$~R-11

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

Reserved on: 14.12.2015
Pronounced on: 22.12.2015

+ CS(OS) 2011/2006

MRS. SUJATA SHARMA ..... Plaintiff
Through: Ms. Mala Goel, Adv.

versus

SHRI MANU GUPTA ..... Defendant
Through: Mr. Aslam Ahmed, Mr. B.S. Jamwal & Mr. Puneet Singh Bindra, Advocates for defendant Nos.1 to 4

Mr. B.K. Srivastava, Mr. Dinesh Kumar & Mr. Roopak Gaur, Advocates for defendant Nos.10 & 11.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. The issue which is to be decided in this case is whether the plaintiff, being the first born amongst the co-parceners of the HUF property, would by virtue of her birth, be entitled to be its Karta. Her claim is opposed by defendants Nos. 1 to 4 while the defendants Nos. 5 to 9 have given their 'no objection' to it and their 'NOC' has been filed along with the plaint. Therefore, defendant Nos. 5 to 9 are virtually plaintiffs. Defendants No. 10 and 1 1 state that their position is to be determined as per law. Ms. Mala

Goel, the learned counsel for the plaintiff, submits that the parties to the suit are the co-parceners of the D.R.Gupta & Sons, HUF.

2. The suit property comprises residential property at 4, University Road, Delhi-110007 and some movable properties and shares such as (i) Shares of Motor and General Finance Ltd.; (ii) Deposits with Motor and General Finance Ltd.; (iii) Bank of Account in Bank of India, Asaf Ali Road; and (iv) Bank Account in Vijaya Bank, Ansari Road.

3. To determine the *lis* in this case, the following issues were framed vide order dated 15.09.2008:

> *1. Whether the suit has been valued properly and proper court fee has been paid thereon? (OPP)*
>
> *2. Whether the suit for declaration, is maintainable in its present form? (OPP)*
>
> *3. Whether there exists any coparcenary property or HUF at all?(OPP)*
>
> *4. Whether the plaintiff is a member of D.R. Gupta and Sons HUF? And if so, to what effect? (OPP)*
>
> *5. Whether the interest of the plaintiff separated upon the demise of her father Sh. K.M. Gupta in 1984? (OPD)*
>
> *6. Assuming existence of a D.R. Gupta and Sons HUF, whether the plaintiff can be considered to be an integral part of the HUF, particularly after her marriage in 1977, and whether the plaintiff has ever participated in the affairs of the HUF as a coparcener, and its effect? (OPP)*
>
> *7. Assuming existence of D.R. Gupta and Sons HUF, whether the plaintiff is a coparcener of and legally entitled to be the Karta?(OPP)*

8. What is the effect of the amendment in the Hindu Succession Act, in 2005 and has it made any changes in the concept of Joint Family or its properties in the law of coparcenary? (OPP)

9. Relief.

4. Issue 1

This issue was decided in favour of defendant Nos. 1 to 4 by this Court, which was subsequently set aside in Appeal No.293/2010 on 17.01.2013, therefore, this issue stands settled in favour of the plaintiff.

5. Issues No. 2, 3, 4 and 7.

Ms. Mala Goel, the learned counsel for the plaintiff submits that pursuant to the Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as the 'amended Act') which amended the Hindu Succession Act, 1956, all rights which were available to a Hindu male are now also available to a Hindu female. She submits that a daughter is now recognised as a co-parcener by birth in her own right and has the same rights in the co-parcenary property that are given to a son. She relies upon Section 6 of the Hindu Succession Act, 1956 which reads as under:

"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 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 in, 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 pre-deceased 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."

6. She also relies upon the dicta of the Supreme Court in ***Tribhovan Das Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.*** AIR 1991 SC 1538 which held that the senior most member in a HUF would become the Karta. The relevant portion of the above judgment is reproduced hereinunder:

"The managership of the Joint Family Property goes to a person by birth and is regulated by seniority and the Karta or the Manager occupies a position superior to that of the other members. A junior member cannot, therefore, deal with the joint family property as Manager so long as the Karta is

available except where the Karta relinquishes his right expressly or by necessary implication or in the absence of the Manager in exceptional and extra-ordinary circumstances such as distress or calamity effecting the whole family and for supporting the family or in the absence of the father whose whereabouts were not known or who was away in remote place due to compelling circumstances and that is return within the reasonable time was unlikely or not anticipated."

