SUPREME COURT OF INDIA

Before: Anil R. Dave & Adarsh Kumar Goel, JJ.

Civil Appeal No.7217 of 2013 Decided on: 16.10.2015

Prakash & Ors. Appellants

Versus

Phulavati & Ors. Respondents

Alongwith

SLP (C) Nos.21814 of 2008, 18744 of 2010, 28702-28703 of 2010, 28471 of 2011, 4217-4218 of 2012, 1299-1300 of 2013, 17577-17578 of 2013, 19816 of 2014, 5619 of 2015, 3805 of 2008, 9390 of 2015, 5680 of 2015, 35209 of 2011

and

15557-15558 of 2015 and Slp. (C) ….15560 of 2015

For Appellant(s) Mr. Anil C. Nishant,Adv.
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Mr. A.K. Joseph,Adv.
Mrs. Sudha Gupta,Adv.
Mrs. S. Usha Reddy,Adv.
Mr. Nanda Kishore,Adv.
Mr. P.R.Kovilan,Adv.
Ms. Geetha Kovilan,Adv.
Mr. Shanth Kumar V. Mahale,Adv.
Mr. Amith J.,Adv.
Mr. Rajesh Mahale,Adv.
Mr. Raghavendra S. Srivatsa,Adv.
Mr. Charudatta Mohindrakar,Adv.
Mr. A. Selvin Raja,Adv.
Mr. Aniruddha P. Mayee,Adv.
Mr. P.R. Ramasesh,Adv.
Mr. Ankolekar Gurudatta,Adv.
Mr. K.N. Rai,Adv.
Mrs. Vaijayanthi Girish,Adv.
Mr. G. Balaji,Adv.

For Respondent(s) for M/s. S.M. Jadhav & Company,Advs.
Mr. Rauf Rahim,Adv.
Mr. Sumeet Lall,Adv.
Mr. Balaji Srinivasan,Adv.
Mr. Mayank Kshirsagar,Adv.
Ms. Srishti Govil,Adv.

Ms. Vaishnavi Subrahmanyam,Adv.
Mr. Tushar Singh,Adv.
Mr. Virendra Sharma,Adv.
Mr. Manjunath Meled,Adv.
Mr. Vijaylaxmi,Adv.
Mr. Anil Kumar,Adv.
Mr. Somiran Sharma,Adv.
Mr. B. Subrahmanya Prasad,Adv.
Mr. Anirudh Sanganeria,Adv.
Mr. Chinmay Deshpande,Adv.
Mr. Amjid MaQBOOL,Adv.
Mr. Shashibhushan P. Adgaonkar,Adv.
Mr. T. Mahipal,Adv.
Mr. G.N. Reddy,Adv.
Mr. Rajinder Mathur,Adv.
Mr. Shankar Divate,Adv.
Mrs. K. Sarada Devi,Adv.
Ms. Garima Prashad,Adv.

A. Hindu Succession Act, 1956 (30 of 1956), Section 6 (As amended by 2005 Act) – Co-parcenery rights of woman – Prospective effect -- Rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born -- Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected -- Any transaction of partition effected thereafter will be governed by the Explanation.

(Para 16-23)

B. Constitution of India, Article 14, 15, 21 -- Gender discrimination in Muslim women – Fundamental rights of Muslim women -- Matter needs consideration as the issue relates not merely to a policy matter but to fundamental rights of women under Articles 14, 15 and 21 and international conventions and covenants – This aspect of the matter may be gone into by separately registering the matter as Public Interest Litigation (PIL) -- For this purpose, a PIL be separately registered and put up before the appropriate Bench as per orders of Hon'ble the Chief Justice of India.

(Para 27-31)

Cases referred:

