DEVOLUTION OF THE SELF-ACQUIRED PROPERTY OF AN INTESTATE HINDU FEMALE – A GREY AREA THAT NEEDS IMMEDIATE LEGISLATIVE ATTENTION

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INTRODUCTION

The ancient Hindu Mitakshara scriptures have only articulated the rules with respect to succession of the Joint Hindu Family property. This is because the economic social settings of the ancient Hindu society meant that all property was a part of the collective stock, called the Joint Hindu Family property, and thus, there existed no concept of self-acquired property.

The Indian society has undergone massive social and economic changes since then and these alterations were taken cognizance of by the legislators while codifying the Shastra laws. One of the reflections of this avant garde law is the Hindu Succession Act, 1956, (hereinafter referred to as ‘The Act’), which, in §8, has provided the mode of devolution of self-acquired property of an intestate Hindu male as well.

However, in spite of these strides, the legislators have still failed to address the issue of devolution of the self-acquired property of an intestate Hindu female. This grey area in the law has resulted in ambiguities in the succession to such property and has, more often than not, resulted in judicial interpretations that go against justice and equity.

Through this paper, the author aims to inspect and analyze this grey area of the law. Since the legislation is inadequate, the author primarily focuses on the critical scrutiny of the landmark decision of the Hon’ble Supreme Court relevant to this issue- Omprakash and Ors. v. Radhacharan and Ors. (Hereinafter referred to as ‘Omprakash’). Through this exercise, the author has brought to the fore the archaic nature of the concerned statute and the pressing need for amending it in order keep it relevant to the current social and economic status of Hindu women.

1 2nd Year BA LLB (Hons.) Student, NALSAR University of Law, Hyderabad
2 §8, Hindu Succession Act, 1956.
3 CIVIL APPEAL NO. 3241 OF 2009 [Arising out of Special Leave Petition (Civil) No. 460 of 2008], Decided on 5th May, 2009.
THE LAW IN QUESTION- §15, THE HINDU SUCCESSION ACT, 1956

§15 of the Act lays down the principles by which the property of an intestate Hindu will devolve:

i. §15(1) provides the general principles by which the property of such a person will devolve and lays down the classes of heirs for the purpose of such inheritance.

ii. §15(2) is a non obstante clause that provides for the devolution of the property of an issueless and intestate Hindu female that she had received from the father or mother (natal family).

iii. §15(3) is a non obstante clause that lays down principles for the devolution of the property of an issueless and intestate Hindu female that she had received from her husband or father-in-law (matrimonial family).

It is, thus, evident that the source of the property decides its mode of devolution.4

Furthermore, §15 is silent with regards to the mode of devolution of the self-acquired property of a Hindu female. The term ‘Property’ used in the section means “the property of the deceased inheritable under the Act and includes both movable and immovable property acquired by her by inheritance”5.

This has to be contrasted with §8 which clearly lays down that ‘property’ of an intestate Hindu male includes “not only joint property but self-acquired property as well”6.

Thus, it is clear that not only does the devolution of the property of an intestate Hindu female dependent on the source of the property but also turns a blind eye towards the possibility of the female acquiring the property from her own effort i.e. self-acquired property.

JUDICIAL INTERPRETATION AND APPLICATION- THE OMPRAKASH CASE

In the seminal case of Omprakash and Ors. v. Radhacharan and Ors.7 The Supreme Court has proposed a judicial solution to this legislative inadequacy through the interpretation and application of §15.

5 Balasaheb v. Jinwala, AIR 1978 Bom. 44.
7 Supra note 3.
Facts of the case

Post the death of the husband, his widow was immediately driven out of her matrimonial home. The widow went to live with her natal family, never to return to live in her matrimonial home. In her natal home, she received education which, later, enabled her to get employment. The widow died intestate and left behind various assets. Post the death of the intestate, her mother claimed right over the deceased’s property. Similar claims were lodged by the heirs of her deceased husband.