Ms. Mala Goel further relies upon the case of **Ram Belas Singh vs. Uttamraj Singh and Ors.** AIR 2008 Patna 8, which held as under. This judgment deals with Section 6B of the Act:

"9. The suit out of which this civil revision has arisen had been filed in the year 2006 much after coming into force of the Hindu Succession (Amendment) Act, 2005 (Act XXXIX of 2005) which substituted Section 6 of the Act and provided that in a joint Hindu family governed by Mitakshara law the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and will have the same rights in the coparcenary property as she would have if she had been a son and shall also 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. In the said circumstances, the law is made very clear that the term "Hindu Mitakshara coparcener" used in the original Hindu Law shall now include daughter of a coparcener also giving her the same rights and liabilities by birth as those of the son."

7. The learned counsel for the plaintiff further submits that there is clear admission by the defendant No. 1 of the existence of the aforesaid HUF insofar as the said defendant, Manu Gupta, had written the letter dated 3.10.2006 (Ex.P-3) to the Military authorities/Mukul Gupta/defendant No.6 as Karta of the said HUF. This letter was written ascertaining his right as the Karta of the HUF by virtue of being the eldest living male member of the HUF; indeed, the said letter refers to the aforesaid HUF four times over. Similarly, identical letters have been written on 08.09.2006 (Ex. P-4) to defendant No. 9, viz. Shri Bharat Gupta.

The learned counsel also refers to Ex. PW3/C which is an extract from a note sheet. No. 36, Clause 2 whereof reads as under:

> *"(i) After perusing the record available in the file it reveals that Bungalow No.4, University Road Kingsway Camp, Delhi admeasuring an area of 25750 Sq. yards or 5.32 acres was held on Lease in Form 'B' Cantt Court 1899 in Perpetuity dated 25.07.1906 duly registered as number 2239 Book No. 1 Vol. No. 615 on pages 8 to 54 dated 31.08.1906 on payment of an annual rent of Rs.12/- in favour of Sh. D.R. Gupta, who died on 01.10.71.*
>
> *(ii) The subject property has also been declared in the name of HUF and mutated in favour of the Legal Heirs of Late Sh. D.R. Gupta namely (1) Sh. Kishan Mohan (2) Shri Mohinder Nath Gupta (3) Shri Jatinder Nath Gujpta (4) Shri Ravinder Nath Gupta and (5) Sh. Bhupinder Nath Gupta.*
>
> *(iii) The above named individuals have also been declared as joint owners of the Lease hold rights of the subject property. Shri Kishan Mohan Gupta died on 17-2-1984 and names of his Legal Heirs have been*

substituted in the names of his Legal Heirs have been substituted in the record of this office.

In his deposition on 18.07.2013, PW-3, one Mr. N.V. Satyanarayan, Defence Estate Officer, Delhi Circle, has admitted that the mutation of Bungalow No. 4, University Road, Delhi had been done in the name of Shri R.N. Gupta (Karta); that it is borne out from the summoned record, i.e., a copy of the letter dated 01.06.85, addressed to Mrs. Shanta K. Mohan, w/o Late Sh. Kishan Mohan, 18, Anand Lok, New Delhi regarding mutation in the name of successor of Late Sh. Kishan Mohan, Karta (JHUF) in respect of 4, University Road, Delhi and letter dated 5.8.2003 from his office addressed to Sh. R.N. Gupta (Karta) & others, 4, University Road, Delhi on the subject "Mutation of Bungalow No.4, University Road, Delhi in the name of Legal Heirs." In this letter, it was contended that Mr. R.N. Gupta was the sole surviving son of Mr. D.R. Gupta and that he was thus the *Karta* of the said JHUF.

8. It is not in dispute between the parties that the plaintiff is the eldest surviving member of the HUF. Accordingly, she seeks a decree in terms of the relief sought in the suit.

9. The learned counsel for the plaintiff relies upon the case of ***Raghunath Rai Bareja and Another vs. Punjab National Bank and Others*** **(2207) 2 SCC 230** which held that, under the Dayabhaga School of Law, an unborn son cannot have a right in the property because the said son cannot perform *Shradha* whereas, under the Mitakshara School of Law, an unborn son in the womb of his mother gets a share in the ancestral property. The rights of an unborn son in the mother's womb under the