1. M. Prithviraj vs. Neelamma N. [ILR 2009 Kar. 3612].

2. Shyam Sunder vs. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27.

3. RBI vs. Peerless (1987) 1 SCC 424, para 33.

4. Kehar Singh vs. State (1988) 3 SCC 609.

5. District Mining Officer vs. Tata Iron and Steel Co. (2001) 7 SCC 358.

6. S. Sundaram Pillai vs. R. Pattabiraman (1985) 1 SCC 591.

7. Keshavji Ravji & Co. vs. CIT (1990) 2 SCC 231.

8. Prema vs. Nanje Gowda (2011) 6 SCC 462.

9. Ganduri Koteshwaramma vs. Chakiri Yanadi (2011) 9 SCC 788.

10. V.K. Surendra vs. V.K. Thimmaiah (2013) 10 SCC 211.

11. Ram Sarup vs. Munshi [(1963) 3 SCR 858].

12. Dayawati vs. Inderjit [(1966) 3 SCR 275].

13. Amarjit Kaur vs. Pritam Singh [(1974) 2 SCC 363].

14. Lakshmi Narayan Guin vs. Niranjan Modak [(1985) 1 SCC 270].

15. S. Sai Reddy vs. S. Narayana Reddy [(1991) 3 SCC 647].

16. State of Maharashtra vs. Narayan Rao [(1985) 2 SCC 321.

17. State of Rajasthan vs. Mangilal Pindwal [(1996) 5 SCC 60].

18. West U.P. Sugar Mills Asson. vs. State of U.P. [(2002) 2 SCC 645].

19. Sheela Devi vs. Lal Chand [(2006) 8 SCC 581].

20. G. Sekar vs. Geetha [(2009) 6 SCC 99, para 30].

21. Bagirathi vs. S. Manivanan [AIR 2005 Mad 250 (DB)].

22. Badrinarayan Shankar Bhandari Vs. Ompraskash Shankar Bhandari [AIR 2014, BOM 151. paras 40-57].

23. Gurupad Khandappa Magdum vs. Hirabai Khandappa Magdum [(1978) 3 SCC 383].

24. Shyama Devi vs. Manju Shukla [(1994) 6 SCC 342].

25. Anar Devi vs. Parmeshwari Devi [(2006) 8 SCC 656].

26. Vaishali Satish Ganorkar vs. Satish Keshaorao Ganorkar [AIR 2012, BOM 101].

27. Kale vs. Dy. Director of Consolidation [(1976) 3 SCC 119].

28. Digambar Adhar Patil vs. Devram Girdhar Patil [(1995) Supp. 2 SCC 428 at page 430].

29. Santosh Hazari vs. Purushottam Tiwari [(2001) 3 SCC 179].

30. Kannaiyan vs. The Assistant Collector of Central Excise [1969 (2) MLJ 277,].

31. C.I.T. Gujarat vs. Keshavlal Lallubhai Patel [(1965) 2 SCR 100].

32. Umayal Achi vs. Lakshmi Achi [AIR 1945 FC 25 at 31(d)].

33. Shivappa Laxman vs. Yellawa Shivappa Shivagannavar [AIR 1954 BOM 47].

34. Ahmedabad Women Action Group(AWAG) vs. Union of India [(1997) 3 SCC 573].

35. Danial Latifi vs. Union of India [(2001) 7 SCC 740].

36. Javed vs. State of Haryana [(2003) 8 SCC 369].

37. John Vallamattom vs. UOI [(2003) 6 SCC 611].

38. Charu Khurana vs. UOI [(2015) 1 SCC 192],

JUDGMENT

ADARSH KUMAR GOEL, J. –

1. The only issue which has been raised in this batch of matters is whether Hindu Succession (Amendment) Act, 2005 ('the Amendment Act') will have retrospective effect. In the impugned judgment (reported in AIR 2011 Kar. 78 Phulavati vs. Prakash), plea of restrospectivity has been upheld in favour of the respondents by which the appellants are aggrieved.

2. Connected matters have been entertained in this Court mainly on account of the said legal issue particularly when there are said to be differing views of High Courts which makes it necessary that the issue is decided by this Court. It is not necessary to go into the facts of the individual case or the correctness of the findings recorded by the courts below on various other issues. It was made clear during the hearing that after deciding the legal issue, all other aspects may be decided separately in the light of the judgment of this Court.

3. Only for the purpose of deciding the above legal question, we refer to the brief facts in Civil Appeal No.7217 of 2013. The respondent-plaintiff, Phulavati filed suit being O.S. No.12/1992 before Additional Civil Judge (Senior Division), Belgaum for partition and separate possession to the extent of 1/7th share in the suit properties in Schedule 'A' to 'G' except property bearing CTS No.3241 mentioned in Schedule 'A' in which the share sought was 1/28th.

4. According to the case of the plaintiff, the suit properties were acquired by her late father Yeshwanth Chandrakant Upadhye by inheritance from his adoptive mother Smt. Sunanda Bai. After the death of her father on 18th February, 1988, she acquired the share in the property as claimed.

