IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.371 OF 2013

Shri. Bhagwant Dagadu Chambhar
(Kadam)
(Since deceased through his LRs)

1a. Dr. Dilip Bhagwant Chambhar
(Kadam)
Age :45 yrs., Occ.: Doctor
R/o : Building No.235,
Room No. 61/31,
Shivdarshan Society,
Naydu Colony, Ghatkopar (East),
Mumbai – 400 075

1b) Sou. Mandakini Chandrakant Pakhare
Age: 42 years, Occ.: Household,
R/o : B-1 Building, Room No.36,
Near Film Center, 6th Floor,
Maniyar Building, Taddeo,
Mumbai – 400 034. …. **Appellants**

Versus

1) Sou. Tarabai @ Hirabai Nivrutti Sonawane,
Age : 58 Yrs. Occ.: Household & Agriculture,
R/o : Bhandup (E), Sahakar Nagar,
Sai Nagar, Room No.7, Chawl No.B.,
Mumbai.

2. Smt. Ratan Shankar Kadam,
Age : 65 yrs., Occ.: Household

3. Shri. Rajendra Shankar Kadam,
Age : 45 yrs., Occ.: Service

4. Shri. Sandeep Shankar Kadam,
Age : 42 yrs., Occ.: Service

5. Vaishali Shankar Kadam
Age : 30 yrs., Occ.: Household

6. Santosh Shankar Kadam
Age : 38 yrs., Occ.: Service

7. Sou. Manisha Bharat Agawane
Age : 37 yrs., Occ. : Household

8. Smt. Shevanta Ramchandra Vetal
Age : 65 yrs., Occ.: Household

Nos. 2 to 8 all R/o Nirmal Nagar,
In front of Police Station,
Building No.5, First Floor,
Room No. 160, Khar (East),
Mumbai.
(Since Respondent No.8
Shevanta expired, through her LRs)

8(a) Sou. Sushila Ashok Gaikwad
Age: 42 years, Occ.: Household

8b) Sou. Dagdabai Namdeo Rokade
Age : 40 yrs., Occ.: Household

8c) Sou. Asha Shivaji Gaikwad
Age : 38 yrs., Occ.: Household

8d) Sou. Jayashree Tulshiram Gaikwad
Age : 35 yrs., Occ.: Household

8e) Sou. Mangala Govind Pawar
Age : 33 yrs., Occ.: Household

8f) Sou. Rukmini Mohan Bhosale
Age : 30 yrs., Occ.: Household

8(a) to 8(f) R/o : Sawera Bhai
Desai Chawl, Room No.5, Khar (E),
Mumbai – 400 051

9) Pramila Bhagwant Kadam
Age- 61 Yrs., Occ.: Household,
Mumbai – 400 083

10) Ajit Bhagwant Kadam
Age : 37 yrs., Occ.: Service

11) Sou. Hemlata Sayaji Karande,
Age : 40 yrs., Occ.: Household

12) Sou. Snehlata Sunil Gaikwad
Age : 36 Yrs., Occ.: Household

13) Nandarani Bhagwant Kadam
Age : 32 Yrs., Occ.: Household

9 to 13 R/o : Chawl, No. 19,
Room No.1, Nav Jeevan Nagar,
Vikroli (East), Mumbai – 400 083 … **Respondents**

Mr. Girish Godbole, Senior Counsel, Amicus Curiae.

Mr. Sandesh D. Patil a/w Mr. Chintan Shah & Ms. Divya A. Pawar, for Appellants.

Mr. S. M. Seegarla, for Respondent Nos.1 and 8(a) to 8(f).

Mr. Drupad Patil, for the Appellant in Second Appeal No.225 of 2023.

Mr. Kalpesh Patil, for the Respondents in Second Appeal No.225 of 2023.

CORAM: MADHAV J. JAMDAR, J.
DATE: 29 AUGUST 2024

JUDGMENT:

1. Heard Mr. Sandesh Patil, learned Counsel appearing for the Appellants and Mr. Seegarla, learned Counsel appearing for

Respondent Nos.1, 8(a) to 8(f).

(A) IMPORTANT QUESTION OF LAW:

2. The important question of law involved in this Second Appeal is, whether the daughter, whose father had passed away before the Hindu Succession Act, 1956 (H.S.A., 1956) came into force, is entitled to claim the benefit of Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005.

3. As a very important question of law is involved in this Second Appeal, Mr. Girish Godbole, learned Senior Counsel has been appointed as the *Amicus Curiae* to assist the Court and he has pointed out various aspects of the matter and assisted the Court.

4. Mr. Sandesh Patil, learned Counsel appearing for the Appellants also extensively argued the matter and pointed out various aspects.

5. Earlier Second Appeal No. 225 of 2023 was also tagged along with this Second Appeal and therefore, Mr. Drupad Patil, learned Counsel for the Appellants and Mr. Kalpesh Patil, learned Counsel for the Respondents in the said Second Appeal have also assisted this Court.

(B) SUBSTANTIAL QUESTIONS OF LAW FRAMED IN THE SECOND APPEAL:

6. A learned Single Judge, by Order dated 6th January 2014

admitted this Second Appeal on the following substantial questions of law:

> (a) Whether, the lower Appellate Court erred in modifying the Decree of the Trial Court and granting the additional share in favour of the original Plaintiff in the absence of any Cross-Objection 'or' the substantive claim in that behalf?
>
> (b) Whether, the Courts below have erroneously applied the Hindu Succession Act, 1956 and as amended from time to time to grant the Plaintiff's share in the immovable property in the Suit for partition?
>
> (c) Whether the Courts below erred in not considering that daughters were not coparceners on the death of the father and only after the death of father, sons get right in father's property?
>
> (d) Whether, the Courts below erred in not considering that the Appellants were only male members in the family and so they are only legal heirs to the suit land as per the old Hindu Law?

7. This Court by Order dated 16th March 2023 framed the following additional substantial question of law:

> "Whether the daughter is entitled to claim benefit of amended Section 6 of the Hindu Succession Act, 1956 even if her father has died before coming into force of the Hindu Succession Act, 1956?"

(C) CHALLENGE IN THE SECOND APPEAL :

8. In the present Second Appeal, the challenge is to the legality

and validity of the Judgment and decree dated 22nd March 2007 passed by the learned Civil Judge, Junior Division, Daund in Regular Civil Suit No.100 of 2002 as well as to the legality and validity of the Judgment and decree dated 4th April 2013 passed by the learned District Judge-2, Baramati in Regular Civil Appeal No. 82 of 2007.

9. By the Judgment and decree dated 22nd March 2007 of the learned Trial Court, the Plaintiff-Tarabai has been allotted 1/12th share in the suit properties and a decree of mesne profit has also been passed in her favour.

10. The learned first Appellate Court by the Judgment and decree dated 4th April 2013 dismissed the Appeal filed by the Defendant No.1 i.e. Plaintiff's brother Bhagwant with costs. However, in view of the amended Section 6 of the Hindu Succession Act, 1956 ("**H.S.A., 1956**"), as amended by the Hindu Succession (Amendment) Act, 2005 ("**Amendment Act, 2005"** or **"2005 Amendment**"), modified the share of the original Plaintiff to the extent that the Plaintiff is entitled to 1/4th share in the suit properties.

(D) FACTUAL MATRIX:

11. Before considering the substantial questions of law framed in this Second Appeal, the factual position is required to be noted:

(a) The family tree of the Appellants and Respondent is as follows :

GENEALOGY

Dagadu Chambar (Deceased- 14.04.1943) — Laxmibai (Wife) (Deft.No.4) (Deceased) passed away on 30.04.2005

Tarabai (Plaintiff/Res.1) (Born in 1941) (Married in 1960)	Sevantabai Def.3/Resp.8 (Deceased)	Bhagawant Def.1/Appellant (Deceased)	Shankar (Def.2) (Deceased)
	Resp. Nos. 8(a) to 8(f) (Heirs of deceased Def. No.3)	Appellant Nos. 1(a), 1(b) and Res. Nos. 9 to 13 (Heirs of deceased Def. No.1)	Resp. Nos.2 to 7 (Heirs of deceased Def. No.2).

(b) Suit Property is land bearing Gat No. 460, admeasuring 1 H. 80 R and Gat No. 463, admeasuring 1 H, 62 R + 14 R of Potkharaba of Village-Pimpalgaon, Tal.-Daund, District-Pune ("**Suit Property**").

(c) The Respondent No.1- Tarabai filed a Suit i.e. Regular Civil Suit No. 100 of 2002 before the learned Civil Judge, Junior Division, Daund seeking partition, separate possession, and mesne profits in respect of the Suit Property.

(d) The learned Trial Court decreed the Suit by the Judgment and Decree dated 22nd March 2007 and granted 1/12th share to the Plaintiff.

(e) Challenging the said Decree dated 22nd March 2007, Original Defendant No.1 Bhagwant filed Regular Civil Appeal No.82 of 2007 before the learned Appellate Court and the

learned Appellate Court although having dismissed the Appeal filed by the Defendant No.1, modified the shares and granted 1/4th share to the Plaintiff in view of the 2005 Amendment to the H.S.A., 1956.

(f) In this Second Appeal, challenge is to the legality and validity of the impugned Judgment and Decrees of the learned Trial Court as well as of the learned Appellate Court.

(E) SUBMISSIONS OF MR. SANDESH PATIL, LEARNED COUNSEL FOR THE APPELLANT:

12. Mr. Sandesh Patil, learned Counsel appearing for the Appellants raised the following contentions:

(i) The Plaintiff-Tarabai and the Defendant No.3-Shevantabai are real sisters of Bhagwant (Defendant No.1) and Shankar (Defendant No.2). Their parents are deceased-Dagadu and Laxmibai (Defendant No.4).

(ii) Plaintiff's father Dagadu passed away on 14th April 1943. The Defendant No.3-Shevanta got married in the year 1952. The Plaintiff got married around the year 1960 - 1961 and a notice demanding 1/12th share was given by the Plaintiff for the first time on 8th May 2002.

(iii) Due to the death of father of the Plaintiff on 14th April 1943, the joint family continued. However, a new coparcenary

was formed namely that of the Plaintiff's brothers i.e. of Bhagwan (Defendant No.1) and Shankar (Defendant No.2) and it cannot be said that the Plaintiff who is the daughter of the deceased-Dagdu, became a coparcener in the year 1943.

(iv) By virtue of Section 6 of the H.S.A., 1956 as originally enacted, when a male Hindu having an interest in a Mitakshara coparcenary property at the time of his death dies after commencement of H.S.A, 1956, then his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary, provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. Thus, if the male Hindu dies after commencement of H.S.A. 1956, then his rights would pass on to the extent of his right to his daughters also.

(v) By virtue of the amended Section 6, on and from commencement of the Amendment Act, 2005, the daughter of a coparcener shall by birth, become a coparcener in her own right in the same manner as that of the son. Thus, by virtue of

Section 6 as amended by Amendment Act, 2005, what is provided is that a daughter becomes coparcener by birth. As the father of the Plaintiff has passed away in the year 1943, the property devolved upon the coparceners of the joint Hindu family as it stood in the year 1943. In the year 1943, the daughters could not have been said to be the coparceners.

(vi) He submitted that even in ***Vineeta Sharma Vs. Rakesh Sharma***[1], it has been held that the provisions of Section 6 of the H.S.A., 1956 as amended by Amendment Act, 2005 ("**Amended Section 6**") are not retrospective as the rights and liabilities both are from the commencement of the Amended Act, 2005. He relied on paragraph No.66 of the said decision. He submitted that it has been held by the Supreme Court in ***Vineeta Sharma*** (supra) that as the Amendment Act, 2005 is not retrospective in effect, there is no question of holding that the Plaintiff has got right in the Suit Property as a coparcener in the year 1943.

(vii) He submitted that by Section 6 as amended by Amendment Act, 2005, no title can be conferred, which was not existing prior to 1956. He relied on the judgment of ***Eramma Vs. Veerupana***[2]. On the basis of the said Judgment, he

1 (2020) 9 SCC 1
2 AIR 1966 SC 1879

submitted that although Section 14 of the Act conferred full ownership upon a woman, the object thereof was to make Hindu female, a full owner of the property which she has already acquired. He submitted that it does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title.

