The Hindu Succession Act, 1956

CONTENTS

CHAPTER I
PRELIMINARY

The Hindu Succession Act, 1956[1]

[Act 30 of 1956]*

[*17th June, 1956*]

An Act to amend and codify the law relating to intestate succession among Hindus

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

Statement of Objects and Reasons.—"This, the third instalment of the Hindu Code, seeks to amend and codify the law relating to intestate succession. The original draft of the provisions relating to intestate succession contained in the Rau Committee's Bill underwent substantial changes in the hands of the Select Committee which considered the Rau Committee's Bill in 1948. This Bill follows to a large extent the scheme adopted by the Select Committee but takes into account the various suggestions made from time to time for the amendment of the Select Committee's version of the Bill. In particular, special provisions have been included for regulating succession to the property of intestates governed by the Marumakkattayam, Aliyasantana or Nambudri laws of inheritance.

The notes on clauses explain in detail the various provisions in the Bill."

Statement of Objects and Reasons of Amendment Act 39 of 2005.—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 Hindus 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.

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1. Extended to (1) Dadra and Nagar Haveli by Regn. 6 of 1963 and (2) Pondicherry by Regn. 7 of 1963 (w.e.f. 1-10-1963).

* **Ed.**: Act 39 of 2005 *repealed* by Act 17 of 2015, S. 2 and Sch. I. *See also* S. 4 of the Repealing and Amending Act, 2015:

"**4. Savings.**—The repeal by this Act of any enactment shall not affect any Act in which such enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment provide or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."

2. Section 6 of the Act deals with the 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.

CASE LAW ▸ Nature and Object.—In terms of Articles 14 and 15 of the Constitution of India, the female heirs, subject to the statutory rule operating in that field, are required to be treated equally to the male heirs. Gender equality is recognised by the world community in general in the human rights regime. The Act brought about revolutionary changes in the old Hindu Law. It was enacted to amend and codify the law relating to intestate succession amongst Hindus. By reason of the Act, all female heirs were conferred equal right in the matter of succession and inheritance with that of the male heirs, *G. Sekar* v. *Geetha*, (2009) 6 SCC 99.

Object of amendment of the Hindu Succession Act, 1956 is to remove the discrimination between sons and daughters, and to give equal rights to the daughters in the Hindu Mitakshara Coparcenary property as the sons have. Provisions contained in Section 6 recognize the rule of devolution by survivorship amongst the members of the coparcenary. Amendment Act came into force with effect from 9-9-2005, and a conjoint reading of Sections 6(1) and 6(5) shows that the provisions are prospective and not retrospective. But same would only mean that the daughters will get rights as coparcenars only after 9-9-2005 irrespective of fact they were born earlier, *Pravat Chandra Pattnaik* v. *Sarat Chandra Pattnaik*, (2008) 66 AIC 676 (Ori).

Class II heirs, category II sister does not include uterine sister, *K. Raj* v. *Muthamma*, (2001) 6 SCC 279.

The preamble of the Hindu Succession Act says that this is an Act to amend and codify the law relating to intestate succession among the Hindus. The Act has not been enacted for the purpose of changing the character of holding of the properties by all the Hindus apart from Section 14 of the Act which of course effects the change in the nature of the properties in the hands of females. Provision similar to Section 14 has not been incorporated in the Act making the already existing impartible estate change into coparcenary property, *Tikka Shatrujit Singh* v. *Brig. Sukhjit Singh*, ILR (1992) 2 Del 1158.

▸ **Interpretation.**—Socio-economic legislation should be interpreted with the widest possible connotation. In the matter of interpretation of statutes specially relating to womenfolk due weightage should be given to the constitutional requirement of equality of status. Therefore Hindu Succession Act should be interpreted accordingly, *Velamuri Venkata Sivaprasad* v. *Kothuri Venkateswarlu*, (2000) 2 SCC 139.

CHAPTER I
PRELIMINARY

1. Short title and extent.—This Act may be called the Hindu Succession Act, 1956.

(2) It extends[2] to the whole of India [3][* * *].

CASE LAW ▸ Applicability.—Operation of the Act is prospective, *Velamuri Venkata Sivaprasad* v. *Kothuri Venkateswarlu*, (2000) 2 SCC 139.

Hindu Succession Act, 1956 operates not from the date of coming into force of the Act but from the date of death of the estate holder, *Revathinnal Balagopala Varma* v. *Padmanabha Dasa Bala Rama Varma*, 1993 Supp (1) SCC 233.

2. Application of Act.—(1) This Act applies—

(*a*) to any 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, Prarthana or Arya Samaj,

(*b*) to any person who is a Buddhist, Jaina or Sikh by religion, and

(*c*) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be—

(*a*) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(*b*) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(*c*) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

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2. Extended to (1) Dadra and Nagar Haveli by Regn. 6 of 1963 and (2) Pondicherry by Regn. 7 of 1963 (w.e.f. 1-10-1963).
3. The words "except the State of Jammu and Kashmir" *omitted* by Act 34 of 2019, Ss. 95, 96 & Sch.-V (w.e.f. 31-10-2019).

STATE AMENDMENTS

PONDICHERRY.—In Section 2, after sub-section (2), *insert*—

"(2-A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry."—Regn. 7 of 1963, S. 3 and First Schedule (w.e.f. 1-10-1963).

CASE LAW ▸ Applicability.—The provisions of the Act, do not pro tanto apply to the members of the Scheduled Tribe as per Section 2(2) of the Act. The customary law of Scheduled Tribe has been preserved by this provision. The Hindu Succession Act by its own force would not apply to the Scheduled Tribe because of the non obstante clause in Section 2(2) of the Act, *Kailash Singh* v. *Mewalal Singh Gond*, (2002) 2 MPLJ 163.

The clog put in the instrument debarring the ladies from right of shebaitship having changed their gotras is wholly inconsistent with the Hindu Succession Act and Hindu Marriage Act, 1955, *Lakshmi Sona Dutta* v. *Official Trustee of W.B.*, (2004) 2 ICC 142 (Cal)

▸ **Inapplicability to Scheduled Tribes**.—This Act is not applicable to Scheduled Tribes. Interpretation of rights of parties based on customary law contained in Wajib-ul-Arj, done, *Bharat Bhushan* v. *Tej Ram*, (2016) 15 SCC 655.

3. Definitions and interpretation.—In this Act, unless the context otherwise requires,—

(*a*) "agnate"—one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;

(*b*) "aliyasantana law" means the system of law applicable to persons who, if this Act had been passed, would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949) or by the customary *aliyasantana* law with respect to the matters for which provision is made in this Act;

(*c*) "cognate"—one person is said to be a "cognate" of another if the two are related by blood or adoption but not wholly through males;

(*d*) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(*e*) "full blood", "half blood" and "uterine blood"—

(*i*) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(*ii*) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In this clause "ancestor" includes the father and "ancestress" the mother;

(*f*) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(*g*) "intestate"—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;

(*h*) "marumakkattayam law" means the system of law applicable to persons—

(*a*) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (XXII of 1933); the Travancore Nayar Act (II of 1100); the Travancore Ezhava Act (III of 1100); the Travancore Nanjinad Vellala Act (VI of 1101); the Travancore Kshatriya Act (VII of 1108); the Travancore Krishnanvaka Marumakkathayee Act (VII of 1115); the Cochin Marumakkathayam Act (XXXIII of 1113); or the Cochin Nayar Act (XXIX of 1113), with respect to the matters for which provision is made in this Act; or

(*b*) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras [4][as it existed immediately before the 1st November, 1956], and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line;

but does not include the *aliyasantana* law;

(*i*) "nambudri law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932 (XXI of 1933); the Cochin Nambudri Act (XVII of 1113); or the Travancore Malayala Brahmin Act (III of 1106), with respect to the matters for which provision is made in this Act;

(*j*) "related" means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

CASE LAW ▸ Interpretation.—Female entering into family of male by marriage is included under "Agnate", *Nanasaheb Vishwasrao Devre* v. *Parwatibai Shankar Chavan*, 1980 Mah LJ 586.

4. *Ins.* by the A.O. (No. 3) of 1956.

Heirs of female Hindu include agnates of her husband, *Basanti Devi* v. *Ravi Prakash Ram Prasad Jaiswal*, (2008) 1 SCC 267.

The word heirs includes both male and female under the General Clauses Act, 1897 as well as Section 3 of Hindu Succession Act, when there is no specific mention, *Lakshmi Sona Dutta* v. *Official Trustee of W.B.*, (2004) 2 ICC 142 (Cal).

Illegitimate children are not entitled to succession certificate of his predecessor father as illegitimate children are not included in the Class I heirs in the Schedule of the Act, *Ramkali* v. *Mahila Shyamwati*, (2001) 1 ICC 773 (MP).

"Related by blood" cannot be equated with "related by birth" and includes the relation that comes because of marriage, *Nanasaheb Vishwasrao Devre* v. *Parwatibai Shankar Chavan*, 1980 Mah LJ 586.

Even illegitimate children are to be deemed to be related to their mother and to one another for the purposes of the Hindu Succession Act. Effect of the definition is that "son or daughter of the deceased" is to be construed to mean not only the son and daughter of the female Hindu from any of her husbands, but even sons or daughters born to her in an illegitimate manner. The sons or daughters of the deceased female Hindu born to her from any other husband than the husband from whom she inherited the property, cannot be excluded, *Rama* v. *Appa*, 1969 Mah LJ 43 : AIR 1969 Bom 205.

To be "relative" there must be legitimate relationship, illegitimate kinship being excluded from concept. Legitimacy is express precondition of relationship which alone can constitute the foundation of right under the Act to succeed. Proviso to Section 3(1)(*j*) makes position further clear, *Dadoo Patil* v. *Raghunath Patil*, 1978 Mah LJ 739.

4. Overriding effect of Act.—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.

(2) [5][* * *]

CASE LAW ▸ Applicability.—Hindu Succession Act not applicable to successions to Bhumidhari holdings, *Saran Pal* v. *Kela Devi*, (1980) 6 ALR 474.

Any custom or usage as part of Hindu Law in force would cease to have effect after enforcement of Act for which provisions are made, *Kalindi Damodar Garde* v. *Manohar Laxman Kulkarni*, (2020) 4 SCC 335.

▸ **Overriding Effect.**—Since the Preamble to the Act reiterates that the Act is to 'amend' and codify the law and Section 4 thereof makes it clear that one should look into the Act in case of doubt and not to the

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5. *Omitted* by Act 39 of 2005, S. 2 (w.e.f. 9-9-2005). Prior to omission it read as:
"(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.".

pre-existing Hindu law, the express words of the Act would prevail over the general law, *C.W.T.* v. *Chander Sen*, (1986) 3 SCC 567 : 1986 SCC (Tax) 641.

Any rule or law of succession previously applicable to those who were governed by custom would after the coming into force of the Hindu Succession Act be permissible only in respect of the matters for which no provision is made under the Act, *Darshan Singh* v. *Ram Pal Singh*, 1992 Supp (1) SCC 191.

Provisions of the Hindu Succession Act are applicable while regulating succession in respect of agricultural lands subject to the provisions of Section 4(2) of the Act. The Hindu Succession Act shall however not affect the provisions of local law concerning prevention of fragmentation, law fixing ceiling and concerning tenancy rights in agricultural lands, *Tukaram Genba Jadhav* v. *Laxman Genba Jadhav*, (1994) 1 Mah LJ 991.

Right to Succession is a statutory right. Right acquired under Hindu Succession Act cannot be taken away except in terms of a later statute having overriding effect with a non obstante clause and which is a complete code in itself. *N. Padmamma* v. *S. Ramakrishna Reddy*, (2008) 15 SCC 517.