5. The suit was contested mainly with the plea that the plaintiff could claim share only in the self acquired property of her deceased father and not in the entire property. During pendency of the suit, the plaintiff amended the plaint so as to claim share as per the Amended Act 39 of 2005. The trial court partly decreed the suit to the extent of 1/28th share in certain properties on the basis of notional partition on the death of her father and in some of the items of property, no share was given, while 1/7th share was given in some other properties as mentioned in detail in the judgment of the trial court.

6. The respondent-plaintiff preferred first appeal before the High Court with the grievance that the plaintiff became coparcener under the Amendment Act 39 of 2005 and was entitled to inherit the coparcenary property equal to her brothers, apart from contentions based on individual claims in certain items of property.

7. The stand of the defendants-appellants was that the plaintiff could not claim any share in self acquired property f the members of the joint family and that the claim of the plaintiff had to be dealt with only under Section 6 of the Hindu Succession Act, 1956 as it stood prior to the amendment by Act 39 of

2005. The defendants relied upon a division bench judgment of the High Court in ***M. Prithviraj vs. Neelamma N. [ILR 2009 Kar. 3612]*** laying down that if father of a plaintiff had died prior to commencement of Act 39 of 2005, the amended provision could not apply. It was only the law applicable on the date of opening of succession which was to apply.

8. The High Court framed following question for consideration on this aspect :

> *"(ii) Whether the plaintiff is entitled to a share in terms of Section 6 of the Hindu Succession Act as amended by Act No.39 of 2005?"*

9. It was held that the amendment was applicable to pending proceedings even if it is taken to be prospective. The High Court held that :

> *"61. The law in this regard is too well settled in terms of the judgment of the Supreme Court in the case of G. Sekar Vs. Geetha and others reported in (2009) 6 SCC 99. Any development of law inevitably applies to a pending proceeding and in fact it is not even to be taken as a retrospective applicability of the law but only the law as it stands on the day being made applicable.*
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> *62. The suit, no doubt, might have been instituted in the year 1992 and even assuming that it was four years after the demise of Yeshwanth Chandrakant Upadhye, the position so far as the parties are concerned who are all members of the joint family, in terms of Section 6 as amended by Act No.39 of 2005 is that a female member is, by a fiction of law created in terms of the amended provision also becomes a coparcener and has a right in joint family property by birth. They are also sharer members of the coparcenary property at par with all male members. When a partition takes place, coparceners succeed to the property in equal measure. Such is the legal position in terms of Section 6 of the Hindu Succession Act as amended by Act No.39 of 2005 and as declared by the Supreme Court in the case of G.S. Sekar (supra). The only exception carved out to the applicability and operation of Section 6 of the Hindu Succession Act as amended by Act No.39 of 2005 being a situation or a factual position where there was a partition which had been effected by a registered partition deed or by a decree of the court which has attained finality prior to 20.12.2004 in terms of sub-section (5) to Section 6.*
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> *63. In the present case such being not the factual position, the exception available under sub-section (5) to Section 6 cannot be called in aid by the defendants and therefore, the liability in terms of the amended provisions operates. It is not necessary for us to multiply the judgment by going into details or discussing other judgments referred to and relied upon by the learned counsel for the parties at the Bar as one judgment of the Supreme Court if clinches the issue on the point, it is good enough for us, as a binding authority to apply that law and dispose of the case as declared in that judgment."*

10. The respondent-plaintiff was accordingly held entitled to 1/7th share in all items in Schedules 'A' to 'D'. In respect of Schedule 'F', first item was given up by the plaintiff. Out of the other two items, she was held entitled to 1/7th share in Item No.2 and 1/7th share in 40% ownership in Item No.3.

11. The defendants-appellants have questioned the judgment and order of

the High Court with the contention that the amended provision of Section 6 has no application in the present case. Father of the plaintiff died on 18th February, 1988and was thus, not a coparcener on the date of commencement of the Amendment Act. The plaintiff could not claim to be "the daughter of a coparcener" at the time of commencement of the Act which was the necessary condition for claiming the benefit. On the death of plaintiff's father on 18th February, 1988, notional partition took place and shares of the heirs were crystallized which created vested right in the parties. Such vested right could not have been taken away by a subsequent amendment in absence of express provision or necessary intendment to that effect. Moreover, the amending provision itself was expressly applicable "on and from" the commencement of the Amendment Act, i.e., 9th September, 2005. The High Court held that even if the provision was prospective, it could certainly apply to pending proceedings as has been held in some decisions of this Court. It is pointed out that the amendment could apply to pending proceedings, only if the amendment was applicable at all.

