

The Hindu Succession Act, 1956

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The Hindu Succession Act 1956

Chapter I – Preliminary

1. Short title and extent.-

- 1) This Act may be called the **Hindu Succession Act 1956**.
- 2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Act.-

- 1) This Act applies-
 - a) To any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Parathana or Arya Samaj.
 - b) To any person who is Buddhist, Jaina or Sikh by religion, and
 - c) To any of other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such persons would not have been governed by the Hindu law or by custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.- The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

- a) Any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion.
 - b) Any child, legitimate or illegitimate one of whose parent is a Hindu, Buddhists, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged.
 - c) Any person who is converts or re-converts to the Hindu, Buddhist, Jaina or Sikh religion.
- 2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the

Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

- 3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

STATE AMENDMENTS

Pondicherry:

In section 2, after sub-section (2) insert—

“(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renouncants of the Union territory of Pondicherry.”

[Regulation 7 of 1963, sec. 3 and First Sch. (w.e.f. 1-10-1963).]

Comments

Applicability of the Act

The petitioner’s mother after marrying the petitioner’s father changed her religion and name. The petitioner was not able to prove that she was a member of the Hindu community as she could not show bona fide intention of being converted to the Hindu faith accompanied by conduct or unequivocally expressing that intention, thereby failing to avail the opportunity of section 2(b) of the Act; Sapna Jacob v. State of Kerala, AIR 1993 Ker 75.

3. Definitions and interpretations.-

- 1) In this Act, unless the context otherwise requires,-
 - a) “Agnate”- one person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males.
 - b) “Aliyasantana law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, or by the customary Aliyasantana law with respect to the matter for which provision is made in this Act.

c) “Cognate”- one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males.

d) The expression “custom” and “usage” signify a rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy, and

Provided further that, in the case of a rule applicable only to a family it has not been discontinued by the family,

e) “Full blood”, “half blood” and ‘uterine blood’-

i. Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but, by different wives.

ii. Two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.

Explanation.- In this clause “ancestor” includes the father and “ancestress” the mother,

f) ‘Heir’ means any person, male or female, who is entitled to succeed to the property of an intestate under this Act:

g) “Intestate” –a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect,

h) “Marumakkattayam law” means the system of law applicable to persons.-

a) Who, if this Act had not been passed would have been governed by the Madras Marumakkattayam Act, 1932, the Travancore Nayar Act, the Travancore Ezhava Act, the Travancore Nanjinad Vellala Act, the Travancore Kshatriya Act, the Travancore Krishnavaka Marumakkathayee Act, the Cochin Marumakkathayam Act, or the Cochin Nayar Act with respect to the matters for which provision is made in this Act, or

- b) Who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras ¹(as it existed immediately before the 1st November, 1956) and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line.

But does not include the aliyasantana law,

- i) “Nambudri law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932, the Cochin Nambudri Act, or the Travancore Malayala Brahmin Act with respect to the matters for which provision is made in this Act.

- j) “Related” means related by legitimate kinship :

Provided that illegitimate children shall be deemed to be related to their mothers and to one another and their legitimate descendants shall be deemed to be related to them and to one another, and any word expressing relationship or denoting a relative shall be construed accordingly.

- 2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

COMMENTS

Scope of illegitimate children

A child of void marriage is related to its parents within the meaning of section 3(1) (j) of Hindu Succession Act by virtue of section 16 of Hindu Marriage Act, 1955. Proviso to section 3(1) (j) is confined to those children who are not clothed with legitimacy under section 16 of Hindu Marriage Act; *Rasala Surya Prakasarao v. Rasala Venkateswararao*, AIR 1992 AP 234.

Heirs

Under clause (f) of sub-section (1) of section (3) agnates of deceased are also heirs; *Basanti Devi v. Raviprakash Ramprasad Jaiswal*, (2007) 11 SCR 444.

