ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 4
Issue I

August 2022

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

Volume 4, Issue I August, 2022 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

TABLE OF CONTENTS

S. No.	Title of the Paper/ Author	Page No.
1.	Negative' And 'Positive' Obligations of The State – The Journey Thus Far *J. Ravindran*	1
2.	Clinical Legal Education and The Role of Legal Aid Clinics In India *Navjeet Sidhu Kundal*	24
3.	Section 115 Of Mental Healthcare Act, 2017: A Lifeline to Suicide Attempters *Deepa Kaushik*	35
4.	Convention On the Status of Refugees 1951: More Eurocentric Than Universal *Aroup Raton Shaha*	45
5.	Principal-to-principal relationship with respect to Automobile manufacturer and dealer in consumer dispute cases *Hansie Singh Nagpal*	59
6.	Domestic Violence During Pandemic: A Socio-Legal Analysis *Nivedita Chaudhary*	70

STUDENTS SECTION

7.	From Rio to Paris: What Have Developing Countries Really Achieved? *Niranjan E.V. & R. Divya Meenakshi*	87
8.	Intellectual Property Right: The Asset of New India *Prarthna R. Markod*	100
9.	The Concept of Judicial Review as A Process – An Analytical Study *Riya Jacob*	119
10.	Third-Party Funding in International Arbitration: The Need for India to Step It Up? *Arushi Anand*	128
11.	Explication On the Concept of Crowdfunding in The Indian Legal System *Saket Agarwal and Charu Agarwal*	139

12. Need For Formalisation of Gig Workers: Towards A Paradigm Shift in Working Model
Kinjal Keya and Aditya Pratap Singh 151

13. The Competition Commission of India's Attitude Towards Cross Border Mergers
Ahan Gadkari 166

14. Rising religious majoritarianism in India - the impediment to minorities rights and representation
Divyanshu Dubey 184

15. Racial discrimination in sports activity
Yuvraj Sharma 201

16. Evolving Interpretations of Legal Provisions Of 'Intestate Succession' In Light of Judicial Precedents
Samrat Bandopadhyay 214

CASE COMMENTS

17. Married women: Less than Humans? RIT Foundation v. Union of India
Yashvi Aswani 222

Evolving Interpretations of Legal Provisions of 'Intestate Succession' In Light of Judicial Precedents

VIPS Student Law Review
August 2022, Vol. 4, Issue 1, 214-221
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
© Vivekananda Institute of Professional Studies
https://vslls.vips.edu/vslr/

Samrat Bandopadhyay*

Abstract

It is seminal to note that Section 30 talks about 'Testamentary Succession' via Indian Succession Act and once the 'Karta' dies or the person is deceased intestate (without any testamentary instrument), then devolution of interest of Coparcenary happens as per extant provisions of the enactment Hindu Succession Act, 1956 where the property is devolved by succession to next 'Legitimate Claimant'. It is vital to look at Section 6 of the original Act which talked about two modes of devolution, that is, firstly, Survivorship and secondly, by accordance of the provisions of the Act. Section 8 to 13 of the aforesaid Act specifies about succession of property Intestate of 'Male Hindu dying'. The law of succession has been subject matter which has been of utmost interest for legal scholars from ancient times. The School of Hindu Law, in the form of Dayabhaga School of Hindu Law and Mitakshara School of Hindu Law has been predominant in India. The ancient text and the scholarly debates have been the food for thought for many scholars and for legal fraternity when delving on the vital facets of succession and devolution of property. The growing acceptance of jurisprudence evolving from the commentaries of scholars Jimutavahana and Vijnaneshwara has been seminal in carrying forward the philosophy that is innate in the realm of property succession.

Keyword: *Property Succession; Dayabhaga School of Hindu Law; Mitakshara School of Hindu Law; Conversion; Escheat; Live-in*

* LLB Student, 2nd year, Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur, West Bengal, India.

Relationship; Jimutavahana; Vijnaneshwara; Remarriage of Widows; Smritikars; Animus possidendim; Agnates; Cognates; Child in womb.