(viii) In the year 1943, when the father of the Plaintiff passed away, the family was governed by a different set of laws i.e. Shastric Law. Therefore, neither the Hindu Succession Act, 1956 nor the Hindu Succession (Amendment) Act, 2005, encroaches upon the law which was in existence prior to 1956. Therefore the 2005 Amendment to the effect that, the daughter of a coparcener shall by birth, become a coparcener, have to be interpreted to mean that the said interpretation can be valid only post 1956. He submitted that prior to 1956, the position of law, as stood it, could not be modified, amended, varied in any manner. He submitted that the Hindu Succession Act, 1956 itself has commenced its operation from 17th June 1956 and therefore, Amendment cannot be stretched prior to 1956 or more particularly prior to 17th June 1956. He submitted that if such interpretation of the Amendment Act, 2005 is made, then it would lead to an absurd situation where an Act would be

said to be in existence even prior to its enactment and even prior to the date of enactment of the Constitution i.e. 26th January 1950. He submitted that therefore Amendment Act, 2005 which specifies that daughter of the coparcener shall by birth become a coparcener w.e.f. 9th September 2005 will not apply to the coparcenary, existing prior to commencement of operation of H.S.A., 1956 i.e. existing prior to 17th June 1956, of which father of a daughter is not a member i.e. one of the coparcener. He submitted that therefore it could not be said that the Plaintiff would become a coparcener even prior to 1956. He submitted that the judgment of the Supreme Court in ***Vineeta Sharma*** (supra) does not consider the position prior to 1956 or a case where succession opened prior to 1956. The said issue was not considered even in the case of ***Prakash vs. Phulavati*** [3].

(ix) He submitted that as in ***Vineeta Sharma*** (supra), it has been held that the Amendment Act, 2005 is not having retrospective effect and the same is retroactive and as the father of the Plaintiff had passed away in the year 1943 and as new coparcenary has been formed in the year 1943, consisting only of the Defendant No.1 and 2 i.e. brothers, the 2005

3 (2016) 2 SCC 36,

amendment of Section 6 of the H. S. Act will not apply to the Plaintiff. He submitted that even if it would have been held that the Amendment Act, 2005 has retrospective effect then also the said amendment will apply only w.e.f. 17th June 1956, when H.S.A., 1956 came into effect. He submitted that thus the Amendment Act, 2005 will have no effect in changing the share of the Plaintiff and therefore she can not claim any share on the basis of the Amendment Act, 2005.

(x) He submitted that as per the settled law in the case of ***Uttam Vs. Saubagh Singh*** [4] and ***Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum***[5], the ancestral property ceased to be the joint family property on the death of father of the Plaintiff and succession opened in the year 1943. He submitted that the fiction that the Plaintiff become coparcener by birth cannot be stretched prior to 1956. In any case, he submitted that as the father had passed away in the year 1943 and as the effect of the same new coparcenery has formed, it cannot be said that the Plaintiff becomes part of the said coparcenery. He submitted that as the partition has opened in the year 1943, the shares have to be determined by considering the law of the year 1943.

4 (2016) 4 SCC 68
5 (1978) (3) SCC 383

(xi) Relying on the judgment of the Supreme Court in the case of ***J.S. Yadav Vs. State of Uttar Pradesh***[6], he submitted that the rights which were vested in the coparceners in the year 1943 cannot be disturbed after a period of more than 60 years.

(xii) Relying on the decision of the Supreme Court in the case of ***Zee Telefilms Ltd. Vs. Union of India***[7], he submitted that the decision in the matter of ***Vineeta Sharma*** (supra) has to be read in the context of the points raised in the decision.

(xiii) He further submitted that if literal interpretation gives rise to an anomaly or absurdity, the same should be avoided and purposive interpretation should be given effect to. He relied on the judgment of ***Deewan Singh Vs. Rajendra Pd. Ardevi*** [8].

(xiv) Mr. Patil, learned Counsel also pointed out various Articles from Mulla's Hindu Law (21st Edition) particularly Articles 64, 170, 212, 233-239 and 305 for pointing out position of right of female before the enactment of H.S.A., 1956.

(xv) Insofar as the Substantial Question No. (1) framed by the learned Single Judge by Order dated 6th January 2014, he

6 (2011) 6, SCC page 570
7 (2005) 4 SCC page 649
8 2007 10 SCC 528

submitted that in absence of cross objection by the Plaintiff in the appeal filed by the present Appellant, the first Appellate Court has no jurisdiction to modify the decree of the trial Court by granting additional share in favour of the original Plaintiff.

(xvi) He submitted that the Appellants are the only male members in the family and therefore as the father of the Plaintiff had passed away in the year 1943, the Appellants are the only legal heirs entitled to the suit land as per the old Hindu Law and therefore the Plaintiff will not get any share. Alternatively, he submitted that at the most, Plaintiff will get share in the share of her deceased father.

(xvii) In the facts and circumstances of this case, and on instructions of the Appellants he submitted that the Judgment and Decree passed by the learned Appellate Court be quashed and set aside and the Judgment and Decree passed by the learned Trial Court be restored.

(F) SUBMISSIONS OF MR. GODBOLE, LEARNED *AMICUS CURIAE* :

13. Mr. Godbole, learned Senior Counsel, who has been appointed as *Amicus Curiae*, made following submissions:-

(i) Learned *Amicus* pointed out principles of Customary Hindu Law and important articles from Chapter IV, V, XI and XII

of Mulla's Hindu Law (21st Edition). He submitted that a Joint Hindu Family is a larger body than a coparcenary. He pointed out the concept of the coparcenary and also modes of succession under Mitakshara.

(ii) Learned *Amicus* pointed out various provisions of ***Hindu Law of Inheritance (Amendment) Act, 1929*** and ***Hindu Women's Rights to Property Act, 1937***. He also pointed out Section 6 of the Hindu Succession Act, 1956 (Pre-Amended). He also pointed out Section 6 as amended w.e.f. 9th September 2005.

(iii) Learned *Amicus* also pointed out the following decisions of the Supreme Court :-

(a) ***Vineeta Sharma*** (supra)

(b) ***Prakash Vs. Phulvati*** *(supra)*

(c) ***Danamma alias Suman Surpur Vs. Amar***[9]

(d) ***Badrinarayan Shankar Bhandari Vs. Omprakash Shankar Bhandari***[10].

(e) ***Devidas Gaurkar Vs. Vithabai***[11]

(f) ***Commissioner of Wealth Tax, Kanpur Vs. Chandar Sen***[12].

(iv) Learned *Amicus* submitted that in view of the amended Section 6 of the H.S.A., 1956, as well as in view of the law laid

9 2018 3 SCC 343
10 (2014) 5 Mh. L.J. 434
11 2008 (5) Mh. L.J. 296
12 (1986) 3 SCC 567

down by the Supreme Court in the case of ***Vineeta Sharma*** (supra), once it is held that the right of the daughter accrues by birth, and if a daughter is alive as on the date of coming into force of the Amendment Act, 2005, she becomes a coparcener, irrespective of whether her father died before or after the Amendment Act, 2005 coming into force i.e. on 9th September 2005.

(v) Learned *Amicus* pointed out paragraph 68 and 69 of ***Vineeta Sharma*** (supra) and pointed out that the Supreme Court in paragraph 68 in the case of ***Vineeta Sharma*** (supra) held that the daughter would step into the coparcenary as a son by birth by taking birth before or after the enactment of the H.S.A., 1956. He submitted that once the daughter becomes a coparcener by birth, she continues to remain a coparcener until she separates from the coparcenary. He submitted that the date of birth of the daughter is immaterial for the purpose of claiming right/interest under the amended Section 6 of H.S.A., 1956 as amended by the Amendment Act, 2005. The date of death of the father and/or coparcener through which a daughter is claiming her right/interest is also immaterial for the purpose of application of amended Section 6 of the H.S.A., 1956 as amended by the Amendment Act, 2005.

Learned *Amicus* further submitted that even the aspect whether a daughter is alive on the date of the amendment coming into force i.e. 9th September 2005 is also irrelevant. However, in the present case the daughter i.e. the Respondent No.1 – Tarabai is alive and therefore the said issue is not arising in this proceeding.

(vi) Learned *Amicus* submitted that for claiming a right/interest as per amended Section 6 of the Act, the coparcenary in which daughter is claiming her right has to be in existence on 9th September 2005. He submitted that it is very clear that "the coparcenery should be in existence on 9th September 2005" is to be determined on the touchstone of the proviso of amended Section 6. He submitted that disposition or alienation of the property by any means such as disposal by will, a decree which has attained finality, Partition Deed and/or Sale Deed or any other mode by which the same is acted upon and/or effected prior to 28th December 2004 will only be construed as those cases where only the daughter will not get her right or interest under amended Section 6 of H.S.A., 1956.

(vii) Learned *Amicus* submitted that the Supreme Court in the case of ***Uttam*** (supra) on a conjoint reading of Sections 4, 8 and 19 of the H.S.A., 1956, has held that after joint property

has been distributed in accordance with Section 8 on the principles of intestacy, the joint family property ceases to be the joint family property in the hands of the various persons who have succeeded to it. He submitted that however, in view of the judgment in the case of ***Commissioner of Wealth Tax*** (supra), wherein it has been held that the property which has been devolved under Section 8 of the H.S.A., 1956 constitutes absolute and separate property of the person succeeding to the share of his deceased father, which share is notionally allotted to the father in a notional partition under the unamended Section 6.

(viii) Learned *Amicus* submitted that in the judgment of the Supreme Court in the case of ***Arshnoor Singh Vs. Harpal Kaur***[13], after considering the judgment of ***Uttam Singh*** (supra), it has been held that the property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands visa-vis his male descendants up to 3 degrees below him. He pointed out paragraph Nos. 7.6 and 7.8 of the judgment in ***Arshnoor Singh*** (supra) and submitted that the findings recorded in ***Uttam Singh*** (supra) are explained in ***Arshnoor Singh*** (supra) and it is held that in ***Uttam Singh***

13 (2020) 14 SCC 436

(supra), the appellant was held not to be a coparcener as regards the share of his grandfather in the property in the facts of that case.

(ix) Learned *Amicus* therefore submitted that the daughter is entitled to claim benefit of amended Section 6 of the Hindu Succession Act, even if her father had died before coming into force of the H.S.A., 1956.

(G) SUBMISSIONS OF MR. S.M. SEEGARLA, LEARNED COUNSEL FOR RESPONDENT NOS. 1 AND 8(a) TO 8(f) :

14. Mr. Seegarla, learned Counsel adopted submissions of Mr. Girish Godbole, learned *Amicus* and submitted that the Second Appeal be dismissed.

(H) SUBMISSIONS OF MR. DRUPAD PATIL, LEARNED COUNSEL:-

15. Mr. Drupad Patil, learned Counsel also assisted the Court. He submitted as follows:-

(i) Section 6 of the H.S. Act as amended by 2005 Amendment is in two parts, as follows:-

First part :

First part comprising of sub sections (1) and (2), makes two declarations viz:-

(a) Daughter of coparcener shall by birth become

coparcener in her own right,

(b) Any reference to Hindu Mitakshara Coparcener shall be deemed to include a reference to a daughter of a coparcener.

Second part:-

Second part comprising of sub-section (3) to (5), makes it clear that if Hindu dies after 9th September 2005, then his interest would devolve by testamentary or intestate succession.

(ii) He submitted that in view of Section 6 of the H.S.A., 1956 as amended by Amendment Act, 2005 and in the light of law laid down in the case of ***Vineeta Sharma*** (supra) only those daughters who were alive as on 9th September 2005 are entitled to claim benefit of said declaration. He also submitted that while determining share of such living daughters, the word "son" in Mitakshara Law will have to be read as "son/daughter". He submitted that as substituted Section 6(3) to 6(5) is quite similar to un-amended Section 6, the only difference is that the rule of survivorship is no more applicable as mode of Succession w.e.f. 9th September 2005.

(iii) He submitted that in this case the Plaintiff will have to be treated as a coparcener even if her father had died prior to

1956, however, interest of deceased father in coparcenary property would devolve on his heirs as per the principles of old uncodified Hindu Law. Thus it would be necessary to take into consideration position of the Mitakshara Law applicable as on 14th April 1943. Thus the provisions of the H.S.A., 1956 will not apply for determining shares of Plaintiff and Defendants, since succession has opened on 14th April 1943.

(iv) He submitted that since in the present case, the male Hindu has died on 14th April 1943, neither the provisions of substituted Section 6(3) nor unamended Section 6 will apply.

(v) He submitted that in the case of ***Devidas Vs. Vithabai***, (supra) a, learned Single Judge of this Court has held that the H.S. Act, 1956 is not retrospective in operation and since the deceased had died prior to 1956, the case will have to be governed by Shastric Hindu Law. He submitted that said view is supported by the Supreme Court decisions in the case of ***Eramma Vs. Veerupana*** (supra). He also relied on the judgment of learned Single Judge in the case of ***Bhagirathi Vs. Tanabai***[14].

(vi) He therefore submitted that the present case will be governed by Mitakshara Law as prevailing on 14th April 1943. He submitted that in the light of declaration made through

14 (2013) 2 MhLJ 502

substituted Section 6(1), any reference to Hindu Mitakshara Coparcener shall be deemed to include a reference to a daughter of a coparcener. Hence, while reading the provisions of Mitakshara Law, the word "son" will have to be read as "son/daughter".