1. Ins. by the Adaptation of Laws (No. 3) Order, 1956.

4. Over-riding effect of Act.-

- 1) Save as otherwise expressly provided in this Act,-
 - a) Any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.
 - b) Any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.
- 2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

¹[***]

1. Sub-section (2) omitted by Act 39 of 2005, sec. 2 (w.e.f. 9-9-2005). Sub-section (2), before omission, stood as under:
2. “For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.”

Chapter II – Intestate Succession

5. Act not to apply to certain properties.-

This Act shall not apply to-

- i. Any property succession to which is regulated by the Indian Succession Act, 1925 by reason of the provisions contained in section 21 of the Special Marriage Act, 1954.

- ii. Any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the term of any enactment passed before the commencement of this Act.
- iii. The Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

State amendment

- a) Kerala State has passed an Act for the partition of the valiamma Thampuran Kovilegam Estate and the Palace Fund: Kerala Act 16 of 1961, sec. 10.

“10. Amendment of the Hindu Succession Act, 1956.—Clause (iii) of section 5 of the Hindu Succession Act, 1956 (Central Act 30 of 1956), shall be omitted with effect on and from the date of execution of the partition deed under section 6.”

6. Devolution of interest of coparcenary property.-

¹[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 recognize 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.]

Statement of Objects and Reasons [The Hindu Succession (Amendment) Act, 2005]

Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. 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 Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

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 Mitakshara coparcenary property as the sons have.

State Amendment

Sections 6A to 6C

Karnataka:

After section 6 the following sections shall be inserted, namely:—

“6A. Equal rights to daughter in co-parcenary property.— Notwithstanding anything contained in **section 6** of this Act—

- a) In a joint Hindu family governed by Mitakshara law, the daughter of a co-parcener shall by birth become a co-parcener in her own right in the same manner as the son and have the same rights in the co-parcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;
- b) At a partition in such a joint Hindu family the co-parcenary property shall be so divided as to allot to a daughter the same share as is allot able to a son:

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:

Provided further that the share allot able to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

- c) Any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents of co-parcenary 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 will or other testamentary disposition;
- d) Nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

6B. Interest to devolve by survivorship on death.— When a female Hindu dies after the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, having at the time of her death an interest in a Mitakshara co-parcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the co-parcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the Mitakshara co-parcenary property shall devolve by testamentary or intestate succession as the case may be under this Act and not by survivorship.

Explanations.—

- 1) For the purposes of this section the interest of female Hindu Mitakshara co-parcenary shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.
- 2) Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased had separated himself or herself from the co-parcenary, or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

6C. Preferential right to acquire property in certain cases.—

- 1) Where, after the commencement of Hindu Succession (Karnataka Amendment) Act, 1990 an interest in any immovable property of an intestate or in any business carried by him or her, whether solely or in conjunction with others devolves under sections 6A or 6B upon two or more heirs and any one of such heirs proposes to transfer his or her interest in the property or 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 under sub-section (1) shall in the absence of any agreement between the parties, be determined by the 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 incidental to the application.
- 3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.— In this section ‘court’ means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may by notification in the Official Gazette specify in this behalf.

[Vide Karnataka Act 23 of 1994, sec. 2 (w.e.f. 30-7-1994).]

COMMENTS

Disposal of undivided interest in property

A wife inherited the interest of her deceased husband in the family property, she continued to be a member of the family and the property including that of her's was held by the family. As a female heir, having inherited property under section 6, she cannot be treated as having ceased to be a member of the family without her volition. Though she can dispose of her undivided interest in the co-parcenary property by a will or sale for a valuable consideration, she cannot make a gift of such interest without the prior consent of the other coparceners; *Kanna Gounder v. Arjuna Gounder* , AIR 2003 Mad 157.

