

## **Hindu Woman's Inheritance Right**

### **Why in news?**

The Supreme Court expanded on a Hindu woman's right to be a joint legal heir and inherit ancestral property on terms equal to male heirs.

### **What is the ruling?**

- A three-judge Bench has ruled that a Hindu woman's right to be a joint heir to the ancestral property is by birth.
- It says that the rights do not depend on whether her father was alive or not when the law was enacted in 2005.
- The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be coparceners or joint legal heirs like a male heir does.
- The ruling said that since the coparcenary is by birth, it is not necessary that the father coparcener should be living as on 9.9.2005.

### **What is the Hindu Succession Act, 1956?**

- The Mitakshara school of Hindu law was codified as the Hindu Succession Act, 1956.
- It governed succession and inheritance of property but only recognised males as legal heirs.
- The law applied to everyone who is not a Muslim, Christian, Parsi or Jew by religion.
- Buddhists, Sikhs, Jains and followers of Arya Samaj, Brahmo Samaj are also considered Hindus for the purposes of this law.
- In a Hindu Undivided Family (HUF), several legal heirs through generations can exist jointly.
- Traditionally, HUF includes only the male descendants of a common ancestor along with their mothers, wives and unmarried daughters.
- The legal heirs hold the family property jointly.

### **What is the 2005 law?**

- Women were recognised as coparceners or joint legal heirs for partition arising from 2005.
- Section 6 of the Act was amended that year to make a daughter of a coparcener also a coparcener by birth in her own right.

- The law also gave the daughter the same rights and liabilities in the coparcenary property as she would have had if she had been a son.
- It applies to ancestral property and to intestate succession in personal property - where succession happens as per law and not through a will.
- The 174th Law Commission Report had also recommended this reform in Hindu succession law.
- Even before the 2005 amendment, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu had made this change in the law.

### How did the case come about?

- While the 2005 law granted equal rights to women, questions were raised in multiple cases on whether the law applied retrospectively.
- There were questions regarding whether the rights of women depended on the living status of the father through whom they would inherit.
- Different benches of the SC had taken conflicting views on the issue.
- In *Prakash v Phulwati (2015)*, the SC held that the benefit of the 2005 amendment could be granted only to living daughters of living coparceners as on September 9, 2005.
- [September 9, 2005 - The date when the amendment came into force.]
- In **2018**, the SC held that the share of a father who died in 2001 will also pass to his daughters as coparceners during the partition of the property as per the 2005 law.
- These conflicting views by Benches of equal strength led to a reference to a three-judge Bench in the current case.
- The ruling now overrules the verdicts from 2015 and 2018.

### How did the court decide the case?

- The court looked into the rights under the Mitakshara coparcenary.
- Section 6 creates an unobstructed heritage or a right created by birth for the daughter of the coparcener.
- So, the right cannot be limited by whether the coparcener is alive or dead when the right is operationalised.
- The court said that the 2005 amendment gave recognition of a right that was in fact accrued by the daughter at birth.
- The conferral of a right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son.
- She is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth.
- The ruling said that though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of **retroactive** application.
- They confer benefits based on the **antecedent event**.

- The Mitakshara coparcenary shall be deemed to include a reference to a daughter as a coparcener.
- The SC also directed High Courts to dispose of cases involving this issue within six months since they would have been pending for years.

### **What was the government's stand?**

- Solicitor General Tushar Mehta argued in favour of an expansive reading of the law to allow equal rights for women.
- He referred to the objects and reasons of the 2005 amendment.
- He said that the Mitakshara law contributed to gender discrimination and was oppressive.
- He also said that the law negated the fundamental right of equality guaranteed by the Constitution of India.

**Source: The Indian Express**