Section 4 of the Act has the overriding effect on succession taking place after the said Act comes into force and Section 12 of the A.P. (Andhra Area) Hereditary shall yield and it stands abrogated after coming into force of the Hindu Succession Act so far Hindus are concerned, *Pentapati Chitti Mahalakshmi* v. *Gannavarapu Subba Rao*, (1985) APLJ 194 (AP) (FB).

There is nothing in the Hindu Succession Act which retrospectively enlarges the power of a holder of ancestral land or nullifies a decree passed before the Act, *Giasi Ram* v. *Ramjilal*, (1969) 1 SCC 813.

It is undisputed that the fiction of relation back in the case of adoption under Hindu Law is based on Hindu Law texts or rule or at any rate it is based on interpretation of Hindu Law. Therefore the rule ceased to have effect from the date the Act came into force with respect to any matter for which provision is made under the Act, *Punithavalli Ammal* v. *Minor Ramalingam*, (1970) 1 SCC 570.

Customary Hindu Law ceases to apply to matter covered by Act but to matters not covered it continues to apply, unless specifically overridden provisions of customary law must be given effect to, *Govindram* v. *Chetumal*, 1970 Mah LJ 59 : AIR 1970 Bom 251.

Cases under the Hindu Women's Right to Property Act, 1937 have no bearing on the interpretation of provisions of Hindu Succession Act, *Govindram* v. *Chetumal*, 1970 Mah LJ 59 : AIR 1970 Bom 251.

The issue of "custom" prevailing in a community cannot be raised in view of the mandatory provisions of S 4, 15 and 16, *Movva Tirupathaiah* v. *Movva Sivaji Rao*, (2007) 2 APLJ 86 (SN).

Section 4 of the Act has an overriding effect. The provisions of the 1956 Act, thus, shall prevail over the text of any Hindu Law or the provisions of the Hindu Widows Re-marriage Act, 1856 Act, *Cherotte Sugathan* v. *Cherotte Bharathi*, (2008) 2 SCC 610.

In case, statutory law does not exclude the applicability of the customary law, customary law would prevail over the statutory law subject to clear proof of usage, *Ass Kur* v. *Kartar Singh*, (2007) 5 SCC 561.

The Hindu Succession Act did not obliterate Hindu law. Except to the extent of female Hindu's enlargement of right provided under section 14. Reversioner's rights under old Hindu law are not affected, *Kalawatibai* v. *Soiryabai*, (1991) 3 SCC 410.

Illegitimate child could inherit properties but not as coparcener. Provisions of 1956 Act prevail over Hindu Law existing prior thereto son born after coming into force of Hindu Succession Act, 1956, *M. Yogendra* v. *Leelamma N.*, (2009) 15 SCC 184.

▸ **Effect of Section 4(2) [before and after its omission by Hindu Succession (Amendment) Act, 2005.**—Effect of Section 4(2) before its deletion was that though the general field of succession including in respect of agricultural lands was dealt with under Section 22 Act, insofar as devolution of tenancy rights with respect to agricultural holdings were concerned, Section 22 would be inapplicable. However, with the deletion of Section 4(2), now there is no exception to the applicability of Section 22, *Babu Ram* v. *Santokh Singh*, (2019) 14 SCC 162.

CHAPTER II
INTESTATE SUCCESSION
General

5. Act not to apply to certain properties.—This Act shall not apply to—

(*i*) any property succession to which is regulated by the Indian Succession Act, 1925 (XXXIX of 1925), by reason of the provisions contained in Section 21 of the Special Marriage Act, 1954 (XLIII of 1954);

(*ii*) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(*iii*) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124), dated 29th June, 1949, promulgated by the Maharaja of Cochin.

CASE LAW ▸ Applicability.—The Hindu Succession Act, 1956 would apply to agricultural lands also, *Laxmi Debi* v. *Surendra Kumar Panda*, AIR 1957 Ori 1 : ILR 1956 Cut 599 (DB).

[6][**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,—

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6. *Subs.* by Act 39 of 2005, S. 3 (w.e.f. 9-9-2005). Prior to substitution it read as:

"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.".

(*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.]

STATE AMENDMENTS

KARNATAKA

6-A. Equal rights to daughter in coparcenary property.—Notwithstanding anything contained in Section 6 of this Act;

(*a*) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(*b*) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allottable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had 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 of such pre-deceased daughter, as the case may be;

(*c*) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (*a*) 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 will or other testamentary disposition;

(*d*) nothing in clause (*b*) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

6-B. Interest to devolve by survivorship on death.—When a female Hindu dies after the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, having at the time of her death an interest in a Mitakshara coparcenary property, her 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 any child or child of a pre-deceased child, 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 female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

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

6-C. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of Hindu Succession (Karnataka Amendment) Act, 1990 an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others devolves under Sections 6-A or 6-B upon two or more heirs and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under sub-section (1) shall, in the absence of any agreement between the parties, be determined by the Court, on application, being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section 'Court' means the Court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other Court which the State Government may by notification in the Official Gazette specify in this behalf. (*vide* Karnataka Act 23 of 1994 w.e.f. 28-7-1994).]

CASE LAW ▸ Nature and Object.—Section 6(1) of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, the proviso appended to Section 6(1) of the Act creates an exception. Section 6 is an exception to the general rules, *Sheela Devi* v. *Lal Chand*, (2006) 8 SCC 581.

▸ **Scope of.**—Section 6 deals with rights of coparcener in devolution of property where Mitakshara coparcener dies intestate. It does not interfere with special rights of members of Mitakshara property. However, it seeks to ensure that female heirs mentioned as Class I heirs get their shares after death of coparcener by introducing concept of notional partition immediately before his death, *Ramesh Verma* v. *Lajesh Saxena*, (2017) 1 SCC 257.

▸ **Applicability.**—Does not apply to property received by member of joint family on partition, *Ramachandra Pillai* v. *Arunschalathammal*, (1971) 3 SCC 847.

Not applicable when the surviving members of coparcenary had already partitioned their properties and became owners to the extent of their share, *Bhanwar Singh* v. *Puran*, (2008) 3 SCC 87.

The question as to whether an amendment is prospective or retrospective in nature, would depend upon its construction. Neither the 1956 Act nor the 2005 Act seeks to reopen vesting of a right where succession has already taken place. Where a partition has not taken place, Section 6 of the 1956 Act would apply, *G. Sekar* v. *Geetha*, (2009) 6 SCC 99.

Section 6 is an exception to Section 8. A Hindu's property can be coparcenary, joint family or self-acquired property. A coparcener cannot lay claim to all properties which belonged to family unless it is shown that property was thrown to common hotchpot, *Radha Devi* v. *Mahendra Prasad Dalmia*, (2008) 4 CTC 289.

Section 6 [as substituted by Hindu Succession (Amendment) Act, 39 of 2005] is not retrospective in operation. It applies only when both coparcener and his daughter were alive on date of commencement of Amendment Act i.e 9-9-2005, irrespective of date of birth of daughter and coparcener who died thereafter. By virtue of proviso to sub-section (1) and main sub-section (5) of amended Section 6, disposition, alienation or partition which had taken place before 20-12-2004 under unamended provision would remain unaffected and transaction of partition effected after that date would be governed by Explanation to Section 6(5) as introduced by Amendment Act by reading the Explanation harmoniously with main sub-section (5), *Prakash* v. *Phulavati*, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549.

Section 6(5) Explanation providing for requirement that "partition" for purposes of amended Section 6 be a duly registered one, said requirement, can have no application to statutory notional partition on opening of succession as per unamended Section 6 proviso, having regard to nature of such partition which is by operation of law. Notional partition, by its very nature, is not covered either under the proviso to Section 6(1) or under sub-section (5) of Section 6 or under the Explanation thereto, *Prakash* v. *Phulavati*, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549.

▸ **Coparcenary Property.**—So long as a property remains in the hands of a single person, the same is to be treated as a separate property and thus, such person would be entitled to dispose of the coparcenary property as if the same were his separate property, but, if a son is subsequently born to him or adopted by him, the alienation whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienation so made by his father before he was born or begotten. But once a son is born, it becomes a coparcenary property and he would acquire an interest therein, *Sheela Devi* v. *Lal Chand*, (2006) 8 SCC 581.

▸ **Interpretation.**—Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Partitioned share of ancestral property held by single person again becomes coparcenary property as soon as child is born to such holder of the partitioned share of ancestral property, *Rohit Chauhan* v. *Surinder Singh*, (2013) 9 SCC 419.

'Coparcenary' is a narrower body than a joint family and consists of only those persons who have taken, by birth, an interest in the property of the holder for the time being and who can enforce a partition whenever they like. It commences with a common ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees. The word 'survivor' usually applies to the longest lives of two or more partners or trustees, and has been applied in some cases to the longest liver or joint tenants and legatees, and to others having a joint interest in any property, *Sathyaprema Manjunatha Gowda* v. *CED*, (1997) 10 SCC 684.

After amendment by 2005 Act, the legislative intent behind the section is giving parity of rights in coparcenary property between Hindu male and female on and from 9-9-2005, *Ganduri Koteshwaramma* v. *Chakiri Yanadi*, (2011) 9 SCC 788.

▸ **Partition.**—Appointment of shares should be determined having regard to all the heirs and allotted to all of them irrespective of the fact that some of them failed to make any claim, *Raj Rani* v. *Chief Settlement Commissioner*, (1984) 3 SCC 619.

A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. "Separation of share" is a species of "partition". When all co-owners get separated, it is a partition. Separation of share(*s*) refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds, *Shub Karan Bubna* v. *Sita Saran Bubna*, (2009) 9 SCC 689.

The right of the wife to get a share in the event of partition or the right of the widow to get a share other than the one envisaged under Section 6 is not postulated by the Hindu Succession Act. The wife is entitled to a share under Shastric Hindu Law independently of Section 6 of the Act and this concretized the later observation that the provisions of the Hindu Succession Act, does not preclude such share. The Act cannot be considered as giving quitus or tranquillizer to the preceptor usage and custom prevailing in South India. Section 6 is primarily confined to the interruption of devolution by survivorship in the event of presence of female heir and the heirs set out in class I of the Schedule are specified as heirs. The fiction embodied in the proviso has a procedural trapping whereby the partition is considered to be at large necessitating the consideration of the slices of all the other sharers to arrive at the ratio of the share of the deceased. Section 6 cannot be stretched beyond this and the right of the wife or the widow to claim share in her own right does not flow from the veins of Section 6, *Rayani Appaiah* v. *Spl. Tahsildar L.R. Addanki*, (1988) 1 APLJ 1 (FB) (AP).

Explanation I of Section 6 provides a fictional expedient namely that the share of a Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition had taken place immediately before his death, *Gurupad Khandappa Magdum* v. *Hirabai Khandappa Magdum*, (1978) 3 SCC 383.

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 Expln 1 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, *State of Maharashtra* v. *Narayan Rao*, (1985) 2 SCC 321.

A legal heir has a right to seek restoration of partition suit of deceased, *Dwarika Prasad* v. *Nirmala*, (2010) 2 SCC 107.

▸ **Succession and Inheritance.**—Property inherited from paternal ancestors is 'ancestral property' as regards the male issue of the propositus, but it is his absolute property and not ancestral property as regards other relations. If a person inheriting such property has no son, grandson, or grandson's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases, *Dipo* v. *Wassan Singh*, (1983) 3 SCC 376.

▸ **Disqualification**.—If the only son, being a coparcener in a joint Hindu family governed by Mitakshara law, murders his father, who died intestate, the son would be totally disqualified from inheriting any interest in the corpacenary property and would be deemed to have predeceased his father and his fresh stock of line of descent would cease to exist. If he is the sole male survivor in the family, he having incurred such disqualification, his wife who succeeds through him, cannot also lay any claim in the property, *Vellikannu* v. *R. Singaperumal*, (2005) 6 SCC 622.