I. Introduction

The devolution of the property in Succession as per the Hindu Law is the subject matter of the instant paper. Pertinently, the heirs are categorised in the Hindu Succession Act, 1956 as enunciated in Section 8 of the Act as per the statutory provisions, firstly, Class I heirs – Class I heirs are 'Preferential heirs' and inherit simultaneously and hence are also called as 'simultaneous heirs' and hence one does not exclude the other, secondly, Class II heirs, thirdly, Agnates and fourthly, Cognates. It is vital to note that Class I legitimate claimants before amendment had 8 (female) and 4 (males), in total 12 person and after amendment, has 11 (female) and 5 males, making it a total of 16 entries in Class I Schedule of Hindu Succession Act 1956. It is vital to observe that in respect to analysis of Hindu Law of Succession, the devolution of the property as per the aforesaid Act happens in a specific order (Section 8), first the Class I heirs success to the property, then if there is no Class I heir, then only Class II heirs are considered where the entries in the Class II in that order takes it all and if there are no Class I or Class II heirs then the Agnates are considered and lastly if there are no Class I or Class II or Agnates, then only the 'Cognates' are considered. It is vital to note that if there is a Hindu male who has no heirs in the aforesaid four heads, then the Government takes the property as 'Escheat' (Section 29 of Hindu Succession Act 1956).

II. Agnates and Cognates

The scenario of Agnates comes into play, when the person traces his relationship in 'ascent' or 'descent' with another wholly through males. The scenario of Cognates involves relationship of a person with another in the 'ascent' or 'descent' where a 'female' intervenes anywhere in line, then only the person is cognate to another. In this perspective, a cognate may be of various types and may acquire the form of either descendant or may be an ascendant or simply, other form of collateral. In 'Half-blood', the persons have the same male ancestor but are from different ancestress (mother), while in 'full blood' father and mother of two persons are the same. In 'Uterine blood' the persons are having the same mother (ancestress) but different fathers. Section 18 specifies that the 'full blood' is preferred over the 'half-blood'. Legitimate and Illegitimate relationships are when a person born within a lawful wedlock is considered as legitimate. However, if a person born outside the lawful wedlock, then is considered as 'illegitimate'.

III. Children in Live-in Relationship

In *D. Velusamy v D. Patchaiammal*[1], the factum of the cases involved, after the death of his wife, the husband started having a live-in relationship with another lady and they resided in the locality as husband and wife, till the husband died in the year 1979. The valid status of the Respondent was the moot issue as the case surfaced before the Hon'ble Court of law and four other daughters born out of the relationship which brought forth questions about 'legitimacy'. The Hon'ble Supreme Court of India held that, "the law presumes in favour of marriage and against concubinage…" The Hon'ble Court further observed that, "there is a presumption under Sec. 114 of Indian Evidence Act that they lived as husband and wife and any child borne out of that relationship is 'legitimate', and such presumption can be rebutted via unimpeachable evidence…"

IV. Daughter's position vis-a-vis that of Son

The position of the daughter is the same as the son which is vital to note that the distinction between married, unmarried and widowed daughter are not there and all of them inherit equally. It is pertinent to note that 'Unchastity' and 'Divorce' are no bar to inheritance.

1. Scenario with Legitimate Son

Legitimate Son brings forth the following scenarios:

a. Natural son born son out of a 'valid marriage'

b. Adopted son

c. Posthumous Son, that is the child in the 'womb of the mother' at the time of intestate or who is born alive later (**Section 20**)

d. Son born after the partition and the son who was separated inherit with other son, in the ambit and scope of the Hindu Succession Act 1956.

2. Scenarios of more than one Wife of a Hindu husband

a. In *Vidyadhari & Ors vs Sukhrana Bai & Ors*[2], the case which surfaced before the Hon'ble Supreme Court of India, had the question of deciding the rights of two wives - Sukhrana Bai and Vidhyadhari of one Sheetaldeen. Vidhyadhari, the plaintiff was the second wife of Sheetaldeen and Sukhrana

1 D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469.;

2 Vidyadhari & Ors. v. Sukhrana Bai & Ors., AIR 2008 SC 1420.

Bai as being the first wife, where the Apex Court went with the decision of the Hon'ble High Court as it held that, "Sukhrana Bai was the only legitimate wife yet, and the Court chose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children…"