Partition of coparcenary property

- i. The contention of the petitioners that there was automatic partition amongst the heirs of the deceased Karta on his death has been negated because it is only when the deceased had left his surviving female heirs as provided in proviso to section 6 of the Act, a notional partition is deemed to have taken place in the joint family property for the purpose of ascertaining the share of the deceased in the joint family properties which comes to the share of the female heirs. If there are male heirs there is no automatic partition; *Shivgonda Balgonda Patil v. Director of Resettlement*, AIR 1992 Bom 72.
- ii. The heirs will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death in addition to the share which he or she received or must be deemed to have received in the notional partition; *Gurupad v. Hirabai*, AIR 1978 SC 1239.
- iii. The fiction in the explanation of section 6 of the Act should be carried to a narrow extent only with a new point to implement the purpose for which it was introduced. When there were only two coparceners and one of them died, then if any person other than the coparcener is entitled to a share as a result of severance of the share of the deceased coparcener, the share of such other person will become fixed; *Shushilabai v. Naraynarao* , AIR 1975 Bom 257.
- iv. The deceased coparcener's share gets fixed on the date of his death, subsequent fluctuations in the fortunes of the coparceners do not affect it; *Karuppa v. Palaniammal*; AIR 1963 Mad 254.

Scope

The interpretation of provisions of section 6, its proviso and explanation 1 thereto with legislative intent in regard to the enlargement of share of the female heirs, qualitatively and quantitatively; *Gurupad v. Hira Bai* , AIR 1978 SC 1239.

1. Subs. by Act 39 of 2005, sec. 3, for section 6 (w.e.f. 9-9-2005). Section 6, before substitution, stood as under:

“6. Devolution of interest in 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 1.—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.

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.”

* Date of commencement 9-9-2005.

7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom. -

- 1) When a Hindu to whom the marumakkattayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarwad, tavazhi or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the marumakkattayam or nambudri law.

Explanation.- For the purpose of this sub-section, the interest of a Hindu in the property of a tarward, tavashi or illom shall be deemed to be the share in the property of the tarward, tavazhi or illom, as the case may be, that would have fallen to him or her if a partition of that property per capital had been made immediately before his or her death among all the members of tarwad, tavashi or illom, as the case may be, then living, whether he or she was entitled to claim such partition or not under the marumakkattayam or nambudri law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

- 2) When a Hindu to whom the aliyasantana law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a kutumba or kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the aliyasantana law.

Explanation.- For the purpose of this sub-section, the interest of a Hindu in the property of kutumba or kavaru shall be deemed to be the share in the property of the kutumba or kavaru as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru, as the case may be, then living, whether he or she was entitled to claim such partition or not under the aliyasantana law, and such share shall be deemed to have been allotted to him or her absolutely.

- 3) Notwithstanding anything contained in sub-section (1), when a sthanamdar dies after the commencement of this Act, sthanama property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar as if the sthanam property had been per capita immediately before the death of the sthanamdar among himself and the all the members of his family then living, and the shares falling to the members of his family and heirs of the sthanamdar shall be held by them as their separate property.

Explanation.- For the purposes of this sub-section, the family of a sthanamdar shall include every, branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar if this Act had not been passed.

State Amendment

Kerala:

In section 7, in sub-section (3)—

- a) Between the words “him” and “shall”, the words “or her”, between the words “himself” and “and”, the words “or herself” and between the words “his” and “family” in the two places where they occur the words “or her” shall be respectively inserted;
- b) In the e explanation , the word “male” shall be omitted;

- c) The existing Explanation shall be numbered as Explanation I and the following Explanation shall be added, namely:—

“Explanation II.— The devolution of Sthanam properties under sub-section (3) and their division among the members of the family and heirs shall not be deemed to have conferred upon them in respect of immovable properties any higher rights than the sthanamdar regarding eviction or otherwise as against tenants who were holding such properties under the sthani .”

[Vide Kerala Act 28 of 1958, sec. 27 (w.e.f. 18-5-1958).]

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 the two classes, then upon the agnates of the deceased, and
- d) Lastly, if there is no agnate, then upon the cognate of the deceased.

COMMENTS

Ownership of property

When a Hindu inherits the property from his father under section 8 he takes it as his separate property and not as joint family property vis-a-vis his sons; Commissioner of Wealth-tax v. Chander Sen, AIR 1986 SC 1752.