Dayabhaga School of Law are premised on the ability of the child to offer a rice ball or to conduct such necessary rituals for the benefit of the departed souls of his ancestors. Under the Mitakshara School of Law, emphasis is on the right of inheritance of the child and therefore, it rests upon consanguinity rather on upon the inheritance efficacy. It is contended that Section 6 of the Hindu Succession Act extends this element of consanguinity to female coparceners of a HUF under the Mitakshara School of Law to all aspects of inheritance, which would include the right to manage a ritual or property as its Karta, being the eldest of the co-parceners. She submits that by virtue of the family settlement dated 01.04.1999 (Ex. PW1/5), the rights of the parties, then existing, were settled. It was agreed that:

> *"2. The parties hereto confirm and declare that the oral family settlement dated 18.01.1999 was arrived at on the following terms:*
>
> *2.1 The parties acknowledge and confirmed that the parties hereto are the members of the Hindu Undivided family D.R. Gupta and Sons (HUF) and each having share in the movable and immovable properties presently owned by the Hindu Undivided Family as under:*
>
> *(a)Shri Krishan Mohan Gupta (The eldest son of late Shri D.R. Gupta who died on 17th Feb., 1984) and is survived by his wife Smt. Shanta K. Mohan And Mrs. Sujata Sharma & Mrs. Radhika Seth, daughter, heirs to the party of the "First part" - 1/5th share.*
>
> *(b) Shri Mahendra Nath Gupta as Karta (party of the "Second part) - 1/5th share*
>
> *(c) Mr. Ravinder Nath Gupta (party of the Third part) - 1/5th share*

(d) Shri Bhupinder Nath Gupta (party of the "Fourth)

- 1/5th Share

(e) Mr. Jitender Nath Gupta (party of the "Fifth part")

- 1/5th share

2.2 The parties acknowledge and confirm that the Hindu Undivided family owns and possesses the following movable and immovable properties.

(a) Bunglow No.4, Universtiy Road, Delhi.

(b) Share of Motor and General Finance Ltd. (4308 shares)

(c) Bank account of Hindu Undivided family D.R. Gupta & Sons (HUF) with Bank of India, Asaf Ali Road, New Delhi.

(d) Bank account with Vijiya Bank, Ansari Raod, New Delhi.

(e) Deposit with the Motor & General Finance Ltd. of Rs.6,400/- plus accumulated interest thereon.

2.3 The parties effected partition of Hindu Undivided family D.R. Gupta & Sons (HUF) and that the parties being the member of the said Hindu Undivided family were entitled to and were owners of the movable and immovable properties of the said Hindu Undivided family mentioned in para 2.2 above to the extent as under:

a) Shri Krishan Mohan Gupta (The eldest son of late Shri D.R. Gupta, who died on 17th Feb. 1983) and is survived by his wife Smt. Shanta K Mohan and Mrs. Sujata Sharma & Mrs. Radhika Seth, daughter, heirs to the party of the "First part". 1/5th share

b) Shri Mahendra Nath Gupta (as karta of the "Second party") 1/5th share

c) Mr. Ravinder Nath Gupta (Party of the "Third part") 1/5th share

d) Mr. Bhupinder Nath Gupta (Party of the "Fourth Part") 1/5th share

e) Mr. Jitender Nath Gupta (Party of the "Fifth part") 1/5th share

3. The Parties acknowledges that the party of the second, third, fourth, part are presently residing in the Hindu Undivided family property No. 4, University Road, Delhi and that they shall continue to reside therein till any three parties herein jointly decide and convey their intention to the other parties herein that the said property No. 4 University Road, Delhi be put to sale/development then the said property shall be put up for sale/development immediately by all the parties. Party of the second, third and fourth part within six months thereof and thereafter will vacate the said property.

4. Sale or development of the said property would be taken up only if the total consideration is equal to or in excess of Rs. 20 Crores. It was further agreed that out of the total consideration received, first one crore would be away at 1/3rd each to the 3 parties two, three and four who are residing on the premises towards relocation expenses and the balance consideration then would be divided in five equal parts.

It was further agreed that under the said family oral family settlement, in the event the parties of the second, third and fourth part are desirous of purchasing the said property, either singly or jointly then the market value of the said property shall be determined and the parties desirous of purchasing would be pay all the other parties who are selling their share the value of their share as determined by the market price of the said property. In case the purchase is made by any one or two of the parties of the second, third & fourth part then the parties/party out of the 2nd, 3rd and 4th parties who are not the purchaser and are being asked to vacate the premises occupied by them would be paid their share of the relocation expenses as described in earlier in clause 4 of the agreement.

