



2025:DHC:1554



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 25th February 2025***

+ **CM(M) 1056/2019 & CM APPL. 31626/2019 STAY**

GEETA DEVI

.....Petitioner

Through: **Mr. Amit Sharma, Adv**

Versus

KULDEEP SINGH & ORS

.....Respondents

Through: **Mr. J. P. Singh & Mr.
Chandrakant Kumar, Advs for
R-1**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (O R A L)

RAVINDER DUDEJA, J.

1. Petitioner challenges the order dated 02.07.2019, passed by the learned District Judge, Dwarka Court Complex, in case bearing No. CS DJ/113/2018, titled "*Kuldeep Singh Vs. Jagat Singh & Ors.*", whereby, the learned court dismissed three separate applications filed under Order 1 Rule 10 CPC, Order 9 Rule 13 CPC and Section 340 Cr. PC.

2. Shorn of unnecessary details, the relevant facts are that petitioner is the daughter and one of the legal heirs of late Sh. Bishan



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Singh. Respondent No. 1 filed a suit for partition, possession etc., without impleading the petitioner herein.

3. In May 2019, petitioner came to know about the pendency of the suit. Thereupon, she filed the aforesaid three applications including application under Order 1 Rule 10 CPC for impleadment.

4. Vide impugned order dated 02.07.2019, trial court dismissed the application under Order 1 Rule 10 CPC. The applications under Order 9 Rule 13 and under Section 340 Cr. PC were also dismissed on account of the reason that the same were not maintainable as the petitioner was not a party to the petition.

5. Learned counsel for the petitioner submits that petitioner has got a legal right in the estate left behind by her late father and therefore is a necessary party to the suit.

6. A perusal of the record shows that late Sh. Bishan Singh, father of the parties, expired on 17.08.2005. A preliminary decree has already been passed in favour of respondent No. 1 on 10.05.2019.

7. Learned trial court while placing reliance on the judgment of the Apex Court in **Prakash & Ors. Vs. Phulavati & Ors., Civil Appeal No. 7217 of 2023, decided on 16.10.2025**, was of the view that petitioner is not entitled to claim any share in the estate left behind by late Sh. Bishan Singh because of the reason that Bishan Singh had expired on 17.08.2005 i.e. before the commencement of



amendment in the Hindu Succession Act, which came into force on 09.09.2005.

8. In the case of *Prakash & Ors. (supra)*, the Supreme Court held that the amended Section 6 was not retrospective in operation and would apply when the both the coparcener and his daughter were alive on the date of commencement of the Amendment Act i.e. 09.09.2005.

9. In **Danamma Vs. Amar, (2018) 3 SCC 343**, Supreme Court held that the amended provisions of Section 6 conferred full rights upon the daughter coparcener. The Court observed that any coparcener, including a daughter, could claim a partition in the coparcenary property. In that case, one G died in the year 2001, leaving behind two daughters, two sons and a widow. The coparcener's father was not alive when the substituted provision of Section 6 came into force. The daughters, sons and the widow were given 1/5th share apiece.

10. In view of the conflicting verdicts rendered by the two Division Benches of the Supreme Court, the question regarding interpretation of Section 6 of Hindu Succession Act, 1956, as amended by the Hindu Succession (Amendment) Act, 2005, was referred to a larger Bench in the case of **Vineeta Sharma Vs. Rakesh Sharma & Ors. (2020) 9 SCC 1**.

11. The Apex Court while considering the provisions of Section 6, held that discrimination with the daughter has been done away with



and they have been provided equal treatment in the matter of inheritance with Mitakshara coparcenary and therefore Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on the daughter whether before or after the amendment in the same manner as the son with same rights and liabilities. The Court further held that it is not necessary that the father coparcener should be living as on 09.09.2005. The relevant paragraphs of the judgment are extracted below:-

“60. The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son". Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and 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. 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, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20-12-2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of



unobstructed heritage has been given a concrete shape under the provisions of Sections 6(1)(a) and 6 (1)(b) . Coparcener right is by birth . Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 09-09-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).

69. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.”

12. Thus, irrespective of the fact that Sh. Bishan Singh, father of the petitioner expired on 17.08.2005 i.e. before the commencement of the



amendment in the Hindu Succession Act, which came into force on 09.09.2005, the petitioner is entitled to claim share in the estate left behind by her late father and thus, that being so, she is a necessary party in the suit for partition and possession filed by respondent No. 1.

13. During arguments, learned counsel for respondent No. 1 fairly concedes that the judgment of Vineeta Sharma (*supra*) is squarely applicable in the present case, and therefore, the impugned order dated 02.07.2019 is liable to be set aside.

14. In view of the discussion made above, in the light of the decision of Apex Court in Vineeta Sharma (*supra*), this Court is unable to sustain the order dated 02.07.2019, passed by the learned trial court. The impugned order dated 02.07.2019 is therefore set aside and the application of the petitioner filed under Order 1 Rule 10 CPC is allowed and petitioner be impleaded in the array of defendants.

15. Petition is disposed of in terms of the aforesaid order.

RAVINDER DUDEJA, J.

FEBRUARY 25, 2025

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