Hindu Woman's Inheritance Right

Why in news?

The Supreme Court expanded on a Hindu woman's right to be a joint legal heir and inherit ancestral property on terms equal to male heirs.

What is the ruling?

- A three-judge Bench has ruled that a Hindu woman's right to be a joint heir to the ancestral property is by birth.
- It says that the rights do not depend on whether her father was alive or not when the law was enacted in 2005.
- The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be coparceners or joint legal heirs like a male heir does.
- The ruling said that since the coparcenary is by birth, it is not necessary that the father coparcener should be living as on 9.9.2005.

What is the Hindu Succession Act, 1956?

- The Mitakshara school of Hindu law was codified as the Hindu Succession Act, 1956.
- It governed succession and inheritance of property but only recognised males as legal heirs.
- The law applied to everyone who is not a Muslim, Christian, Parsi or Jew by religion.
- Buddhists, Sikhs, Jains and followers of Arya Samaj, Brahmo Samaj are also considered Hindus for the purposes of this law.
- In a Hindu Undivided Family (HUF), several legal heirs through generations can exist jointly.
- Traditionally, HUF includes only the male descendants of a common ancestor along with their mothers, wives and unmarried daughters.
- The legal heirs hold the family property jointly.

What is the 2005 law?

- Women were recognised as coparceners or joint legal heirs for partition arising from 2005.
- Section 6 of the Act was amended that year to make a daughter of a coparcener also a coparcener by birth in her own right.

- The law also gave the daughter the same rights and liabilities in the coparcenary property as she would have had if she had been a son.
- It applies to ancestral property and to intestate succession in personal property - where succession happens as per law and not through a will.
- The 174th Law Commission Report had also recommended this reform in Hindu succession law.
- Even before the 2005 amendment, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu had made this change in the law.

How did the case come about?

- While the 2005 law granted equal rights to women, questions were raised in multiple cases on whether the law applied retrospectively.
- There were questions regarding whether the rights of women depended on the living status of the father through whom they would inherit.
- Different benches of the SC had taken conflicting views on the issue.
- In Prakash v Phulwati (**2015**), the SC held that the benefit of the 2005 amendment could be granted only to living daughters of living coparceners as on September 9, 2005.
- [September 9, 2005 - The date when the amendment came into force.]
- In **2018**, the SC held that the share of a father who died in 2001 will also pass to his daughters as coparceners during the partition of the property as per the 2005 law.
- These conflicting views by Benches of equal strength led to a reference to a three-judge Bench in the current case.
- The ruling now overrules the verdicts from 2015 and 2018.

How did the court decide the case?

- The court looked into the rights under the Mitakshara coparcenary.
- Section 6 creates an unobstructed heritage or a right created by birth for the daughter of the coparcener.
- So, the right cannot be limited by whether the coparcener is alive or dead when the right is operationalised.
- The court said that the 2005 amendment gave recognition of a right that was in fact accrued by the daughter at birth.
- The conferral of a right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son.
- 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.
- The ruling said that 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**.

- The Mitakshara coparcenary shall be deemed to include a reference to a daughter as a coparcener.
- The SC also directed High Courts to dispose of cases involving this issue within six months since they would have been pending for years.

What was the government's stand?

- Solicitor General Tushar Mehta argued in favour of an expansive reading of the law to allow equal rights for women.
- He referred to the objects and reasons of the 2005 amendment.
- He said that the Mitakshara law contributed to gender discrimination and was oppressive.
- He also said that the law negated the fundamental right of equality guaranteed by the Constitution of India.

Source: The Indian Express

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