CHAPTER 4

ROLE OF JUDICIARY IN SAFEGUARDING THE HINDU WOMEN’S RIGHT TO PROPERTY

“What is the sauce for the goose is sauce for the gender……..’”

- Lord Denning

With the enactment of a number of legislations to protect the interest of Hindu women in the property of Joint family as discussed under the earlier chapter, the judiciary has to perform pivotal role in bringing and applying the provisions of legislations which were in letters, and to apply them in spirit. In this chapter the role of judiciary will be observed by discussing the facts of various decided case laws.

The success of democracy rests more importantly on the Judiciary. It is a well known fact that, the Indian Judicial system, one among the oldest legal systems in the world today, is the fruit of British inheritance after 200 years of their Colonial rule.

The modern Indian Judicial system is the product of British administration. During its evolutionary journey from Privy Council to
Supreme Court of India it has encountered with numerous disputes and interpreting the laws relating to property rights. In the initiation of British administration, the dispute relating to property was decided after making proper enquiry of the prevailing custom in the society. Custom is a habitual course of conduct observed uniformly and voluntarily by the people concerned.

In Harpurshad vs. Sheo Dayal\(^1\), the Privy Council observed that, “a custom is a rule which in a particular family or in a particular district or in a particular sect, class or tribe, has from long usage obtained the force of law”.

The British Judges did not intend to interfere with personal laws of Hindus. But to keep the control of administration in their hands and with the intention to bring about reformation in the age old rules and to improve the worse situation of women, with the passage of time, they had started to apply the rule of equity, justice and good conscience.

However the first case which came before the Court was concerned with the property of widows, which was relatively unusual case for the Court and it was evident from the fact that it appeared on the Court’s lists not less than four times. The execution date of the decree was recorded as 22\(^{nd}\) June 1728\(^2\).

\(^1\) (1876) 3 I.A. 259, 285(P.C.)
\(^2\) Mayor’s Court Proceeding, 22 June 1725
4.1: Role of Courts from 1728 to passing of Hindu Succession Act, 1956:

Case no 1: The facts of the case as;

Krishna was an issueless widow. Her brother-in-law (Monick) offered a maintenance and took possession of ‘all his brothers’ effects as being his brother according to the prevailing custom of the country. The court ordered the case of Krishna to be deferred till the next day to enquire into the custom of the country providing for a wife if a man dies without issue, whether the next heirs take possession of all and allows her only maintenance or whether she is entitled for half of her husband’s property. On the next day the Court decreed on the basis of an enquiry that ‘as it is the custom of the country to allow a wife all her jewels and half the husband’s estate in case of issueless’. And accordingly Monick handed over all her jewels to Krishna, appearing before the Court on 22 June 1728, and promised to transfer her share in her husband’s property.  

This is the beginning of Company’s intense concern expressed as early as 1728 with regard to verified and right interpretation of Hindu personal laws. Such solicitude enthuse them to went into the matter in depth as they deputed an Englishman to assist the Court in inquiring the rules of natives.

3. ibid 1st June 1728
The right of a widow were again discussed in another case, on 23 March 1733. The case was related with the ejectment of the widow from her husband’s property. One Sookdebram made a bid on behalf of Hurrynaut’s widow against Jotto Bose. To investigate the matter, arbitrators were appointed by the court. And on the basis of their investigation, it was reported that the late Hurrynaut purchased the house for Rs. 300 during the Zamindari of one Franland. The Court passed the decree in favour of the widow.4

A close examination of these disputes in detail exposes some attributes of the Company’s administration of civil law in the early stages. First, most of the cases are related to property rights under Hindu personal law, such involvement with the civil law of the Hindus opened up a road for further interceding in this sphere. Secondly, the help of pundits sought repeatedly in solving disputes as arbitrators. Thirdly, by seeking collaboration from an Englishman in arbitration reflects the Company’s attitude towards the administration of the indigenous rule and acquiring definite knowledge of laws and customs in regards to property.

The Hindu Women’s Right to Property Act, 1937 was enacted by the Central Legislative authority by entitling a Hindu widow to a share in the separate property of her deceased husband dying intestate equal to that of a son, and in respect of joint family property the Act conferred upon the widow

4.DECEMBER 1733 TO DEC 1734
the right to have in the property the same interest as her husband have had but the interest so vested on her is known as Hindu woman’s estate or limited estate. But the validity of this statute was challenged before the Federal Court on the ground of legislative incompetency of the Central legislature to enact this Act in respect of agricultural lands⁵.

Case No. 2.

Gonda Kooer vs. Kooer Gody Singh⁶

In this case the widow of the deceased had purchased property out of the accumulated income from her stridhana and pleaded that it should be considered as her stridhana, but following the rule laid down by the Privy Council, the Calcutta High Court held that the property was not stridhana and hence she does not have the right to dispose it off as her own will and upon her death it would devolve on her husband’s heirs. In this case it is evident that the definition of ‘stridhana’ was not well defined to ascertain the nature of property, resulting gain or loss in the property in the name of ‘stridhana’.