(vii) He also relied on the decision of ***Vineeta Sharma*** (supra) and pointed out paragraph No. 137 of the said decision. He also pointed out paragraph Nos. 66, 80, and 114 of the said decision. He submitted that only those daughters, who fulfill the requirement as laid down by the Supreme Court, can claim a share equal to that of a son.

(viii) He pointed out the judgment of the Supreme Court in the case of ***Controller of Estate Duty, Madras, Vs. Alladi Kuppuswamy***[15], and also relied on N.R. Raghuvachariar's Hindu Law. He submitted that the daughters, who were alive as on 9th September 2005 are entitled for different rights from the date of birth including right by birth, that the lineal descendants upto the third generation acquire an independent right of ownership by birth and not as representative of their ancestors, enjoyment of right of possession, survivorship, right of joint possession and right to alienation for legal necessity,

15 1997 3 SCC 385

right to account and right to self acquisition.

(ix) He submitted that in view of the judgment in the case of ***Vineeta Sharma*** (supra) even if daughter was born prior to enforcement of Hindu Succession Act (i.e. 17th June 1956), then also, "Coparcener- daughter" will have to be treated as coparcener and is to a share which is equal to that of a son in coparcenary property.

(x) He relied on the judgment in the case of ***Potti Lakshmi Perumallu Vs. Potti Krishnavenamma***[16] and submitted that if the daughter is claiming share in the coparcenary property of her father (i.e. Male Hindu), it is most crucial to understand modes of devolution applicable as on the date of death of father/ male Hindu. For example, if father has died in 1925 leaving behind daughter and son's widow, then by virtue of rule of survivorship and declaration provided in substituted Section 6, the entire property would devolve on daughter who was alive on 9.9.2005. However, if same father had died in 1940, then by virtue of Hindu Women's Rights to Property Act, 1937, said son's widow would get half share and daughter would get only half share. Furthermore, if father had died after enactment of 1956 Act, then, rule of survivorship would not

16 AIR (1965) SC 825

apply and said son's widow would get half share and daughter would get half share.

(I) SUBMISSIONS OF MR. KALPESH PATIL, LEARNED COUNSEL :

16. Mr. Kalpesh Patil, learned Counsel, submitted that in ***Vineeta Sharma*** (supra), it has been held that daughter is coparcener by birth and concept of notional partition/statutory fiction is curtailed. He pointed out paragraph Nos.107, 108 and 109 of said decision. He submitted that the Judgment in the case of ***Magdum*** (supra) is considered in paragraph 103 and distinguished. He submitted that ***Anar Devi v. Parmeshwari Devi*** [17] is also considered and distinguished in paragraphs 104 and 105. He pointed out Judgment in the case of ***Arshnoor Singh*** (supra). He also pointed out decision of ***Uttam*** (supra) and more particularly paragraph 7 of the same. He pointed out judgment in the case of ***Ganduri Koteshwaramma v. Chakiri Yanadi*** [18]. He submitted that Uttam Singh (supra) has relied on the judgment of ***Magdum*** (supra) as the decision in the case of ***Magdum*** (supra) is considered in ***Vineeta Sharma*** (supra) and distinguished in effect the decision in the case of ***Uttam*** (supra) also stands distinguished. He pointed out paragraph 109 and 80 of the decision in ***Vineeta Sharma*** (supra). He also reiled on judgment of Supreme

17 (2006) 8 SCC 656
18 (2011) 9 SCC 788

Court in the case of ***Prasanta Kumar Sahoo v. Charulata Sahu*** [19], and more particularly on paragraphs 71, 72 and 73. He also pointed out paragraph 49 of ***Prasanta Kumar Sahoo*** (supra).

(J) REASONING :-

(I) The substantial question of law:

17. The principal substantial question of law involved in the present Second Appeal is whether the daughter, whose father had passed away before H.S.A., 1956 came into force, is entitled to claim benefit of amended Section 6 of the H.S.A. 1956.

18. The substantial questions of law in that regard are framed by Order dated 6th January 2014 being substantial questions of law (b), (c) and (d) as well as additional substantial question of law as framed by Order dated 16th March 2023. The said substantial questions of law, i.e. (b), (c) and (d) framed on 6th January 2014 and the substantial question of law as framed on 16th March 2023 are already set out in earlier part of this Judgment. For deciding the substantial questions of law involved in this Second Appeal, most important question required to be decided is the rights to which the daughters are entitled before coming into the operation of H.S.A., 1956.

(II) Position of law as applicable to daughters before Hindu Succession Act, 1956 came into effect

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19. For the purpose of deciding the above substantial questions of law, it is required to consider the rights of daughter in the coparcenary property before coming into force of H.S.A., 1956 i.e. before 17th June 1956. For the said purpose, it is important to note old Hindu Law, provision of Hindu Law of Inheritance (Amendment) Act, 1929 and the provisions of the Hindu Women's Rights to Property Act, 1937.

20. In this behalf, it is necessary to set out certain paragraphs/article of the old Hindu Law. The same are set out in the Note submitted by Mr. Girish Godbole, *Amicus Curiae*. The pages referred are from Mulla's Hindu Law (21st Edition). The relevant portion of the same is as follows:-

> "1. A *Joint Hindu Family is a larger body than a Hindu Coparcenary. A Hindu coparcenary consist of propositus and 3 lineal descendants. Traditionally, it included only Hindu male lineal descendants. Coparcenary property is one which is inherited by a Hindu from his father, grandfather, or great grandfather. The property is held as Joint owners.*
>
> 2. *Article 24- Modes of Devolution of Property (Pg.110)- Mitakshara recognises two modes of devolution of property namely, survivorship and succession.* ***Every member of a Mitakshara Joint Family has only an undivided interest in the Joint Property****.*
>
> 3. *Article 25- Female heirs (Pg. 110)-* ***The law on inheritance by female heirs is not uniform. According to***

the Bengal, Benares and Mithila school, there are only five female who can succeed as heirs to a male, namely: (1) the widow; (2) daughter; (3) mother; (4) father's mother; (5) father's father's mother. To this list, three more were added by the Hindu Law of Inheritance (Amendment) Act, 1929, namely, the son's daughter, daughter's daughter, and sister. The Madras school recognises a large number of female heirs including the three mentioned in the Act of 1929, and the Bombay school a still larger number. Under the Hindu Women's Right to Property Act 18 of 1937, the widow of a predeceased son are among the heirs to a Hindu's separate property in all the schools.

4. *Article 34- Devolution of property according to Mitakshara Law (Pg. 118)- In determining the mode in which the property of a Hindu male, governed by Mitakshara Law, devolves on his death, the following propositions are to be noted:*

(1) Where the deceased was, at the time of his death, a member of joint and undivided family, technically called coparcenary, his undivided interest in the coparcenary property devolves on his coparceners by survivorship (see Act XVIII of 1938 and Article 35).

(2)(i) even if the deceased was joint at the time of his death, he might have left self- acquired or separate property. Such property goes to his heirs by succession according to order given in Article 43, and not to his coparceners.

(ii) if the deceased was at the time of his death, the sole surviving member of a coparcener property, the whole of his property, including the coparcenary property, will pass to his heirs by succession according to the order given in Article 43.

(iii) if the deceased was separate at the time of his death from his coparceners, the whole of his property, however acquired, will pass to his heirs by succession according to the order given in Article 43.

(3) If the deceased was re-united at the time of his death, his property will pass to his heirs by succession according to the rule laid down in Article 60.

4. Article 43 – Order of Succession Among Sapindas (Pg.137)-- Article 43 contains the order in which Sapindas succeed to property. Article 43(5) provides for priority amongst daughters. Rules are contained to govern inheritance to unmarried daughter, married daughter who are unprovided for and daughters who are married and of means. Outside Bombay State, daughter would take only a limited interest. However, in Bombay State, the daughter would take full interest and not a limited interest.

5. Article 64 – Female heirs in Bombay (Pg. 184)- This Article provides that not only are the widow, daughter, mother, father's mother, and father' father's mother heirs, but even sisters, father's sister, and certain other female heirs are also recognised. Besides this, Article 170 (pg. 255) also recognises various other female heirs as per the Bombay School.

These articles are relied upon to demonstrate the history and evolution of Rights of daughter among Hindus from the Bombay School."

(Emphasis added)

Thus, it is important to note that even before coming into operation of H.S.A., 1956, the females including daughters were having rights. The

change brought by Hindu Law Inheritance (Amendment) Act, 1929 and the Hindu Women's Rights to Property Act, 1937 is also significant and is very relevant for deciding the questions of law raised in this Second Appeal.

(III) Relevant provisions of the Hindu Succession Act, 1956 (prior to 2005 Amendment):

21. In this behalf, it is necessary to set out Section 4, unamended Section 6 and Section 14 of the H.S.A. 1956. The same reads as under:

(i) **Section 4 of the H.S.A., 1956** :

"*4* ***Overriding effect of Act****.-- (1) Save as otherwise expressly provided in this Act,—*

> *(a)* ***any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act****;*
>
> *(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.*"
>
> (Emphasis added)

(ii) **Unamended Section 6 of the H.S.A., 1956** :

"*6. Devolution of interest in coparcenary property.—* ***When a male Hindu dies after the commencement of this***

Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

*Explanation 1.— **For the purposes of this 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.***

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

(Emphasis added)

iii) ***Section 14 of the H.S.A., 1956*** -

*" **Property of a female Hindu to be her absolute property.--** (1) **Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.***

*Explanation.—In this sub-section, "**property" includes both movable and immovable property acquired by a female Hindu** by inheritance or*

devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, ***before, at or after her marriage****, or by her own skill or exertion, or by purchase or by prescription,* ***or in any other manner whatsoever****, and also any such property held by her as stridhana immediately before the commencement of this Act.*

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

(Emphasis added)

(IV) Provisions of Hindu Law of Inheritance (Amendment) Act, 1929:

22. The Hindu Law of Inheritance (Amendment) Act, 1929 conferred heirship rights on the son's daughter, daughter's daughter and sister in all areas where the Mitakshara law prevailed.

(V) Provisions of the Hindu Women's Rights to Property Act, 1937:

23. The Section 3 of the Hindu Women's Rights to Property Act, 1937, conferred upon the Hindu widow the right to a share in the joint family property as also a right to demand partition like any male member of the family.

Thus, the above provisions of H.S.A., 1956 before amendment,

provisions of Hindu Law of Inheritance (Amendment) Act, 1929 and provisions of the Hindu Women's Rights to Property Act, 1937 are very significant for deciding the rights of daughters prior to coming into force of H.S.A. 1956 i.e. before 17th June 1956. It will be very important to see the evolution of law concerning the same. The Supreme Court while deciding the rights of females under H.S.A., 1956 (Before 2005 Amendment) has also discussed the position prior to coming into force of H.S.A. 1956 and therefore, it is necessary to consider the important decisions of the Supreme Court in that behalf.