12. Learned counsel for the respondents would support the view taken by the High Court.

13. We have heard learned counsel for the parties in the present appeal as well as in connected matters for the rival view points which will be noticed hereinafter.

14. The contention raised on behalf of the appellants and other learned counsel supporting the said view is that the 2005 Amendment was not applicable to the claim of a daughter when her father who was a coparcener in the joint hindu family died prior to 9th September, 2005. This submission is based on the plain language of the statute and the established principle that in absence of express provision or implied intention to the contrary, an amendment dealing with a substantive right is prospective and does not affect the vested rights ***[Shyam Sunder vs. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27]***. If such a coparcener had died prior to the commencement of the Amendment Act, succession opens out on the date of the death as per the prevailing provision of the succession law and the rights of the heirs get crystalised even if partition by metes and bounds does not take place. It was pointed out that apparently conflicting provision in Explanation to Section 6(5) and the said Section was required to be given harmonious construction with the main provision. The explanation could not be read in conflict with the main provision. Main provision of Section 6(1) confers right of coparcener on a daughter only from commencement of the Act and not for any period prior to that. The proviso to Section 6(1) also applies only where the main provision of Section 6(5) applies. Since Section 6(5) applies to partition effected after 20th December, 2004, the said proviso and the Explanation also applies only when Section 6(1) applies. It is also submitted that the Explanation was merely a rule of evidence and not a substantive provision determining the rights of the parties. Date of a daughter becoming coparcener is on and from the commencement of the Act. Partitions effected before 20th December, 2004 remain unaffected as expressly provided. The Explanation defines partition, as partition made by a registered deed or effected by decree of a court. Its effect is not to wipe out a legal and valid partition prior to the said date, but to place burden of proof of genuineness of such partition on the party alleging it. In any

case, statutory notional partition remains valid and effective.

15. On the contrary, stand on behalf of the respondents is that the amendment being piece of social legislation to remove discrimination against women in the light of 174th Report of the Law Commission, the amendment should be read as being retrospective as interpreted by the High Court in the impugned judgment. A daughter acquired right by birth and even if her father, who was a coparcener, had died prior to coming into force of the amendment, the shares of the parties were required to be redefined. It was submitted that any partition which may have taken place even prior to 20th December, 2004 was liable to be ignored unless it was by a registered deed of partition or by a decree of the Court. If no registered partition had taken place, share of the daughter will stand enhanced by virtue of the amendment.

16. We have given due consideration to the rival submissions. We may refer to the provision of Section 6 of the Hindu Succession Act as it stood prior to the 2005 Amendment and as amended :

Section 6 of the Hindu Succession Act	**Section 6 on and from the commencement of the Hindu Succession (Amendment) Act, 2005**
6. Devolution of interest of coparcenary property. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: PROVIDED that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. Explanation I: For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.	**6. Devolution of interest in coparcenary property.-(**1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005**,** in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,- (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. (2) Any property to which a female Hindu becomes entitled by virtue of

Explanation 2: Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. 7. Devolution of interest in the property of a tarwad,	sub-section -(1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition. (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,- (a) the daughter is allotted the same share as is allotted to a son; (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; and (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be. Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. (4) After the commencement of the

	Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted. Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005. (5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004. Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.'

17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective ***[Shyam Sunder vs. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27]***. In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.

18. Contention of the respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under sub-section 5 or under the Explanation.

19. Interpretation of a provision depends on the text and the context ***[RBI vs. Peerless (1987) 1 SCC 424, para 33]***. Normal rule is to read the words of a statute in ordinary sense. In case of ambiguity, rational meaning has to be given ***[Kehar Singh vs. State (1988) 3 SCC 609]***. In case of apparent conflict, harmonious meaning to advance the object and intention of legislature has to be given ***[District Mining Officer vs. Tata Iron and Steel Co. (2001) 7 SCC 358]***.

20. There have been number of occasions when a proviso or an explanation came up for interpretation. Depending on the text, context and the purpose, different rules of interpretation have been applied ***[S. Sundaram Pillai vs. R. Pattabiraman (1985) 1 SCC 591]***.