It was further under the said oral family settlement that till such time that the permission of (sic.) competent authority to subdivide or to construct the said property is received the two families who are not in occupation of the said property would not demand demarcation or setting aside of their share in the property. However, once the permission to construct and subdivide is received then it would be their right to demand demarcation and possession of their share in the said property. In case on demarcation if anyh one(sic) or two or all out of the 2nd, 3rd and 4th parties move out of their present constructed portion that they are occupying, then the affected party/parties would be paid relocation expenses as described earlier in Clause 4 of the agreement. In such event, the parties 2, 3 & 4 will be aloowed a minimum, period of six months to vacate the respective premises."

10. The plaintiff is the daughter of Kishan Mohan Gupta, who is one of the acknowledged coparceners of the said HUF and was thus a party. She had signed the settlement as a member of the family and her signatures would have to be read as one of the parties. Her signatures would testify that she has a share in the property otherwise her signature would not be necessary.

11. Ms. Goel, the learned counsel, further submits that the share of a Karta is restricted by restraints placed upon the Karta inasmuch as no rights can be created nor can the property be appropriated to the detriment and exclusion of any of the co-parceners.

12. In the circumstances, issue Nos.2, 3, 4 and 7 are answered in the affirmative in favour of the plaintiff.

12. On behalf of defendant Nos. 10 and 11, the learned counsel, Mr. B. K. Srivastava, submits in support of the plaintiffs claim, that the stipulation

in Section 6(1) of the Hindu Succession Act,1946, which devolves interest in co-parcenary right, is clear and unambiguous and does not call for any interpretation; that any reference to Hindu Mitakshara Law would be deemed to include a daughter with equal rights in the coparcenary, no other view regarding succession is permissible in view of the overriding effect as per Section 4. For literal rule of interpretation, he relies upon the dicta of the Supreme Court in ***Raghunath Rai Bareja and Another vs. Punjab National Bank and Others*** **(2007) 2 SCC 230**.

> *"40. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR2004 SC 4219. As held in Prakash Nath Khanna vs. C.I.T. 2004 (9) SCC 686, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide Delhi Financial Corporation vs. Rajiv*

> *Anand 2004 (11) SCC 625. Where the legislative intent is clear from the language, the Court should give effect to it, vide Government of Andhra Pradesh vs. Road Rollers Owners Welfare Association 2004(6) SCC 210, and the Court should not seek to amend the law in the grab of interpretation."*

13. The learned counsel further relies upon ***Ganduri Koteshwar Ramma & Anr. v. Chakiri Yanadi & Anr.,*** (2011) 9 SCC 788 which, in the context of Section 6 of the Hindu Succession Act, held that rights in the co-parcenary property among male and female members of a joint Hindu family are equal on and from 9.9.2005. He submits that the legislature has now conferred a substantive right in favour of the daughters; that by Section 6, the daughter of the co-parcenar shall have same rights and liabilities in the co-parcenary property as she would if she had been a son; thus, on and from 9.9.2005, the daughter is entitled to a share in the HUF property and is a co-parcenar as if she had been a son. The Supreme Court relied upon its own judgment in ***S.Sai Reddy v. S. Narayana Reddy and Ors.*** (1991) 3 SCC 647 which held that the Hindu Succession Act was a beneficial legislation and had been placed on the statute book with the objective of benefitting a woman's vulnerable position in society. Hence, the statute was to be given a literal effect. It is, however, required to be noted that the Court was then considering Section 29(a) of the Act and not Section 6.

14. The learned counsel for the defendant further submits that it is necessary to take into consideration Section 29(a) of Hindu Succession (Andhra Pradesh Amendment) Act, 1986 which is *para materia* to Section

6 of the Hindu Succession Act,1956. Therefore, the principle laid down in ***S.Sai Reddy v. S. Narayana Reddy and Ors.*** (supra) which is referred to in ***Ganduri Koteshwar Ramma & Anr. v. Chakiri Yanadi & Anr.*** (supra) ought to be followed. Ergo, the right of the eldest male member of a co-parcenary extends to the female members also. In the present case insofar as the plaintiff is the eldest member of the co-parcenary, her being a female cannot be seen a disqualification from being its Karta since this disqualification has been removed by the amendment brought about under Section 6 in the year 2005. It is further submitted that this Court in ***Sukhbir Singh vs Gaindo Devi***, RFA(OS)30/1974 (CM Application 2730/2014) has held that Section 4 of the Hindu Succession Act,1956 overrides all customs, texts, etc. to the extent that they provide anything contrary to what is contained in the Act.