V. Vital Features of the Hindu Succession (Amendment) Act, 2005

1. Abolition of Doctrine of Survivorship with retention of National Partition
2. Deletion of provisions for exempting application of the Hindu Succession Act 1956 to 'Agricultural Holdings'
3. Daughters as 'Coparceners' irrespective of the Marital Status
4. Female Coparceners could devolve property being 'absolute owner' as per Section 14 of the Act.
5. Abolition 'pious nature' of obligation for the son to pay off the debts of the father as such it is now a personal responsibility and debts which occurred prior to the enforcement of the aforesaid amendment was to dwelt into as per the classical Hindu law.
6. Partition to be registered and doing away with any form of 'Oral Partition'.
7. Introduction of four new heirs (three female and one male heirs') in Class I category mentioned in 'Schedule' of the Act.
8. Amendment with respect to 'Dwelling Houses' aspect, which is deemed to be 'Impartible property'.

Disease, Deformity and Defect are no longer a disqualification as per Section 28 under Hindu Succession Act 1956, as such mental and physical abnormality and diseases such as AIDS, TB, cancer would not have any effect on succession rights of a person. Unchastity is no longer a disqualification as well, in contrast to the old Hindu law, before 1956.

Section 20 specifies the 'Right of the child in womb' which is satisfied with two conditions, firstly, the persons who are having the interest in property are aware of the child being in womb of the mother, secondly, the child in womb is presumed to be eligible for inheritance, though the child is in womb and may have been born and see the light of the day after the death of the intestate. The complexity increases in case of 'Surrogate child in womb' as

technology makes a higher degree of certainty because of technological advancement of the birth of the child and require further explanation and proper jurisprudence evolving with the passage of time as it is also 'predetermined'.

Section 21 specifies the 'presumption in case of simultaneous death', which is based on 'Statutory presumption', where the younger is presumed to be survived the elder in case of uncertain circumstances who have died. So, here it is pertinent to note that younger means 'younger by relationship' and not by age. In sequitur, reliance can be placed on the case Madambath Rohini v Devi[3], where the Hon'ble Court delved into the aspect of Section 21 of aforesaid Act, pertaining to 'presumption in case of simultaneous death'; however, in the instant case, it was inapplicable as date of the death of one brother was unknown.

Section 22 of the Act specifies the legal facet of 'Preferential Rights', which is applicable to Class I heirs and where there is preferential right to family members and has two vital aspects associated, firstly, this Section to safeguard from the introduction of 'stranger' in the family, secondly, it safeguards from the disturbance caused to the family members by 'total stranger' in the family setup, where enjoyment of the family property by another family member is being ensured and prevent the potential cause of harm or trauma to previous 'tenants in common'. This Section can be also construed from the perspective of 'Doctrine of rights of Pre-emption' which raises clogs and fetters on full sale, which was the subject matter if the issue in the case *Bhola Nath v Santosh Prakash*[4], where the scope of applicability of the Section was restricted to cases of Inheritance only.

Section 23 which has being omitted by amendment in the Act vide Hindu Succession (Amendment) Act, 2005 pertains to 'Dwelling Houses' such as those property which has been permanent abode of the family for many years, acquire the character of 'Impartible property'. In *S. Narayanan v Meenakshi*[5], where taking into consideration in ambit and scope of interpretation of this omission of the Section has to be seen in light of 'preservation' of a dwelling house as for long period it is wholly occupied by some or all the members of the intestate's family members including male or males. Further, the Court held that the inclusion of 'stranger' in the family setup with respect to 'dwelling house' where it was understood that the male has lost his animus possidendi (that is, his right to control the object as 'intent to possess'). It is also pertinent to mention that even *'Smritikars'* also did not ordinarily entertain partition of 'dwelling house' property.

3 Madambath Rohini v. Devi, AIR 2002 Ker 192.

4 Bhola Nath v. Santosh Prakash, AIR 1975 Pat 336.

5 S. Narayanan v. Meenakshi, AIR 2006 Ker. 143.

Pertinently, it is seminal to note that another complexity which is enunciated in the Act is that of Section 24 where 'remarriage of widows' before succession opens, disentitles them from inheritance as they cease to be members of the intestate's family. Reliance can be placed on the case *Montorabai v Parentanbai*[6], where it was held that, "the mother of the intestate does not succeed as widow of the father but in her own right…"

VI. Conversion

As per Section 26 of the aforesaid Act, a Hindu converting to other religion, whereby the covert's descendants are 'disqualified' from inheriting property - Two conditions have to be satisfied for that, *firstly,* they should be born after the conversion, secondly, they should not be Hindu at the time of opening of the succession, that is at the time of death of the intestate. Two seminal cases in this context, is that of *K Sivanandam v Maragathammal*[7], a Hindu widow converting to Christianity after the death of the husband was entitled and would not create a bar against inheritance of the deceased spouse's property. In *Suresh Darwade v Arjun Pandey*[8], the Hon'ble High Court of Punjab and Haryana held that, disinheritance was a result of conversion for convert's descendants, which disqualified them from inheritance.