In this case the court has referred the case of Srinath Gangopadhaya vs Sarbamangla Debi⁷, where, the Calcutta High Court held, that as per the

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⁵ Repealed by Hindu Succession Act, 1956
⁶ (1874) 14 BLR 159
⁷ (1868) 10 WR 488
Benares school, once a stridhana property devolves upon an heir, it loses its character as stridhana and devolves as per ordinary rules of Hindu law. In another case of the same time, the Privy Council held that the property inherited by the widow from her husband was not stridhana. The Privy Council reversed the Judgment of the lower court and proclaimed:

“Under the law of the Benares School, notwithstanding the ambiguous passage in the Mitakshara, no part of her husband’s estate whether movable or immovable to which a Hindu woman succeeds by inheritance, forms part of her Stridhana”. 8

The legal precedents set by the Privy Council became the binding rule of law and dealt with a lethal blow to the property rights of Hindu widows. The Courts also ruled that the property inherited by a daughter from her father is not stridhana. In this respect it could be said that Privy Council had synchronized the extent of ‘stridhana’. This principle was then extended to the property inherited by an unmarried daughter from her mother and later stretched to include the property inherited from all female relatives, thus sealing all scope for the continuation of property devolution in the female line. The Privy Council in this regard expressly stated that this rule has been established by a series of decision in Bengal and Madras, a different

8. Bhugwandeep Doobey vs Myna Baee (1867) 11MIA 487
interpretation of the old and obscure texts cannot be followed. The Privy Council further stated that the Courts ought not to unsettle a rule of inheritance affirmed by a long course of decision, unless it is manifestly opposed to law and reason.

The Privy Council said that the rule has been laid down by Sir William Macnaghten in his Treatise on Hindu Law, as follows:

“Under no circumstances can a daughter’s son, daughter, husband or other descendant inherit the property which devolved on her at her father’s death. Such property is not stridhana and will devolve on her father’s heirs.”

The court further held that this rule is not against to the spirit of Mitakshara. It is considerable to note that while during the early years of administration, contemporary practices were abandoned in favour of ancient and obscure texts during the later period, after the establishment of Anglicized courts, the decisions of courts and translated texts were granted greater validity than the written texts which now came to be casted off as ‘old and obscure’.

Case No. 3

Mussamat Thakoor Deyhee vs. Rai Baluk Ram

9. Supra, note 7, p. 46
10. (1886) 11 MIA 139
In this case, a childless widow Choteh Babe, had made the gift of the property she inherited from her husband to her niece. It is reported in the judgement that Choteh Babee, despite being a purdah Nishin, was an excellent business woman who managed her property well. The deed was challenged by the husband’s heirs, inter alia, on the ground that it was fraudulent and therefore she had no power of alienation over immovable property inherited from her husband. Sudder Ameen of Benares held that the widow was competent to gift the property. Sudder Dewaney Adawlut of Agra reversed the decision on the ground that the deed of gift was a forged document. At this point the right of the widow to gift her property was not a disputed issue before the court. The court only examined whether the gift deed was an authentic or a forged document. The Privy Council, on appeal ruled that “the widow has no power to dispose immovable property inherited form her husband, whether ancestral or acquired”.

In this case it is reflected that Privy Council rule was not in support of women’s right to property. The Court had reduced the power of woman as minimum to a zero. Such decision of the Court was totally unsound on part of women’s right to property.
Case No. 4

Sheo Shankar vs, Debi Sahai

The Privy Council in 1903 set another illustration of the Judicial trend in this case. As per the facts of this case the woman had succeeded the property from her mother. After her demise, her sons claimed the property as heirs of the mother and grandmother and deprived their sister. The subordinate judge of Gorakhpur, on 7 December 1897 held that the property inherited through the female line was the woman’s stridhana and hence her sons had no right over it. The decision was reversed by the Allahabad High Court on appeal. The outcome of this is an appeal to the Privy Council. In February, 1903, the Privy Council upheld the decision of the High Court on that the property inherited by a woman from her mother is not her stridhana and therefore it will not devolve on her daughter who is her stridhana heir, instead it will devolve upon her son. In this case the Court violated the rights of women on the face.

The subordinate Judge of Gorakhpur, had pronounced a sound decision regarding the rights of women towards the stridhana, but the Allahabad High Court and the Privy Council seemed to take a drastic view towards women emancipation. They even neglected the right of daughter to inherit their mother and given preference to son rather to daughter.

11. (1903) 30 IA 2021
Case No. 5

Navalram Atmaram vs Nand Kishore Shivnarayan\textsuperscript{12}

In this instant case, the woman inherited property from her father. She expired leaving a daughter and daughter’s sons. Upon her demise, her husband’s brother took charge of the property. In a suit to reclaim the property, the trial court (Sudder Ameen) declared in favour of the daughter’s son. On appeal, Assistant Judge reversed the decree. On second appeal, the Bombay High Court had held that according to the usage of the caste and in accordance with Hindu law as interpreted by the authorities in the Bombay presidency, the daughter was an absolute heir to the property which the woman had inherited from her father.