15. However, the learned counsel for defendant Nos. 1 to 4 submits that section 4 has to be read in the context in which it was enacted, i.e. only those customary rights have been overridden for which there is a specific provision made in the Act; that Section 6 does not specifically refer to the expression *Karta* of an HUF and that this right has to be gleamed from the text in Hindu law. He also relied upon para 13 of the judgment in ***Tribhovan Das Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.*** *(supra)* which reads as under:

> *"13. In Raghavachariar's Hindu Law Principles and Precedents, Eighth Ed., 1987 in Section 275 at p. 239 stated thus:*
>
> *So long as the joint family remains undivided, the senior member of the family is entitled to manage the family*

properties, and the father, and in his absence, the next senior-most male member of the family, as its manager provided he is not incapacitated from acting as such by illness or other sufficient cause. The father's right to be the manager of the family is a survival of the patria potestas and he is in all cases, naturally, and in the case of minor sons necessarily the manager of the joint family property. In the absence of the father, or if he resigns, the management of the family property devolves upon the eldest male member of the family provided he is not wanting in the necessary capacity to manage it."

16. He submits that the ***S. Sai Reddy*** judgment only recognizes the right of the eldest male member to be the *Karta*; that the amendment in 2005 only recognized the rights of a female member to equal those of male members but it did not extend to granting them any right in the management of HUF property; that the Hindu Succession Act,1956 only deals with succession to the intestate properties of a Hindu and does not purport to address the issue of the management of the estate.

17. The learned counsel for the defendant Nos.1 to 4 further refers to paras 8 & 9 of the written statement regarding the powers and functions of a *Karta* which are of wide amplitude. Finally, he submits that the limitation apropos customs under Section 4 is not comprehensive. He submits that Section 6 defines the rights only with respect to the inheritance of property and not its management; therefore, the undefined rights will have to be gleaned from customs as well as from the interpretation of ancient texts regarding Hindu religion. He submits that insofar as the right of management has not been specifically conferred on a female Hindu, the customary practice would have to be examined. In

support of his contention, the learned counsel relies upon the judgement of the Supreme Court in ***Badshah v. Urmila Badshah Godse & Anr.*** **(2014) 1 SCC 188**, more particularly paras 13, 14, 16, 20 & 22. He also contends that the legislations regarding succession between Hindus were enacted for the purpose of removing obstacles and enabling inheritance of property by people with mental disabilities or injuries. Hence, the following enactments were made:-

1. Hindu Inheritance Act, 1928
2. Hindu Law of Act, 1929
3. Hindu Amendment Right to Property Act, 1937

19. The learned counsel submits that even the Hindu Succession Act of 1956 has sought to remove the obstacles in the succession of intestate properties between the Hindus. He submits that in accordance with the Objective of the Act, Section 24 was regarding inheritance of a remarried widow (which has since been repealed), while Section 14 empowers a female Hindu to have an absolute right in property possessed by her before or after the commencement of the said Act; therefore, that the Act never intended to extend the right of a female coparcenor to the management of a HUF which, according to ancient Hindu text, vests in the eldest male member of the coparcenary.

20. The learned counsel for defendant Nos. 10 and 11 promptly rebuts this contention by referring to the objects and reasons of the Hindu Succession Act, 2005 which reads inter alia:-

"2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcener. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution having regard to the need to render social justice to women, the States of Andhra Pradesh Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindi Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1976.

3. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession act, 1956 by giving equal rights to daughters in the Hindu Mitakashara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section."

21. He also submits that there is a positive constitutional protection in favour of the women under Articles 14, 15 and 16 as well as in the Directive Principles for the State Policy.

The effect of deletion of sub-Section 2 Section 4 of the unamended Act has been enunciated in a judgment of this court in ***Nirmala & Ors. v.***

Government of NCT of Delhi & Ors., ILR(2010)Supp.(1) Delhi413 para 13 of which reads *as under:*

> *13. The relevant sections of the HSA are reproduced hereunder:*
>
> *Old Section 6 before substitution by the Amendment Act:*
> *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 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 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.*
>
> *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." New Section 6after the Amendment Act:*
> *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 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 pre -deceased 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 subsection, 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.