Scope

The property in section 8 includes agricultural land also; Tukaram Genba Jadhav v. Laxman Genba Jadhav, AIR 1994 Bom 247.

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.

10. Distribution of property among heirs in class I of the Schedule. -

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:-

Rule 1.- The intestate's widow, or if there are more widow than one, all the widows together, shall take one share.

Rule 2.- The surviving sons and daughter and the mother of the intestate shall each take one share.

Rule 3.- The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.- The distribution of the share referred to in Rule 3-

- i. Among the heirs in the branch of the pre-deceased son shall be son made that his widow (or widows together) and the surviving sons and daughters get equal portions, and the branch of his pre-deceased sons gets the same portion.
- ii. Among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distributions of property among heirs in class II of the Schedule. -

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

12. Order of succession among agnates and cognates.-

The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1- Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.- Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.- Where neither heirs is entitled to be preferred to the other under

Rule 1 or Rule 2 they take simultaneously.

COMMENTS

Succession among agnates and cognates

The number of cognates is larger than the number of agnates as the agnate traces his relationship to the porosities wholly through males, while a cognate is not required to trace his or her relationship with the porosities wholly through males. Held that after the failure of class I and class II heirs, the respondents being agnates should inherit instead of cognates; Prabhu Dayal v. Suwa Lal, AIR 1994 Raj 149.

13. Computation of degrees.-

- 1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.
- 2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.
- 3) Every generation constitutes a degree either ascending or descending.

14. Property of a female Hindu to be her absolute Property.-

- 1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of arrears of maintenance, or by gift from any person, whether a relative or note, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

- 2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

COMMENTS

Absolute ownership of property

- i. Property given to widow in lieu of her maintenance, after coming into force of Hindu Succession Act, ripens into full estate and widow becomes absolute owner in view of section 14(1) of the Act; *Santosh v. Saraswathibai*, AIR 2006 Kant 85.
- ii. The respondent had a limited widow's estate in the scheduled properties which was given to her in lieu of her maintenance and the same ripened into an absolute estate in view of the provisions of section 14 (1) of the Act. Thus, the Act made her an absolute owner; *Yemanappa Dudappa Marve v. Yelubai*, AIR 2003 Karn 396.
- iii. Any property possessed by a Hindu female, irrespective of how it was acquired, becomes her absolute property after coming into force of the Act in view of the operation of section 14(1); *Chaudhary v. Ajudhia*, AIR 2003 NOC 126 (HP).
- iv. The testator had given the property to Sarjabai only for a limited period, hence she would not be its absolute owner under sub-section (1) of section 14. The property would, in fact, be governed by sub-section (2) of section 14 as the court should give effect to the intention of the testator; *Bhura v. Kashiram*, AIR 1994 SC 1202.
- v. Sub-section (2) of section 14 must be read as a proviso or exception to sub-section (1) of section 14 and its operation must be confined to cases where property is acquired for the first time as a grant without any pre-existing right. If the female had an existing interest in the property, the interposition of any instrument will not affect the operation of sub-section (1) of section 14 and the property will be held by the female as her absolute property; *M. Shamugha Udayar v. Sivanandam*, AIR 1994 Mad 123.
- vi. When some property is allotted to the widow in lieu of her claim for maintenance, she becomes its absolute owner; *V. Tulsamma v. Sessa Reddy*, AIR 1977 SC 1944.
- vii. The right of the alliance is co-extensive with that of the widow; *Jagat Singh v. Teja Singh*, AIR 1970 P&H 309 (FB).

Extent

- i. The words "any property possessed by a female Hindu" include actual as well as constructive possession. Even when the property is in the possession of a trespasser, she is in its constructive possession; *Mangal v. Ratno*, AIR 1967 SC 1786.

- ii. The word ‘possessed’ is used in the broad sense and in the context means the state of owning or having in ones hand or power; Gurumalappuru v. Setra, AIR 1959 SC 577.