In this regard, it is evident that the Bombay High Court had accepted an applaudable step in favour of women’s right to property by giving the daughter an absolute interest in the property of her mother inherited from the deceased father.

Case no 6.

Jayaram Govind Bhalerao vs. Jaywant Balkrishna Deshmukh & Ors\textsuperscript{13}.

According to the facts of the case Sitabai, whose husband and brother-in-

\textsuperscript{12} (1861) 1 BCHR 209
\textsuperscript{13} (1856) 6 MIA 393
law were members of Joint Hindu family along with their father. Sitabai was married in 1938 and her husband had died in 1942 during the lifetime of his father. In 1945, his father also expired and thus the Joint Family Property of the coparcener was in the hands of Balkrishna, he alone would get the entire property by way of survivorship and the female members would be entitled only to maintenance from that property. However, a big change was brought in the law by Hindu Women’s Right to Property Act, 1937. Under section 3(2) of the same Act, when a Hindu governed by any school of Hindu Law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu Joint Family property, his widow shall, subject to the provisions of sub section (3) have in the property same interest known as a Hindu Woman’s estate, provided however that she shall have the right of claiming partition as like a male owner. It means she could claim partition, get possession and enjoy the property, but she could not dispose of the property except in special circumstances. Sitabai would get the same interest in the Joint Hindu Family property as her husband had at the time of her death, but that interest was a limited interest.

In this case the judgment is made in the line of newly made the Hindu Women’s Right to Property Act, 1937. The Act has been able to provide at least some extent some relief to the women and by applying the letters of Act’s in spirit, able to upgrade the position of women in her home.
Case no 7.

Kunwas Sardar Singh vs. Kunj Behari\textsuperscript{14},

A widow made a gift of a small portion of the property inherited by her to create a dedication for the offering of bhog or food to the deity and the maintenance of priest charged with the performance of duty. Here Privy Council observed that the Hindu law recognizes two sets of religious act. One for the actual obsequies of the deceased and the other, periodical of ‘obsequial rites’, which are considered as essential for the departed soul of the husband. For the fulfillment of this purpose even the entire property can be sold if income is not sufficient. It is considered as a pious job for the spiritual benefit of the deceased. Hence a small fraction of the property may be alienated for such pious purposes, resulting the gift was upheld.

In this case religious practice is seemed to be given more importance for making the gift. Otherwise in absence of religious purpose, the power of alienation of the limited estate holder is governed by the rule in Hunooman Persaud vs. Musamat Babooee\textsuperscript{15}, that the alienation would be valid only on the ground of legal necessity or benefit to the estate.

This case pointed towards the influence of religious beliefs under which

\textsuperscript{14} (1855) PC 456
\textsuperscript{15} (1856) 6 MIA 393
the woman can alienate the property which otherwise might be limited to be alienated by her.

4.2. Role of Courts from 1956 to 2004:

Case no. 8.

Jaisri Sahu vs Rajdewan Dubey\(^{16}\)

In this case regarding right of a Hindu widow in dealing with the properties of her late husband, the four Judge bench of the Court laid down the following ratio, as extracted below:

“When a widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to anyone. It is true that she cannot alienate the properties unless it be for necessity or for the benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law”.

\(^{16}\) (1962) 1 MLJ 258 SC
The court further held that:

“Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. Her powers in this regard are, as held in a series of decisions beginning with ‘Hunooman Persaud’, those of the manager of an infant’s estate or the manager of Joint Hindu family.”

In the same case, the Apex court has added to this dimension, and expressed:

“When a Hindu widow succeeds as heir to her husband, the ownership in the properties both legal and beneficial, vest in her. She fully represents the estate, the interest of the reversioners therein being only spec successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to anyone. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit or reversioners but is an incident of the estate as known to Hindu law.”

The judgement pronounced in this case by the court established it stands in support of women’s right to property. Thus the position settled in the law is that the widow succeeds as an heir of her husband and hence ownership of the
properties vests in her. She cannot be divested from the property on ground of being widow and she can use the property any way she likes.

Case no. 9.

Mangal singh vs. Rattno

In this case a Hindu widow, on the death of her husband in 1917 came into possession of the properties and continued the same till 1954 when she was forcibly evicted by her collaterals. In 1956 March, she filed a suit for possession before the Hindu Succession Act, 1956 came. She died in 1958 during the pendency of the suit and thereupon her legal representative was impleaded. In this case the widow was deemed to have been in possession on the date of the coming of the Act and she has been forcibly disposed by her husband’s collaterals who were in unlawful possession as trespassers and her right therefore grown into a full estate by the coming into force of the Act and accordingly her legal representative got full title after her death.