Widow of a coparcener who is found unchaste on the date of his demise is not disqualified to inherit his estate as a class 1 heir under the Hindu Succession Act, *Narasimhulu* v. *Srimathi Manemma*, (1987) 2 APLJ 313 (AP).

Children born to Hindu, after such Hindu converts himself to another religion, shall be disqualified from inheriting property of any of their Hindu relatives, *Subramaniyan* v. *Vijayarani*, (2001) 3 CTC 73.

A mother cannot be divested of her interest in her son's property either on the ground of unchastity or remarriage, *Kasturi Devi* v. *Dy. Director of Consolidation*, (1976) 4 SCC 674.

▸ **Karta/Manager**.—Hindu widow is not coparcener in undivided family of her husband. Therefore, she cannot act as Karta of that undivided family, however she can act as its manager. Position of Hindu widow remains unaltered even after amendment to Hindu Succession Act, 1956 in 2005. Manager denotes role distinct from that of Karta. Where male adult died and there is minor coparcener, under such circumstances, joint family does not come to end. Mother of minor coparcener as legal guardian of minor can act as manager, *Shreya Vidyarthi* v. *Ashok Vidyarthi*, (2015) 16 SCC 46 : (2016) 3 SCC (Civ) 611.

▸ **Succession to joint family property prior to 2005 amendment**.—When male Hindu, having interest in Mitakshara coparcenary property, died intestate after commencement of HSA, leaving behind a Class I female heir and sons, then by operation of proviso to Section 6 deceased's interest in coparcenary property would devolve by intestate succession under Section 8 and not by survivorship under Section 6. After devolution of joint family property as per Section 8 HSA upon death of male Hindu intestate, property would cease to be joint family property and said female heir and other coparceners succeeding to the same would hold their respective share in property as tenants-in-common and not as joint tenants. Therefore, grandson born after death of the male Hindu cannot maintain suit for partition claiming his share by division of alleged joint family property, *Uttam* v. *Saubhag Singh*, (2016) 4 SCC 68 : (2016) 2 SCC (Civ) 545.

▸ **Right under unamended and amended Section 6 of HS Act**.—Right of Daughter born before enactment of HS Act, 1956, in joint Hindu family property governed by Mitakshara law, under unamended and amended Section 6 of HS Act, explained in detail, *Danamma* v. *Amar*, (2018) 3 SCC 343.

▸ **Right of daughters in partitioned ancestral property**.—On father and mother dying intestate, under principles of amended Hindu Succession Act, every Class I heir including daughters, entitled to share in property of parents. Partition pursuant to decree in an earlier partition suit of 1966 cannot, in any way, disentitle a daughter from claiming a share in properties of her parents in subsequent suit when the 2005 Amendment Act had come into force, *Shailndra Kumar Jain* v. *Maya Prakash Jain*, (2019) 15 SCC 770.

▸ **Daughter's right in coparcenary property**.—Daughter born before date of enforcement of the 2005 Amendment Act, held, has same rights as daughter born on or after the amendment. Non-requirement of coparcener father to be alive on date of coming into force of the said amendment, explained, *Vineeta Sharma* v. *Rakesh Sharma*, (2020) 9 SCC 1.

▸ **Mode of succession.**—Survivorship as a mode of succession of property of a Mitakshara coparcener, held, has been abrogated with effect from 9-9-2005 by the substituted Section 6(3), *Vineeta Sharma* v. *Rakesh Sharma*, (2020) 9 SCC 1.

▸ **Coparcenary interest of male Hindu.**—Coparcenary interest of male Hindu if deceased leaves behind Class I female heir would devolve by testamentary or intestate succession under 1956 Act and not by survivorship. Further held, such interest would be inherited by the heirs as their individual property and not as joint family/HUF property, and the heirs shall take the property per capita and as tenants-incommon and not as joint tenants. Such interest is not to be treated as joint family/HUF property, though it may be held jointly by the legal heirs as tenants in- common until the property is divided, apportioned or dealt with in a family partition or settlement, *M. Arumugam* v. *Ammaniammal*, (2020) 11 SCC 103.

7. Devolution of interest in the property of a *tarwad, tavazhi, kutumba, kavaru* or *illom*.—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad, tavazhi* or *illom*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad, tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad, tavazhi* or *illom*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad, tavazhi* or *illom*, as the case may be, then living whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru*, shall be deemed to be the share in the property of the *kutumba* or *kavaru*, as the case may be, that would have fallen to him or her if a partition of that property per *capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1), when a *sthanamdar* dies after the commencement of this Act, the *sthanam* property held by him shall devolve upon the members of the family to which the *sthanamdar* belonged and the heirs of the *sthanamdar* as if the *sthanam* property had been divided *per*

capita immediately before the death of the *sthanamdar* among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the *sthanamdar* shall be held by them as their separate property.

Explanation.—For the purposes of this sub-section, the family of a *sthanamdar* shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom of usage to succeed to the position of *sthanamdar* if this Act had not been passed.

STATE AMENDMENTS

KERALA.—In sub-section (3) of Section 7—

(*a*) between the words 'him' and 'shall', the words 'or her', between the words 'himself' and 'and', the words 'or herself' and between the words 'his' and 'family' in the two places where they occur the words 'or her' shall be respectively *inserted*;

(*b*) in the Explanation, the word 'male' shall be *omitted*;

(*c*) the existing Explanation shall be numbered as Explanation I and the following shall be added as Explanation II—

"*Explanation II.*—The devolution *of sthanam* properties under sub-section (3) and their division among the members of the family and heirs shall not be deemed to have conferred upon them in respect of immovable properties any higher rights than the *sthanamdar* regarding eviction or otherwise as against tenants who were holding such properties under the *sthani.*"—Kerala Act XXVIII of 1958, Section 27 (w.e.f. 18-5-1958).

CASE LAW ▸ Devolution of Interest.—Section 7 is dealing with a situation similar to that dealt with in Section 6, namely, that when a member of joint Hindu family dies undivided, instead of his undivided interest devolving upon the other members of the family by survivorship, it is provided that on the death of an undivided member of the joint Hindu family his share in the joint family properties shall devolve on his heirs as if there had been partition in the family, *Jalaja Shedthi* v. *Lakshmi Shedthi*, (1973) 2 SCC 773.

Chapter II of the Hindu Succession Act, which deals with intestate succession of Hindus, would prevail over any law which was in force immediately before the commencement of this Act. Therefore, after the coming into force of the Hindu Succession Act, an undivided interest of an Aliyasanthana Hindu possessed of life interest would devolve as provided for under Section 7(2) while in the case of separate property it would devolve on his heirs as provided for in Section 17 of that Act and the Aliyasanthana Act would not be applicable, *Sundari* v. *Laxmi*, (1980) 1 SCC 19.

Merely because the properties held by a person devolve by a rule of succession related to the position held by him, it does not follow that such person is a sthani within the meaning of Section 7(3) of the Hindu Succession Act. Three important incidents characterise a sthanam and its properties. In the first place, the powers of a sthani to alienate the corpus of the sthanam properties or to bind his successors by his debts are limited. Secondly, when a sthanam was created by opulent and influential families, the members of the tarwad agreed to set aside for the karnavan certain properties in order that he might keep up his social position and influence; such properties descended to the next head of the family and the other members of the tarwad had no rights therein except reversionary rights in case the sthanam ceased to exist. There is nothing whatever on record to show that any properties of any tarwad to which the Rulers belonged had at the inception of the Rulership been set apart for the benefit of the Ruler. Thirdly, in the case of a sthanam, the sthani ceases to have any interest in the other properties of his tarwad because the tarwad has

already allotted properties belonging to it to meet the needs of the sthani, *Revathinnal Balagopala Varma* v. *Padmanabha Dasa Bala Rama Varma*, 1993 Supp (1) SCC 233.

▸ **Member of tarwad, Rights of.**—From the language of the section, it is clear that members of the tarwad take the property as co-owners and not as the heirs of the deceased *sthanee*. This fiction was created for the purpose of providing for the devolution of the *sthanam* properties, *Inspecting Asstt. Commissioner* v. *V.K.R. Panikkar*, (1972) 4 SCC 435.

▸ **Estate duty.**—The provisions of Section 7 of the Succession Act have to be read together with Section 7 of the Estate Duty Act for determining the interest which the deceased sthanamdar had in the sthanam property on which the estate duty would be leviable, *M.K.B. Menon* v. *Asstt. Controller of Estate Duty*, (1971) 2 SCC 909.

▸ **Compromise.**—Custom is irrelevant once parties enter into valid compromise. Compromise is binding in the absence of fraud, undue influence or coercion, *Madalappura Kunhikoya* v. *Kunnamgalam Beebi*, (2015) 15 SCC 684 : (2016) 3 SCC (Civ) 454.

8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(*a*) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(*b*) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

(*c*) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(*d*) lastly, if there is no agnate, then upon the cognates of the deceased.

CASE LAW ▸ Nature and Object.—Section 8 is not retrospective, *Eramma* v. *Veerupana*, (1966) 2 SCR 626.

In determining the holding of a deceased Hindu male, provisions of succession contained in Section 8 stand excluded by virtue of Section 4(2), *Sooraj* v. *S.D.O.*, (1995) 2 SCC 45.

▸ **Interpretation.**—'Dying intestate' covers both situations of dying either without having made any will or having made an invalid will, *Manshan* v. *Tej Ram*, 1980 Supp SCC 367.

The words "dying intestate" in Section 8 may be contrasted with the words of Section 6 viz., "where a male Hindu dies after the commencement of this Act". The reference in Section 6 is clearly to the time of death, while in Section 8 it is only to the fact of intestacy. The material point of time is the date when the succession opens, viz., the death of the widow. The words "where a male Hindu dies after the commencement of this Act" in Section 6 and their absence in Section 8, are extremely significant. Thus two propositions follow, (1) Succession opens on the death of the limited owner, and (2) the law then in force would govern the succession, *Daya Singh* v. *Dhan Kaur*, (1974) 1 SCC 700.

▸ **Children born from Null and Void marriages.**—Children born out of null and void marriage inherit property of father with other heirs. Daughters born from void marriage included in Class I heir under Section 8, *Bhogadi Kannababu* v. *Vuggina Pydamma*, (2006) 5 SCC 532.

▸ **Succession and Inheritance.**—After coming into force of the Hindu Succession Act, the theory of birth right does not exist and son gets share in the property only after death of his father, *Chandrakanta* v. *Ashok Kumar*, (2002) 3 MPLJ 576.

Female heirs specified in Class I of Schedule 1 inherits share devolved on her absolutely and such female heir cannot seek partition of dwelling house of male heir elects to divide estate, *Ameenambal Beevi* v. *Gopalasamy*, (2002) 2 CTC 272.

Under Section 8 read with the Schedule of the Hindu Succession Act, sons of predeceased brother of a Hindu does not come within the category of Class II heirs and heiress. Brothers, sisters or father do not come within the purview of Class I heirs as described in the Schedule, who get preference to heirs described in Class II. In Class II it provides that the heirs falling within the category of Entry II of the same class get preference to those mentioned in other subsequent entries. The brother's sons come within Entry IV, whereas brothers and sisters come within Entry II, *Shyamal Kumar Banerjee* v. *Sunil Kumar Banerjee*, (2005) 1 ICC 230 (Cal).

Class II heir is incompetent to pursue matters of dead minor when a class I heir is alive, *Leelabai* v. *Rajaram*, (1998) 8 SCC 543.

