



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

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LECTURE : 29

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General provisions relating to Succession, Disqualification of heirs, Testamentary Succession:

General provisions relating to succession:

Section 18 to 29 of the Hindu Succession Act, 1956 lay down general rules of succession. These may be enumerated as follows:

1. Full blood heirs to be preferred to half blood heirs:

Section 18 lays down that heirs related to the propositus 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.

Section 18 of the Hindu Succession Act is nothing but a substantial reproduction of the prevalent rule of Hindu Law under which relations of the whole blood were preferred to those of the half blood. If their degree or relationship to the deceased was the same, Section 18 provides for a preference of one category of heirs to another. [Woman Govind Shindore v. Gopal Baburao Chakradeo, A.I.R. 1984 Bom. 208].

2. Rules re: per stripes and per capita:

Sec. 19 lays down that if two or more heirs succeed together to the property of an intestate, they shall take the property save as otherwise expressly provided in this Act, (a) per capita and not per stripes and (b) as tenants-in-common and not as joint tenants.

3. Right of child in womb:

A child who was in the womb at the time of 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 inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate. [Sec. 20].

4. Presumption in cases of simultaneous death:

Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which survived the other, than for all purposes affecting succession to property, it shall be presumed until the contrary- is proved, the younger survived the elder. [Sec. 21].

5. Preferential right to acquire property in certain case:

(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 clause I of the schedule, and any one of such heirs proposes to transfer his or her interest in the property of 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 shall in the absence of any agreement between the parties, be determined by 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 schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for transfer shall be preferred. (Sec. 22).

6. Special provision respecting dwelling house:

The right of a female heir to seek partition of the dwelling house of an intestate will remain in suspense till male heirs of the intestate choose to divide their respective shares in the house and the actual right of residence therein will be limited only to such female heirs, who are either unmarried or are widows or are either deserted by or have separated from their husband. (Vide Sec. 23).

Where a Hindu male dies intestate leaving one male heir and other female heirs, the female heirs can claim partition of the family dwelling house. Section 23 is no bar to such a claim. The statutory rights bestowed and conferred by S.8 on the female heirs are restricted or curtailed

respecting dwelling houses only under the circumstances envisaged under S.23, the purpose being to deter actual partition of the family dwelling house which is actually in occupation of the members of the family of the intestate until the male members themselves choose to destruct their joint status.

This exception and restriction must be construed strictly and strongly and it is, in fact,, implied that no other exceptions are contemplated by the legislature. Firstly, therefore, in the case of single or sole male heir, there is no joint family, no joint family dwelling of joint family members and, therefore, there is no object and no purpose that is calculated to be served by keeping the devolution of female heirs in abeyance.

Secondly, to construe this section to mean that the restriction applies even in cases where there is only one heir of the intestate, would be to construe it beyond the purpose plainly indicated and to forfeit verify, the established and vested rights of the female heirs, when they take as tenants-in-common with the single male heir. [Anant. v. Jankibai, A.I.R. 1984 Bom. 319].

7. Section 24 bars the claim of certain widows to succeed to the property of an intestate as such widows, if they have remarried on the death the succession opens, i.e., the intestate dies, widows are the widow of a predeceased son, the widow of a predeceased son of a predeceased son and the widow of a brother.

8. 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. (Sec. 25).

9. 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 same time when the succession opens. (Sec. 26).

10. Succession when heirs disqualified:

If any person is disqualified from inheriting any property under this Act, it shall devolve as such if the person had died before the intestate. (Sec. 27).

11. 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. (Sec. 38).

12. 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. (Sec. 29)

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 - Right of child in WOMB is given – U/s 20 U/s 21 U/s 18 U/s 12
2.
 - Murderer disqualified: U/s 20 U/s 21 U/s 25 U/s 12
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 - Presumption in cases of simultaneous death: U/s 20 U/s 21 U/s 18 U/s 12
1.
 - Succession when heirs disqualified: U/s 20 U/s 22 U/s 27 U/s 28

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Failure of heirs:

U/s 29

U/s 27

U/s 26

U/s 25