



INDIALAW

REAL ESTATE

# Prakash & Ors v. Phulawati & Ors – Inheritance rights of a daughter over coparcenary property

**AUTHOR** Suresh Palav, Shweta Tiwari

**PUBLISHED** 6 November 2015

## Introduction

In the case of *Prakash & Ors. v Phulawati & Ors.*<sup>[1]</sup>, the Supreme Civil Appeal No.7217 of 2013 Court has dealt with the question of retrospective application of Section 6 (1) of the Hindu Succession Amendment Act, 2005 (“**Amendment Act**”), which grants equal rights to sons and daughters of a coparcener, in his share of ancestral property.

## Facts of the Case

The Respondent (as per the Supreme Court case) had initially filed a suit before the Additional Civil Judge (Senior Division), Belgaum (“**Trial Court**”) for partition and separate possession of 1/7<sup>th</sup> share in certain properties (“**Ancestral Properties**”) and 1/28<sup>th</sup> share in a different property. The Ancestral Properties were inherited by the Respondent’s father. The Respondent claimed that, after the death of her father on 18 February 1988, the Respondent acquired the Ancestral Properties. The Appellant (as per the Supreme Court case) contested that Respondent could claim only the self acquired property of her deceased father, and not his ancestral property. The suit was filed in the year 1992 and the Amendment Act was made effective from 9<sup>th</sup> September 2005. The Respondent, during the pendency of the suit amended her plaint to claim her share as per the Amendment Act. The Trial Court partly allowed the suit. Aggrieved by the decision of the Trial Court, the Respondent approached the High Court.

## Decision of the High Court

The Respondent filed an appeal before the High Court stating that she had become a coparcener as per Section 6 (1) of the Amendment Act and hence she was entitled to inherit coparcenary property equal to her brothers, apart from her individual right over certain properties. The Appellants contested that the Respondent’s father died before the commencement of the Amendment Act hence the amended provisions cannot apply to the present case.

The High Court allowed the appeal of the Respondent. The High Court placed reliance on the judgment delivered in the case of *G. Sekar v. Geetha and Others*<sup>[2]</sup>, wherein the Supreme Court held that any development in the law will inevitably apply to a pending proceeding. This does not mean that the law will be applicable retrospectively. It only means that the law has to be interpreted as it stands on that day. Although Respondent’s father died in the year 1988 and the suit was initiated in the year 1992, the suit is pending the Amendment Act. Hence the provision of the Amendment Act will be applicable to the present case.

The High Court also analyzed the application of section 6 (5) of the Amendment Act in the context of a notional partition held between the parties happened.

Section 6 (5) of the Amendment Act reads as follows:

*“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.”*

The above section states that, if the partition was effected by a registered partition deed or a decree of the court which had attained finality prior to 20 December 2004, the Amendment Act will not be applicable. In the present case, partition was not effected by either a registered partition deed or decree of the court. It was a notional partition. Hence, Section 6 (5) of the Amendment Act will not be applicable.

## Decision of the Supreme Court

Aggrieved by the judgment of the High Court, an appeal was filed by the Appellants before the Supreme Court. The Supreme Court accepted the contention of the Appellant that the present case was a case of notional partition and was governed by the Principal Act. As per the notional partition, shares in the Ancestral Properties were already allotted to the heirs under the Hindu Succession Act, 1956 (“**Principal Act**”). The said rights cannot be taken away by a subsequent amendment to the Principal Act. The Amendment Act is applicable only from 9 September 2005. Hence, the present case cannot be governed by the Amendment Act.

The Supreme Court also rejected the contention of the Respondent that the Amendment Act was a social legislation and hence, it should be applied retrospectively. The Supreme Court held that even though the Amendment Act is a social legislation, it cannot be applied retrospectively, unless intended by the legislature and expressly provided under such legislation.

The Respondent had claimed that a daughter acquired right to all her father's property by birth, irrespective of the date of his death, whether it is prior to the commencement of the Amendment Act or afterwards. The Supreme Court rejected this contention stating that legislature has expressly made the Amendment Act applicable from 9 September 2005 and only if the death of the coparcener in question is after the said date, the provisions of the Amendment Act will be applicable. Hence, there is no scope for any other interpretation in view of express language of the Amendment Act.

Hence, the appeal of the Appellant was allowed.

[1] Civil Appeal No.7217 of 2013

[2](2009) 6 SCC 99