The court in this case makes an appropriate step in giving property rights to women. Though the collaterals has made an attempt to inherit the property by trespassing, however the enforcement of Hindu Succession Act, made such attempt unsuccessful by providing relief to the woman as a part of gender justice

17. AIR 1967 SC 1786
Case no.10

Badri Pershad vs Smt. Kanso Devi

Here the propositus expired in 1947 leaving behind five sons and a widow. Shortly after his demise disputes arose between the parties and the matter was referred to an arbitrator in 1950. The arbitrator in his award allotted shares to the parties wherein it was stated that the widow would only have widow’s estate in the properties. While the widow was in possession of the properties, the Hindu Succession Act, 1956 came into force and the question arose whether she became full owner of the property or not. The Court held that the award had given a limited estate, in view of the existing law. However, the widow inherited the property under the Hindu Women’s Right to Property Act, her interest matured to absolute with the passing of the Hindu Succession Act, 1956 and thereby she fell within the provision of section 14(1) of the Act. It was further held that the mere fact that the partition was by means of an award would not bring the matter within section 14 (2) of the Act, as because the interest given to the widow was on the basis of a pre-existing right and not a new grant for the first time. This Court observed as follows:

18. AIR 1970 SC 1963
‘The word “acquired” in sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the explanation which makes sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift by a female’s own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds she gets possession of the properties allotted to her there can be no matter of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.”

Thus the following proposition has been emerged from a detailed discussion of this case:

(1) That the widow’s claim to maintenance is undoubtedly a tangible right though not an absolute right to property so as to become a fresh source of title. The claim for maintenance can, however, be made a charge on the joint family properties and even if the properties are sold with the notice of the said charge, the sold properties will be burdened with the claim for maintenance;

(2) That by virtue of the Hindu Women’s Right to Property Act, 1937 the claim of the widow to maintenance has been crystallized into a full
fledged right and any property allotted to her in lieu of maintenance becomes property to which she has limited interest which by virtue of the provisions of Act of 1956 is enlarged into an absolute title;

(3) Section 14(2) applies only to cases where grant is not in lieu of maintenance or in recognition of pre-existing rights but confers a fresh right or title for the first time and while conferring the said title certain restrictions are placed by the grant or transfer. Where, however, the grant is merely in recognition or in implementation of a pre-existing right to claim maintenance, the case falls beyond the purview of section 14(2) and comes squarely within the explanation to section 14 (2).

By learning the facts of the case the view can be expressed that once the right of maintenance is established is which is a pre-existing right it makes no distinction whether a Hindu widow died before or after the enactment of Hindu Women’s Right to Property Act, 1937.

Case no.11

Karta Ram vs. Om Prakash

Ram Dia was the occupancy tenant of the land in dispute. On his death the

19. 1971 73 Punj L. R. 783
occupancy rights were inherited by his son Sugan Chand. When Sugan Chand died, these rights were mutated in the name of his widow Mukhtiari in March, 1935. On the enforcement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Punjab Act VIII of 1953), the occupancy tenants became owners of the land, with the result that Mukhtiari’s occupancy rights were enlarged into absolute ownership. She died in 1957 after the Hindu Succession Act, 1956, had come into force. By virtue of the provisions of the Act, i.e., section 15(2), Sugan Chand’s sisters, Ashrafi Devi and Rothi, inherited the property left by Mukhtiari. It was held that both Ashrafi Devi and Rothi succeeded to the property of Mukhtiari through the instrumentality of their brother Sugan Chand. According to Rule 3 of section 13, the devolution of the property of the intestate on the heirs referred to in Cl. (b) of sub-section (1) of section 15 of the Act was to in the same order and according to the same rules as would have applied if the property had been the husband’s and he had died intestate in respect thereof immediately after the intestate’s death. To the facts of this instant case, applying this rule, it would mean that the devolution of the property of Mukhtiari will be on the heirs of the husband. Sugan Chand would be in the same order and according to the same rules as would have applied if the property had been of Sugan Chand and he had died intestate in respect thereof immediately after the widow’s (Mukhtiari) death. As per this provision of law, on Mukhtiari’s death the property would be deemed to be that of her husband Sugan Chand and it would be taken as if he had died
in respect thereof, with the result that the said property would devolve on his sisters under Entry II of Class II heirs in the Schedule of the Act. By virtue of this Rule 3, therefore, the property in this case after Mukhtiari’s death will, by a fiction of law, be deemed to be that of her husband Sugan Chand and on his dying intestate it will devolve upon his sisters, were his heirs as mentioned in Section 8(b) of the Act. They would not have got the property if they were not his sisters. The said property devolve on them on account of or by reason of this very relationship. So the new Act has helped the sisters to claim in the property of their brothers which made another step in favour of sisters to inheritance.

Case no.12

Tulasama vs. Sesha Reddy 20

In this case a woman obtained a money decree for her maintenance with a charge on property. Thereafter, a compromise was entered into. In lieu of maintenance, she was given a life estate in certain immovable properties under that compromise. The compromise was recorded in a court in full satisfaction of the maintenance decree. But the question arose that whether woman becomes the absolute owner of the property under section 14 sub-section (1)

20. AIR 1977 SC 1944
or would get only a restricted estate under sub-section (2) of the Hindu Succession Act, 1956. The Andhra Pradesh High court held that sub-section (2) applied to this case, which in appeal overruled by the Apex Court. Here it seems that there is conflict of application between the High Court and Apex Court regarding the legal provision as applicable to women. The decision given by the Andhra Pradesh High Court was in violence of the women’s right and it will be continued, if such error is not wiped out by the interference of the Apex Court.