Scope

- i. The expression “female Hindu” in the heading of section 14 of the Act as well as the expression “any property possessed by a female Hindu” have to be given a wider interpretation in consonance with the wishes and desires of the framers of the Constitution. The expression ‘female Hindu’ would take in “daughter” also. Therefore, limited interest of daughter in property would get enlarged to full right after the commencement of the Act; Jose v. Ramakrishnan Nair Radhakrishnan, AIR 2004 Ker 16.
- ii. If no property is given in lieu of maintenance and only a sum of money is given, then section 14 does not apply; Sulabha v. Abhimanyu, AIR 1983 Ori 71.

15. General rules of succession in the case of female Hindus.-

- 1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-
 - a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.
 - b) Secondly, upon the heirs of the husband.
 - c) Thirdly, upon the heirs of the father, and
 - d) Fourthly, upon the heirs of the father, and
 - e) Lastly, upon the heirs of the mother.
- 2) Notwithstanding anything contained in sub-section (1),-
 - a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father, and
 - b) Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

COMMENTS

Extent

- i. When a female inherits property from her brother, inheritance to it is governed by section 15(1) of the Act 1956; Balasaheb v. Jaimala, AIR 1978 Bom 44.
- ii. Son and daughter include son and daughter by natural birth legitimate or illegitimate; Gurbachan v. Khichar Singh, AIR 1971 Punj 240.

Succession on death of Hindu female

- i. The object of section 15(2) is to ensure that the property left by a Hindu female does not lose the real source from where the deceased female had inherited the property, one has no option but to hold that son or daughter (including the children of any pre-deceased son or daughter) of such a Hindu female will mean the son or daughter begotten by the Hindu female from the husband whose property she had inherited, and not the son or daughter whom she had begotten from a husband other than the one, whose property she had inherited. If such property is allowed to be drifted away from the source through which the deceased female has actually inherited the property, the object of section 15(2) will be defeated; Dhanistha Kalita v. Ramakanta Kalita, AIR 2003 Gau 92.
- ii. Hindu female inherited property from her deceased husband. If the property is allowed to be inherited by a son or daughter, whom the deceased female had begotten not through her husband, whose property it was, but from some other husband then, section 15(2)(b) will become meaningless and redundant; Dhanistha Kalita v. Ramakanta Kalita, AIR 2003 Gau 92.
- iii. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-section (2) of section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. The fact that a female Hindu originally had a limited right and later acquired the full right, in any way, would not alter the rules of succession given in sub-section (2) of section 15; Bhagat Ram (D) by L.Rs. v. Teja Singh (D) by L.Rs., AIR 2002 SC 1.
- iv. The mother became an absolute owner of the property which she inherited from her husband after his death in 1950 but after the Hindu Succession Act, 1956 came in force, before 1956 her interest being limited. Hence, it has been held that the property after the death of the mother

shall be inherited by her son and daughter under section 15(1)(a) and not under any other provision of law; Debahari Kumbhar v. Sribatsa Patra, AIR 1994 Ori 86.

16. Order of succession and manner of distribution among heirs of a female Hindu. -

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate property among those heirs shall take place according to the following rules, namely:-

Rule 1 .- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2.- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate' death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

17. Special provisions respecting persons governed by marumakkattayam and aliyyasantana laws.-

The provisions of sections, 8,10, 15 and 23 shall have effect in relation to persons who would have been governed by the marumakkattayam law or aliyyasantana law if this Act had not been passed as if-

- i. For such clauses (c) and (d) of section 8, the following had been substituted, namely: -" (c) thirdly, the there is no heirs of any of the two classes, then upon his relatives, whether agnates or cognates".
- ii. For clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely:-
 - a) "Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother.
 - b) Secondly, upon the father and the husband.
 - c) Secondly, upon the father and the husband.
 - d) Fourthly, upon the heirs of the father, and

- e) Lastly, upon the heirs of the husband”.
- iii. Clause (a) of sub-section (2) of section 15 had been omitted.
- iv. Section 23 had been omitted

18. Full blood preferred to half blood.-

Heirs related to an intestate 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.