21. Normal rule is that a proviso excepts something out of the enactment which would otherwise be within the purview of the enactment but if the text, context or purpose so require a different rule may apply. Similarly, an explanation is to explain the meaning of words of the section but if the language or purpose so require, the explanation can be so interpreted. Rules of interpretation of statutes are useful servants but difficult masters ***[Keshavji***

Ravji & Co. vs. CIT (1990) 2 SCC 231]. Object of interpretation is to discover the intention of legislature.

22. In this background, we find that the proviso to Section 6(1) and sub-section (5) of Section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 20th December, 2004 on which date the Bill was introduced. Explanation cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to 20th December, 2004 is not to make the main provision retrospective in any manner. The object is that by fake transactions available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced. Main provision of the Amendment in Section 6(1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the appellants are not intended to be done away with for period prior to 20th December, 2004. In no case statutory notional partition even after 20th December, 2004 could be covered by the Explanation or the proviso in question.

23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.

24. On above interpretation, Civil Appeal No.7217 of 2013 is allowed. The order of the High Court is set aside. The matter is remanded to the High Court for a fresh decision in accordance with law. All other matters may be listed for hearing separately for consideration on 24th November, 2015.

25. The view which we have taken above is consistent with and not in conflict with any of the earlier decisions. We may now refer to the decisions cited by the parties. Main decisions cited by the respondents are: ***Prema vs. Nanje Gowda [(2011) 6 SCC 462]***, ***Ganduri Koteshwaramma vs. Chakiri Yanadi [(2011) 9 SCC 788]***, ***V.K. Surendra vs. V.K. Thimmaiah [(2013) 10 SCC 211, para 18], Ram Sarup vs. Munshi [(1963) 3 SCR 858], Dayawati vs. Inderjit [(1966) 3 SCR 275], Amarjit Kaur vs. Pritam Singh [(1974) 2 SCC 363], Lakshmi Narayan Guin vs. Niranjan Modak [(1985) 1 SCC 270], S. Sai Reddy vs. S. Narayana Reddy [(1991) 3 SCC 647]*** and ***State of Maharashtra vs. Narayan Rao [(1985) 2 SCC 321, paras 8 to 10].*** Many of these decisions deal with situations where change in law is held to be applicable to pending proceedings having regard to intention of legislature in a particular law. There is no dispute with the propositions laid down in the said decisions. Question is of application of the said principle in the light of a particular amending law. The decisions relied upon do not apply to the present case to support the stand of the respondents.

25.1. In ***Ram Sarup case (supra),*** the question for consideration was of amendment to the Punjab Pre-emption Act, 1930 by Punjab Act 10 of 1960 restricting the pre-emption right. Section 31 inserted by way of amendment prohibited passing of a decree which was inconsistent with the amended provisions. It was held that the amendment was retrospective and had retrospective operation in view of language employed in the said provision.

25.2. In ***Dayawati case (supra),*** Section 6 of the Punjab Relief of Indebtedness Act, 1956 expressly gave retrospective effect and made the statute applicable to all pending suits on the commencement of the Act. The Act sought to reduce the rate of interest in certain transactions to give relief against indebtedness to certain specified persons.

25.3. In ***Lakshmi Narayan Guin case (supra),*** the question was of applicability of Section 13 of the West Bengal Premises Tenancy Act, 1956 which expressly provided that no order could be passed by the Court contrary to the scheme of the new law.

25.4. In ***Amarjit Kaur case (supra),*** Section 3 of the Punjab Pre-emption (Repeal) Act, 1973 was considered which expressly prohibited the Court from passing any pre-emption decree after the commencement of the Act.

25.5. There is also no conflict with the principle laid down in ***V.K. Surendra case (supra)*** which deals with a presumption about the nature of a joint family property and burden of proof being on the person claiming such property to be separate. The said decision only lays down a rule of evidence.

25.6. In ***S. Sai Reddy case (supra)***, the question for consideration was whether even after a preliminary decree is passed determining the shares in partition, such shares could be varied on account of intervening events at the time of passing of the final decree. In the said case, partition suit was filed by a son against his father in which a preliminary decree was passed determining share of the parties. Before final decree could be passed, there was an amendment in the Hindu Succession Act (vide A.P. Amendment Act, 1986) allowing share to the unmarried daughters. Accordingly, the unmarried daughters applied to the court for their shares which plea was upheld. The said judgment does not deal with the issue involved in the present matter. It was not a case where the coparcener whose daughter claimed right was not alive on the date of the commencement of the Act nor a case where shares of the parties stood already crystalised by operation of law to which the amending law had no application. Same is the position in ***Prema and Ganduri cases (supra)***.

