under the Act of 2005 requires the coparcener to be alive for the daughters of the coparcener to claim rights in the property?

HELD : In this case the Supreme Court gave a landmark judgement stating that the daughters will have an equal right in the coparcenary property of the Hindu joint family. After the Hindu succession act 1956 has been amended in 2005 it has provided that apart from the male coparceners of the Hindu coparcenary to inherit the property by birth, the daughter of the coparcener will also have the similar right conferred on her by birth on the coparcenary property. This right of the woman has been recognised under section 6 of the Hindu succession act 1956. And therefore the daughter will have an absolute right to inherit the property of her father, As the daughter is considered to be of the class one Heir, She will have an absolute right over the property of her father, hence The decision in this case was that the daughter will inherit the father's property by birth and hence it is not necessary the father should be alive on the date the daughter inherits the property of her father. Hence when the daughter inherits the property of the father this also referred to as the daughter will get an absolute right over the property therefore if a female Hindu dies intestate without leaving any issue then the property which has been acquired by her from her father or mother would be moved to the main successors to the father

⁷ (2020) AIR 3717 (SC)

ANALYSIS:

The basic aim of the legislation after, amending the Hindu succession act in 2005, was to ensure that the inherited property should be returned back to the source from there the female Hindu has inherited it. The judgement that was given in this case was having a wider perspective in relation to the rights of the woman and upliftment of the female by providing her the shares in the family property, however there are still certain drawbacks that has been faced by the female regarding, Holding the right over a property which has been inherited buy her from her husband or as daughter from her father. Because a woman is not able to transfer the property acquired by her to her own Heir, as such property is transmitted back to the source. Although the judiciary has went a long way since, the independence of India, conferring rights to the women, but there is much more to accomplish.

CONCLUSION

The law of inheritance is a complex concept under the Hindu law, The hindlow provides a separate scheme for both male and female Interstate but also different sets of hair and rules have been specified linked with the source of accusation of the property. The entire plan of sec 15 and the Nomenclature or depiction of beneficiaries Or hairs of her significant other or of her dad or of her mother shows that the governing body doesn't regard a female as an autonomous individual and doesn't characterize her relationship with her beneficiaries as far as her own blood. The following cases that has been illustrated before in this research paper comes to the conclusion that It took years for the legislature to enact certain laws in favour of the female in cases of inheritance of the properties, after the amendment act of 2005, has widened and broadened the outlook towards the woman and has given certain preferential rights in terms of succession. However, despite this fact, The rights of the woman are still limited, Creating a lag in achieving the equality and unbias laws.

This research paper provides Some of the few important laws, judgement, and it's analysiss,in order to understand the rules of succession of the property in favour of a woman, even though the Hindu succession act governs the rules of inheritance but there are certain landmark judgments which has passed a significant decisions In relation to a females right over the property.

DRAWBACKS AND RECOMMENDATIONS

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The Hindu Succession Act in 2005 has made a revolutionary change in the law for the female Hindu dying intestate, which provided that a Hindu female will now be an absolute owner of the property inherited by her, therefore giving the unmarried daughter and a widow an equal importance and succession right in her husband's and father's property respectively.

But the drawback that has been faced even though there has been a remarkable step taken, in order to bring equality between male and female with regards to the property right:

- ❖ The law does not treat a woman as an independent individual.
- ❖ Even though an amendment has been made under section 14, 15 and sections 16 of the Hindu succession act, it has not defined her relationship with her heirs, in terms of her own blood.
- ❖ The law provides that if a woman dies intestate then the property inherited by her shall go back to the source from which it was passed. Which is the basic aim of the legislature while enacting section 15 clause 2.

Hence, the rights of the Hindu woman still remain unjustified in certain perspectives.

- ❖ A distinction like this and an attempt to conserve the property in the family from where it came, makes a woman incapable of transmitting the property to her heirs.
- ❖ Apart from that it also created confusion and frustrate the very object of making her an absolute owner of the property. Hence, there is a need to give an absolute right of the property to the women in a true sense.

These are the drawbacks in the law where as the social drawbacks are much more grave:

- ❖ The laws in India have often discouraged the passing of the property to a female in fear of its division once the woman is married.
- ❖ Secondly it has been observed that Hindu religion has a strong influence of Patriarchal tradition which have created a fear of violence and threat, by the Hindu male, which created restriction upon the woman from fighting for their rights of inheritance.
- ❖ The literacy level among the female is much low which also includes the low awareness of rights and knowledge about the protection which the law is providing in favour of the women.

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- ❖ The law of inheritance in favour of the woman has been drafted in the 21st century, even though the inheritance laws empower the woman by giving them absolute inheritance right but this Also has certain social impacts such as female foeticide because in India the women are still considered as a liability,.

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