(VI) Decision of Supreme Court in the case of Eramma Vs. Veerupana [A.I.R. 1966 SC 1879]:

24. The Supreme Court in the case of ***Eramma Vs. Veerpana*** (supra) has considered the position before enactment of H.S.A. 1956. In the said case, the claim made by two widows of Eran Gowda was considered. The factual position in that case is set out in paragraph no.2, which reads as under:

> *"The appellant--Eramma--and the 3rd respondent-Siddamma were, at the relevant time, widows of Eran Gowda who also, had a third wife—Sharnamma. By the said Sharnamma, Eran, Gowda had a son called Basanna who died in the year 1347 Falsi*

(corresponding to 1936-37 AD) at a time when he was the sole male holder of the property in dispute. After his death his step mothers Eramma and Siddamma got into possession of the properties. Respondents 1 and 2 thereafter filed a suit in the Sadar Adalat, Gulbarga claiming that they, as the nearest heirs of Basanna, were entitled to all the properties left by him and seeking, to recover possession thereof from his step-mothers--Eramma and Siddamma. The suit was contested by Eramma on the ground that she had adopted Sogan Gouda, Respondent no. 4 on the basis of the authority alleged to have been given to her by her husband Eran Gowda. It was claimed by Siddamma that she had adopted Sharnappa, Respondent no. 5 on the basis of the authority alleged to have been conveyed under a will. The trial court rejected the case of Eramma but upheld that of Siddamma. On appeal to the High Court, Siddamma's claim of adoption was also negatived. In the result the High Court passed a decree in favour of Respondents 1 and 2. Eramma and Siddamma thereafter applied to the High Court for a certificate of fitness to appeal to this Court. Siddamma was granted such certificate but the High Court refused to grant a certificate to Eramma who filed an application in this Court for special leave. During the pendency of these proceedings the Hindu Succession Act, 1956 came into force with effect from June 17, 1956. Respondents 1 and 2 have put to execution, the decree granted by the High Court in their favour. Eramma filed an objection in the execution court on the ground that she had been in possession of half the properties since the death of her husband and the decree was non-executable in view of the provisions of the Hindu Succession Act, 1956 and that she had now become full owner of the properties of which she is in possession. The case of Eramma was accepted by the District Judge, Raichur

> *who dismissed the execution case on February 14, 1957. Respondents 1 and 2 preferred an appeal to the Mysore High Court against the order of the District Judge, dismissing the execution case.* ***The appeal was allowed by the High Court on the ground that Hindu Succession Act, 1956 was not applicable to the case and Eramma did not acquire full ownership under Section 14(1) of that Act. The High Court accordingly set aside the order of the District Judge dated February 14, 1957 dismissing the execution case and restored the execution case to file of the District Judge for being dealt with in accordance with law.***"

The Supreme Court after considering Section 8 of the H.S.A., 1956 observed in paragraph 4 as under:

> "*There is nothing in the language of this section to suggest that it has retrospective operation. The words "The property of a male Hindu dying intestate" and the words "shall devolve" occurring in the section make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Hindu Succession Act.*"

Thereafter the Supreme Court considered Section 6 of the 1956 Act and observed as under :

> "*5.* ***It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of Section 8 must be construed in the context of Section 6 of the Act. We accordingly hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into***

> *force i.e., where succession opened before the Act, Section 8 of the Act will have no application.*
>
> *6. It was next contended by the appellant that she was admittedly in possession of half the properties of her husband Eran Gowda after he died in 1341-F and by virtue of Section 14 of the Hindu Succession Act she became the full owner of the properties and Respondents 1 and 2 cannot, therefore, proceed with the execution case. We are unable to accept this argument as correct.* ***At the time of Eran Gowda's death the Hindu Women's Rights to Property Act, 1937 (Act 18 of 1937) had not come into force****. It is admitted by Mr. Sinha that the Act was extended to Hyderabad State with effect from February 7, 1953.* ***It is manifest that at the time of promulgation of Hindu Succession Act, 1956 the appellant had no manner of title to properties of Eran Gowda****."*

Thereafter the Supreme Court considered Section 14 of the Hindu Succession Act and observed in paragraph '7' as under:

> *"It is true that the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of Section 14. The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however, restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-*

section (1) of Section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female (who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called limited estate or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (1) of Section 14 defines the word 'property' as including "both movable and immovable property acquired by a female Hindu by inheritance or devise..” Sub-section (2) of Section 14 also refers to acquisition of property. It is true that the Explanation has not given any exhaustive connotation of the word 'property' but the word 'acquired' used in the Explanation and also in sub-section (2) of Section 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last

> *male holder on the date of the commencement of the Act when she is only a trespasser without any right to property.*"

Thus in ***Eramma*** (supra) as the husband Eran Gowda passed away before the enactment of Hindu Women's Rights to Property Act, 1937, although Appellant - Eramma was widow of Eran Gowda, it has been held that even if the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of Section 14. The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It has been further held that it does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property.

25. Thus, it is clear that the rights of widow in said decision of ***Eramma*** (supra) are decided in view of the very important aspect

that when the husband of the Appellant-Eramma passed away, the Hindu Women's Rights to Property Act, 1937 had not come into force.

(VII) Decision of Supreme Court in Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum [(1978) 3 SCC 383]

26. The Supreme Court in the case of ***Magdum*** (supra) has considered unamended Section 6 of the H.S.A., 1956 as well as the Proviso and Explanation '1' and Explanation '2' to the same as also Hindu Law of Inheritance (Amendment) Act, 1928 and the Hindu Women's Rights to Property Act, 1937.

27. The factual position in the case of ***Magdum*** (supra) reads as follows:

> *" It will be easier, with the help of the following pedigree, to understand the point involved in this appeal:*
>
> *Khandappa Sangappa Magdum*
> *-- Hira Bai (Plaintiff)*
>
> ⇓
>
> ---
>
> ⇓ ⇓ ⇓ ⇓ ⇓
>
> *Gurupad (Deft.1)* | *Bayawwa (Deft. 3)* | *Bhagirathibai (Deft. 4)* | *Dhondubai (Deft.5)* | *Shivapad (Deft.2)*
>
> *2.* ***Khandappa died on June 27, 1960 leaving him surviving his wife Hirabai, who is the plaintiff, two sons Gurupad and Shivapad, who are defendants 1 and 2 respectively, and three daughters, defendants 3 to 5. On November 6, 1962 Hirabai filed Special Civil Suit No. 26 of 1963 in the Court of the Joint***

Civil Judge, Senior Division, Sangli for partition and separate possession of a 7/24th share in two houses, a land, two shops and movables on the basis that these properties belonged to the joint family consisting of her husband, herself and their two sons. If a partition were to take place during Khandappa's lifetime between himself and his two sons, the plaintiff would have got a 1/4th share in the joint family properties, the other three getting a 1/4th share each. Khandappa's 1/4th share would devolve upon his death on six sharers: the plaintiff and her five children, each having a 1/24th share therein. Adding 1/4th and 1/24th, the plaintiff claims a 7/24th share in the joint family properties. That, in short, is the plaintiff's case.

2-A. Defendants 2 to 5 admitted the plaintiff's claim, the suit having been contested by Defendant 1, Gurupad, only. He contended that the suit properties did not belong to the joint family, that they were Khandappa's self-acquisitions and that, on the date of Khandappa's death in 1960 there was no joint family in existence. He alleged that Khandappa had effected a partition of the suit properties between himself and his two sons in December 1952 and December 1954 and that, by a family arrangement dated March 31, 1955 he had given directions for disposal of the share which was reserved by him for himself in the earlier partitions. There was, therefore, no question of a fresh partition. That, in short, is the case of Defendant 1.

3. The trial court by its judgment dated July 13, 1965 rejected defendant 1's case that the properties were Khandappa's self-acquisitions and that he had partitioned them during his lifetime. Upon that finding the plaintiff became indisputably entitled to

> *a share in the joint family properties but,* ***following the judgment of the Bombay High Court in Shiramabai Bhimgonda v. Kalgonda [AIR 1974 Bom 263 : (1964) 66 Bom LR 351] the learned trial Judge limited that share to 1/24th, refusing to add 1/4th and 1/24th together****. As against that decree, Defendant 1 filed First Appeal No. 524 of 1966 in the Bombay High Court, while the plaintiff filed cross-objections. By a judgment dated March 19, 1975* ***a Division Bench of the High Court dismissed Defendant 1's appeal and allowed the plaintiff's cross-objections by holding that the suit properties belonged to the joint family, that there was no prior partition and that the plaintiff is entitled to a 7/24th share****. Defendant 1 has filed this appeal against the High Court's judgment by special leave."*

28. It is to be noted that in the case of ***Magdum*** (supra), the Plaintiff's husband-Khandappa had died after the commencement of 1956 Act and therefore in paragraph Nos. 6 to 9, the Supreme Court has considered the position after the commencement of the H.S.A., 1956 and observed as follows:-

> *" 6.* ***The Hindu Succession Act came into force on June 17, 1956. Khandappa having died after the commencement of that Act, to wit in 1960, and since he had at the time of his death an interest in Mitakshara coparcenary property, the pre-conditions of Section 6 are satisfied and that section is squarely attracted****. By the application of the normal rule prescribed by that section, Khandappa's interest in the coparcenary property would devolve by*

survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Act. But, ***since the widow and daughter are amongst the female relatives specified in class I of the Schedule to the Act and Khandappa died leaving behind a widow and daughters, the proviso to Section 6 comes into play and the normal rule is excluded. Khandappa's interest in the coparcenary property would therefore devolve, according to the proviso, by intestate succession under the Act and not by survivorship****. Testamentary succession is out of question as the deceased had not made a testamentary disposition though, under the explanation to Section 30 of the Act, the interest of a male Hindu in Mitakshara coparcenary property is capable of being disposed of by a will or other testamentary disposition."*

7. ***There is thus no dispute that the normal rule provided for by Section 6 does not apply, that the proviso to that section is attracted and that the decision of the appeal must turn on the meaning to be given to Explanation 1 of Section 6. The interpretation of that Explanation is the subject-matter of acute controversy between the parties****.*

8. Before considering the implications of Explanation 1, it is necessary to remember that what ***Section 6 deals with is devolution of the interest which a male Hindu has in a Mitakshara coparcenary property at the time of his death. Since Explanation 1 is intended to be explanatory of the provisions contained in the section, what the Explanation provides has to be co-related to the subject-matter which the section itself deals with****. In the instant case the plaintiff's suit, based as it is on the provisions of Section 6, is essentially a claim to obtain a share in the interest which her husband*

had at the time of his death in the coparcenary property. ***Two things become necessary to determine for the purpose of giving relief to the plaintiff: One, her share in her husband's share and two, her husband's own share in the coparcenary pro-property****. The proviso to Section 6 contains the formula for fixing the share of the claimant while Explanation 1 contains a formula for deducing the share of the deceased. The plaintiff's share, by the application of the proviso, has to be determined according to the terms of the testamentary instrument, if any, made by the deceased and since there is none in the instant case, by the application of the rules of intestate succession contained in Sections 8, 9 and 10 of the Hindu Succession Act.* ***The deceased Khandappa died leaving behind him two sons, three daughters and a widow****. The son, daughter and widow are mentioned as heirs in class I of the Schedule and therefore, by reason of the provisions of Section 8(a) read with the 1st clause of Section 9, they take simultaneously and to the exclusion of other heirs.* ***As between them the two sons, the three daughters and the widow will take equally, each having one share in the deceased's property under Section 10 read with Rules 1 and 2 of that section. Thus, whatever be the share of the deceased in the coparcenary property, since there are six sharers in that property each having an equal share, the plaintiff's share therein will be 1/6th****.*

9. The next step, equally important though not equally easy to work out, is to find out the share which the deceased had in the coparcenary property because after all, the plaintiff has a 1/6th interest in that share. Explanation 1 which contains the formula for determining the share of the deceased

> *creates a fiction by providing that 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.* ***One must, therefore, imagine a state of affairs in which a little prior to Khandappa's death, a partition of the coparcenary property was effected between him and other members of the coparcenary. Though the plaintiff, not being a coparcener, was not entitled to demand partition yet if a partition were to take place between her husband and his two sons she would be entitled to receive a share equal to that of a son. (See Mulla's Hindu Law, 14th Edn. p. 403, para 315). In a partition between Khandappa and his two sons there would be four sharers in the coparcenary property the fourth being Khandappa's wife, the plaintiff. Khandappa would have therefore got a 1/4th share in the coparcenary property on the hypothesis of a partition between himself and his sons.*** *".*
>
> (Emphasis added)

29. In the said case of ***Magdum*** (supra), the Supreme Court also considered even the position before the commencement of H.S.A., 1956 *inter alia* regarding daughter's rights. The same is discussed in paragraphs Nos. 13 and 14 particularly in the light of provisions of the Hindu Law of Inheritance (Amendment) Act, 1929 and the Hindu Women's Rights to Property Act, 1937, which reads as under :

> *" 13.* ***In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the***

coparcenary property. For, by doing that alone can one determine the extent of the claimant's share. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that 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 that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition

cannot generally be recalled. 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.

14. The interpretation which we are placing upon the provisions of Section 6, its proviso and Explanation 1 thereto will further the legislative intent in regard to the enlargement of the share of female heirs, qualitatively and quantitatively. The Hindu Law of Inheritance (Amendment) Act, 1929 conferred heirship rights on the son's daughter, daughter's daughter and sister in all areas where the Mitakshara law prevailed. Section 3 of the Hindu Women's Rights to Property Act, 1937, speaking broadly, conferred upon the Hindu widow the right to a share in the joint family property as also a right to demand partition like any male member of the family. The Hindu Succession Act, 1956 provides by Section 14(1) that any property processed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as a full owner thereof and not as a limited owner. By restricting the operation of the fiction created by Explanation I in the manner suggested by the appellant, we shall be taking a retrograde step, putting back as it were the clock of social reform which has enabled the Hindu woman to acquire an equal status with males in matters of property. Even assuming that two interpretations of Explanation I are reasonably possible, we must prefer that interpretation which will further the intention of the legislature and remedy the injustice from which the Hindu women have suffered over

the years."