In dealing with the nature and incidents of the Hindu widow’s right to maintenance Golapchandra Sarkar Sastri observes

“when the husband is alive, he is personally liable for the wife’s maintenance, which is also a legal charge upon his property: this charge being a legal incident of her marital co-ownership in all her husband’s property……But after his death, his widow’s right to maintenance becomes limited to his estate, which, it passes to any other heir, is charged with the same……..There cannot be any doubt that under Hindu Law the wife’s or widow’s maintenance is a legal charge on the husband’s estate; but the courts appear to hold, in consequence of the proper materials not being placed before them, that it is not so by itself, but is merely claim against the husband’s heir, or an equitable charge on his estate; hence the husband’s debts are held to have priority, unless it is made a charge on the property by a decree”.

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The observation made by the author seems to be that the courts holding widow’s right of maintenance does not amount to a legal charge and this happens because proper materials were not placed before the courts. It is further viewed that the author seems to indicate the original Hindu Law contained clear provisions about the right of maintenance amounts to a charge on the property of her husband and the obligation follows with the property so that any person who inherits the property also takes upon the obligation to maintain the widow.

Case no. 13

Smt Amar Kaur vs. Raman Kumari\textsuperscript{21},

In this case, a widow inherited property from her husband in 1956. She had two daughters and she had gifted the entire property in favour of her two daughters. One of the daughter named Shankari died in 1972, without leaving husband or descendant. Her property was mutated in favour of her other living sister. Shankari’s husband predeceased her leaving behind another wife and a son. And they claimed right over the property left by Shankari. It was held in the Judgment, as para 4 said:

“…..Smt. Shankari succeeded to life estate, which stood enlarged in her full ownership under section 14 (1) of the Act. Since smaller estate merged

\textsuperscript{21. AIR 1985 P&H 86}
into larger one, the lesser estate ceases to exist and a new estate of full ownership by fiction of law came to be held for the first time by Smt. Shankari. The estate, which she held under section 14(1) of the Act, cannot be considered to be by virtue of inheritance from her mother or father. In law it would be deemed that she became full owner of this property by virtue of the Act. On these facts it is to be seen whether section 15(1) of the Act will apply or section 15(2) of the Act will apply. Section 15(2) of the Act will apply only when inheritance is to the estate left by father or mother, in the absence of which, section 15(1) of the Act would apply.”

It can be said that a contra-view was taken by the High Court in this case. The decision given by the single Judge in this case cannot be considered as right. Because the source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. This would vitiate the very intent and purpose of sub- section (2) of section 15, which provides a special pattern of succession.

Case no.14

Smt. Usha Majundar vs. Smt. Smriti Basu22

22. AIR 1988 CAL 115
In this case the plaintiff who was married Hindu female had filed a suit against her step mother, step brother and step sisters claiming partition of properties left by her deceased father which included a two storeyed house which was exclusively used for residential purpose. In ground floor two rooms were in occupation of tenant and rest is occupied by defendants. In consideration of these facts it was held that by tenanting a portion of the house to certain extent and thereby the entire object of keeping the dwelling house as the exclusive domain of the male heirs is lost. Also the restriction on right of female will not operate when it is partly occupied by members of family and thus the plaintiff was entitled to partition in respect of her 1/5th share in the property mentioned.

In this case it has been observed that the decision is a proper decision delivered by the Judiciary by favouring a married women entitled for partition in respect of her 1/5 the share in the property of her deceased father.

Case no.15

State of Punjab vs. Balwant Singh23

In this case the female Hindu inherited the property from her husband prior to the enactment of Hindu Succession Act, 1956 and she died after the Act. On being informed that there was no heir entitled to succeed to her

23. AIR 1991 SC 2301
property, the Revenue Authorities effected mutation in favour of the state. There was no heir from her husband’s side entitled to succeed to the property. The plaintiff, who was the grandson of the brother of the female Hindu claimed right over the property of the deceased. In view of section 14 of the Hindu Succession Act, 1956 the High Court held that the property inherited by the female Hindu from her husband became her absolute property and the property would devolve upon the heirs specified under section 15(1).

The above view was held to be faulty and the court did not accept. It was held that it is significant to remember that female Hindu being full owner of the property becomes a fresh stock of descent. If she leaves behind any heir either under sub section (1) or under sub section (2) of section 15 her property cannot be escheated. So the court in this case has rectified and corrected the wrong committed by the Revenue Authorities.