The question of fact that the property of the deceased was self-acquired was undisputed by both the parties and thus, the question that arose before the Court pertained to the mode of devolution of the self-acquired property of an intestate Hindu female.

On the one hand, the counsels for the mother of the deceased contended that since no member of the matrimonial family of the deceased, including the heirs of her husband, had made any contribution whatsoever in the education and the subsequent employment of the deceased, the property so acquired by the deceased must devolve in accordance to the rules laid down in § 15(2) of the Act, 1956.

The counsels for the heirs of the deceased’s husband, on the other hand, contended that since the Act, 1956 does not lay down specific rules for the devolution of the self-acquired property of a female Hindu, such property must devolve in accordance to § 15(1) which lays down the general rules of succession.

The Hon’ble Supreme Court’s Judgment

The Court adopted the following line of reasoning:

i. The Court, on considering the matter, stated that the issue was a hard one. It stated that “only because a case appears to be hard would not lead us to invoke different interpretation of a statutory provision which is otherwise impermissible.”

ii. Furthermore, the Court expressed its view that “it is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining

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8 Supra note 3 at ¶10.
the rights of the parties which are otherwise clear and unambiguous”.

In this regard, the Court cited multiple precedents like M.D., H.S.I.D.C. and Ors. V. Hari Om Enterprises and Anr.\(^9\), Subha B. Nair and Ors. V. State of Kerala and Ors.\(^10\) and Ganga Devi v. District Judge, Nainital and Ors.\(^11\) to substantiate its stance.

iii. Additionally, it relied upon the principle laid down in Bhagat Ram (Dead) v. Teja Singh\(^12\) and stated that since the statute is silent with respect to devolution of self-acquired property of a Hindu female, the general rules of succession laid down in §15(1) will apply.

For these reasons, the Hon’ble Court dismissed the appeal of the Appellants.

DECONSTRUCTING THE CASE- A CRITICAL ANALYSIS

Was the Court’s decision appropriate?

In the instant case, the Court scrutinized the factual matrix that surrounded the issue at hand with a highly positivistic lens that blocked out the vital pathos and the family dynamics at play. As a result of such a reading of the facts, the Court failed to construe the actual import of the facts at hand and thus, failed to read together the facts and the statute.

As a consequence, the Court played it by the book and preferred reading §15(1) and §15(2) in a highly positivistic manner. It is this positivistic application of the law that led to the devolution of the self-acquired property of the deceased to her husband’s heirs and not her heirs from the natal family, in spite of the fact that her husband’s heirs had done nothing to support or educate or help the deceased acquire the property in contention.

Thus, the Court limited itself to the statutory provisions in spite of having at its disposal other Constitutional provisions like Article 142 that could have helped it arrive at a legally-sound decision by utilizing the test of ‘complete justice’.

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\(^9\) Id.
\(^10\) AIR 2009 SC 218.
\(^11\) AIR 2008 SC 2760.
\(^12\) 2009 (2) ALT 31 (SC).
\(^13\) AIR 1999 SC 1944.
The author’s view on this decision has been endorsed by renowned legal thinkers as well. Stating that the Court ought to have taken a more progressive ad sympathetic stance, Prof. Poonam Pradhan Saxena has expressed her opinion that “It is not whether a person deserved the property of the deceased or not, but justice demanded that the blood relations of the woman be given preference. And there have been precedents of the courts deviating from rigid provisions”. A similar opinion has been expressed by Justice Prabha Sridevan when she stated that “the mother's claim was not based on sympathy or sentiment, but logic and principles of fairness, equity and justice. The Supreme Court, however, found that the law was a hurdle to her claim”.

Hence, in the instant case, the Court’s decision has resulted in the miscarriage of justice as it has failed to adopt a logical, fair and just manner to resolve the issue.

Was the justification given by the Court satisfactory?