(Emphasis added)

It is required to be noted that the said discussion in ***Magdum*** (supra) is concerning the right of widow. However, the Hindu Law of Inheritance (Amendment) Act, 1929 conferring heirship right on the son's daughter, daughter's daughter and sister in all areas where the Mitakshara Law prevailed is also considered and therefore the said discussion is relevant. It is significant to note that the observations of the Supreme Court in ***Magdum*** (supra) to the effect that the interpretation which the Supreme Court is placing upon the provisions of Section 6, its proviso and Explanation 1 thereto will further the legislative intent in regard to the enlargement of the share of female heirs, qualitatively and quantitatively. The Hindu Law of Inheritance (Amendment) Act, 1929 conferred heirship rights on the son's daughter, daughter's daughter and sister in all areas where the Mitakshara law prevailed. It has been observed that Section 3 of the Hindu Women's Rights to Property Act, 1937, speaking broadly, conferred upon the Hindu widow the right to a share in the joint family property as also a right to demand partition like any male member of the family. These observations of the Supreme Court regarding interpretation of the Hindu Law of Inheritance (Amendment) Act, 1929 and the Hindu Women's Rights to Property

Act, 1937 are very significant for deciding the present case.

Thus, it is very relevant and significant to note that ***Magdum*** (supra) emphasises that various provisions of the H.S.A., 1956 will have to be interpreted in the light of the rights conferred on the females including daughter/sister under the Hindu Law of Inheritance (Amendment) Act, 1929 and the Hindu Women's Rights to Property Act, 1937.

(VIII) Decision of Supreme Court in the case of Danamma Vs. Amar [(2018 3 SCC 343]:

30. In the above background, it is necessary to consider the decision of the Supreme Court in ***Danamma*** (supra). In that case, the Supreme Court not only considered the Hindu Law prior to H.S.A. 1956 coming into force i.e. position of Hindu Law prior to 17th June 1956 but also considered the position after the 2005 Amendment. In the above case of ***Danamma*** (supra), it is the case of the Defendant No.8 that the Appellants were not coparceners in the said joint family as they were born prior to the enactment of the H.S.A. 1956.

31. The factual position in ***Danamma*** (supra) is set out in paragraphs Nos.1 to 3, which read as under:

> "***The appellants herein, two in number, are the daughters of one, Gurulingappa Savadi, propositus of a Hindu Joint Family****. Apart from these two daughters, he had two sons, namely, Arunkumar and*

Vijay. ***Gurulingappa Savadi died in the year 2001 leaving behind the aforesaid two daughters, two sons and his widow, Sumitra****. After his death, Amar, S/o Arunkumar filed the suit for partition and a separate possession of the suit property described at Schedule B to E in the plaint stating that the two sons and widow were in joint possession of the aforesaid properties as coparceners and properties mentioned in Schedule B was acquired out of the joint family nucleus in the name of Gurulingappa Savadi.* ***Case set up by him was that the appellants herein were not the coparceners in the said joint family as they were born prior to the enactment of Hindu Succession Act, 1956 (hereinafter referred to as the 'Act'). It was also pleaded that they were married daughters and at the time of their marriage they had received gold and money and had, hence, relinquished their share****.*

2) ***The appellants herein contested the suit by claiming that they were also entitled to share in the joint family properties, being daughters of Gurulingappa Savadi and for the reason that he had died after coming into force of the 1956 Act****.*

3) ***The trial court, while decreeing the suit held that the appellants were not entitled to any share as they were born prior to the enactment of the Act and, therefore, could not be considered as coparceners****. The trial court also rejected the alternate contention that the appellants had acquired share in the said properties, in any case, after the amendment in the Act vide Amendment Act, 2005.* ***This view of the trial court has been upheld by the High Court in the impugned judgment dated January 25, 2012*** *thereby confirming the decree dated August 09, 2007 passed in the suit filed for partition."*

32. In paragraph 4 of ***Danamma*** (supra), the question of law which is raised in the said decision is set out, which reads as under:

> "*4) In the aforesaid backdrop,* ***the question of law which arises for consideration in this appeal is as to whether, the appellants, daughters of Gurulingappa Savadi, could be denied their share on the ground that they were born prior to the enactment of the Act and, therefore, cannot be treated as coparceners? Alternate question is as to whether, with the passing of Hindu Succession (Amendment) Act, 2005, the appellants would become coparcener "by birth" in their "own right in the same manner as the son" and are, therefore, entitled to equal share as that of a son****?*"

33. The Supreme Court after considering Section 6 of the H.S.A., 1956 as it stood prior to 2005 Amendment has held in paragraphs 16 to 18 as follows:

> *"16. No doubt,* ***Explanation 1 to the aforesaid section states that the interest of the deceased in the Mitakshara coparcenary property shall be deemed to be the share in the property that would have been allotted to him if the partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not****. This Explanation came up for interpretation before this Court in* ***Anar Devi v. Parmeshwari Devi. The Court quoted, with approval, the following passage from the authoritative treatise of Mulla, Principles of Hindu Law, 17th Edn., Vol. II, p. 250*** *wherein the learned author made following remarks while interpreting Explanation 1 to Section 6: (SCC pp. 658-59, paras 6-8)*
>
> > *"6. …****Explanation 1 defines the expression "the***

interest of the deceased in Mitakshara coparcenary property" and incorporates into the subject the concept of a notional partition. It is essential to note that this notional partition is for the purpose of enabling succession to and computation of an interest, which was otherwise liable to devolve by survivorship and for the ascertainment of the shares in that interest of the relatives mentioned in Class I of the Schedule. Subject to such carving out of the interest of the deceased coparcener the other incidents of the coparcenary are left undisturbed and the coparcenary can continue without disruption. A statutory fiction which treats an imaginary state of affairs as real requires that the consequences and incidents of the putative state of affairs must flow from or accompany it as if the putative state of affairs had in fact existed and effect must be given to the inevitable corollaries of that state of affairs.'

7. The learned author further stated that:

> *'[T]he operation of the notional partition and its inevitable corollaries and incidents is to be only for the purposes of this section, namely, devolution of interest of the deceased in coparcenary property and would not bring about total disruption of the coparcenary as if there had in fact been a regular partition and severance of status among all the surviving coparceners.'*

8. According to the learned author, at pp. 253-54, the undivided interest 'of the deceased coparcener for the purpose of giving effect to the rule laid down in the proviso, as already pointed out, is to be ascertained on the footing of a notional

> *partition as of the date of his death. The determination of that share must depend on the number of persons who would have been entitled to a share in the coparcenary property if a partition had in fact taken place immediately before his death and such person would have to be ascertained according to the law of joint family and partition. The rules of Hindu law on the subject in force at the time of the death of the coparcener must, therefore, govern the question of ascertainment of the persons who would have been entitled to a share on the notional partition'."*

17. Thereafter the Court spelled out the manner in which the statutory fiction is to be construed by referring to certain judgments and summed up the position as follows: (Anar Devi case SCC pp. 660-61, para 11)

> *"11. Thus we hold that according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of the Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener, by survivorship but upon his heirs by intestate succession. Explanation 1 to Section 6 of the Act provides a mechanism under which undivided interest of a deceased coparcener can be ascertained and i.e. that 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.*

> *It means for the purposes of finding out undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he could have got in notional partition."*
>
> *18. This case clearly negates the view taken by the High Court in the impugned judgment.*"
>
> (Emphasis added)

34. At this stage only it is required to be noted that in paragraph 139 of ***Vineeta Sharma*** (supra), it is specifically observed that the opinion expressed in ***Danamma*** (supra) is partly overruled to the extent it is contrary to the decision of ***Vineeta Sharma*** (supra). Thus, in view of the same, it is necessary to consider the decision of the Supreme Court in ***Vineeta Sharma*** (supra).

(IX) <u>The decision of Supreme Court in Vineeta Sharma Vs. Rakesh Sharma [(2020) 9 SCC 1</u>]:

(a) **The concept of un-obstructed and obstructed heritage in the Mitakshari Coparceners**.

35. In the case of ***Vineeta Sharma*** (supra) in paragraph No. 48, the Supreme Court has discussed the concept of un-obstructed and obstructed heritage in the Mitakshari Coparceners. The said

paragraph nos. 48 and 49 read as under:

> " *48. In Mitakshara coparcenary, there is* **unobstructed heritage** *i.e. apratibandha daya and* **obstructed heritage i.e.** *sapratibandha daya.* **When right is created by birth, it is called unobstructed heritage**. *At the same time,* **the birthright is acquired in the property of the father, grandfather, or great-grandfather. In case a coparcener dies without leaving a male issue, right is acquired not by birth, but by virtue of there being no male issue, it is called obstructed heritage. It is obstructed because the accrual of right to it is obstructed by the owner's existence. It is only on his death that obstructed heritage takes place. Mulla on Hindu Law has discussed the concept thus**"
>
> *"216. Obstructed and unobstructed heritage.—* **Mitakshara divides property into two classes, namely, apratibandha daya or unobstructed heritage, and sapratibandha daya or obstructed heritage**.
>
> *(1)* **Property in which a person acquires an interest by birth is called unobstructed heritage, because the accrual of the right to it is not obstructed by the existence of the owner**.
>
> ***Thus, property inherited by a Hindu from his father, father's father, or father's father's father, but not from his maternal grandfather, is unobstructed heritage as regards his own male issue i.e. his son, grandson, and great-grandson. His male issues acquire an interest in it from the moment of their birth. Their right to it arises from the mere fact of their birth in the family, and they become coparceners with their paternal ancestor in***

such property immediately on their birth, and in such cases ancestral property is unobstructed heritage.

Property, the right to which accrues not by birth but on the death of the last owner without leaving a male issue, is called obstructed heritage. It is called obstructed, because the accrual of right to it is obstructed by the existence of the owner.

Thus, property which devolves on parents, brothers, nephews, uncles, etc. upon the death of the last owner, is obstructed heritage. These relations do not take a vested interest in the property by birth. Their right to it arises for the first time on the death of the owner. Until then, they have a mere spes successionis, or a bare chance of succession to the property, contingent upon their surviving the owner.

(2) ***Unobstructed heritage devolves by survivorship; obstructed heritage, by succession.*** *There are, however, some cases in which obstructed heritage is also passed by survivorship."*

..49. ***It is apparent that unobstructed heritage takes place by birth, and the obstructed heritage takes place after the death of the owner.*** *It is significant to note that under Section 6 by birth, right is given that is called unobstructed heritage. It is not the obstructed heritage depending upon the owner's death. Thus,* ***coparcener father need not be alive on 9-9-2005, date of substitution of provisions of Section 6.***"

(Emphasis added)

Thus, it has been held that property in which a person acquires an interest by birth is called unobstructed heritage, because the accrual of the right to it is not obstructed by the existence of the owner. Property, the right to which accrues not by birth but on the death of the last owner without leaving a male issue, is called obstructed heritage. It is called obstructed, because the accrual of right to it is obstructed by the existence of the owner. Thus, it is very clear that the unobstructed heritage takes place by birth i.e. coparcenar and the obstructed heritage takes place after the death of the owner.

(b) **Essential characteristics of coparcenary** :-

36. In paragraphs 33 and 34 of ***Vineeta Sharma***, the Supreme Court has considered the essential characteristics of coparcenery as discussed in the decision of ***CED Vs. Alladi Kuppuswamy (supra)***. The said paragraph no.33 and 34 reads as follows:.

> *"33. Essential characteristics of coparcenary, as discussed in the abovementioned decision in Ghamandi Ram were analysed in CED v. Alladi Kuppuswamy, thus: (SCC pp. 393-94, para 8)*
>
> > *"8.'Thus analysing the ratio of the aforesaid case regarding the incidents of a Hindu coparcenary it would appear that a* ***Hindu coparcenary has six essential characteristics,***

namely, (1) that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors; (2) that the members of the coparcenary have the right to work out their rights by demanding partition; (3) that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share which he might receive; (4) that as a result of such co-ownership the possession and enjoyment of the property is common; (5) that there can be no alienation of the property without the concurrence of the other coparceners unless it be for legal necessity; and (6) that the interest of a deceased member lapses on his death and merges in the coparcenary property. Applying these tests to the interest of a Hindu widow who has been introduced into a coparcenary by virtue of the 1937 Act, we find that, excepting Condition (1), all other conditions are fully satisfied in case of a Hindu widow succeeding to the interest of her husband in a Hindu coparcenary. In other words, after her husband's death the Hindu widow under the 1937 Act has got the right to demand partition, she cannot predicate the exact share which she might receive until partition is made, her dominion extends to the entire property conjointly with the other members of the coparcenary, her possession and enjoyment is common, the property cannot be alienated without concurrence of all the members of the family, except for legal necessity, and like other coparceners she has a fluctuating interest in

> *the property which may be increased or decreased by deaths or additions in the family. It is manifest that she cannot fulfill the first condition, because she enters the coparcenary long after she is born and after she is married to her husband and acquires his interest on his death. Thus, short of the first condition, she possesses all the necessary indicia of a coparcenary interest. The fact that before the 1956 Act, she had the characteristic of a widow-estate in her interest in the property does not detract any the less from this position. It must follow as a logical corollary that though a Hindu widow cannot be a coparcener, she has coparcenary interest and she is also a member of the coparcenary by virtue of the rights conferred on her under the 1937 Act."*
>
> *34. In CED, it has also been laid down that if a widow does not exercise her right of partition, there is no severance of the Hindu coparcenary and on her death, the interest of the widow merges in the coparcenary property or lapses to the other coparceners. It was observed that the male issue of coparcener acquires an interest in the coparcenary by birth, not as representing his father."*
>
> (Emphasis added)

37. The Supreme Court in ***Vineeta Sharma*** (supra) has relied on the law laid down by Supreme Court in **C.E.D.** (supra) wherein it has been further held that **though a Hindu widow cannot be a coparcener, she has coparcenary interest and she is also a member of the coparcenary by virtue of the rights conferred on her under the**

Hindu Women's Rights to Property Act, 1937. It has been further held that if a widow does not exercise her right of partition, there is no severance of the Hindu coparcenary and on her death, the interest of the widow merges in the coparcenary property or lapses to the other coparceners. This position of law is very important and significant for deciding the present case.