A son who inherits his father's assets does so in his individual capacity and not as a karta of the Hindu undivided family, *Makhan Singh* v. *Kulwant Singh*, (2007) 10 SCC 602.

Where a house was built by a Hindu governed by Mitakshara law, after his death, it would devolve on his son not as Karta of HUF but in his individual capacity. Therefore, after death of the son, the grandson would be a licensee of his father, *Yudhishter* v. *Ashok Kumar*, (1987) 1 SCC 204.

▸ **Partition.**—When a divided son or daughter has got the property belonging to their father in a partition, whether it is ancestral or self-acquired property of the father, they become absolute owners of their respective shares and they can deal with the properties exclusively excluding their sons. The son of a divided son does not get right from his father by birth who is excluded by virtue of Section 8 of the Act and he cannot become a coparcener in the property in question. When a Hindu died intestate, the first class heirs namely, the heirs mentioned in Schedule I, namely, son, daughter, widow and brother shall take equally to the exclusion of the other heirs, including son's son, *M. Kumaran* v. *J. Rajesh*, (2010) 5 LW 329 (Mad).

Son who is separated by partition from his father, would on father's death inherit father's assets in his individual capacity and not as karta of his Hindu Undivided Family by virtue of Section 8, *CWT* v. *Chander Sen*, (1986) 3 SCC 567.

▸ **Disposition of Property.**—Property is the subject-matter of mutual will executed by husband and wife having no issues. It is open to testator to dispose of his property in any manner during his lifetime or alter the course of inheritance by disposing of his property to the 3rd party or charity also. It cannot be said that on death of one of them the other succeeded to properties as natural heirs, *Hindu Community In General And Citizens of Gobichettipalayam Senniappa Chettiar* v. *Commr., Hindu Religious and Charitable Endowment*, (2005) 3 CTC 151.

▸ **Undivided property, Sale of.**—Sale by only some co-owners of undivided jointly inherited property not effective, *Shanmughasundaram* v. *Diravia Nadar*, (2005) 10 SCC 728.

▸ **Pension Rights.**—Right to receive pension may be termed a "property" and not a bounty. Illegitimate children are, though, entitled to share in property but right to receive family pension is strictly governed by rules, such right does not devolve upon all the legal heirs of the deceased, *A. Pappammal* v. *Union of India*, (2004) 14 AIC 372 (Mad).

▸ **Limited Ownership**.—On death of limited owner, succession opens and would be decided on the basis that the last male owner died on that day, *Daya Singh* v. *Dhan Kaur*, (1974) 1 SCC 700.

If the person who is likely to succeed at the time of the limited owner's death is not, as happens very often, likely to be the person who would have succeeded if the limited owner had not intervened, there is nothing unreasonable in holding that the law as to the person who is entitled to succeed on the owner's death should be the law then in force and not the law in force at the time of the last full owner's death. Of course, if the property had already vested in a person under the old Hindu Law it cannot be divested. Section 8 of the Hindu Succession Act will apply in preference to the customary law of the parties, *Daya Singh* v. *Dhan Kaur*, (1974) 1 SCC 700.

▸ **Widowed mother**.—Mother is a Class I heir to inherit property of her deceased son. Remarriage by Widowed mother is not a bar to inherit property of son born to her through her first marriage. Such succession, held, not prohibited or controlled by Section 2 of Hindu Widows' Re-marriage Act, 1856. Overriding effect given to Hindu Succession Act, 1956 by virtue of Section 4 thereof, *Atma Singh* v. *Gurmej Kaur*, (2017) 9 SCC 325.

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in Class I of the Schedule.—The property of an intestate shall be divided among the heirs in Class I of the Schedule in accordance with the following rules:

Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3—

(*i*) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;

(*ii*) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in Class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in Class II of the Schedule so that they share equally.

12. Order of succession among agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder—

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

CASE LAW ▸ Succession and Inheritance.—From the proviso of Section 12(*b*) of the Act, the property as per the said proviso (*b*), which vested in the adopted child before the adoption, shall continue to vest in such person. Property will be subject to the obligations, if any, attached to the ownership of such property. As, a person even after being given in adoption, takes along with him the property from his natural family which vested in him and continues to vest in him, adoption notwithstanding, whether that property vested in him either due to partition or otherwise. The property vests in a coparcener by birth and hence he gets a vested right in that property by virtue of inheritance. The proviso (*b*) makes it perfectly clear that the person even after his adoption, takes the property along with him, which was earlier vested in that person, *Yarlagadda Nayudamma* v. *Govt. of A.P.*, (1980) 2 APLJ 194 (AP).

▸ **Adopted son, Status of**.—Adoption of the adoptive son to the father or mother gets effect only from the date of the adoption and not retrospectively, *Kisan Babu Rao Memane* v. *Suresh Sadu Memane*, (1996) 1 ICC 625 (Bom).

Adopted son entitled to be treated as "issue" or natural son, *Diyyala Gopala Krishna Murthy* v. *Pullagura Dhanalakshamma*, (2010) 15 SCC 125.

Existence of joint family property is sine qua non for adopted son to get right in property of the father, *Kesharbai Jagannath Gujar* v. *State of Maharashtra*, 1981 Mah LJ 1 (FB).

13. Computation of degrees.—(1) For the purposes of determining the order of succession among agnates or cognates, relationships shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

14. 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.

CASE LAW ▸ Applicability.—Parties who have become Hindu are entitled to benefits under Section 14, *Labishwar Manjhi* v. *Pran Manjhi*, (2000) 8 SCC 587.

Section 14(1) operates when Hindu female's right to a property is questioned, *Jagannathan Pillai* v. *Kunjithapadam Pillai*, (1987) 2 SCC 572.

The whole purpose of Section 14(1) is to make a widow who has a limited interest a full owner in respect of the property in question regardless of whether the acquisition was prior to or subsequent to the commencement of the Act. The legal effect of Section 14(1) would be that after the coming into operation of the Act there would be no property in respect of which it could be contended by anyone that a Hindu female is only a limited owner and not a full owner, *Jagannathan Pillai* v. *Kunjithapadam Pillai*, (1987) 2 SCC 572.

Section 14 is not retroactive in operation, *Thota Sesharathamma* v. *Thota Manikyamma*, (1991) 4 SCC 312.

Section 14 should be construed harmoniously consistent with the constitutional goal of removing gender-based discrimination and effectuating economic empowerment of Hindu females, *Masilamani Mudaliar* v. *Idol of Sri Swaminathaswami Thirukoil*, (1996) 8 SCC 525.

Section 14(1) is neither vague and uncertain nor violative of Articles 14 and 15(1). It is also protected under Article 15(3) of Constitution of India, *Pratap Singh* v. *Union of India*, (1985) 4 SCC 197.

Section 14(2) is confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. Where the property is acquired by a Hindu female in lieu of her right to maintenance, inter alia, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14(2) even if the instrument, decree, order or award allotting the property to her prescribes a restricted estate in the property, *Santosh* v. *Saraswathibai*, (2008) 1 SCC 465.

Section 14(2) is applicable where right to property acquired under decree of court and not by virtue of any pre-existing right, *Basanti Devi* v. *Rati Ram*, (2018) 16 SCC 608.

Sub-section (2) of Section 14 is in the nature of a proviso or exception to Section 14(1). It must be construed strictly and must be confined to cases where property is acquired by a Hindu female for the first time as a grant, without any pre-existing right under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. Where however, property is acquired by a Hindu female at a partition or in lieu of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope of sub-section (2), but within the scope of sub-section (1), *V. Tulasamma* v. *Sesha Reddy*, (1977) 3 SCC 99.

In fact, even if the instrument were silent as to the nature of the interest given to the widow, in the property given to her in virtue of a pre-existing right, she would have no more than a limited interest in the property under customary Hindu Law and hence a provision in the instrument prescribing that she would have only a limited interest merely records the true legal position, and would not attract sub-section (2) but would be governed by sub-section (1), *V. Tulasamma* v. *Sesha Reddy*, (1977) 3 SCC 99;

Constructive possession of property by female concerned, is enough for applicability of Section 14(1), *Sri Ramakrishna Mutt* v. *M. Maheswaran*, (2011) 1 SCC 68.

Section 14 is not applicable to malesm, *Sundari* v. *Laxmi*, (1980) 1 SCC 19.

Section 14(1) is applicable only in the presence of an existing right and not dehors the same, *Velamuri Venkata Sivaprasad* v. *Kothuri Venkateswarlu*, (2000) 2 SCC 139.

Essential ingredients of applicability of Section 14 are antecedents of the property, possession of the property by female Hindu on the date of the commencement of the Act and existence of right in her over it. Mere possession of the property is not enough and nature of right acquired is important. Sub-section(1) applies where a female Hindu is possessed of the property on the date of the Act in which she had a pre-existing right, even if the right be to a limited estate or a right to maintenance, *Sadhu Singh* v. *Gurdwara Sahib Narike*, (2006) 8 SCC 75.

Test to determine applicability of sub-section (1) or (2) of section 14 is whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she got the right for the first time under an instrument without any pre-existing right, *C. Masilamani Mudaliar* v. *Idol of Swaminathaswami Thirukoil*, (1996) 8 SCC 525.

The essential ingredients for determining whether Section 14(1) of the Hindu Succession Act would come into play are, the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be. Any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act, *Sadhu Singh* v. *Gurdwara Sahib Narike*, (2006) 8 SCC 75.

Three conditions required to be fulfilled to attract provision of Section 14(1) namely property must be possessed by Hindu female, it must have been acquired by her and she must have been a limited owner thereof, *A. Ganesan* v. *Palaniyappa Gounder*, (2006) 45 AIC 388 (Mad HC).

Property given to Hindu woman in lieu of her pre-existing right of maintenance, even if by will creating only life interest, same would get transformed into absolute right by operation of Section 14(1). Even in absence of express words in will that life interest granted to her is in lieu of her maintenance, if same can be gathered from nature of arrangements made in will for her enjoyment of the property and if no one disputed the arrangement pursuant to which she continued to enjoy the property in lieu of maintenance, then no pleading and further proof required to substantiate the fact, *Jupudy Pardha Sarathy* v. *Pentapati Rama Krishna*, (2016) 2 SCC 56 : (2016) 1 SCC (Civ) 569.

▸ **Interpretation.**—The words 'restricted estate' in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest but any other kind of limitation that may be placed on the transferee, *V. Tulasamma* v. *Sesha Reddy*, (1977) 3 SCC 99.

Female Hindu does not necessarily mean wife, *Vidya* v. *Nand Ram*, (2001) 10 SCC 747.

"Property possessed by a female Hindu" means she must not only be possessed of the property but a pre-existing right is a sine qua non for conferment of a full ownership under section 14. A mere right of maintenance without actual acquisition in any manner is not sufficient to attract section 14, *Ram Vishal* v. *Jagan Nath*, (2004) 9 SCC 302.

The word "possessed" in Section 14 is used in a broad sense and, in the context, means the state of owning or having in one's hand or power. Once a widow gifts away the property she is no longer in a position to claim any legal right to that property and in absence of such a right, she cannot be held to be possessed of it, *Kuldip Singh* v. *Surain Singh*, 1959 Supp (1) SCR 968, *Eramma* v. *Veerupana*, (1966) 2 SCR 626.

The expression 'possessed' has been used in the sense of having a right to the property or control over the property. The expression 'any property possessed by a Hindu female whether acquired before or after the commencement of the Act' on analysis yields to the following interpretation: (1)Any property possessed by a Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner. (2) Any property possessed by a Hindu female acquired after the commencement of the Act will be held as a full owner thereof and not as a limited owner, *Jagannathan Pillai* v. *Kunjithanapadam Pillai*, (1987) 2 SCC 572.