The reason given by the Court while dismissing the current appeal was that §15 nowhere mentions the mode of scheme of devolution of self-acquired property and hence, the devolution of such property must be according to the general principles laid down in §15(1). The Court also categorically stated that a mere tight-spot presented by the factual matrix of a case or the fact that it involves elements that invoke sympathy or sentiment does not mean that the Court will resort to an alternative interpretation of the statute.

Thus, on the one hand, the Court has restricted itself to the literal reading of the statute and washed its hands off the idea of interpreting the law broadly in order to make way for new circumstances and variations that may arise over time. It has, thus, adopted a narrow and a very positivistic approach while implementing the legislation and this makes the justification sound on paper.

On the other hand, by doing so, the Court has arrived at a decision that grossly violates the principle of justice equity and good conscience and this makes the decision in the instant case unsound in principle. With regard to this point, it is pertinent to mention the complete neglect of the provision available to the Apex Court under Article 142 that aggravated the injustice that was meted out as a result of the legal analysis done by the Court.

15 Prabha Sridevan, A law that thwarts justice, THE HINDU, 26th June, 2011.
Hence, the Court’s justification, in the author’s opinion, represents a quintessential legal analysis that is sound on paper but is unsound in principle. Furthermore, in the author's view, the Court’s rationale displays the successful implementation of the positivistic standards of statutory interpretation but largely fails to satisfy the expected threshold of legal merit and soundness.

**Does this decision conform to the existing laws and whether the decision is consistent with rulings in similar cases?**

The decision put out by the Court in the instant case adheres verbatim to the legislative provision under §15 of the Act, 1956 and thus, is consistent with the law in a strictly positivistic sense.

The issue of intestate succession with respect to the self-acquired property of a Hindu female is one that has seldom emerged for judicial scrutiny. Hence, the instant case is a landmark of sorts as it was the first time that an issue pertaining to this issue was presented before the Court. As a corollary, it is also evident that there exists no precedent which can serve as a metric to evaluate the judgment and the reasoning of the Court in the instant case.

**What is the impact of this decision on future cases?**

The instant case is a landmark decision by the Apex Court and has greatly influenced the decisions in cases that emerged later before Courts.

- In *Saroja Chandrasekar and Ors. v. The Union of India and Ors.* the High Court of Mardras used this decision as the guiding principle and has refused the devolution of self-acquired property of the Hindu female to her natal heirs.\(^\text{16}\)
- However, the case of *Mamta Dinesh Vakil v. Bansi S. Wadhwa & Nirmalaben @ Nivedite Desai v. Nivedita Dhimant Desai*\(^\text{17}\) raised the question of the constitutional validity of §15(1). The High Court of Mumbai discussed the instant case and stated that:

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“The provisions in §8 and 15 show discrimination between Hindu males and females. They show discrimination only on the ground of gender. The family unit or the tie may be a justification, but the discrimination is not upon family ties. The classification made is not upon family ties. The classification is wholly and only between males and females. The female acquiring property by her own skill and exertion would deprive herself of allowing it to succeed to her own heirs being her mother and father or their heirs in preference to the heirs of the husband under §15(1) (b) as was the lot of the Petitioners in the case of Omprakash v. Radhacharan in which the constitutional validity was not brought up for consideration. Years of toil and skill would, therefore, be watered down. Conversely a Hindu female who would otherwise hope to succeed to an estate of another Hindu female as an heir would receive a setback from the distant relatives of the husband of the deceased not even known to her or contemplated by her to be her competitors except upon claiming precedence as class II heirs under Section 8 or as preferential heirs under §15(1) (b).”

In light of the reasoning presented above, the High Court declared that §15(1) was discriminatory and ultra vires the constitution.

What are the judicial implications of this decision?

Devolution of self-acquired property of an intestate Hindu female is a question of law that has not been subject to much legislative intervention or judicial inspection yet. Thus, each and every case that is remotely connected to the issue is of great importance in the formation of a comprehensive and exhaustive corpus of judicial precedents and the formation of a sound legislation in this regard.