19. Mode of succession of two or more heirs.-

If two or more heirs succeed together to the property of an intestate, they shall take the property:-

- a) Save as otherwise expressly provided in this Act, per capita and not per stripes, and
- b) As tenants-in common and not as joint tenants.

20. Right of child in womb.-

A child who was in the womb at the time of the death of an intestate and who is subsequently born alive have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such as case with effect from the date of the death of the intestate.

21. Presumption in cases of simultaneous deaths.-

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

22. Preferential right to acquire property in certain cases. –

- 1) Where, after the commencement of this Act, 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, devolve upon two or more heirs specified in class 1 of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or 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 under this section shall, in the absence of any agreement between the parties, be determined by the 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 1 of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.- In this section, ‘court’ means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

23. Special provision respecting dwelling houses. –

¹[23. Special provision respecting dwelling houses.—[Rep. by the Hindu Succession (Amendment) Act, 2005 (39 of 2005), sec. 4 (w.e.f. 9-9-2005) .]]

Statement of Objects and Reasons [The Hindu Succession (Amendment) Act, 2005]

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.

1. Section 23, before repeal by Act 39 of 2005, stood as under:

“23. Special provision respecting dwelling houses. —Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.”

24. Certain widows re-marrying may not inherit as widows.-

¹[24. Certain widows re-marrying may not inherit as widows.—[Rep. by the Hindu Succession (Amendment) Act, 2005 (39 of 2005), sec. 5 (w.e.f. 9-9-2005) .]]

1. Section 24, before repeal by Act 39 of 2005, stood as under:

“24. Certain widows re-marrying may not inherit as widows. —Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.”

25. Murderer disqualified.-

A person who commits murder or abets the commission of murder shall be disqualified from

26. 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 their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

27. Succession when heir disqualified.-

If any person is disqualified from succeeding to any property on the ground of any disease, defect or deformity, as save as provided in this Act, on any other ground whatsoever.

28. 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, on any other ground whatsoever.

29. 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.

State Amendments

Chapter IIA

Andhra Pradesh:

After Chapter II, insert the following Chapter, namely:—

“Chapter IIA

Succession by survivorship

29A. Equal rights to daughter in coparcenary property.— Notwithstanding anything contained in section 6 of this Act—

- i. 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 have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;
- ii. At a partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allot able to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allot able to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had 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 of the pre-deceased daughter as the case may be;

- iii. Any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) 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 will or other testamentary disposition;

- iv. Nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

29B. Interest to devolve by survivorship on death.— When a female Hindu dies after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 having at the time of her death an interest in a Mitakshara coparcenary property, her 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 any child or child of a pre-deceased child, 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 female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death irrespective of whether she was entitled to claim partition or not.

Explanation II .—Nothing contained in the proviso this section shall be construed as enabling a person who before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29C. Preferential right to acquire property in certain cases.—

- 1) Where, after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 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 under section 29A or section 29B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or 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 under this section shall, in the absence of any agreement between the parties, be determined by

the 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 incidental to the application.

- 3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In his section ‘court’ means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf.”

[Vide Andhra Pradesh Act 13 of 1986, sec. 2 (w.r.e.f. 5-9-1985).]