Before, any property can be said to be "possessed" by a Hindu woman, as provided in Section 14(1) of the Act, two things are necessary: (*a*) she must have had a right to the possession of that property, and (*b*) she must have been in possession of that property, either actually or constructively, *Dindayal* v. *Rajaram*, (1970) 1 SCC 786.

▸ **Hindu Women, Rights of.**—If a female Hindu acquires property under a written instrument or a decree of the court and where such acquisition is not traceable to any antecedent right then Section 14(2) alone would be attracted and where an antecedent right is traceable, a document in the nature of will is of no consequence and the case will be covered by provisions contained in Section 14(1), *Jaswant Kaur* v. *Harpal Singh*, (1989) 3 SCC 572.

When a Hindu female purchases a property from the alienee to whom she had sold the property prior to the enforcement of the Act, she 'acquired' the property within the meaning of the Explanation to Section 14(1). The property shall be held by her as full owner thereof on such re-transfer, *Jagannathan Pillai* v. *Kunjithapadam Pillai*, (1987) 2 SCC 572.

Right to equality is a fundamental right. Parliament, therefore, has enacted Section 14 to remove pre-existing disabilities fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section 14(1) enlarging the scope of acquisition of the property by a Hindu female appending an explanation with it, *Masilamani Mudaliar* v. *Idol of Sri Swaminathaswami Thirukoil*, (1996) 8 SCC 525.

▸ **Absolute Rights of Ownership.**—Laws providing for prevention of fragmentation of agricultural land holdings take precedence over provisions of Section 14 granting Hindu females absolute rights of ownership over property including land, *Dalchand* v. *Kamlabai*, (2000) 2 SCC 209.

Widow of illegitimate son obtaining possession of immovable property in lieu of maintenance is entitled to full ownership of the property under Section 14(1), *Subhan Rao* v. *Parvathi Bai*, (2010) 10 SCC 235.

If the property was acquired by a female Hindu before commencement of the Hindu Succession Act given to her for maintenance in recognition of her shastric right to maintenance from the joint family property, it would become absolute property after coming into force of the Hindu Succession Act. But if the deed, instrument or device creates an independent or new right or claim in favour of female for first time in addition to her pre-existing right under shastric law, Section 14(1) has no application. To such cases, Section 14(2) would apply, *Kallakuri Pattabhiramaswamy* v. *Kallakuri Kamaraju*, (2009) 2 APLJ 135 (HC).

Where a Hindu widow acquired properties under a compromise in lieu of or in satisfaction of her right of maintenance the case would fall under Section 14(1) and not Section 14(2) and hence she would acquire an absolute interest, *V. Tulasamma* v. *Sesha Reddy*, (1977) 3 SCC 99.

Widow's pre-existing right of maintenance enlarges to absolute right on commencement of the Hindu Succession Act, 1956. Such right not restricted under Section 14(2). Section 14(2) is more in nature of proviso or exception to Section 14(1) and Section 14(2) applies only if acquisition arose for first time after Act came into force without there being any pre-existing right, *L. Bakthavatsalam* v. *R. Alagiriswamy*, (2007) 5 CTC 513.

Sub-section (2) makes it clear that the object of Section 14 was only to remove the difficulty on women imposed by law and not to interfere with contracts, grants or decrees, etc. by virtue of which a woman's right was restricted, *Badri Pd.* v. *Kanso Devi*, (1969) 2 SCC 586.

The Hindu Succession Act confers rights of inheritance and sweeps away the traditional limitations on powers of females on disposition of property etc. which were regarded under the Hindu law as inherent in her estate. They too become 'a stock of descent'. A female Hindu who, except for stridhan property, was a limited owner became an absolute owner under Section 14 of the Act. The Section not only removed the Disability from which a female suffered in acquiring and holding property but it converted any estate held by her on the date of commencement of the Act from limited or restricted estate to an absolute estate or full ownership. Section 14(1) was used 'as a tool to undo past injustice to elevate her to equal status with dignity of person on par with man'. This, 'section was a step forward towards social amelioration of women who had been subjected to gross discrimination in matter of inheritance.' *Gumpha* v. *Jaibai*, (1994) 2 SCC 511.

Section 14(1) of the Act was enacted to remedy to some extent the plight of a Hindu woman who could not claim absolute interest in the properties inherited by her from her husband but who could only enjoy them with all the restrictions attached to a widow's estate under the Hindu law. There is now hardly any justification for the males belonging to the Hindu community to raise any objection to the beneficent provisions contained in Section 14(1) of the Act on the ground of hostile discrimination. The above provision is further protected by the express provision contained in Article 15 (3), since it is a special provision enacted for the benefit of Hindu women, *Pratap Singh* v. *Union of India*, (1985) 4 SCC 197.

The purpose of Section 14(1) of the Hindu Succession Act is to make a widow, who has a limited interest, a full owner in respect of the property in question, regardless of whether acquisition was prior to or subsequent to the commencement of the said Act of 1956. All that has to be shown by her is that she had acquired the property and that she was possessed of the property at the point of time when her title was called into question Section 14(1) comes into operation at the point of time when the widow has an occasion to claim or assert the title to the property. The expression "possessed" pertains to the acquisition of right or interest in the property or control over the property and not to the actual physical possession or constructive possession of the property acquired by force without any legal right, *Dada Bhagwan Shinde* v. *Tulsabai*, (2008) 3 Mah LJ 475.

A property gifted by father to his daughter at the time of her marriage pursuant to an age-old custom prevailing in the area and as per family arrangement by virtue of section 14(1) makes her the absolute owner of the property, *Govt. of AP* v. *M. Krishnaveni*, (2006) 7 SCC 365.

After coming into force the Hindu Succession Act, a Hindu woman became absolute owner in the property. Any gift made by her to a minor donee would be valid and the donee gets absolute right over the property, *Kavali Hanumanna* v. *Huzurappa*, (2000) 1 ICC 572 (AP).

Laws providing for prevention of fragmentation of agricultural land holdings take precedence over provisions of section 14 granting Hindu females absolute rights of ownership over property including land, *Dalchand* v. *Kamlabai*, (2000) 2 SCC 209.

Section 14(1) of the Act along with the Explanation makes it explicitly clear that if any property is possessed by a female Hindu, before or after the commencement of the Hindu Succession Act even in lieu of maintenance, such property shall be held by her as a full owner thereof and not as a limited owner, *Chhabubai Balwantrao Shinde* v. *Gulabrao Balwantrao Shinde*, (2001) 4 Mah LJ 37.

Where the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award where under the property is given to her. In other words, though the instrument, grant, award or deed creates a limited estate or a restricted estate, as the case may be, it stands transformed into an absolute estate provided such property is given to a female Hindu in lieu of maintenance and is placed in her possession, *Santosh* v. *Saraswathibai*, (2008) 1 SCC 465.

Declaratory decree if obtained on the basis of reversionary right protected in customary law, the customary law existing prior to enactment of Section 14(1), became a nullity on extinguishment of the reversionary right recognized by the declaratory decree, on enlargement of the limited interest to absolute interest by operation of Section 14(1), *Shakuntla Devi* v. *Kamla*, (2005) 5 SCC 390.

Limited owner commonly means a person with restricted rights as opposed to full owner with absolute rights. In relation to property absolute, complete or full ownership comprises various constituents such as the right to possess, actual or constructive, power to enjoy, that is to determine manner of use extending even to destroying, right to alienate, transfer or dispose of, etc. Any restriction or limitation on exercise of these rights may result in limited or qualified ownership, *Kalawatibai* v. *Soiryabai*, (1991) 3 SCC 410 : AIR 1991 SC 1581.

Sub-section (1) of Section 14 gives a female Hindu the right to hold the property as a full owner irrespective of whether she acquired it before or after the commencement of the Act, if she fulfils two conditions, which must co-exist for the applicability of the sub-section viz., (i) she must be possessed of the property; and (*ii*) such property must be possessed by her as a limited owner, *Bai Vajia* v. *Thakorbhai Chelabhai*, (1979) 3 SCC 300.

Alienation of limited estate by female Hindu prior to coming into force of the Act must be for legal necessity, *Kalawatibai* v. *Soiryabai*, (1991) 3 SCC 410.

Section 14(1) is applicable only where female acquires possession on basis of some vestige of claim, right or title under any devise or mode indicated in Explanation and not where she is a mere trespasser. In *Ajit Kaur* v. *Darshan Singh*, (2019) 13 SCC 70, property was gifted to wife for her maintenance during lifetime of donor-husband and registered will was executed by him stipulating that property would vest in his children to the exclusion of wife after his death. It was held by the Supreme Court that merely being in possession during lifetime of husband would not make her absolute owner under Section 14(1). Absolute ownership cannot be claimed on basis of mutation of property in revenue records in her name.

▸ **Maintenance.**—Maintenance includes residence and money for necessary expenditure, *Mangat Mal* v. *Punni Devi*, (1995) 6 SCC 88.

'Maintenance', necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must,

therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head, *Mangat Mal* v. *Punni Devi*, (1995) 6 SCC 88.

The deed or any other arrangement by which the husband gives the property to his wife for maintenance need not specifically state that it is given in lieu of maintenance. It is not an act of charity the husband does. It is out of his personal obligation to maintain her. The right to maintenance of a Hindu woman is a personal obligation of the husband. If, therefore, the wife is put in exclusive possession of the property with the right to take the income for her maintenance, it must be presumed that the property is given to her in lieu of maintenance. The very right to receive maintenance which is inherent in her, is itself sufficient to enable the ripening of possession of any property into full ownership under Section 14(1) of the Hindu Succession Act, *Maharaja Pillai Lakshmi Ammal* v. *Maharaja Pillai Thillanayakom Pillai*, (1988) 1 SCC 99.

It is clear from the provisions of the Explanation appearing in Section 14 of the Hindu Succession Act that a situation was contemplated where a female Hindu could be in possession of joint family properties in lieu of maintenance. It may be mentioned that after the enforcement of the Hindu Adoption and Maintenance Act, 1956, the rights of widowed daughter-in-law to maintenance are governed by Section 19 of that Act, *Rani Bai* v. *Yadunandan Ram*, (1969) 1 SCC 604.

Benefit to a female could be given under Section 14(1) where her claim is based on her pre-existing right over her husband's property. Section 14(2) is in the nature of a proviso to Section 14(1). Section 14(1) applies to property granted to a female Hindu by virtue of a pre-existing right of maintenance.

When a widow claims her right under sub-section (1) of Section 14 in the hand of either the coparcener or male issue of her deceased husband, it is because of her pre-existing right of maintenance to the extent of her husband's share in a joint family property. She cannot claim any such right out of the share of the other coparcener in which there is no trace of her husband's share. So when limited right as spoken with reference to the husband's right in a Joint Hindu Family property is concerned, it only means limited to the extent of the husband's share, *Muninanjappa* v. *R. Manual*, (2001) 5 SCC 363.

Property bequeathed to wife by husband under a Will with right to enjoyment in life, must be construed to have been acquired by the wife in view of her pre-existing right to maintenance, *Bhoomireddy Chenna Reddy* v. *Bhoospalli Pedda Verrappa*, (1997) 10 SCC 673.

15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,—

(*a*) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
(*b*) secondly, upon the heirs of the husband;
(*c*) thirdly, upon the mother and father;
(*d*) fourthly, upon the heirs of the father; and
(*e*) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(*a*) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(*b*) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

CASE LAW ▸ Nature and Object.—The basic aim of Section 15(2), is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source. It was enacted to prevent inherited property falling into the hands of strangers, *S.R. Srinivasa* v. *S. Padmavathamma*, (2010) 5 SCC 274 : (2010) 2 SCC (Civ) 365.