25.7. In ***Narayan Rao case (supra)***, it was observed that even after notional partition, the joint family continues. The proposition laid down in this judgment is also not helpful in deciding the question involved herein. The text of the Amendment itself shows that the right conferred by the Amendment is on a ‘daughter of a coparcener’ who is member of a coparcenary and alive on commencement of the Act.

25.8. We also do not find any relevance of decisions in ***State of Rajasthan vs. Mangilal Pindwal [(1996) 5 SCC 60]*** and ***West U.P. Sugar Mills Asson. vs. State of U.P. [(2002) 2 SCC 645]*** or other similar decisions for deciding the issue involved herein. The said decisions deal with the effect of repeal of a provision and not the issue of restrospectivity with which the Court is concerned in the present case.

26. We now come to the decisions relied upon by the appellants. In ***M. Prithviraj case (supra),*** the view taken appears to be consistent with what has been said above. It appears that this was a binding precedent before the Bench of the High Court which passed the impugned order but does not appear to have been referred to in the impugned judgment. Judgments of this

Court in ***Sheela Devi vs. Lal Chand [(2006) 8 SCC 581]*** and ***G. Sekar vs. Geetha [(2009) 6 SCC 99, para 30]*** and the judgment of Madras High Court in ***Bagirathi vs. S. Manivanan [AIR 2005 Mad 250 (DB)]*** have been relied upon therein. In ***Sheela Devi case (supra),*** this Court observed:

> *21. The Act indisputably would prevail over the old Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of Amendment Act, 2005 would have no application. Sub-section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, the proviso appended to Sub-section (1) of Section 6 of the Act creates an exception. First son of Babu Lal, viz., Lal Chand, was, thus, a coparcener. Section 6 is exception to the general rules. It was, therefore, obligatory on the part of the respondents-plaintiffs to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof. So far as the Second son, Sohan Lal is concerned, no evidence has been brought on records to show that he was born prior to coming into force of Hindu Succession Act, 1956."*

Full Bench judgment of Bombay High Court in ***Badrinarayan Shankar Bhandari Vs. Ompraskash Shankar Bhandari [AIR 2014, BOM 151. paras 40-57]*** also appears to be consistent with the view taken hereinabove.

26.1. In ***Gurupad Khandappa Magdum vs. Hirabai Khandappa Magdum [(1978) 3 SCC 383, paras 6,11 and 13]***, ***Shyama Devi vs. Manju Shukla [(1994) 6 SCC 342, para 7]*** and ***Anar Devi vs. Parmeshwari Devi [(2006) 8 SCC 656, paras 10,11] cases*** this Court interpreted the Explanation 1 to Section 6 (prior to 2005 Amendment) of the Hindu Succession Act. It was held that the deeming provision referring to partition of the property immediately before the death of the coparcener was to be given due and full effect in view of settled principle of interpretation of a provision incorporating a deeming fiction. In ***Shyama Devi and Anar Devi cases,*** same view was followed.

26.2. In ***Vaishali Satish Ganorkar vs. Satish Keshaorao Ganorkar [AIR 2012, BOM 101, paras 13 to 37],*** the Bombay High Court held that the amendment will not apply unless the daughter is born after the 2005 Amendment, but on this aspect a different view has been taken in the later larger Bench judgment. We are unable to find any reason to hold that birth of the daughter after the amendment was a necessary condition for its applicability. All that is required is that daughter should be alive and her father should also be alive on the date of the amendment.

26.3. ***Kale vs. Dy. Director of Consolidation [(1976) 3 SCC 119, para 9]*** and ***Digambar Adhar Patil vs. Devram Girdhar Patil [(1995) Supp. 2 SCC 428 at page 430]*** have been cited to submit that the family settlement was not required to be registered. ***Santosh Hazari vs. Purushottam Tiwari [(2001) 3 SCC 179, para 15.]*** lays down that the Appellate Court must deal with reasons of the trial court while reversing its findings.

26.4. ***Kannaiyan vs. The Assistant Collector of Central Excise [1969***

(2) MLJ 277,], C.I.T. Gujarat vs. Keshavlal Lallubhai Patel [(1965) 2 SCR 100], Umayal Achi vs. Lakshmi Achi [AIR 1945 FC 25 at 31(d)] and ***Shivappa Laxman vs. Yellawa Shivappa Shivagannavar [AIR 1954 BOM 47, para 4]*** have been cited to canvass that partition was recognition of pre-existing rights and did not create new rights.