Case no.16

Radhika vs Anguram 24

In the instant case a deceased female who inherited the suit properties from her maternal grandfather died leaving her husband and her daughter as her sole issue. The husband claimed as co-heir with his daughter and filed a

24. (1994) 5 SCC 761
suit for partition of his half share in the properties of his wife under section 15 (1) of the Act. The daughter resisted the claim claiming to be the sole heir of her mother. The suit was dismissed by the trial Court, holding that the deceased, while alive, had made a gift of her properties to her daughter. The first Appellate Court found that the gift was not valid; that the husband and the daughter were Class (I) heirs under section 15(1) of the Act and decreed the suit for partition and separate possession of the husband’s half share. This judgement was confirmed by the High Court of Patna in the Second Appeal. The matter came up before the Supreme Court by Special Leave. Their Lordship in a very brief judgment held:

“A reading thereof (section 15(1) and section 15(2) (a) of the Act) clearly indicates that for the property inherited by the female Hindu from her father or mother, in other words, the female’s paternal side, in the absence of a son, daughter or children of the predeceased son or daughter, the succession opens to the heirs of the father or mother and not to the Class I heirs in the order of Section 16. In other words, the children and the children of the predeceased son or daughter of the Hindu female alone are entitled to get such properties.

Thus, the husband stands excluded from succession to the properties inherited by the female Hindu from her father’s side. Accordingly, we hold that since the mother of the appellant had inherited the suit property from her grandfather, her husband- respondent stood excluded from intestate succession
to the estates left by her. The courts below obviously overlooked to the provisions in section 15, in particular sub-section (2) thereof and illegally granted a decree”.

As a consequence the appeal was allowed and the judgments and decrees of the first and second Appellate Courts were set aside and the suit was dismissed. The learned Judge failed to see that the deceased female Hindu had left behind a daughter who is one of the heirs referred to in sub-section (1) (a) and hence sub- section (2)(a) of section 15 had no application. This decision is seemed not the right principle of law and requires reconsideration by a larger Bench.

Case No.17

Narasima Murthy vs Sushilabai\(^{25}\),

In this case female’s right to partition of dwelling house has been raised. It was held that a female heir’s right to claim partition of the dwelling house of the person dying intestate under section 23 of the Hindu Succession Act, 1956 would be deferred or kept in abeyance during the lifetime or even a sole surviving male heir of the deceased until he chooses to separate his share or

\(^{25}\) AIR 1996 S.C. 1826
ceases to occupy it or lets it out. The purpose behind such deferment under this section is to prevent more fragmentation and disintegration of the dwelling house at the instance of the female heir.

So women heirs are disqualified to ask for partition for the sake of preventing more fragmentation until the male decides to go for partition as per this case cannot be a right decision.

Case no.18

Nasar Singh vs. Jagjit Khaur

It is a case which arose after the enforcement of the Hindu Succession Act, 1956. Kurudiyal Singh owned an extent of 94 Karnals and 19 marlas of land in his village in Punjab. There was some estrangement between him and his wife Smt. Karnal Khaur. In a proceeding under section 488 of the Code of Criminal Procedure 1908, there was a compromise under which the entire extent of 94 karnals and 19 marlas of land was given to the wife in lieu of her maintenance under Ex.B7, dated 3.12.1963. It was provided in the deed of compromise that the wife should not sell or mortgage the land and after her lifetime, Kurudiyal Singh will get back the land and if Kurudiyal Singh pre-

26. AIR 1996 SC 855
deceased his wife, she will be entitled to get her share from the land as a legal heir. Kurudiyal Singh died on 30\textsuperscript{th} July 1981. Widow Karnal Khaur sold the properties to defendants 1 to 3 in 1987 and 1988. In January 1991, the first plaintiff claiming to be the 2\textsuperscript{nd} wife of Kurdiyal Singh and the plaintiffs 2 to 4 who were their daughters filed a suit for partition and separate possession of their shares in the suit properties. Their claim was for partition and separate possession of 7/8\textsuperscript{th} share. It was held by the Supreme Court that “where however the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the suit property (unless of course is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award where under the property is given to her. Their Lordship applied the provisions of section 14(1) of the Act and held that the plaintiffs were not entitled to any right, title or interest in the suit properties. The decision of this court is really applaudable towards securing the property rights of women.

Case no. 19

Yadala Venkata Subbamma vs. Yadalla Chinna Subbaiah (Dead) by Lrs,\textsuperscript{27}

The appeal by special leave is directed against the judgement of the

\textsuperscript{27} AIR 2000 SC 1664
Andhra Pradesh High Court passed in Letters Patent Appeal No. 82 of 1982. The appellant who was the original plaintiff has challenged the impugned judgement in this appeal.