Section 15(2) carves out an exception in case of a female dying intestate without leaving son, daughter or children of a predeceased son or daughter. In such a case, the rule prescribed is to find out the source from which she has inherited the property, if it is inherited from her father or mother, it would devolve as prescribed under Section 15(2)(*a*). If it is inherited by her from her husband or father-in-law, it would devolve upon the heirs of her husband under Section 15(2)(*b*). The clause enacts that in a case where the property is inherited by a female from her father or mother, it would devolve not upon the other heirs, but upon the heirs of her father so if there is no son or daughter including the children of any predeceased son or daughter, then neither her husband nor her heirs would get such property, *V. Dandapani Chettiar* v. *Balasubramanian Chettiar*, (2003) 6 SCC 633.

▸ **Interpretation.**—Stepsons and stepdaughters of a female dying intestate are not covered by words "sons and daughters" in clause (*a*) but fall under clause (*b*), *Lachman Singh* v. *Kirpa Singh*, (1987) 2 SCC 547.

A 'son' means a male offspring and 'stepson' means a son of one's husband or wife by a former union. The word 'sons' in clause *(a)* of Section 15(1) includes (*i*) sons born out of the womb of a female by the same husband or by different husbands including illegitimate sons too in view of Section 3(*j*) of the Act and *(ii)* adopted sons who are deemed to be sons for purposes of inheritance. Children of any pre-deceased son or adopted son also fall within the meaning of the expression 'sons'. In the case of a woman, a stepson, that is, the son of her husband by his another wife is a step away from the son who has come out of her own womb. But under the Act, a stepson of a female dying intestate falls in the category of the heirs of the husband referred to in clause *(b)* of Section 15(1), *Lachman Singh* v. *Kirpa Singh*, (1987) 2 SCC 547.

The word "sons and daughters (...) and the husband" in clause *(a)* of sub-section (1) of Section 15 only mean "sons and daughters (...) and the husband" of the deceased and not of anybody else. The words "son or daughter of the deceased (including the children of any predeceased son or daughter)" in clauses *(a)* and *(b)* of sub-section (2) refer to the entire body of falling under clause *(a)* of sub-section (1) except the husband. What clauses (*a*) and (*b*) of sub-section (2) do is that they make a distinction between devolution of the property inherited by a female Hindu dying intestate from her father or mother on the one hand and the property inherited by her from her husband and from her father-in-law on the other. The exclusion of 'stepsons' and 'stepdaughters' from clause (*a*) of Section 15(1) cannot be said to be unfair on ground that they would thereby be deprived of a share in the property of their father, *Lachman Singh* v. *Kirpa Singh*, (1987) 2 SCC 547.

▸ **Succession and Inheritance.**—Succession to property held by a female Hindu is governed by Section 15(2)(*a*) and remains unaffected by provisions of section 14, *Bhagat Ram* v. *Teja Singh*. (2002) 1 SCC 210.

Even if the female Hindu who has limited ownership becomes full owner by virtue of Section 14(1) of the Act, the rules of succession given under sub-section (2) of Section 15 can be applied, *Bhagat Ram* v. *Teja Singh*, (2002) 1 SCC 210.

Succession opens on the death of the limited owner and the law then in force would govern the succession, *Daya Singh* v. *Dhan Kaur*, (1974) 1 SCC 700.

Nature of succession of classified heirs is absolute and passes on in turn to the heirs of the classified heirs. There is no question of reversion, *Krishna Kumar Birla* v. *Rajendra Singh Lodha*, (2008) 4 SCC 300.

Property of a female Hindu can be classified under two heads: (1) under section 15(1) the general class of all property belonging to a female intestate, (2) under section 15(2) that the portion of the property which was inherited by the said intestate from her mother or father, *Bhagat Ram* v. *Teja Singh*, (1999) 4 SCC 86.

Sub-section (2) of Section 15 was intended only to change the order of succession specified in sub-section (1) and not to eliminate other categories of heirs set out in sub-section (1). Consequently by virtue of sub-section (2) property should first go to heirs of father or husband as the case may be, *State of Punjab* v. *Balwant Singh*, 1992 Supp (3) SCC 108.

Property of female Hindu dying intestate devolves upon sons, daughters and husband. Mother has no better claim, *Prabir Mukherjee* v. *Union of India*, (2005) 2 CHN 672.

Succession to property inherited by female Hindu from her father or mother is governed by section 15(2)(a) and remains unaffected by provisions of Section 14. Therefore, if such Hindu female leaves behind no children or children of any predeceased child, the property would devolve upon the heirs of her father, *Bhagat Ram* v. *Teja Singh*, (2002) 1 SCC 210.

▸ **Genuineness of Will.**—Onus to prove execution and genuineness of the will lays on the beneficiary where he, relying on a will sought to deny right of deceased heirs to inherit under section 15(2)(*a*), *SR Srinivasa* v. *S. Padmavathamma*, (2010) 5 SCC 274.

▸ **Estate, Kinds of.**—On bare perusal of the section, it becomes clear that as regards the females three types of estate are created by this provision with regard to succession of the female Hindus. First type is self-acquired or self-created property of a Hindu female. Second type is the property inherited by a Hindu female from her father's family including the mother and third type which is created is the property inherited by a Hindu female from her husband or father-in-law. After the death of a female Hindu, these three types become important for further inheritance of the property. In case of first type, in the absence of husband, sons or daughters, it will devolve on heirs of the husband in terms of Section 15(1)(*b*) of the Act. But in second type if the property has been inherited by the deceased Hindu female from her father or mother, it will devolve, in the absence of any son or daughter of the deceased, upon the heirs of her father, and in third type if the property inherited by a female Hindu is from her husband or father-in-law, it shall devolve, in the absence of any son or daughter, upon the heirs of the husband, *Pamulapati Venkata Subbamma* v. *Gogineni Veeraiah*, (2005) 2 APLJ 101 (SN).

▸ **Prospective effect.**—Right to succession under Section 15(2)(*a*) of category of heirs included by amendment of 2005 to Class I to Schedule viz. "son of a pre-deceased daughter of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased daughter" would be available with prospective effect. Therefore, right to succession to property of female Hindu referred to in Section 15(2)(a) would open in favour of such heir from father's side only on death of that female on or after 9-9-2005 i.e date of enforcement of amendment, *Karunanidhi* v. *Seetharama Naidu*, (2017) 5 SCC 483.

▸ **Property inherited by a female Hindu.**—Section 15(2)(*b*) of Hindu Succession Act is an exception to provisions as to general order of succession to property of a female Hindu dying intestate. Operation of Section 15(2)(b) is confined only to the case where a female Hindu inheriting property from her husband or father-in-law dies without leaving a son or a daughter or children of any predeceased son or daughter. Her said property in such a case would devolve upon heirs of her husband, *Durga Prasad* v. *Narayan Ramchandaani*, (2017) 5 SCC 69.

16. Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:

Rule 1.—Among the heirs specified in sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (*b*), (*d*) and (*e*) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

CASE LAW ▸ Heirs/Legal Representative.—All the heirs mentioned in an item of clause II of the Schedule take the property simultaneously and heirs specified earlier in the same sub-item do not exclude those later in the sequence, *Ramchandra Pillai* v. *Arunschalathammal*, (1971) 3 SCC 847.

Section 16, Rule 3 merely designates the heirs; it has no relevance in determining the nature of the property. There is nothing in Rule 3 to support the contention that the estate of a person dying intestate is to be restored to the character which it had when it devolved upon the propositus; the rule specifies a method of determining the preferential heir, and for that purpose creates a fiction, *Ramachandra Pillai* v. *Arunschalathammal*, (1971) 3 SCC 847.

Rule 3 of Section 16 creates a fiction for ascertaining the order of devolution. Bearing in mind that fiction Schedule under Section 8 has to be referred to for finding out the heirs of the father/husband who would be entitled to succeed to the property of the intestate, *State of Punjab* v. *Balwant Singh*, 1992 Supp (3) SCC 108.

The issue of "custom" prevailing in a community cannot be raised in view of the mandatory provisions of Sections 4, 15 and 16, *Movva Tirupathaiah* v. *Movva Sivaji Rao*, (2007) 2 APLJ 86 (SN).

▸ **Family Arrangement/Settlement/Partition.**—Absolute owner cannot purport to transfer his absolute interest vide "partition". Such "partition" has to be construed either as a gift deed or family settlement, for which necessary formalities, conditions or rules laid down for donation inter vivos or gift so as to enforce said document have to be complied with. French Civil Code applicable by virtue of Regulation dt. 6-1-1817. In terms thereof customary Hindu Law as prevailing in Puducherry would apply to Christians

also. Hindu Succession Act not applicable to Christians in view of Section 2(1)(c) thereof. Under applicable customary Hindu Law, sons of absolute owner of property have no right or interest in their father's property and they cannot claim partition of father's property during his lifetime. Even otherwise, father being absolute owner, cannot give away his property to his sons by entering into partition with them. However, as per applicable law, father can distribute or give away his property by donation inter vivos or by will after complying with necessary conditions or rules, *Theiry Santhanamal* v. *Viswanathan*, (2018) 3 SCC 117.

17. Special provisions respecting persons governed by *marumakkattayam* and *aliyasantana* laws.—The provisions of Sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the *marumakkattayam* law or *aliyasantana* law if this Act had not been passed as if—

(*i*) for sub-clauses (*c*) and (*d*) of Section 8, the following had been *substituted*, namely—

"(*c*) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates."

(*ii*) for clauses (*a*) to (*e*) of sub-section (1) of Section 15, the following had been *substituted*, namely—

"(*a*) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;

(*b*) secondly, upon the father and the husband;

(*c*) thirdly, upon the heirs of the mother;

(*d*) fourthly, upon the heirs of the father; and

(*e*) lastly, upon the heirs of the husband."

(*iii*) clause (*a*) of sub-section (2) of Section 15 had been *omitted*;

(*iv*) Section 23 had been *omitted*.

CASE LAW ▸ Applicability.—Section 7, 17 prevail over customary law, *Sundari* v. *Laxmi*, (1980) 1 SCC 19.

General provisions relating to succession

18. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

CASE LAW ▸ Heirs/Legal Representative.—Section 18 is a substantial reproduction of the prevalent rule of Hindu Law that relations of the whole blood are preferred to those of the half blood if their degree of relationship to the deceased is the same. Expression "if the nature of the relationship is the same in every other respect" contemplates a competition between heirs of the same degree which may be male or female, *Waman Govind Shindore* v. *Gopal Baburao Chakradeo*, 1984 Mah LJ 1 (FB).

If there are female heirs of full blood and male heirs of half-blood, the heirs of full blood would not exclude male heirs of half-blood, *Shalikram Urkuda Chambhare* v. *Pandurang*, (2009) 3 Mah LJ 867.

19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate they shall take the property,—

(*a*) save as otherwise expressly provided in this Act, *per capita* and not *per stripes*; and

(*b*) a tenants-in-common and not as joint tenants.

CASE LAW ▸ Nature and Object.—Section 19 does not deal with heir's relationship with strangers, *Surayya Begum (Mst)* v. *Mohd. Usman*, (1991) 3 SCC 114.

▸ **Statutory tenancy.**—Heirs and LRs inherit statutory tenancy as joint tenants and not as tenants-in-common, despite Personal Law to the contrary, *Suresh Kumar Kohli* v. *Rakesh Jain*, (2018) 6 SCC 708.

