DILUTION OF THE DOCTRINE OF SURVIVORSHIP

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ABSTRACT

The doctrine of survivorship was a model of property division, prevalent in the Mitakshara school of thought under Hindu legal traditions. It was a heavily patriarchal system which essentially mandated the division of the estate solely among the male claimants, terming them as coparceners. This selective exclusion of female descendants and disqualification of legal heirs’ claim in their ancestral property was gradually diluted and ultimately abolished via a series of legislations and amendments, providing females a greater equitable claim, a guaranteed share and a set of complimentary rights. This article documents this process and its impact, via examples of important cases and critical outlook of the currently persisting issues in the much-transformed doctrine.
The doctrine of survivorship was a concept of Mitakshara school of thought in Hindu jurisprudence, which decreed that joint Hindu family’s property should be devolved among the remaining coparceners, as their interest in the remaining property does not cease to exist due to the death of another coparcener, only transferred. A coparcener is defined under Hindu law as a member of a Hindu joint family who holds a direct interest and prerogative in the estate by birth, with the partakers classically consisting of only the male members: the propositus and his four generational lineal descendants. Thus, the system is heavily patriarchal and completely disregards the female family members’ rights in their ancestral property.

The system of survivorship-based partition was heavily prevalent without any check or contention, until the first legal codification arrived in 1937 with regards to a widow’s rights of partition and essentially started the dilution of the survivorship doctrine. The Hindu Women’s Right to Property Act was passed 1937, and it decreed that the widow of a coparcener shall hold the same rights as he did post his death and receive a share equal to that of the sons, and can thus practically “step into his shoes”. This prevented the coparcener’s property from devolving into the surviving coparceners by survivorship, but rather to his widow (if he leaves one behind). The widow however, still didn’t have the right of transfer of this acquired property for legal necessities/estate’s benefits or performance of religious acts (alienation), thus only a limited ownership right was conferred upon them. It was still however, a step in the right direction.

To illustrate how a plausible partition would’ve taken place post this act, let us assume a Mitakshara Hindu Joint family of a father, his wife, a son and a daughter. Upon the father’s death, his widow and the son would receive half of the property each, and the daughter shall receive nothing.

The next legislation that further diluted the doctrine as well as brought about positive implications for women in their ancestral property was the Hindu Succession Act of 1956. According to Section 6 of the act, in cases where the deceased coparcener leaves behind a surviving female relative or male relative claiming through such female, specified in Class I of Schedule to the Act, can claim an interest in the Mitakshara coparcenary property, the estate shall be partitioned by testamentary succession rather than by the survivorship doctrine.
It also introduced the concept of notional partition in section 6, a fictional scenario-based division, wherein it is assumed that the deceased coparcener had asked for a partition immediately before their death, and the estate is divided equally between the coparcenaries. The deceased person’s share is then equally distributed amongst the remnants, according to classes of heirship, rather than survivorship. This only takes place in case the coparcener leaves behind a surviving class 1 female heir. Additional aid to female members of HJF was provided via Section 8 of the Act, which provided certain guidelines for intestate succession in cases of death of males. It decreed that the classes of heirship would apply if there are no members in a superior class, thus limiting the usage extent of survivorship further.

The doctrine of notional partition being completely applicable throughout the allotment, ascertainment and actual distribution processes in cases of a class 1 female heir being left behind was re-iterated in the case of Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum, wherein the relative in question was a widow. The court stated that the “partition has to be completely treated and accepted as factually concrete reality” (even though the process of partition may involve a certain degree of assumption: the deceased asking for partition immediately before his death).

For illustration, let’s continue the previous example of a father, mother, son and daughter. Post the death of father after this act’s commencement, all the father, son and widow shall receive an equal 1/3rd, and the father’s 1/3rd shall be redistributed to his class 1 heirs, the widow, son and daughter. The final shares would be: widow: 4/9 to the widow and son each, 1/9 to the daughter. It is clear with this illustration that the females began to receive some share in their ancestral property and survivorship was no longer universally applicable. Additionally, it conferred absolute ownership rights to those who inherit the property, which was retrospective for females including widows.

The most significant and conclusive blow to the doctrine of survivorship was dealt by the 2005 amendments to the Hindu Succession Act, which absolutely abolished the doctrine, and made daughters eligible as equal coparceners like the other male members. Thus, it mandated that devolution of coparcenary property shall universally be governed by notional partition, irrespective of whether the deceased left behind a class 1 female heir, or even had a direct interest.
in the property at the time of death. Additionally, under section 6 of the HSAA the daughters were conferred with absolute interest, prerogative and liabilities like the sons in a coparcenary property as a birthright, guaranteeing a share from their ancestral property, if the father had not disinherited her via a will. The right of representation was extended to the surviving daughter/son of a pre-deceased daughter, with their mother’s shares being conferred to them via notional partition.

The inherited property’s right was again, absolute and she now has complete authority to will away her share, seek partition or act as a Karta, which was established in the case of Sujata Sharma v. Manu Gupta. The case was imperative in establishing that daughters now stand on an even pedestal as the sons in a Hindu joint family, on paper as well as in effect.

Although the amendment brings about ground-breaking positive implications pertaining survivorship and gender justice, it still left about plentiful vacuum spots for subjective interpretation. For example, who gets the benefit of the amendment making daughters coparcenaries? What happens to pending cases prior to the amendment? The landmark case of Prakash vs. Phulavati established certain grounds. The court held that the amendment will apply to cases where the father dies post the enactment date of the Act. It will also not be applied retrospectively, regardless of the fact that it is a social legislation. Thus, only alive daughters of alive coparceners shall reap the amendment’s benefits. The fixation of a date for application does seem problematic, as the ruling of another case Danamma v. Amar Singh created another dichotomy by ruling that a daughter may be able to claim coparcenary share even if her father died before 2005, if a partition case is pending as of then. This needs resolution.

For the final illustration using the same example (father, mother, son daughter), in-case the father dies post 2005, notional partition shall apply, and all 4 of them would be given an equal 1/4th share. Subsequently, the father’s 1/4th shall equally devolve among all three of them according to class 1 heirship. Thus, the final shares being 4/12 to all three of widow, daughter and son.

References

- Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum [AIR 1978 SC 1239]
- Mrs Sujata Sharma v Shri Manu Gupta & Ors [CS (OS) 2011/2006]
- Prakash Vs Phulavati, [(2016) 2 SCC 36]