38. As noted hereinabove, although the father of the Plaintiff passed away on 14th April 1943, the mother of the Plaintiff was alive till 30th April 2005 i.e. the mother was alive when the H.S.A., 1956 came into force. Thus, it is clear that as the coparcenary has continued till 30th April 2005 or in any case till the H.S.A. 1956 came into force on 17th June 1956, the Plaintiff is entitled for the share as equal to that of her brother i.e. Defendant Nos. 1 and 2 as by birth, she has become a coparcener in her own right in the same manner as the son.

(X) <u>The submissions of the Appellants</u> :

39. In view of above position of law, as held by the Supreme Court, the submissions of Mr. Sandesh Patil, learned Counsel for the Appellants are required to be appreciated. He submitted that as the father of the Plaintiff died in the year 1943, the joint family continued, however, a new coparcenary was formed namely that of the Plaintiff's brothers. He submitted that the Plaintiff i.e. daughter of

the deceased-Dagdu cannot be said to be the coparcener in the year 1943. He submitted that by virtue of Section 6 of the 1956 Act, when the male Hindu having an interest in the coparcenary property dies after commencement of the 1956 Act, his interest in the property would evolve by survivorship upon the surviving members of the coparcenary. He submitted that thus if the male Hindu dies after 1956, then his rights to the extent of his share would pass on to his daughters also. He submitted that by virtue of amendment to Section 6 of the H.S.A., 1956, which has come into effect from Commencement of the Hindu Succession (Amendment) Act, 2005, the daughter of a coparcener shall by birth, becomes a coparcener in her own right in the same manner as of the son. He submitted that thus by virtue of the amended Section 6 of H.S.A, 1956, all that is done is that a daughter becomes a coparcener and therefore the discrimination between the daughter and son is sought to be removed and now a daughter of a coparcener becomes coparcener by birth. However, it is his submission that a very important question is as to when such daughter becomes a coparcener and that whether this amendment will apply from the date of commencement of 1956 Act i.e. with effect from 17th June 1956. He submitted that prior to that there were different schools of succession in different parts of India. He submitted that if it is held that the daughter becomes a

coparcener since her birth even if the birth of the daughter is before 1956, then the effect of the same will be following :

> " *A. It would have to be treated that the Hindu female became coparcener not after the passing of the 2005 amendment act or the 1956 act, but she became coparcener even prior to the amendment act or as a matter of fact even prior to the 1956 Act itself.*
>
> *B. The very opening sentence in the amendment act, more particularly Section 6 thereof, 'on and from the commencement of the Hindu Succession (amendment) act, 2005' will have to be ignored totally.*
>
> *C. The act cannot be held to be retrospective so as to cover the incident which occurred prior to the enactment of the act itself.*
>
> *D. What can be ascertained with precision is that after the death of the father of the plaintiff somewhere in the year 1943, the property devolved upon the coparceners of the joint Hindu family as it stood in the year 1943. (In the year 1943, the daughters could not be said to be coparceners).*"

40. He submitted that if the daughter born any time before the commencement of 1956 Act, is considered to be a coparcener by birth, it would open floodgates of litigations and same will be contrary to the intention of the legislature. He submitted that the effect of the same would be that the amendment will be treated as having retrospective effect. He submitted that in case of ***Vineeta Sharma*** (supra), it has been very specifically held that the provisions

of Section 6(1) of the Act are not retrospective as the rights and liabilities are both from the commencement of the Amendment Act. He submitted that once it is held by the Supreme Court that the Act is not retrospective in effect, there is no question of holding that the Plaintiff has got right in the suit property as a coparcener in the year 1943.

41. Thus, to appreciate the submissions of Mr. Sandesh Patil, learned Counsel for the Appellants, it is necessary to see retroactive nature of the amendment of Section 6 of H.S.A., 1956.

(XI) The Amendment to Section 6 of H.S.A., 1956 is retroactive [Ref.: Vineeta Sharma (supra)]

42. Before considering the retroactive nature of Section 6 of the H.S.A, 1956 as amended by 2005 Amendment, is is necessary to set out the same.

> "*6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—*
>
> *(a) by birth become a coparcener in her own right in the same manner as the son;*
>
> *(b) have the same rights in the coparcenary property as she would have had if she had been a son;*
>
> *(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,*

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) 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.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a

partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

43. To appreciate submissions of Mr. Sandesh Patil, learned Counsel for the Appellants, it is necessary to see the judgment of the Supreme Court in ***Vineeta Sharma*** (supra) wherein while discussing the concept of the prospective, retrospective and retroactive statutes in paragraph No. 61 of the said judgment, it has been held that the prospective statute operates from the date of its enactment conferring new rights, the retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws, however, a **retroactive statute is the one that does not operate retrospectively. It operates in futuro, however, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent event. Under the amended Section 6 of the Act, since the right is given by birth, that is, an antecedent event and the provisions operate concerning claiming rights on and from the date of Amendment Act, therefore, it is again necessary to see the concept of coparcenary under the Hindu Law**, in view of the submissions of Mr.

Sandesh Patil, learned Counsel.

(XII) Concept of Coparcenary And Joint Hindu Family :

A] The decision of the Supreme Court in *Vineeta Sharma v. Rakesh Sharma* [(2020) 9 SCC 1]:

44. The decision of the Supreme Court in ***Vineeta Sharma*** (supra) has extensively discussed this aspect. In paragraph No. 26, the Supreme Court observed that for interpreting the provision of Section 6, it is very necessary to consider how coparcenary is formed. The said paragraph 26 is relevant and the same reads as under:

> "*26. For interpreting the provision of Section 6, it is necessary to ponder how coparcenary is formed.* ***The basic concept of coparcenary is based upon common ownership by coparceners. When it remains undivided, the share of the coparcener is not certain. Nobody can claim with precision the extent of his right in the undivided property. Coparcener cannot claim any precise share as the interest in coparcenary is fluctuating. It increases and diminishes by death and birth in the family.***".

45. In paragraph No. 31 of ***Vineeta Sharma*** (supra), reliance is placed on the case of ***Dharma Shamrao Agalawe*** Vs. ***Pandurang Miragu Agalawe & Ors*** [20], wherein it has been held that a joint family property retains its character even after its passing on to the hands of a sole surviving coparcener and if a son is subsequently born or adopted, the coparcenary will survive, subject to saving the

20 1988 2 SCC 126 : 1988 SCC OnLine SC 93

alienations made in the interregnum.

B] Decision of the Supreme Court in Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe & Ors [1988 2 SCC 126 : 1988 SCC OnLine SC 93]:

46. For deciding the issue involved in this Second Appeal, the law laid down in ***Dharma*** (supra) is very significant.

(a) In paragraph 2 of ***Dharma*** (supra), the factual aspects involved in said case are set out, which reads as under:

> "2. One **Shamrao**, who was governed by the Mitakshara Hindu Law died leaving behind him **two sons Dharma** (the appellant in this appeal) and **Miragu. Miragu died issueless in the year 1928 leaving behind him his widow Champabai — Respondent 2. The properties owned by the joint family of Dharma and Miragu passed on to the hands of Dharma who was the sole surviving coparcener on the death of Miragu. Under the law, as it stood then, Champabai had only a right of maintenance in the joint family properties. The Act came into force on December 21, 1956. On August 9, 1968 she took Pandurang, Respondent 1, in adoption and immediately thereafter a suit was filed by Pandurang and Champabai in Regular Civil Suit No. 457 of 1968 on the file of the Civil Judge, Junior Division, Barsi for partition and separate possession** of one-half share in the properties of the joint family of which Dharma, the appellant herein, and Miragu were coparceners. **Before the said adoption**

> took place, two items of the joint family properties had been sold in favour of Defendants 3 and 17 for consideration. Champabai had instituted a suit for maintenance against Dharma and obtained a decree for maintenance. Dharma resisted the suit on the ground that Pandurang was not entitled to claim any share in the properties which originally belonged to the joint family in view of clause (c) of the proviso to Section 12 of the Act and the properties which had been sold by him in favour of third parties could not in any event be the subject-matter of the partition suit".
>
> (Emphasis added)

(b) In paragraph No. 1 of the said decision, the question which arose for consideration is set out, as under:

> "The short question which arises for consideration in this case is whether a person adopted by a Hindu widow after the coming into force of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the Act') can claim a share in the property which had devolved on a sole surviving coparcener on the death of the husband of the widow who took him in a adoption."
>
> (Emphasis added)

(c) In paragraph Nos. 4 and 5, the submissions of the Appellant were noted, the relevant part of the same reads as under:

"4. The only question urged on behalf of the appellant before us is that **the suit for partition should have been dismissed by the High Court as Respondent 1 — Pandurang could not divest Dharma — the appellant of any part of the estate which had been vested in him before the adoption in view of clause (c) of the proviso to Section 12 of the Act.** Section 12 of the Act reads thus:

"12. **An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption** and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) **the adopted child shall not divest any person of any estate which vested in him or her before the adoption.**"

> 5. It is argued that **Pandurang became the child of the adoptive mother for all purposes with effect from the date of the adoption and only from that date all the ties of Pandurang in the family of his birth should be deemed to have been severed and replaced by those created by the adoption in the adoptive family and, therefore, Pandurang, the adopted son could not claim a share in the joint family properties which had devolved on the appellant by survivorship on the death of Miragu**."
>
> (Emphasis added)

(d) The Supreme Court in said decision of **Dharma** (supra) extensively relied on the Judgment of the Supreme Court in **Sitabai Vs. Ram Chandra**[21] and also another Judgment of the Supreme Court in **Vasant Vs. Dattu**[22]. The relevant discussion is to be found in paragraph Nos. 7 to 11 of **Dharma** (supra).

> "7. **In Sitabai v. Ram Chandra which was again decided by a Bench of three Judges, this Court was called upon to decide a case which was more or less similar to the one before us.** In that case the facts were these. **Two brothers** were in possession of ancestral properties consisting of a house and tenancy rights of an ordinary tenant in agricultural lands. **The elder brother died in 1930 leaving a widow, the first appellant therein. The first appellant continued to live with the younger brother and had an illegitimate son by him, the respondent therein. In March 1958, she adopted**

21 (1969) 2 SCC 544
22 (1987) 1 SCC 160

the second appellant, and some time later, the surviving brother died. After his putative father died, the respondent who was the illegitimate son took possession of all the joint family properties. The two appellants thereupon filed a suit for ejectment. The trial court decreed the suit. The first appellate court held that a will executed by the respondent's father (the younger brother) was valid insofar as his half share in the house was concerned and, therefore, modified the decree by granting a half-share of the house to the respondent. In second appeal, the High Court held that the appellants were not entitled to any relief and that their suit should be dismissed on two grounds, namely, (1) the joint family properties ceased to have that character in the hands of the surviving brother when he became the sole surviving coparcener, and (2) the second appellant did not become, on his adoption, a coparcener with his uncle in the joint family properties. In this Court the appellants in that appeal questioned both the conclusions reached by the High Court. On the first contention, this Court held that the joint family properties continued to retain their character in the hands of the surviving brother, as the widow (the first appellant) of the elder brother was still alive and continued to enjoy the right of maintenance out of the joint family properties following the decision of this Court in Gowli Buddanna v. CIT [AIR 1966 SC 1523 : (1966) 3 SCR 224] . On the second contention this Court held that the scheme of Sections 11 and 12 of the Act was that in the case of adoption by a widow the adopted child became absorbed in the adoptive family to which the widow belonged. It further observed that though Section 14 of the Act did not expressly state that the child adopted by a widow

became the adopted son of her deceased husband, it was a necessary implication of Sections 12 and 14 of the Act and that was why Section 14 of the Act provided that when a widow adopted a child and subsequently married, that husband became the step-father of the adopted child. Therefore, when the second appellant was adopted by the first appellant he became the adopted son of the first appellant and her deceased husband, namely, the elder brother, and hence became a coparcener with the surviving brother in the joint family properties, and after the death of the surviving brother the second appellant became the sole surviving coparcener entitled to the possession of all the joint family properties except those bequeathed under the will, that is, except the half-share of the house. **Applying the above decision it has to be held in the case before us that the joint family properties which belonged to the joint family consisting of Dharma — the appellant and his brother Miragu continued to retain the character of joint family properties in the hands of Dharma — the appellant as Champabai, the widow of Miragu was still alive and continued to enjoy the right of maintenance out of the said joint family properties. It should also be held that Pandurang — Respondent 1 on adoption became the adopted son of Miragu and became a coparcener with Dharma — the appellant in the joint family properties. When once he became a member of the coparcenary which owned the joint family properties he was entitled to institute a suit for partition and separate possession of his one-half share in the joint family properties, of course, except those which had been alienated in favour of third parties before the adoption by Dharma — the appellant.**