20. Right of child in womb.—A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the death of the intestate.

21. Presumption in cases of simultaneous deaths.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in Class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in Class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, "Court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

CASE LAW ▸ Nature and Object.—Object of Section 22(1) is that in cases where by virtue of intestate Succession any interest in immovable property has devolved upon two or more heirs specified in class I of Schedule 1 and any one of such heirs proposes to transfer his interest in property, other heirs should have preferential right to acquire interest which is proposed to be transferred. This section confers as incidental right on heirs other than one proposed to transfer his interest. Person having such preferential right has remedy in respect of transfer made in violation of above section seeking intervention of court. This section does not provide any special procedure for seeking such remedy and remedy can be by way of regular Civil Suit before competent Court, *P. Srinivasamurthy* v. *P. Leelavathy*, (2000) 2 CTC 159.

Section 22 of the Act has been enacted to keep out strangers coming into the heirs of Class I of the Schedule 1 after coming into force of the Act. Looking to the scheme of this section it appears to have been thought necessary as an antidote to the inconvenient effect sometimes resulting from transfer to an outsider by a co-heir of his or her interest in the property simultaneously inherited along with other co-heirs. The alienation of his interest by a co-heir in violation of Section 22(1) is not void but is voidable at the instance of other non-alienating co-heirs. Thus, where one of the co-heir transfers his interest in an immovable property in violation of Section 22(1) of the Act the remedy of other co-heirs to enforce his preferential right under the said provision is by way of filing regular civil suit. The cause of action is a sale to a third party without reference to the other co-heirs who might have purchased the property for the proper price, if it had been offered to them. In case of a proposed transfer an application could be filed and where the alienation is concluded, regular suit should be filed, *Vishwanath Gupta* v. *Virendra Nath Agrawal*, (2007) 4 MPLJ 281.

Under Section 22 of the Hindu Succession Act, when Hindu dies intestate leaving behind him more than one heir specified in Clause I to Schedule and if one such heir wants to transfer or proposes to transfer his interest in property, then other legal heirs shall have preferential right to acquire interest which is proposed to be transferred. Section 22 does not prescribe any special procedure for enforcing such right, *P. Srinivasamurthy* v. *P. Leelavathy*, (2000) 2 CTC 325.

Pre-emptive right, agricultural lands are not covered under the section, *Subramaniya Gounder* v. *Easwara Gounder*, (2010) 5 LW 941 (Mad).

▸ **Applicability.**—This section does not apply until succession opens, *Ramlal Maniram Navdhinge* v. *Maniram Patiram Navdhinge*, (2008) 1 Mah LJ 860.

▸ **Appeal, Right of.**—Legislature has not provided any right of appeal against the adjudication mentioned in Section 22(2) of the Act. Therefore, if before actual sale of the property, an application is made under Section 22(2) of the Act and such application is adjudicated by a civil court, the decision passed thereon is not subject to any appeal, as the adjudication does not amount to a decree as defined in the Civil Procedure Code, 1908. The right of appeal, is a creature of statute and in the absence of any such right created by the statute, a litigant is not entitled to get the benefit of appeal. However, such decision in terms of Section 22(2) of the Act being passed by a court, an aggrieved party has the right to challenge the said decision by taking recourse to either Section 115 of the Civil Procedure Code or Article 227 of the Constitution of India, provided, however, that the decision sought to be impugned fulfils the conditions which are required to be satisfied for invocation of those jurisdiction, *Arati Das* v. *Bharati Sarkar*, (2008) 4 CHN 20.

▸ **Devolution of Joint/Co-owned/Coparcenary Property.**—With reference to devolution of interest in immovable property of intestate on heirs, "immovable property" includes agricultural land. Parliament has legislative competence in respect of preferential right of heir to acquire agricultural land from co-heir who intends to transfer his/her share to third party, *Babu Ram* v. *Santokh Singh*, (2019) 14 SCC 162.

23. Special provision respecting dwelling-houses.—[7][* * *]

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7. *Omitted* by Act 39 of 2005, S. 4 (w.e.f. 9-9-2005). Prior to omission it read as:
"23. *Special provision respecting dwelling-houses.*—Where a Hindu intestate has left surviving him or her both male and female heirs specified in Class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

CASE LAW ▸ Partition.—"Partition" is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty. A partition of a property can be only among those having a share or interest in it. A person who does not have share in such property cannot obviously be a party to a partition. "Separation of shares" is a species of "partition". When all co-owners get separated, it is a partition. Separation of share(s) refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds, *Shub Karan Bubna* v. *Sita Saran Bubna*, (2009) 9 SCC 689.

In Section 23 a female heir gets her undivided share as much as any male heir, but she cannot claim partition of the family dwelling house. This is a restriction upon her ownership of the undivided share. This restriction on ownership only Parliament can enact. By enacting this, Parliament has created a special type of estate, the exact like of which was not known to law before 1956, although woman's limited enjoyment was well known. It is quite clear that this special type of estate should be allowed to arise only in those cases which satisfy the requirements of Section 23 and not in any others, *Kamal Basu Mazumdar* v. *Usha Bhadra Chowdhury*, (2004) 2 CHN 383.

Daughter is not entitled to partition of dwelling house until male heirs demand or enforce partition, *Lakshmiammal* v. *Ekambara Gounder*, (2000) 4 CTC 648.

▸ **Dwelling House.**—'Dwelling House' does not include tenanted house. The house must be wholly occupied by members of the family of the deceased intestate. Family members must have animus possidendi. As soon as stranger is let into it, animus possidendi is exhibited by them. But their temporary absence from the house shows their animus reverendi and thereby the house does not cease to be dwelling house, *Narashimaha Murthy* v. *Susheelabai (Smt)*, (1996) 3 SCC 644.

If will had not been duly proved in favour of married daughters, share in dwelling-house cannot be claimed by them by virtue of proviso to Section 23, *Dharam Singh* v. *ASO*, 1990 Supp SCC 684.

Where dwelling house not wholly occupied, such property available for partition. Female heir can claim partition in such dwelling house, *Ramesh Verma* v. *Lajesh Saxena*, (2017) 1 SCC 257.

▸ **Hindu Woman, Right of.**—Right of a son under this section to keep in abeyance a daughter's right to partition of a dwelling house is not a vested right or a right of enduring nature. Therefore, son's right can be taken away (1) by statutory amendment/repeal or (2) by operation of statute or by removing the disablement clause, *G. Sekar* v. *Geetha*, (2009) 6 SCC 99.

Subsequent marriage of wife, after death of her husband will not affect her claim on husband's property. Widow will be entitled for share in husband's property on the date when the husband died, *Sathiyavani* v. *Ramayee Ammal*, (2003) 4 AIC 725 (Mad).

24. Certain widows re-marrying may not inherit as widows.—[8][* * *]

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.".

8. *Omitted* by Act 39 of 2005, S. 5 (w.e.f. 9-9-2005). Prior to omission it read as:

"24. *Certain widows re-marrying may not inherit as widows.*—Any heir who is related to an intestate as a widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or

25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

CASE LAW ▸ Applicability.—The statutory bar under Section 25 applies to a legal heir, who either commits murder or abates commission of murder with object to succeed to the property of the person so murdered. The statutory bar under Section 25 does not apply to the wife to succeed to the assets of the husband who committed suicide, *Talla Palli Kasi Visalakshmi* v. *Tallapalli Venkata Vijayalakshmi*, (2004) 1 APLJ 425.

26. Convert's descendants disqualified.—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

CASE LAW ▸ Applicability.—Section 26 of the Hindu Succession Act will be applicable if succession opens after birth of children subsequent to conversion of their father or mother not before conversion in relation to the properties of the other relation, *Shyamal Kumar Banerjee* v. *Sunil Kumar Banerjee*, (2005) 1 ICC 230 (Cal).

▸ **Disqualification.**—Section 26 of the Succession Act does not disqualify a convert. It only disqualifies the descendants of the converts who are born to the convert after such conversion from inheriting the property of any of their Hindu relatives. Change of religion and loss of caste have long ceased to be grounds of forfeiture of property and the only disqualification to inheritance on the ground that a person has ceased to be a Hindu is confined to the heirs of such convert. This disqualification does not affect the convert himself or herself, *Asoke Naidu* v. *Raymond Stanislans Mulu*, (1976) CHN 226.

Children born to Hindu, after such Hindu converts himself to another religion, shall be disqualified from inheriting property of any of their Hindu relatives, *Subramaniyan* v. *Vijayarani*, (2001) 3 CTC 73.

27. Succession when heir disqualified.—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

CASE LAW ▸ Inheritance of children born before conversion of hindu parents to another religion.—Children born to Hindu, after such Hindu converts himself to another religion, shall be disqualified from inheriting property of any of their Hindu relatives, *Subramaniyan* v. *Vijayarani*, (2001) 3 CTC 73.

28. Disease, defect, etc. not to disqualify.—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, or any other ground whatsoever.

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the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried.".

CASE LAW ▸ Widow, Right of.—A widow though unchaste can succeed to the property of her son as his father's widows. Unchasity of a widow has ceased to be a disqualification for succession after the Act came into force, *Krishnamma* v. *P. Subramanyam Reddy*, (2008) 1 ICC 624 (AP).

▸ **Relinquishment of share.**—Gift by a coparcener of his undivided coparcenary interest to another coparcener, without reserving life interest, amounts to renunciation and relinquishment of his share in favor of other coparceners, which is valid, *Thamma Venkata Subbamma* v. *Thamma Rattamma*, (1987) 3 SCC 294.

▸ **Reversioner Rights.**—A widow's reversionary rights recognised under the Hindu Law now stand abrogated under this Act which has abolished her estate, *Percy Rustomji Basta* v. *State of Maharashtra*, (1971) 1 SCC 847 : 1971 SCC (Cri) 345.

After the enactment of this Act, a reversioner cannot challenge the gift of the property by a widow upon whom the same has under the Act devolved not by survivorship but by succession, *Percy Rustomji Basta* v. *State of Maharashtra*, (1971) 1 SCC 847 : 1971 SCC (Cri) 345.

When a valid gift was effected by the widow, having life interest in the property, inherited from her deceased husband prior to coming into force of the Act, it could not be contended that there were any residuary rights left with her. What residuary rights could be thought of were not the rights of the widow but the right of the reversioners to get as heirs of her husband on her death and on that basis it could not be said that she could be said to be possessed of any right in the property which she held as a limited owner on the date the Hindu Succession Act came into force. Therefore, she could not get any advantage from the coming into force of the Hindu Succession Act, *Munsi Singh* v. *Sohan Bai*, (1989) 2 SCC 265.

▸ **Notional partition.**—The concept of notional partition with regard to Section 6, Explanation 1 of the Hindu Succession Act is one of those fictions of law which are employed to make a provision of law work. Notional partition is not a real partition. It neither effects a severance of status nor does it demarcate the interest of the surviving coparceners or of any females who are entitled to a share on a partition. It is only a legal device used for the purpose of demarcating the interest of the deceased coparcener. This obviously means that for the implementation of the device of the notional partition the rules of partition as laid down in Hindu Law are to be employed. The share of the deceased coparcener can be determined only on the allotment of shares to all members of the family entitled to a share on an actual partition, since that is the only means of individualization of the share of the deceased coparcener. The share of the deceased coparcener thus demarcated will go by succession. In the rest of the property the family will remain joint, *Anubai* v. *Vithoba Shripati Savant*, (2004) 1 Mah LJ 545.

A notional partition is a legal device used for purpose of demarcating interest of the deceased when the Explanation I of Section 6 is attracted. Like any other legal fiction, the fiction of notional partition is meant for a specific purpose. It is not a real partition by metes and bounds. It neither effects a severance of status nor does it demarcate the interest of the surviving coparceners or of any females who are entitled to a share on a partition, *Shankarlal Ramprasad Laddha* v. *Vasant Chandidasrao Deshmukh*, (2009) 3 Mah LJ 959.