Maharashtra:

After Chapter II, insert the following Chapter, namely:—

“CHAPTER IIA

SUCCESSION BY SURVIVORSHIP

29A. Equal rights of daughter in coparcenary property.— Notwithstanding anything contained in section 6 of this Act—

- i. In a joint Hindu family governed by the Mitakshara Law, the daughter of a coparcener shall, by birth, become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;
- ii. At a partition in a joint Hindu family referred to in clause (i), the coparcenary property shall be so divided as to allot to a daughter the same share as is allot able to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allot able to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had 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 of the pre-deceased daughter as the case may be;

- iii. Any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) 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 will or other testamentary disposition;
- iv. Nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994;
- v. Nothing in clause (ii) shall apply to a partition which has been effected before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994;

29B. Interest to devolve by survivorship on death.— When a female Hindu dies after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994, having, at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of section 29A, her 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 any child or child of a pre-deceased child, 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 female Hindu in Mitakshara coparcener property shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

Explanation II.—Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29C. Preferential right to acquire property in certain cases.—

- 1) Where, after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994 an interest in any immovable property of any intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under section 29A or section 29B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or 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 under this section shall, in the absence of any agreement between the parties, be determined by the 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 incidental to the application.
- 3) If there are two or more heirs proposing to acquire any interest under this section, then, the heir who offers the highest consideration for the transfer shall be preferred.

Explanation .—In this section “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

[Vide Maharashtra Act 39 of 1994, sec. 2 (w.e.f. 22-6-1994).]

Tamil Nadu:

After Chapter II, insert the following Chapter, namely:—

“Chapter IIA

Succession by survivorship

29A. Equal rights to daughter in coparcenary property.— Notwithstanding anything contained in section 6 of this Act,—

- i. 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 a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;
- ii. At a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotted to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allotable to the pre-deceased child of pre-deceased son or of a pre-deceased daughter, if such child had 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 of the pre-deceased daughter, as the case may be;

- iii. Any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) 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 will or other testamentary disposition:
- iv. Nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989;
- v. Nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

29B. Interest to devolve by survivorship on death.— When a female Hindu dies after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, having at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of section 29A, her 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 any child or child of a pre-deceased child, 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 female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

Explanation II.— Noting contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29C. Preferential right to acquire property in certain cases.—

- 1) Where, after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, 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 under section 29A or section 29B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or 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 under this section shall, in the absence of any agreement between the parties, be determined by the 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 incidental to, the application.
- 3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.— In this section “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on and includes any other court which the State Government may, by notification in the Tamil Nadu Government Gazette, specify in this behalf.

[Vide Tamil Nadu Act 1 of 1990 sec. 2 (w.r.e.f. 25-3-1989).]

Chapter III – Testamentary Succession

30. Testamentary succession.-

¹[***] Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so ²[disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.— The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this ³[section.]

⁴[***]

1. The brackets and figure “(1)” omitted by Act 58 of 1960, sec. 3 and Sch. II (w.e.f. 26-12-1960).
2. Subs. by Act 39 of 2005, sec. 6, for “disposed of by him” (w.e.f. 9-9-2005).
3. Subs. by Act 56 of 1974, sec. 3 and Sch. II, for “sub-section”.
4. Sub-section (2) omitted by Act 78 of 1956, sec. 29 (w.e.f. 21-12-1956).

Chapter IV – Repeals

31. Repeals.-

Rep. by Repealing and Amending Act, 1960 (58 of 1960) Section 2 and Sch.1

THE SCHEDULE

HEIRS IN CLASS AND CLASS II

Son, daughter, widow, mother, son of a pre-deceased son, daughter of a pre-deceased son, son of a pre-deceased daughter, daughter of a pre-deceased daughter, widow of a pre-deceased son, ¹son of pre-deceased son of a pre-deceased son, daughter of a pre-deceased son of a pre-deceased son, widow of a pre-deceased son of a pre-deceased son.

Class II

1. Father
2. (1) Son’s daughter’s son (2) son’s daughter’s daughter, (3) brother, (4) sister.

III. (1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s son, (4) daughter’s daughter.

IV. (1) Brother’s son (2) Sister’s son, (3) brother’s daughter (4) Sister’s daughter.

V. Father’s father. Father’s mother.

VI. Father’s widow, brother’s widow.

VII Father's brother, father's sister.

VIII Mother's father, mother's sister.

IX Mother's brother, mother's sister.

Explanation.- In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

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1. Added by Act 39 of 2005, sec. 7 (w.e.f. 9-9-2005).