Sections 8 and 9:
8. General rules of succession in the case of males. - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of two classes, then upon the agnates of the deceased; and (d) lastly , if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule. -Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Ms. Mala Goel, the learned counsel for plaintiff refers to the same locus classicus by Mulla on principles of Hindu laws which states as under:

"By virtue of the new provision, a daughter of a coparcener in a joint Hindu family governed by the Mitakshara law now becomes a coparcener in her own right and thus enjoys rights equal to those hitherto enjoyed by a son of a coparcener. The implications of this fundamental change are wide. Since a daughter now stands on an equal footing with a son of a coparcener, she is now invested with all the rights, including the right to seek partition of the coparcenary property. Where under the old law, since a female could not

act as karta of the joint family, as a result of the new provision, she could also become karta of the joint Hindu family"

22. The learned counsel for the plaintiff further relies upon the 174th Report of the Law Commission of India, which has argued that when women are equal in all respects of modern day life, there is no reason why they should be deprived of the right and privilege of managing HUF as their *Karta*. She argues that it is in this context, that Section 6 was so formulated that it covers all aspects of succession to a coparcener which are available to a male member to be equally available to a female member also.

23. Insofar as the plaintiff father had passed away prior to the aforesaid amendment and there being no testamentary succession in her favour she would not have any rights into the co-parcenary. Upon the query put to counsel he submits that if the survivor of Mr. Krishan Mohan Gupta had been male then he would have rights in the co-parcenary.

24. In the present case, the right of the plaintiff accrued to her upon the demise of the eldest Karta. Indeed, there is a correspondence in this regard between her and the Land and Building Department. In any case, it is not denied that she is the eldest of the co-parceners. By law, the eldest co-parcener is to be karta of the HUF.

25. It is rather an odd proposition that while females would have equal rights of inheritance in an HUF property, this right could nonetheless be curtailed when it comes to the management of the same. The clear language of Section 6 of the Hindu Succession Act does not stipulate any

such restriction. Therefore, the submissions on behalf of defendant Nos. 1 to 4 which are to the contrary are untenable.

26. In the case of ***Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara vs. Seth Govindram Sugar Mills,*** AIR 1966 SC24 the Supreme Court had held that:

> *"The decision of the Orissa High Court in Budhi Jena v. Dhobai Naik followed the decision of the Madras High Court in V.M.N. Radha Ammal v. Commissioner of Income-tax, wherein Satyanarayana Rao J. observed :*
>
> *"The right to become a manager depends upon the fundamental fact that the person on whom the right devolved was a coparcener of the joint family... Further, the right is confined to the male members of the family as the female members were not treated as coparceners though they may be members of the joint family."*
>
> *17. Viswanatha Sastri J. said :*
>
> *"The managership of a joint Hindu family is a creature of law and in certain circumstances, could be created by an agreement among the coparceners of the joint family. Coparcenership is a necessary qualification for managership of a joint Hindu family."*
>
> *18. Thereafter, the learned judge proceeded to state :*
>
> *It will be revolutionary of all accepted principles of Hindu law to suppose that the senior most female member of a joint Hindu family, even though she has adult sons who are entitled as coparceners to the absolute ownership of the property, could be the manager of the family... She would be guardian of her minor sons till the eldest of them attains majority but she would not be the manager of the joint family for she is not a coparcener.*
>
> *19. The view expressed by the Madras high Court in accordance with well settled principles of Hindu law., while*

that expressed by the Nagpur High Court is in direct conflict with them. We are clearly of the opinion that the Madras view is correct."

27. What emerges from the above discussion, is that the impediment which prevented a female member of a HUF from becoming its Karta was that she did not possess the necessary qualification of co-parcenership. Section 6 of the Hindu Succession Act is a socially beneficial legislation; it gives equal rights of inheritance to Hindu males and females. Its objective is to recognise the rights of female Hindus as co-parceners and to enhance their right to equality apropos succession. Therefore, Courts would be extremely vigilant apropos any endeavour to curtail or fetter the statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu women should be denied the position of a Karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a *Karta*, so can a female member. The Court finds no restriction in the law preventing the eldest female co-parcener of an HUF, from being its *Karta*. The plaintiff's father's right in the HUF did not dissipate but was inherited by her. Nor did her marriage alter the right to inherit the co-parcenary to which she succeeded after her father's demise in terms of Section 6. The said provision only emphasises the statutory rights of females. Accordingly, issues 5, 6 and 8 too are found in favour of the plaintiff.

29. In these circumstances, the suit is decreed in favour of the plaintiff in terms of the prayer clause, and she is declared the *Karta* of 'D.R. Gupta & Sons (HUF)'.

30. Decree sheet be drawn up accordingly.

31. The suit is disposed off in the above terms.

NAJMI WAZIRI, J

DECEMBER 22, 2015