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Inheritance Under Traditional Hindu Law

Dharma sastra exhibits a very pragmatic and practical approach and acknowledges that ultimately and for a variety of reasons, individuals do want to be independent and set up their own homes. Dharma sastra seeks to safeguard the interests of different sections of the society and here, the endeavour is to balance the interests of the individual within the family, and at the same time to prevent disintegration of the family as a social unit, and avoid fragmentation of economically and sustainable units of property. Since Hindu society has always been a patriarchal society, property rights of male members of the family were always supreme and were considered to be more appropriate than family members. Although, constant efforts were made during that era to provide for women as mothers, daughters-in-laws etc. a right to property.

If we look at the commentaries and the Vedic age, amongst the dictates of manu, hinting at the negation of rights of women to be owners of property, there are still ample references, indicating that a woman was always capable of owning property. However, there was a lot of difference between theory and the practice which was actually followed. According to the texts, she could hold property but actually the property given to women was meagre to the property given to man. Also, she didn't have absolute right to dispose of the property and restrictions were placed on her. The restrictions were considered to be necessary by our traditionally patriarchal setup and it was thought that if women were given absolute freedom then they will neglect their marital obligations and management of household affairs. As declared by Narada, "The transactions of a woman had no validity, especially the gift, hypothecation or sale of a house or field. Such transactions were valid only when they were sanctioned by the husband or on a failure of the husband, by the son."

Before the codifying of Hindu law, there were different commentaries and digests which decided on the inheritance issues among hindus and as the time grew these commentaries acquired ex cathedra character. The result was that two rival schools of inheritance, the Mitakshara school and the Dayabhaga school, came into existence. Regarding the origin and development of these schools, it has been said by the Privy Council, "The remoter sources of Hindu law are common to all the different schools....Works universally or generally received became the subject of subsequent commentaries. The commentator put his own glosses on the ancient text, and his

authority having been received in one and rejected in another part....., schools with conflicting doctrine arose. Thus, Mitakshara which is universally accepted by all the schools except that of Bengal as of highest authority.....; and the Dayabhaga,....., prevails in Bengal.” The smritis used by Vijnanesvara and Jimutavahana in establishing the principles of these schools was same but it was their different interpretation of these smritis which resulted in both these rival doctrines. The fundamental difference between the two schools is with regard to the principle on the basis of which the right to inheritance is to be determined. These schools born of diversity of doctrines marked a new stage in the evolution of Hindu law. The common principle on which both of them rely is that a sapinda inherits the deceased’s property. This is also where differences arise as to how sapindas should be understood for inheritance issues. Under Mitakshara law, community of blood is to be preferred to community in the offering of religious ablations is the governing factor whereby the right to inherit arises whereas under Dayabhaga, the right arises from spiritual efficacy i.e. the capacity for conferring spiritual benefit on the manes of paternal and maternal ancestors. Under Mitakshara law, only agantes could inherit the property no matter how distant they were to the deceased which meant that the property could go to a distant male cousin but not to one’s own daughter’s son. However, under Dayabhaga law, the view was more of liberal and allowed cognates to inherit the property such as a person can inherit his maternal grandfather’s property if he had no son. According to Mitakshara law, each son acquires an equal interest in his father’s property as soon as he is born and on his father’s death gets the property by survivorship whereas under Dayabhaga, the son doesn’t acquire any interest in father’s property by birth and his rights regarding the property are determined only after father’s death. Thus, the Mitakshara shows a clear sign of following a strong patriarchal system whereas Dayabhaga showed a clear departure from set norms and a dilution in traditional patriarchal structure.

According to Dayabhaga(Bengal) school, the only females who can inherit the property of a male are the widow, daughter, mother, father’s mother and father’s father’s mother. The Madras school, in addition to the above mentioned five heirs, also recognises three more heirs known as bandhus which are brother’s daughter, brother’s son’s daughter and father’s brother’s daughter. According to all schools, except Bombay, a female who has inherited property from a female relation is not the wholesome owner of the property and is known as a limited owner of

the property. Except in case of fulfilling indispensable religious and charitable purposes including for spiritual benefits to her husband, a woman doesn't have a right to alienate such property. The limitation is with respect to the power over its disposal and the inability to transmit this estate to her own heirs, but otherwise she had full powers to possess it and appropriate the income generated from it. During her lifetime, no person had any right of succession over that property, though after her death the property passed on to the next heir of the male from whom she inherited it. With regard to the property inherited from female relation relations also, the concept of limited ownership was present. In Bombay school, other than five females mentioned above, the other females who had the right to inherit the property as heirs were daughters of descendants and ascendants and collaterals within five degrees and widows of gotraja sapindas. Female heirs under this school are divided into two following classes:

Those who come into the gotra of the deceased owner, by marriage i.e. wife of the deceased and the wives of his sapindas and samanodakas.

Those who are born in the gotra of the deceased owner but pass by marriage into different gotra and their daughters such as a daughter, daughter's daughter, sister, niece, father's sister and the like.

Under the first class females have limited ownership of the property whereas under class (ii), the female heirs become the absolute owners of the property. Such property is considered to be stridhana and thus governed by Mitakshara law. In cases of property inherited from females, they become the absolute owners of the property.

Dayabhaga follows the principle that sons can divide the ancestral wealth only after the death of both the father and the mother. Here, the son is given a position of prominence and widow's seemingly absolute right to the property is circumscribed by the rights of the son. Though, in case of more than one widow, it is said that partition is as per the widows, it is submitted that the reference to equal number of sons signifies that the mother's right to partition is limited by the sons and that each widow is allowed to take an equal share temporarily. As opposed to Dayabhaga, in Mitakshara, as mentioned above, son is vested with an interest in the property since his birth. The wife loses her position of equality and her status as the joint owner with the

husband. Though Vijnanesvara says that a man should give an equal share to his wife and sons are also supposed to give their mother an equal share after father's death.

According to Hindu family system, the daughter becomes part of her husband's family and accordingly is entitled to inherit property from her husband or son. However, in case of unmarried daughter, dharma sastras have clearly laid down that such daughters have right to be maintained by her father and brothers. It has been laid down by Manu that each brother must give one-fourth of the share to his unmarried sister. According to Mitakshara, the expression one-fourth did not mean one-fourth of each brother's share but only one-fourth of the share the daughter would have received if she were a son. This interpretation greatly reduces the share of a daughter and is biased against them. Though, it is, in general, according to the usual pattern followed by Mitakshara as usually it gives the son a superior right to inherit as compared to daughters.

As we all know that women always had limited ownership of the property they inherited which has been reiterated in the Privy Council's judgement:

"her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however, limited; but so long as she is alive no one has any vested interest in the succession". The estate of a Hindu widow is an absolute one subject to certain restrictions.

As far as the rights of a sonless widow to inherit the property are considered, Mitakshara has clearly laid down that sonless widow can inherit the separate estate of the husband i.e. his self acquired property and his share in ancestral property if he has separated from the family. However, she gets no share in the husband's ancestral property if he was undivided or had rejoined the family, though husband's family had to maintain her in that case.

MCQ

1.

Is there any
difference between
the rights of other
owners and adopted
son?

yes

No

Only true

None of these

2.

In coparcenary property, each coparcener can acquire interest by _____

By partition

By birth

By attaining majority

All the above

3.

Any hindu is entitled to dispose of _____ property at will.

Self aquired and seprated

Inherited

A and B both are correct

A and B both are v

4.

When does Hindu Succession act came into force?

1965

1956

1948

5.

Which committee formed Hindu Law?

Rao committee

Maneka Gandhi

Choksi committee

None of the above