



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Second Appeal No. 189 of 2011

[Shandrabhagabai S/o Pandurang Rode and ors. ..vs.. Smt. Ashabai W/o Namdeorao Deotale]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Nitin Vyawahare, Advocate for the appellants
Mr. Bhushan Dafle, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 28-03-2024

The appeal has been admitted on following
substantial questions of law.

1) Whether, by virtue of the provisions of Section 6 of the Hindu Succession Act, 1956 (as amended by the Hindu Succession (Amendment) Act, 2005), creating a status of daughters as a coparcener and equal to that of son, by birth, the rights of the son acquired by him in the ancestral property as a coparcener prior to the above said amendment of 2005, are diverted or reduced ?

2) Whether the Plaintiff Ashabai became a coparcener under the provisions of Hindu Succession (Maharashtra Amendment) Act, 1994 (40 of 1994), which came into force from 22/01/1994 ? (Under which the daughters married after 22/06/1994) only, are given rights of a coparcener by birth in the ancestral property and there is no evidence to that effect that the Plaintiff was married after 22/06/1994) ?

2. Learned counsel for the respondent/defendant submits that the substantial questions of law formulated in the appeal have been answered by the coordinate

Bench of this Court in the case of ***Babu s/o Jyotiram Jadhav and others Vs. Muktabai w/o Wamanrao Somwanshi [2022(1) Bom.C.R. 294]*** wherein in paragraph no. 15, the Court held as under.

“15. It can be seen that the law on the point of Succession is at Entry No. 5 of the Concurrent List, i.e. List No.III in the Seventh Schedule. Article 254 of the Constitution gets attracted only when both Central and State legislations have been enacted on any of the matters in the said List and there is conflict between two legislations. The basic principle is that the Central legislation will prevail as Article 254(1) of the Constitution gives supremacy to the law made by the Parliament. We have considered earlier as to how Section 29-A of the Hindu Succession Act, as amended in the Maharashtra, was repugnant to the old Hindu Law. As stated in T. Barai’s case (supra), the general rule, laid down in clause 1 of Article 254; clause 2 engrafts an exception viz., if the President assents to a State Law, which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to earlier law of the Union. However, the Constitution itself makes a proviso to clause 2 and provides that, nothing in clause 2 of Article 254 shall prevent the Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. Now, it is to be seen that in the year 2005, the Union Government brought an amendment to Section 6 of the Hindu Succession Act and made the daughters as coparceners and this has been done with a view to give equal rights to the daughters in comparison to sons. When the Maharashtra State Amendment was restricted to un-married daughters (excluding the daughters, who were

married prior to 1994), no such distinction has been made in Section 6 of the amended provision by the Union Government and, therefore, the repugnancy existed. In view of the proviso, when Parliament exercised its power to bring a new legislation, the said enactment will prevail. In view of the law laid down in the aforesaid three pronouncements, it was not necessary for the Parliament to repeal Section 29-A of the Hindu Succession (Maharashtra Amendment) Act. Taking into consideration both the enactments, i.e. Section 29-A and Section 6, as amended in 2005, they cannot stand together and, therefore, the law made by the Parliament would prevail over the State Law in view of Article 254(1) of the Constitution of India.”

3. Thus, the coordinate Bench has held that it was not necessary for the Parliament to repeal Section 29-A of the Hindu Succession (Maharashtra Amendment) Act. The Court further held that Section 29-A and Section 6, as amended in 2005, they cannot stand together and, therefore, the law made by the Parliament would prevail over the State Law in view of Article 254(1) of the Constitution of India. Thus, in a way, the Court has held that Section 6 of the Hindu Succession Act, 1956 would prevail.

4. The Supreme Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others [(2020) 9 SCC 1]*** has held that provisions of Hindu Succession Act, 1956 (as substituted by the Hindu Succession (Amendment) Act, 2005) under nature and applicability are of retroactive application i.e. they confer benefits based on the antecedent event i.e. rights given by birth, and the

Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. They are not retrospective i.e. do not affect or reopen concluded transactions and neither take away nor impair vested rights acquired under existing laws.

5. Learned counsel for the appellants failed to show that there occurred concluded transaction or that there accrued vested rights under existing law. Learned counsel for the appellants submits that in view of Section 29-A of the Hindu Succession (Maharashtra Amendment) Act, the married daughters were not coparceners and, therefore, by virtue of said provision, the rights had accrued in favour of the appellants.

6. This argument is unsustainable because in *Babu's* case, the coordinate Bench has held that Section 6 of the Hindu Succession Act, 1956 will prevail over Section 29-A of the Hindu Succession (Maharashtra Amendment) Act. In the circumstances, even if, the succession opened prior to 2005, the coparcenary right of daughters would stand accrued in terms of the amended Section 6 of the Hindu Succession Act, 1956 and accordingly, the share of other coparceners would be diverted and reduced.

7. Once it is held that the daughter acquires the status of coparcener, as a consequence, the rights of other coparceners will proportionately reduce. Even otherwise, the shares in coparcenary property is fluctuating. The share would vary upon the birth and death of the coparceners. Accordingly, the first substantial question of law is answered as under.

8. By virtue of provision of Section 6 of the Hindu Succession Act, 1956, creating a status of daughter as a coparcener and equal to that of son by birth, the rights of son acquired by him in the ancestral property as a coparcener prior to above said amendment of 2005 would stand diverted or reduced.

9. So far as second substantial question of law is concerned, the answer finds place in the judgment passed by the coordinate Bench of this Court in **Babu's** case wherein the coordinate Bench has in a way held that Section 6 of the Hindu Succession Act, 1956 would prevail. The date of marriage of plaintiff, therefore, will be irrelevant. Plaintiff Ashabai, therefore, would become coparcener in terms of Section 6 of the Hindu Succession Act, 1956.

10. Both the Courts below have rendered a concurrent finding that plaintiff Ashabai is a coparcener and thus entitled for one forth share in the suit property. The answers to substantial questions of law would support the aforesaid findings. There is, thus, no merit in the second appeal. Accordingly, the appeal stands dismissed.

(Anil L. Pansare, J.)