8. The effect of Section 12 of the Act again came up for consideration before this Court in **Vasant v. Dattu** [(1987) 1 SCC 160 : AIR 1987 SC 398]. In that case **interpreting clause (c) to the proviso of Section 12** of the Act Chinnappa Reddy, J. who spoke for the court observed that in a case of this nature **where the joint family properties had passed on to the hands of the remaining members of the coparcenary on the death of one of the coparceners no vesting of the property actually took place in the remaining coparceners while their share in the joint family properties might have increased on the death of one of the coparceners which was bound to decrease on the introduction of one more member into the family either by birth or by adoption**. In the above connection, the Court observed thus: (SCC p. 163, paras 4 and 5)

"We are concerned with proviso (c) to Section 12. **The introduction of a member into a joint family, by birth or adoption, may have the effect of decreasing the share of the rest of the members of the joint family, but it certainly does not involve any question of divesting any person of any estate vested in him. The joint family continues to hold the estate, but with more members than before. There is no fresh vesting or divesting of the estate in anyone**.

> The learned Counsel for the **appellants urged that on the death of a member of a joint family the property must be considered to have vested in the remaining members by survivorship. It is not possible to agree with this argument. The property, no doubt passes by survivorship, but there is no question of any vesting or divesting**

in the sense contemplated by Section 12 of the Act. To interpret Section 12 to include cases of devolution by survivorship on the death of a member of the joint family would be to deny any practical effect to the adoption made by the widow of a member of the joint family. We do not think that such a result was in the contemplation of Parliament at all."

9. We respectfully agree with the above observations of this Court in Vasant case [(1987) 1 SCC 160 : AIR 1987 SC 398]. The joint family property does not cease to be joint family property when it passes to the hands of a sole surviving coparcener. If a son is born to the sole surviving coparcener, the said properties become the joint family properties in his hands and in the hands of his son. The only difference between the right of a manager of a joint Hindu family over the joint family properties where there are two or more coparceners and the right of a sole surviving coparcener in respect of the joint family properties is that while the former can alienate the joint family properties only for legal necessity or for family benefit, the latter is entitled to dispose of the coparcenary property as if it were his separate property as long as he remains a sole surviving coparcener and he may sell or mortgage the coparcenary property even though there is no legal necessity or family benefit or may even make a gift of the coparcenary property. If a son is subsequently born to or adopted by the sole surviving coparcener or a new coparcener is inducted into the family on an adoption made by a widow of a deceased coparcener an alienation made by the sole surviving coparcener before the birth of a new coparcener or the induction of a

> **coparcener by adoption into the family whether by way of sale, mortgage or gift would however stand, for the coparcener who is born or adopted after the alienation cannot object to alienations made before he was begotten or adopted**.
>
> 10. The decision of the High Court of Bombay in Y.K. Nalavade case [AIR 1981 Bom 109] which was followed by the High Court in dismissing the appeal, out of which the present appeal arises, has been rightly given. We agree with the reasons given by the High Court of Bombay in that decision for taking the view that clause (c) of proviso to Section 12 of the Act would not be attracted to a case of this nature since as observed by this Court in Vasant case [(1987) 1 SCC 160 : AIR 1987 SC 398] there was no "vesting" of joint family property in Dharma — the appellant took place on the death of Miragu and no "divesting" of property took place when Pandurang — the first respondent was adopted. The decision of the Andhra Pradesh High Court in Narra Hanumantha Rao case [(1964) 1 Andh WR 156 : ILR 1966 AP 140] which takes a contrary view is not approved by us. It, therefore, stands overruled.
>
> 11. **The joint family properties continued to remain in the hands of Dharma — the appellant as joint family properties and that on his adoption Pandurang — Respondent 1 became a member of the coparcenary entitled to claim one-half share in them except those items which had been sold by Dharma — the appellant**."

C] <u>Decision of the Supreme Court in State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh [(1985) 2 SCC 321]:</u>

47. In paragraph No. 40 of **Vineeta Sharma** (supra), the characteristics of joint family and coparcenary as discussed in the

decision of ***State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh***[23] are quoted. The said paragraph No.40 reads as under:

> "***40***. *In State of Maharashtra v. Narayan Rao Sham Rao Deshmukh,* ***characteristics of joint family and coparcenary were culled out***. *It was also held that* ***interest of a female member of a joint Hindu family gets fixed, on her inheriting interest of a deceased male member of the family. She would not cease to be a member of family unless she chooses to become separate by partition***, *thus: (SCC pp. 328 & 330-31, paras 8 & 10)*
>
> > *"8.* ***A Hindu coparcenary is, however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary. A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating. It increases by the death of a coparcener and decreases on the birth of a coparcener. A joint family, however, may consist of female members. It may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to the family merely because there is only a single male member in the family***. *(See Gowli Buddanna v. CIT [Gowli Buddanna v. CIT, AIR 1966 SC*

23 (1985) 2 SCC 321

1523] and Sitabai v. Ramchandra [Sitabai v. Ramchandra, (1969) 2 SCC 544 : AIR 1970 SC 343] .) ***A joint family may consist of a single male member and his wife and daughters. It is not necessary that there should be two male members to constitute a joint family.*** *(See N.V. Narendranath v. CWT [N.V. Narendranath v. CWT, (1969) 1 SCC 748] .)* ***While under the Mitakshara Hindu law there is community of ownership and unity of possession of joint family property with all the members of the coparcenary,*** *in a coparcenary governed by the Dayabhaga law, there is no unity of ownership of coparcenary property with the members thereof. Every coparcener takes a defined share in the property and he is the owner of that share. But there is, however, unity of possession. The share does not fluctuate by births and deaths. Thus it is seen that the recognition of the right to a definite share does not militate against the owners of the property being treated as belonging to a family in the Dayabhaga law.*

* * *

10. ***We have carefully considered the above decision and we feel that this case has to be treated as an authority for the position that when a female member who inherits an interest in the joint family property under Section 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which would have been notionally allotted to her, as stated in Explanation I to Section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the***

death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under Section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. To illustrate, if what is being asserted is accepted as correct it may result in the wife automatically being separated from her husband when one of her sons dies leaving her behind as his heir. Such a result does not follow from the language of the statute. In such an event she should have the option to separate herself or to continue in the family as long as she wishes as its member though she has acquired an indefeasible interest in a specific share of the family property which would remain undiminished whatever may be the subsequent changes in the composition of the membership of the family. As already observed, the ownership of a definite share in the family property by a person need not be treated as a factor which would militate against his being a member of a family. We have already noticed that in the case of a Dayabhaga family, which recognises unity of possession but not

community of interest in the family properties amongst its members, the members thereof do constitute a family. That might also be the case of families of persons who are not Hindus. In the instant case the theory that there was a family settlement is not pressed before us. There was no action taken by either of the two females concerned in the case to become divided from the remaining members of the family. It should, therefore, be held that notwithstanding the death of Sham Rao the remaining members of the family continued to hold the family properties together though the individual interest of the female members thereof in the family properties had become fixed."

(emphasis supplied)

D] <u>Difference between Coparcenary And Joint Hindu Family</u>:

48. Thus analysis of the above concept of the coparcenary and joint Hindu family, the principles which are emerging are as follows:-

a) Joint Hindu Family is larger body whereas a Hindu Coparcenary is a smaller body.

b) Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners.

c) The lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing

their ancestors.

d) Until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share which he might receive.

e) As a result of such co-ownership the possession and enjoyment of the property is common.

f) The interest of a deceased member lapses on his death and merges in the coparcenary property.

g) A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place.

h) The share is not defined in coparcenary. It keeps on fluctuating on death and birth in the family.

i) A joint family, however, may consist of female members. It may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to the family merely because there is only a single male member in the family.

j) A joint family may consist of a single male member and his wife and daughters. It is not necessary that there should be two male members to constitute a joint family.

k) Under the Mitakshara Hindu law there is community of ownership and unity of possession of joint family property with all the members of the coparcenary.

l) Where the joint family properties had passed on to the hands of the remaining members of the coparcenary on the death of one of the coparceners no vesting of the property actually took place in the remaining coparceners while their share in the joint family properties might have increased on the death of one of the coparceners which was bound to decrease on the introduction of one more member into the family either by birth or by adoption.

m) The joint family property does not cease to be joint family property when it passes to the hands of a sole surviving coparcener. The only difference between the right of a manager of a joint Hindu family over the joint family properties where there are two or more coparceners and the right of a sole surviving coparcener in respect of the joint family properties is that while the former can alienate the joint family properties only for legal necessity or for family benefit, the latter is entitled to dispose of the coparcenary property as if it were his separate property as long as he remains a sole surviving coparcener and he may sell or mortgage the coparcenary property even though there is no legal necessity or family benefit or may even make a gift of the coparcenary property.

(XIII) Effect of Amendment to Section 6 of the Hindu Succession Act, 1956:

49. In view of above nature of coparcenary property, it is necessary to consider the effect of amended Section 6 of the H.S.A., 1956.

A] Statement of Objects and Reasons Of 2005 Amendment :

(a) For appreciating the amended Section 6, it is necessary to consider the Statement of Objects and Reasons behind introduction of 2005 Amendment. The same reads as under:

> "***Statement of Objects and Reasons***.—*The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus.* ***The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri laws.*** *The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian*

Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. ***The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters*** *in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.*

3. ***It is proposed to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.***

> *4. The above proposals are based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".*
>
> *5. The Bill seeks to achieve the above objects.* "
>
> (Emphasis added)

Thus what is set out in the Statement of Objects and Reasons is that the H.S.A. 1956 brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. The Objects and Reasons record that Section 6 of the H.S.A., 1956 is proposed to be amended to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu

Mitakshara coparcenary property as the sons have.

B] Nature of Amended Section 6 of the Hindu Sucessions Act, 1956 :

50. The nature of amended Section 6 is discussed in ***Vineeta Sharma*** (supra) in paragraph Nos.60, 61, 68 and 69, which are reproduced hereinbelow for ready reference:-

> *"60. The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right.* ***Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son". Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9-9-2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20-12-2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated****.*
>
> *61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute*

operates backwards and takes away or impairs vested rights acquired under existing laws. ***A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.***

68. ***Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Sections 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).***

69. ***The effect of the amendment is that a daughter is***

made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3)".

51. Thus in ***Vineeta Sharma*** (supra), the Supreme Court held as follows:

(i) The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes **daughter by birth a coparcener** "**in her own right**" and "**in the same manner as the son**".

(ii) **The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth.**

(iii) **Though the rights can be claimed, w.e.f. 9-9-2005, the provisions are of retroactive application and they confer benefits based on the antecedent event, and the Mitakshara**

coparcenary law shall be deemed to include a reference to a daughter as a coparcener.

(iv) The legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20-12-2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

(v) Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognized and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred.

(vi) Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage.

(vii) The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of

past transactions as provided in the proviso to Section 6(1) read with Section 6(5).

C] Enlargement of Daughter's rights in view of the Amended Section 6 of the H.S.A., 1956 :

52. The Supreme Court in **Vineeta Sharma** (supra) in paragraph Nos. 70 to 72 discussed about the enlargement of daughter's right in view of the amended Section 6. The said discussion reads as under:

> 70. **Under the proviso to Section 6 before the amendment made in the year 2005 in case a coparcener died leaving behind female relative of Class I heir or a male descendant claiming through such Class I female heir, the daughter was one of them. Section 6, as substituted, presupposes the existence of coparcenary. It is only the case of the enlargement of the rights of the daughters**. The rights of other relatives remain unaffected as prevailed in the proviso to Section 6 as it stood before amendment.
>
> 71. **As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death**. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of Section 6. **Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, there is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has now been done away with by amending the provisions in consonance with**

the spirit of the Constitution.