26.5 This would normally have ended our order with the operative part being in para 24 which disposes of Civil Appeal No.7217 of 2013 and directs listing of other matters for being dealt with separately. However, one more aspect relating to gender discrimination against muslim women which came up for consideration needs to be gone into as Part II of this order.

Part II

27. An important issue of gender discrimination which though not directly involved in this appeal, has been raised by some of the learned counsel for the parties which concerns rights to muslim women. Discussions on gender discrimination led to this issue also. It was pointed out that inspite of guarantee of the Constitution, muslim women are subjected to discrimination. There is no safeguard against arbitrary divorce and second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security to her. Although the issue was raised before this Court in ***Ahmedabad Women Action Group(AWAG) vs. Union of India [(1997) 3 SCC 573],*** this Court did not go into the merits of the discrimination with the observation that the issue involved state policy to be dealt with by the legislature[1]. It was observed that challenge to the Muslim Women (Protection of Rights on Divorce) Act, 1986 was pending before the Constitution Bench and there was no reason to multiply proceedings on such an issue.

[1]This Court referred to the observations of Sahai, J. in ***Sarla Mudgal vs. Union of India (1995) 3 SCC 635*** that a climate was required to be built for a uniform civil code. Reference was also made to observations in ***Madhu Kishwar vs. State of Bihar (1996 (5) SCC 125*** to the effect that the court could at best advise and focus attention to the problem instead of playing an activist role.

28. It is pointed out that the matter needs consideration by this Court as the issue relates not merely to a policy matter but to fundamental rights of women under Articles 14, 15 and 21 and international conventions and covenants. One of the reasons for the court having not gone into the matter was pendency of an issue before the Constitution Bench which has since been decided by this Court in ***Danial Latifi vs. Union of India [(2001) 7 SCC 740].*** The Constitution Bench did not address the said issue but the Court held that Article 21 included right to live with dignity which supports the plea that a muslim woman could invoke fundamental rights in such matters. In ***Javed vs. State of Haryana [(2003) 8 SCC 369],*** a Bench of three judges observed that practice of polygamy is injurious to public morals and can be superseded by the State just as practice of '*sati' [Para 46]*. It was further observed that conduct rules providing for monogamy irrespective of religion are valid and could not be struck down on the ground of violation of personal law of muslims *[Paras 54 to 59]*. In ***John Vallamattom vs. UOI [(2003) 6 SCC 611],*** it was observed that Section 118 of Indian Succession Act, 1925 restricting right of christians to make Will for charitable purpose was without any rational basis, was discriminatory against Christians and violated Article 14*[Paras 28 and 29]*. Laws dealing with marriage and succession are not part of religion *[Para 44]*.

Law has to change with time *[Paras 33 to 36]*. International covenants and treaties could be referred to examine validity and reasonableness of a provision *[Paras 30 to 32]*.

> [1]"Para 33……. This Court in *Olga Tellis* v. *Bombay Municipal Corpn. [*1985(3) SCC 545] and *Maneka Gandhi* v. *Union of India [1978 (1) SCC 248]* held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution would include the "right to live with dignity". Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC. Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. **The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion."**

29. In ***Charu Khurana vs. UOI [(2015) 1 SCC 192],*** this Court considered the issue of gender discrimination in the matter of denial of membership of "Cine Costume Make-up Artists and Hair Dressers Association" in film industry. It was held that such discrimination violates basic constitutional rights.

30. It was thus submitted that this aspect of the matter may be gone into by separately registering the matter as Public Interest Litigation (PIL). We are of the view that the suggestion needs consideration in view of earlier decisions of this Court. The issue has also been highlighted in recent Articles appearing in the press on this subject[2].

> [2]"The Tribune" dated 24.09.2015 "Muslim Women's quest for equality" by Vandana Shukla and "Sunday Express Magazine" dated 04.10.2015 "In Her Court" by Dipti Nagpaul D'Suza.

31. For this purpose, a PIL be separately registered and put up before the appropriate Bench as per orders of Hon'ble the Chief Justice of India.

32. Notice be issued to learned Attorney General and National Legal Services Authority, New Delhi returnable on 23rd November, 2015. We give liberty to learned counsel already appearing in this matter to assist the Court on this aspect of the matter, if they wish to volunteer, for either view point.

Order accordingly.

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