The facts of the case are as, one Thummalapenta Nagayya was the owner of the suit property and through his first wife he got a daughter, Subbamma who was married to defendant 1. After the death of his first wife, Nagaaya married defendant No. 4, Polamma and through her he got two daughters, Narayamma and Pitchamma. On 4th June, 1927, Nagayya executed a will and shortly thereafter he died. It was recorded in the will by him that he wanted to give his daughter Pitchamma in marriage to his nephew, Yadalla Lakshmaiah and wanted to give all his properties to him, whom he brought to his house two years back from the date of the will. As he could not perform their marriage during his lifetime, the marriage should be performed after his death in his house and all properties except the properties given to his grandson, defendant No. 3 should go to his daughter Pitchamma and the said Lakshmaiah. He declared that both his daughter and son-in-law shall be entitled to all his outstanding properties and liable for his debts, if any. He stated that his second wife Polamma, defendant no. 4 should be looked after properly by his daughter and son-in-law. Regarding their daughter Narayamma, he stated that she should be married after attaining proper age and that at the time of marriage she should be given 30 cents of land and
further in case his wife Polamma did not wish to reside with his daughter and son-in-law, she would be entitled to be in possession of the house property then available and shall have life interest in such property and these properties shall devolve upon his daughter and son-in-law after the death of his wife Polamma, defendant No.4. After the death of Nagayya his daughter Pitchamma was married to Lakshmaiah but she died within about two years of her marriage. Narayyamma, the other daughter of Nagayya died soon after the death of Nagayya with the result that all the suit properties came to devolve upon Yadalla Lakshmaiah who married a second time, but his second wife also died soon. Thereafter Lakshmaiah married a second time, but his second wife also died soon. Thereafter Lakshamaiah married the plaintiff and died soon after without leaving any issue through the plaintiff.

In this appeal two question get consideration, i.e.,

(a) Whether there was lending by the husband of the plaintiff of his separate property which he inherited by virtue of the Will with the joint family properties; and

(b) Whether by the deed of relinquishment Ext. B-3, the plaintiff relinquished the property inherited by her husband.

The learned Single Judge in the first appeal gave a clear finding that there was no blending of property which was affirmed by the impugned judgement. In the impugned judgement there is a clear finding that when
defendant No.4 decided to live separately, she shifted her residence from the joint family and, therefore, it has been held clearly that she acquired title to half-share of the property left by her husband as the full owner thereof and her title has not been affected in any manner in view of the provisions of the Hindu Succession Act.

The double Judge bench of the Supreme Court hold that there was no blending of property inherited by the husband of the plaintiff through the will and that the plaintiff has not relinquished the said property by the deed of relinquishment Ext. B-3. W

Case no. 20

Anoop Kaur vs. Anoop Singh Garewal

In this case, one Mehtap Singh who was the owner of the suit properties had a wife, Pratap Kaur, his son Anoop Singh Garewal (plaintiff) and two daughters Anoop Kaur and Saroop Kaur (defendants). The said Mehtap Singh executed a registered ‘Will’ bequeathing his entire estate to his wife as a limited owner with a specific condition that she could not have any right to alienate the same and with a further condition that after her death his son Anoop Singh would become the absolute owner. The testator died on 13.4.1967 when all his three children were married. His wife Pratap Kaur died

28. 2003(1) 133 P.L.R. 451 (P&H)
on 9.6.1977. His two daughters claimed absolute title to the properties under a Will purported to have been executed in their favour by their mother on 21.5.1976. The son Anoop Grewal filed a suit for possession against his sisters. It was contended by the defendants that under the Will of their father dated 20.7.1939, their mother became an absolute owner of these properties and she was competent to execute the Will in their favour. The truth of the will was found against by both the courts below and finding was confirmed in the Second Appeal by the High Court. The High Court further held that when the testator Mehtap Singh expired on 13.4.1967 after the operation of Hindu Succession Act and there was no pre-existing right of his wife and hence the question of mature of limited estate created in favour of her under the Will into a full estate under section 14(1) of the Act did not arise. The learned Judge held that the case fell squarely within the ambit of section 14(2) of the Act.

It is learnt from practice that section 14(2) of the Hindu Succession Act, 1956 put a restriction on the absolute right imparted under section 14(1) of the Act. Here it is focused on the intention of the legislature not to give property to women by applying some other means available under section 14(2) of the Act.
Case No 21.

Ramabai Padmakar Patil (Dead) by LRs vs. Rukminibai Vishnu Vekhande

In this case appellant filed a suit for a declaration that she had become owner and occupant of the suit property as per the Will dated 5th April, 1976 and for injunction for restraining the defendants and their agents, etc. from interfering with her peaceful possession over the mentioned property. The defendants’ nos.1 and 5 are the real sisters of the plaintiff and defendant Nos. 6 to 8 are the children of a deceased sister of the plaintiff, namely, smt Gajarubai. The suit was filed on the ground that the property in dispute, which is a house and agricultural land, belonged to Madhav, the father of the plaintiff and defendants nos. 1 to 5 and after his death, the same was inherited by their mother Smt. Yamunabai and became the owner thereof. Smt. Yamunabai executed a registered Will by which she bequeathed the entire property to the plaintiff. Smt. Yamunabai died on 11th January, 1980 and thereafter the plaintiff came in possession over the property in dispute. However, the defendants got the names of all the heirs of Madhav mutated over the property in dispute and thereafter started interfering with the plaintiffs possession thereof. The suit was accordingly filed claiming a decree of declaration and injunction. The defendants Nos. 1 to 5 contested the suit on the ground, inter alia, that the property in dispute was ancestral property in the hands of

29. AIR 2003 SC 3109
Madhav and after his death Smt. Yamunabai did not become the exclusive owner thereof: “that the tenancy rights were inherited by all the heirs of Madhav by succession” that the house was built by father of Madhav and it being ancestral in nature, the same was inherited by all the heirs, that Madhav died in the year 1957, and therefore the succession would be governed by Hindu Succession Act and that Smt. Yamunabai did not execute any Will in favour of the plaintiff on 5th April, 1976 and the same was not binding upon the defendants. It was specifically pleaded that the share of the plaintiff was only 1/7 and therefore, no decree for injunction could be passed against the defendant.