VII. Murderer

As per Section 25 of the Act, a 'murderer' is not entitled to succession as it is rule of public policy, which is based in equity, justice and good conscience as per the old Hindu law also. It is based on the maxim which encapsulates the guiding principle of 'Nemo ex suo delicto meliorem suam conditionem facere potest' (no one can perfect his condition by crime), pertinently the section applies where the 'murderer' is disqualified person who is treated to be 'non-existent' and with 'no title' to right to succeed. As has been well established in *Vallikannu v. R Singaperumal*[9], if the heir is entitled to succession on his own right and at the same time, does not trace his right through the murderer, then the section would have no application. A conjoint reading with Section 27, further substantiates that any person is disqualified, it shall devolve as if the person has 'non-existent' before the intestate. As could be seen, in varied catena of cases that the Hon'ble Apex Court held that as per Section 25 and Section 27 of the aforesaid Act, the person cannot inherit the property based

6 Montorabai v. Parentanbai, AIR 1972 MP 145.

7 K Sivanandam v. Maragathammal, AIR 2013 (Mad) 30.

8 Suresh Darwade v. Arjun Pandey AIR 2010 Chh 40.

9 Vallikannu v. R Singaperumal, AIR 2005 SC 2587.

on the principle of justice, equity and good conscience.

From Comparative Law perspective, *Riggs v. Palmer*[10], where a criminal law existed to punish the convicted murderer, but the person claims in the estate based on his action resulted in disqualification from inheritance of the estate.

VIII. Property devolving to Government (Escheat)

This provision is embodied in Section 29 of the aforesaid Act, if the intestate has no heirs qualified to succeed, then the Government has taken the property, which has been also substantiated and pronounced in the judgment in the case of *Kothawale v State of Maharashtra*[11].

IX. Conclusion

To conclude, a synergetic and a harmonious construction of interpretation from judicial precedents and statutory provisions tested with the touchstone of the provisions enshrined in the Constitution of India would have to be considered in entirety. The broader principles of 'equity, fairness and good conscience' would have a paramount importance in the light of cases on succession where attempts to bring finality to the judgment should be the constant endeavour of legal fraternity for meeting the ends of justice for the parties seeking delivery of justice in a timely and expeditious manner in the august portals of Hon'ble Courts. In a recent judgment in the year 2021, *R. Janakiammal and Ors. vs. S.K. Kumarasamy (Deceased) through Legal Representatives and Ors.*[12], held that in the year 1979 when residential property of Tatabad was obtained in the name of one of the defendants, all three branches were part of the joint Hindu family and the house property purchased in the name of one member of joint Hindu family was for the benefit of all and during the purchase of property amount was not paid by the defendant from his separate account or in cash. So, it becomes vital to note whether the individual coparceners have done investment from their bank account personally or via a third party which becomes essential factor to be looked into in subject matter of 'partition' in civil cases. The catena of cases surfacing before the Hon'ble Court of law with varied concepts *inter alia* of 'Live-in relationship', 'child borne out of illegitimate marriages', 'surrogate child rights' and 'daughter rights on matrimonial

10 Riggs v. Palmer, 115 N.Y. 506.

11 Kothawale v. State of Maharashtra AIR 1970 Bom.

12 R. Janakiammal and Ors. v. S.K. Kumarasamy (Deceased) through Legal Representatives and Ors., (2021) 9 SCC 114.

property acquired by her' are some of the questions which has been the moot questions where the judicial interpretation by precedents have a significant value seen in light of hitherto 'customary practices' in the context. The cross fertilisation of ideas in the stream of legal know-how with social and cultural dynamics have been the bedrock of the changes that have an anticipatory effect on the legal future and the way forward in this pertinent area of Succession in Hindu Family Law.