Mulla, with respect to §15(2), has observed that the section “seem to have been made on the ground that they prevent such property passing into the hands of persons to whom justice would require it should not pass and on the ground that the exceptions are in the interest of the intestate herself”.

By categorically dismissing the claims of the Appellant on the grounds of judicial overreach into the legislature’s domain, the Court has allowed the devolution of property to the party which had refused to maintain the deceased and had made contribution to the deceased’s

education or subsequent employment. Thus, the current decision violates the principle enunciated above.

Furthermore, the non-evocation of Article 142 of the Indian Constitution, which bestows upon it powers to do ‘complete justice’, in the instant case does not resonate with the principle of justice, equity and good conscience.

Hence, the instant case lays down a rather problematic and unsound precedent.

THE WAY AHEAD

The Omprakash judgment makes it amply clear that the judiciary is virtually incapacitated by the legislative inadequacy with respect to the mode of devolution of the self-acquired property of an intestate Hindu female. This makes a legislative reform the only means to resolve this conundrum.

In this regard, various recommendations have been made that can serve as effective guidelines for framing an inclusive and gender-just law.

RECOMMENDATIONS OF THE LAW COMMISSION OF INDIA

In its 207th Report, the Law Commission has examined the question of intestate succession of self-acquired property of a Hindu female. In this regard, it has recommended the amendment of §15 of the Act in order to make the devolution of such property equally on the heirs of her husband and heirs from her natal family.

RECOMMENDATIONS OF THE NATIONAL COMMISSION FOR WOMEN

The National Commission for Women, in its 19th Report on the Review of Laws and the Legislative Measures Affecting Women, has recommended that in order to make the devolution of self-acquired property to be just and equal to both sexes:

i. §8 of the Act must be made gender-neutral through the removal of the word ‘male’.
ii. §15 of the Act must be repealed.

LEGISLATIVE ACTION

The decision in Omprakash, along with the 207th Law Commission Report, had galvanized the Central Legislature into contemplating the amendment of the Act in order to include self-acquired property of Hindu females and prescribe a scheme for its devolution. This Bill was tabled in 2013 and sought to include Clause (k) in §3 of the Act which would define ‘self-acquired property’ as ‘any property including both movable and immovable property acquired by a Hindu by her own skill or exertion’. Furthermore, it sought to amend §15 to create a system of devolution of self-acquired property wherein, in absence of her children and her husband, first preference would be given to her parental heirs over her husband’s heirs. However, the Bill lapsed and there have been no legislative measures to re-table the Bill since.

CONCLUSION

“We clearly got a raw deal. But I am sure that my sister’s soul will rest in peace if the ruling in our case moves the government to make the necessary changes to the Hindu Succession Act.”

- The deceased’s brother on the decision of the Omprakash case

The Supreme Court’s unsatisfactory decision and its justification in Omprakash v. Radhacharan has thrown light on a gaping hole in the Act and has delineated the urgency of the requirement of necessary amendments. This is because this landmark judgment has managed to open the eyes of the legislature and the recommendatory bodies and has exhorted

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22 Supra note 3.
23 Supra note 3.
them to take cognizance of the changing social and economic status of women and incorporate them in statutes in the form of appropriate amendments.

As an outcome, of this decision, we saw a step in the right direction being taken in the form of a Bill to effectuate the inclusion of the laws pertaining to the devolution of the self-acquired property of an intestate Hindu female. However, the subsequent legislative lethargy and disinterest towards the issue is ominous of the doomsday for the concerned legislation for, without the requisite amendments, the law would fail to be abreast with the developments in the society and would, hence, become irrelevant.

Thus, legislative amendments with regards to this issue are the need of the hour and immediate legislative attention must be paid in order to bring clarity to this grey area of law.