72. There can be a sole surviving coparcener in a given case the property held by him is treated individual property till a son is born. In case there is a widow or daughter also, it would be treated as joint family property. If the son is adopted, he will become a coparcener. An adoption by a widow of a deceased coparcener related to the date of her husband's death, subject to saving the alienations made in the intermittent period."

(Emphasis added)

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53. The above discussion of the Supreme Court in **Vineeta Sharma** (supra) is very significant for deciding the question of law involved in this Second Appeal and for understanding the observation in paragraph No.69 in ***Vineeta Sharma*** (supra) to the effect that the coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. The Supreme Court in ***Vineeta Sharma*** (supra) in paragraph Nos. 70 to 72 has held as follows:

(i) Section 6, as substituted, presupposes the existence of coparcenary. It is only the case of the enlargement of the rights of the daughters.

(ii) As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death.

(iii) Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, there is no disruption

of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place.

(iv) There can be a sole surviving coparcener in a given case the property held by him is treated individual property till a son is born. In case there is a widow or daughter also, it would be treated as joint family property.

(v) If the son is adopted, he will become a coparcener. An adoption by a widow of a deceased coparcener related to the date of her husband's death, subject to saving the alienations made in the intermittent period.

54. Thus, it is very clear that as per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. If the son is adopted, he will become a coparcener. An adoption by a widow of a deceased coparcener related to the date of her husband's death, subject to saving the alienations made in the intermittent period.

55. The observations in ***Vineeta Sharma*** (supra) in paragraph 69 to the effect that the coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her are required to be understood in the context of the concept of Joint Hindu Family and coparcenary as discussed extensively herein above.

Thus, what is contemplated is that if the coparcenary is not at all existing, then only the daughter will not be entitled to claim any right. This is also required to be understood in view of what has been held by the Supreme Court in **C.E.D. Vs. Alladi Kuppuswamy**.

D] **Acquisition of rights in coparcenary property :**

56. The Supreme Court in **Vineeta Sharma** (supra) in paragraph Nos.73 and 74 discussed acquisition of rights in coparcenary property, which reads as under :

> "73. **It is by birth that interest in the property is acquired. Devolution on the death of a coparcener before 1956 used to be only by survivorship. After 1956, women could also inherit in exigencies, mentioned in the proviso to unamended Section 6. Now by legal fiction, daughters are treated as coparceners. No one is made a coparcener by devolution of interest. It is by virtue of birth or by way of adoption obviously within the permissible degrees; a person is to be treated as coparcener and not otherwise.**
>
> 74. **The argument raised that if the father or any other coparcener died before the 2005 Amendment Act, the interest of the father or other coparcener would have already merged in the surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. We are unable to accept the submission because it is not by the death of the father or other coparcener that rights accrue. It is by the factum of birth. It is only when a female of Class I heir is left, or in case of her death, male relative is left, the share of the deceased coparcener is fixed to be distributed by a deemed partition, in the event of an actual partition, as and when it takes place as per the proviso to unamended Section 6. The share of the surviving coparcener may undergo**

> **change till the actual partition is made**. The proviso to Section 6 does not come in the way of formation of a coparcenary, and who can be a coparcener. The proviso to Section 6 as originally stood, contained an exception to the survivorship right. **The right conferred under substituted Section 6(1) is not by survivorship but by birth**. The death of every coparcener is inevitable. How the property passes on death is not relevant for interpreting the provisions of Section 6(1). **Significant is how right of a coparcener is acquired under Mitakshara coparcenary. It cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener, by declaration contained in Section 6, she has been made a coparcener. The precise declaration made in Section 6(1) has to be taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly conferred by the legislature. Survivorship as a mode of succession of property of a Mitakshara coparcener, has been abrogated with effect from 9-9-2005 by Section 6(3)**."
>
> (Emphasis added)

57. The above observations of the Supreme Court are very clear and emphasised that irrespective of the date of birth of the daughter, she is entitled to the right conferred by amended Section 6. In fact the Supreme Court rejected the same argument to the effect that if the father or any other coparcener died before the 2005 Amendment Act, the interest of the father or other coparcener would have already merged in the surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. What is important is that coparcenary must exist as on 9th September 2005 and not that

the father should be alive. It is significant to note that by birth as of right the daughter becomes member of the coparceners and it is not necessary that the father should be alive when the H.S.A., 1956 came into efffect. The Supreme Court clearly held that it is not by the death of the father or other coparcener that rights accrue. It is by the factum of birth of a daughter that the right accrue to the daughter. It has been held that the share of the surviving coparcener may undergo change till the actual partition is made.

(XIV) Conclusions Recorded By The Supreme Court In Vineeta Sharma (Supra):

58. The Supreme Court in Vineeta Sharma (supra) recorded conclusions in Paragraph No.137 as follows :

> "137. Resultantly, we answer the reference as under:
>
> 137.1. **The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities**.
>
> 137.2. **The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004**.
>
> 137.3. **Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-**

9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

(Emphasis added)

(XV) The Supreme Court in the decision of Prasanta Kumar Sahoo v. Charulata Sahu [(2023) 9 SCC 641] :

59. The Supreme Court in ***Prasanta Kumar Sahoo*** (Supra) in Paragraph No.71 set out the propositions which follow from the decision of ***Vineeta Sharma*** (supra). The said Paragraph No.71 reads

as under :-

> "***71.*** *The following propositions, amongst others, follow from the abovequoted paragraphs of the decision in Vineeta Sharma [Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119] :*
>
> ***71.1.*** *Sub-section (1) of the substituted Section 6 of the Hindu Succession Act, 1956 recognises a joint Hindu family governed by Mitakshara law.*
>
> ***71.2. The coparcenary must exist on 9-9-2005 i.e. the date of commencement of the 2005 Amendment Act.***
>
> ***71.3. The daughter has been recognised and treated as a coparcener by birth, with equal rights and liabilities as of that of a son.***
>
> ***71.4. It is not necessary that a coparcener whose daughter is conferred with the rights is alive or not on the date of commencement of the 2005 Amendment Act. The daughter would step into the coparcenary as that of a son by birth.***
>
> ***71.5. Though the daughter would step into the coparcenary as that of a son by birth whether the daughter is born before the commencement of the 2005 Amendment Act or after the commencement of the 2005 Amendment Act, but the daughter born before the commencement of the 2005 Amendment Act can claim coparcenary rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).***
>
> ***71.6.*** *In case a coparcener living on the date of commencement of the 2005 Amendment Act (i.e. 9-9-2005) dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).*"

(Emphasis added)

(XVI) Conclusions regarding substantial questions of law "whether the daughter, whose father had passed away before the Hindu Succession Act, 1956 (H.S.A., 1956) came into force, is entitled to claim the benefit of Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005?"

60. For the above reasons the following conclusions are recorded :-

A] The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities. **[Para 137.1 of Vineeta Sharma]**

B] The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004. **[Para 137.2 of Vineeta Sharma]**

C] Since the right in coparcenary is by birth, it is not necessary that father of coparcener should be living as on 9-9-2005. **[Para 137.3 of Vineeta Sharma]**

D] As held in ***Vineeta Sharma*** (supra) and reiterated in ***Prasanta***

Kumar Sahoo (supra), to claim the rights as coparcener, the coparcenary must exist on 9th September 2005 which is to be understood in the light of the law laid down by the Supreme Court in ***Sitabai*** (supra), ***Vasant*** (supra) and ***Dharma*** (supra), which is as under:

(i) Where the joint family properties had passed on to the hands of the remaining members of the coparcenary on the death of one of the coparceners no vesting of the property actually takes place in the remaining coparceners while their share in the joint family properties might have increased on the death of one of the coparceners which was bound to decrease on the introduction of one more member into the family either by birth or by adoption.

(ii) The joint family property does not cease to be joint family property when it passes to the hands of a sole surviving coparcener. The only difference between the right of a manager of a joint Hindu family over the joint family properties where there are two or more coparceners and the right of a sole surviving coparcener in respect of the joint family properties is that while the former can alienate the joint family properties only for legal necessity or for family benefit, the latter is entitled to dispose of the coparcenary

property as if it were his separate property as long as he remains a sole surviving coparcener and he may sell or mortgage the coparcenary property even though there is no legal necessity or family benefit or may even make a gift of the coparcenary property.

E] In ***Vineeta Sharma*** (supra), the same is made clear in Paragraph Nos. 68, 71, and 72, which are as follows:

> "*68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Sections 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).*

71. As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of Section 6. Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I heir, there is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has now been done away with by amending the provisions in consonance with the spirit of the Constitution.

72. There can be a sole surviving coparcener in a given case the property held by him is treated individual property till a son is born. In case there is a widow or daughter also, it would be treated as joint family property. If the son is adopted, he will become a coparcener. An adoption by a widow of a deceased coparcener related to the date of her husband's death, subject to saving the alienations made in the intermittent period."

F] In fact, arguments as raised by the Appellant is specifically rejected by the Supreme Court in Paragraph No.74, which reads as under :

"*74. The argument raised that if the father or any other coparcener died before the 2005 Amendment Act, the interest of the father or other coparcener would have already merged in the surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. We are unable to accept the submission because it is not by the death of the father or other*

coparcener that rights accrue. It is by the factum of birth. It is only when a female of Class I heir is left, or in case of her death, male relative is left, the share of the deceased coparcener is fixed to be distributed by a deemed partition, in the event of an actual partition, as and when it takes place as per the proviso to unamended Section 6. The share of the surviving coparcener may undergo change till the actual partition is made. The proviso to Section 6 does not come in the way of formation of a coparcenary, and who can be a coparcener. The proviso to Section 6 as originally stood, contained an exception to the survivorship right. The right conferred under substituted Section 6(1) is not by survivorship but by birth. The death of every coparcener is inevitable. How the property passes on death is not relevant for interpreting the provisions of Section 6(1). Significant is how right of a coparcener is acquired under Mitakshara coparcenary. It cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener, by declaration contained in Section 6, she has been made a coparcener. The precise declaration made in Section 6(1) has to be taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly conferred by the legislature. Survivorship as a mode of succession of property of a Mitakshara coparcener, has been abrogated with effect from 9-9-2005 by Section 6(3)."

G] Thus, the substantial question of law will have to be answered in favour of the Respondent No.1-Tarabai i.e. the original Plaintiff. It will have to be held that the daughter is entitled to claim benefit of amended Section 6 of the Hindu Succession Act, 1956 even if the father had passed away before the Hindu Succession Act, 1956 came

into force.

H] Thus, the Frist Appellate Court has correctly applied the Hindu Succession Act, 1956 as per 2005 Amendment to the facts of the case. It is very clear that the father of the Respondent No.1 had passed away in 1943, is not at all relevant for the purpose of claiming the share by the Respondent No.1 as equal as that of son as she becomes coparcener immediately after her birth and therefore the date of death of the father is totally irrelevant even if death of the father is before 17th June 1956 i.e. the date on which Hindu Succession Act, 1956 came into effect.

(XVII) Whether it was necessary for the Respondent No.1 to file cross-objection:

61. Another substantial question of law framed by a learned Single Judge by Order dated 6th January 2014, is whether the first Appellate Court erred in modifying a decree of the learned trial Court of granting additional share in favour of the original Plaintiff in the absence of any cross-objection or substantive claim in that behalf. As far as this substantial question of law, it is required to be noted that the suit is filed for partition. It is settled law that as far as the partition suits are concerned, all the parties are Plaintiffs and Defendants and the said principle will also apply to the First Appeal. Thus, non filing of cross-objection is not relevant.

62. In this behalf, it is also required to note that the Supreme Court in ***Ganduri Koteshwaramma*** (supra), with reference to amended Section 6 and giving share to the daughter as equal to that of son, observed that a preliminary decree of partition only determines the rights and interests of the parties. It is only by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, there is any change in law necessitating determination of shares accordingly then there would be no impediment for the Court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation. Thus, it is clear that it is not necessary for the Respondent No.1 to file cross-objection before the First Appellate Court for seeking enhanced share. In this case, the proceedings are pending at the stage of preliminary decree. Thus, there is no substance in the said contention.

63. Accordingly, there is no substance in the Second Appeal and the same is accordingly dismissed, however, with no order as to costs.

64. This Court places on record its appreciation for the valuable assistance rendered by Mr. Girish Godbole, learned Senior Counsel -

Amicus Curiae. It is also required to be noted that Mr. Sandesh Patil, learned Counsel for the Appellants, Mr. Drupad Patil, learned Counsel and Mr. Kalpesh Patil, learned Counsel also effectively assisted this Court. This Court places on record its appreciation for the assistance rendered by all the learned Counsel.

[MADHAV J. JAMDAR, J.]