▸ **Hindu Woman, Right of.**—In spite of marriage, female heirs can be entitled to succeed the office of shebaitship, *Sankar Nath Mullick* v. *Lakshmi Sona Datta*, (2005) 1 ICC 792 (Cal) (DB).

Daughters have equal rights in coparcenary property, *Prema* v. *Nanje Gowda*, (2011) 6 SCC 462.

The Karnataka Legislature amended the Hindu Succession Act and inserted Section 6-A to 6-C for ensuring that the unmarried daughters get equal share in the coparcenary property with a view to achieve the

goal of equality enshrined in Articles 14 and 15(1) of the Constitution and to eliminate discrimination against daughters, who were deprived of their right to participate in the coparcenary property. Similar provisions were inserted in the Act by the legislatures of the State of Andhra Pradesh, Maharashtra and Tamil Nadu, *Prema* v. *Nanje Gowda*, (2011) 6 SCC 462.

Escheat

29. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

CASE LAW ▸ Heirs/Legal Representative.—Section 29 operates only in the event of total absence of any heir to the intestate, *State of Punjab* v. *Balwant Singh*, 1992 Supp (3) SCC 108.

Escheat operates only in the event of total absence of any heir to the intestate, *State of Punjab* v. *Balwant Singh*, 1992 Supp (3) SCC 108.

Property devolves on heirs to a person dying bachelor only when there is no heir, *Mondira Construction Co. (P) Ltd.* v. *Kanan Kumar Maity*, (2006) 3 CHN 146.

▸ **Escheat.**—Escheat operates when line of succession is completely extinct, *Marthanda Varma* v. *State of Kerala*, (2021) 1 SCC 225.

STATE AMENDMENTS

ANDHRA PRADESH

29-A. Equal rights to daughter in coparcenary property.—Notwithstanding anything contained in Section 6 of this Act—

(*i*) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son; inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(*ii*) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a pre-deceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allotable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had 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 of the pre-deceased daughter as the case may be;

(*iii*) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (*i*) 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 will or other testamentary disposition;

(*iv*) nothing in clause (*ii*) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

29-B. Interest to devolve by survivorship on death.—When a female Hindu dies after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 having at the time

of her death an interest in a Mitakshara coparcenary property, her 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 any child or child of a pre-deceased child, 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 I.—For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death irrespective of whether she was entitled to claim partition or not.

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

29-C. Preferential right to acquire property in certain cases.—(1) Where after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under Section 29-A or Section 29-B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire if for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section 'court' means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf."—*Vide* A.P. Act 13 of 1986, S. 2 w.e.f. 5-9-1985.

MAHARASHTRA

Chapter II-A

SUCCESSION BY SURVIVORSHIP

29-A. Equal rights of daughter in coparcenary property.—Notwithstanding anything contained in Section 6 of this Act—

(*i*) in a Joint Hindu Family governed by the Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(*ii*) at a partition in a Joint Hindu Family referred to in clause (*i*), the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had 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:

Provided further that the share allotable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had 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 of the pre-deceased daughter as the case may be;

(*iii*) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (*i*) 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 will or other testamentary disposition;

(*iv*) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994;

(*v*) nothing in clause (*ii*) shall apply to a partition which has been effected before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994;

29-B. Interest to devolve by survivorship on death.—When a female Hindu dies after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994, having, at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of Section 29-A, her 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 any child or child of a pre-deceased child, 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 I.—For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

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

29-C. Preferential right to acquire property in certain cases.—(1) Where, after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994, an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under Section 29-A or Section 29-B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the Court on an application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of, or incidental to, the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, then, the heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section "Court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

3. Certain partitions to be null and void.—Notwithstanding anything contained in the principal Act or in any other law for the time being in force, where, on or after the 22nd June, 1994 and before the date of the publication of this Act in the Official Gazette, any partition in respect of coparcenary property of a Joint Hindu Family has been effected and such partition is not in accordance with the provisions of the principal Act, as amended by this Act, such partition shall be deemed, to be, and to have always been, null and void.—[*Vide* Maharashtra Act XL of 1994, w.e.f. 22-6-1994].

CASE LAW ▸ Hindu Woman, Right of.—Any unmarried illegitimate daughter on the date of coming into force of Section 29-A of the Hindu Succession Act does not have equal share as that of male coparceners

by virtue of Section 29-A r/w Section 16 of the Hindu Marriage Act, 1955, *Gayabai* v. *Gopal Sakharam Jambhulkar*, (2008) 4 Mah LJ 286.

TAMIL NADU

Chapter II-A

SUCCESSION BY SURVIVORSHIP

29-A. Equal rights to daughter in coparcenary property.—Notwithstanding anything contained in Section 6 of this Act—

(*i*) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(*ii*) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allotable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of such pre-deceased daughter as the case may be:

(*iii*) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (*i*) 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 will or other testamentary disposition;

(*iv*) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

(*v*) nothing in clause (*ii*) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

29-B. Interest to devolve by survivorship on death.—When a female Hindu dies after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, having, at the time of her death an interest in a Mitakshara coparcenary property by virtue of the provisions of Section 29-A, her 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 any child or child of a pre-deceased child, 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 I.—For the purposes of this section, the interest of a female Hindu Mitakshara coparcenary shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

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

29-C. Preferential right to acquire property in certain cases.—(1) Where, after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, an interest in any immovable property of an intestate or in any business carried on by him or her whether solely in

conjunction with others, devolves under Section 29-A or Section 29-B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the *Tamil Nadu Government Gazette*, specify in this behalf".—T.N. Act 1 of 1990 w.e.f. 25-3-1989.

CASE LAW ▸ Hindu Woman, Right of.—Unmarried daughter can claim equal rights as son in spite of specific devolution of interest in coparcenary properties. Section 29-A does not exclude operation of Section 23. Section 29-A is departure and deviation from Section 6 and special rights given to son is not taken away in view of Section 29-A of the Act but, unmarried daughter separated from her husband or widow is entitled to right of residence in dwelling house, *Kokila* v. *Swathanthira*, (2004) 3 CTC 401.

In the light of Section 29-A of the Hindu Succession Act, 1956 (as incorporated vide Tamil Nadu Act 1 of 1990 Section 2 with retrospective effect from 25-3-1989) and Section 23 of the Hindu Succession Act, 1956 which has been omitted w.e.f. 9-9-2005, the daughters who have got married prior to 1989 may not have equal share as that of a son but the daughters who got married after 1989 would have equal share as that of a son, *R. Mahalakshmi* v. *A.V. Anantharaman*, (2009) 9 SCC 52.

CHAPTER III
TESTAMENTARY SUCCESSION

30. Testamentary succession.—[9][* * *] Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him [10][or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a *tarwad, tavazhi, illom, kutumba* or *kavaru* in the property of the *tarwad, tavazhi, illom, kutumba* or *kavaru* shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this [11][section].

(2) [12][* * *]

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9. The brackets and figure "(1)" *omitted* by Act 58 of 1960, S. 3 and Second Sch.
10. *Ins.* by Act 39 of 2005, S. 6 (w.e.f. 9-9-2005).
11. *Subs.* by Act 56 of 1974, Section 3 and Sch. II.
12. Sub-section (2) *omitted* by Act 78 of 1956, S. 29. Prior to omission it read as:
"(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that

CASE LAW ▸ Applicability.—Not applicable to dispositions inter vivos, *Mukund Singh* v. *Wazair Singh*, (1972) 4 SCC 178.

▸ **Interpretation.**—Legal terms such as "heirs" used in a will must be construed in the legal sense, unless a contrary intention is clearly expressed by the testator. The word "heirs" cannot normally be limited to "issues" only. It must mean all persons who are entitled to the property of another under the law of inheritance, *N. Krishnammal* v. *R. Ekambaram*, (1979) 3 SCC 273.

The expression "the interest" in the Explanation to Section 30(1) is the interest quantified under Section 7, *Falaja Shedthi* v. *Lakshmi Shedthi*, (1973) 2 SCC 773.

In view of the Explanation to Section 30, a gift does not partake the character of testamentary succession, *Pavitri Devi* v. *Darbari Singh*, (1993) 4 SCC 392.

▸ **Disposition of property.**—An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act, *Sadhu Singh* v. *Gurdwara Sahib Narike*, (2006) 8 SCC 75.

Disposition intra vivos by gift of undivided share or interest in coparcenary property is void unless it is with consent of the coparceners or between the coparceners or in exceptional circumstances, *Pavitri Devi* v. *Darbari Singh*, (1993) 4 SCC 392.

A male Hindu, governed by Mitakshara system is not debarred from making a will in respect of coparcenary/ancestral property, *Sham Lal* v. *Sanjeev Kumar*, (2009) 12 SCC 454.

Any Hindu may dispose of by Will or other testamentary disposition of any property which is capable of being disposed of by him, in accordance with Succession Act, 1956. Explanation to Section 30 defines that interest of male Hindu in Mitakshara Coparcenary property shall be deemed to be property capable of being disposed of by him, *Senthilkumar* v. *Dhandapani*, (2004) 3 CTC 561.

▸ **Will, Execution of.**—A will operates from the date of testator's death, *Gumpha* v. *Jaibai*, (1994) 2 SCC 511.

Examination of scribe of will who had not signed the will with intention to attest, is not sufficient to satisfy the statutory requirement of examination of at least one attesting witness for proving the will, *S.R. Srinivasa* v. *S. Padmavathamma*, (2010) 5 SCC 274 : (2010) 2 SCC (Civ) 365.

Where execution of will was shrouded by suspicious circumstances, it was necessary for propounder of will to explain the same. Mere registration of will not by itself sufficient to remove the suspicion, *S.R. Srinivasa* v. *S. Padmavathamma*, (2010) 5 SCC 274 : (2010) 2 SCC (Civ) 365.

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under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate."

Scope of power to dispose of property by will includes power to create limited estate in favour of a female, *Gumpha* v. *Jaibai*, (1994) 2 SCC 511.

▸ **Tenancy Right.**—The tenancy right is not a property nor an estate of the tenant which can be disposed of in favour of anybody by way of will or testament, *Kartick Das* v. *Kamal Ghosh*, (2004) 3 ICC 40 (Cal).

▸ **Will — genuineness.**—Execution of a document does not mean mechanical act of signing document or getting it signed, but an intelligent appreciation of contents of document and signing it in token of acceptance of those contents. Proof of a will stands in a higher degree in comparison to other documents. There must be a clear evidence of attesting witnesses or other witnesses that contents of will were read over to executant and he, after admitting same to be correct, puts his signature in presence of witnesses. It is only after executant puts his signature, attesting witnesses shall put their signatures in presence of executant, *Dhannulal* v. *Ganeshram*, (2015) 12 SCC 301 : (2016) 1 SCC (Civ) 440.

▸ **Disposal of undivided share.**—Disposal of undivided share in Mitakshara joint family properties by means of executing will, permissible, *Radhamma* v. *H.N. Muddukrishna*, (2019) 3 SCC 611.

CHAPTER IV
REPEALS

31. Repeals.—[13][* * *]

THE SCHEDULE

(*See* Section 8)

HEIRS IN CLASS I AND CLASS II

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son [14][; son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].

Class II

I. Father.
II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.
III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.
V. Father's father; father's mother.
VI. Father's widow; brother's widow.
VII. Father's brother; father's sister.
VIII. Mother's father; mother's mother
IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

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13. *Repealed* by Act 58 of 1960, S. 2 and Sch. I. Prior to omission it read as:
"31. *Repeals.*—The Hindu Law of Inheritance (Amendment) Act, 1929 (2 of 1929), and the Hindu Women's Rights to Property Act, 1937 (18 of 1937), are hereby repealed."
14. *Ins.* by Act 39 of 2005, S. 7 (w.e.f. 9-9-2005).