The parties produced both oral and documentary evidence in support of their cases. The learned Civil Judge (Jr. Divn.), Palghar decreed the suit on 4th February, 1988 declaring that the plaintiff had become exclusive owner of the property in dispute on the basis of the Will dated 5th April, 1976. He further passed a decree for injunction restraining the defendants from causing any interference in the possession of the plaintiff over the property in dispute. Aggrieved by the given judgement the defendant Nos. 1 to 5 preferred an appeal before the District Judge, Thane, who allowed the same by the judgment and decree dated 7th April, 1993 and dismissed the suit. The plaintiff preferred a second appeal which was dismissed by the High Court on 27th April, 1995 and the decree passed by the learned District judge dismissing the
The reason behind which weighed with the learned District Judge in discarding the Will, which has also appealed to the High Court, is that Smt. Yamunabai completely disinherited her daughters and gave the entire property to Smt. Ramabai. It is a case of making provision for a widowed daughter who had been left a destitute on account of death of her husband at a very early age. If the parental property was to be divided equally amongst all the seven sisters, the share inherited by Smt. Ramabai would be quite small making it difficult to survive.

Again the next case which requires consideration is whether the plaintiff appellant would become the owner of the entire property which belonged to Madhav. The learned Civil Judge Jr. Divn. has held that as Madhav died on 6th June, 1956, Smt. Yamunabai after coming into force of Hindu Succession Act became the owner of the entire property. The learned District Judge has reversed this finding and has held that Madhav died sometime in the year 1957 i.e. after 17th June, 1956 when Hindu Succession Act, had come into force and consequently Smt. Yamunabai and all her daughters would get equal share in the property. The High Court did not go into this question at all and dismissed the second appeal after expressing agreement with the finding of the learned District Judge regarding the doubtful
character of the Will. The High Court did not go into this question and opined that the finding recorded by the learned District Judge to the effect that Madhav died sometime after enforcement of Hindu Succession Act is based upon a correct and proper appraisal of evidence and no exception can be taken to the same. In this view of the matter, Smt. Yamunabai will have only 1/8th share in the estate left by Madhav which alone would go to the plaintiff on the basis of the Will executed in her favour.

In the result the Judgment and decree passed by the District Judge and also by the High Court are set aside. The decree passed by the learned Civil judge (Jr. Divn.) is modified and it is declared that the plaintiff-appellant, in addition to her own share, will also be entitled to the 1/8th share of her mother Smt. Yamunabai on the basis of the Will executed in her favour. In this case the Supreme Court has appropriately used section 14 of the Act.

Case No.22

B. Chandrasekhar Reddy vs. State of Andhra Pradesh

Here the facts of the case are as the father of the appellant Nos. 2, 4 and 5 to 7, and husband of appellant No.3, late B. Chandrasekhar Reddy, filed two

30. 2003 (4) S.L.T. 76
separate declarations under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. By Order dated 23rd January 1977, the Tribunal held that family of late B. Chandrasekhar Reddy was entitled to hold one standard holding under the Act and the excess of 4.3360 standard holdings was held to be surplus land. Aggrieved by this Order, an appeal was preferred before the Land Reforms Appellate Tribunal as LRA No. 1170/77 which was partly allowed. Aggrieved by this Order, a revision petition C.R.P.No. 7171/79 was filed before the High Court of Andhra Pradesh. However, during the pendency of the Revision the father of the appellants expired and his legal representatives were impleaded. Pending this Revision application, there was a State amendment to section 29 of the Hindu Succession Act whereby sec. 29-A was inserted. The appellants contended that they were entitled to the benefit of section 29-A and thus an additional ground was sought to be raised in the Revision Petition. The High Court permitted them to urge the additional ground. However, the pleas raised by them were not allowed and aggrieved by the same they preferred to apply to the Apex Court.

The learned counsel for appellants urged before the Court that by virtue of Sec. 29-A of the Hindu Succession Act, the daughters of a Hindu joint family acquired rights as a coparcener in a joint Hindu family and thus they have got right by birth; hence, they are to be treated on the same footing as major sons and it was argued that the ceiling on land should have been fixed treating them
as additional members of the family. However, the High Court rejected the plea of the appellants and held that the amendment to Sec. 29 of the Hindu Succession Act, will not alter the position and the appellants herein are not entitled to get any additional share.

In order to appreciate the contention of the appellants, the definition of the term ‘family unit’ has been considered which is defined in the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, which is as follows-

‘s’section 3 (f) family unit’ means-

i. In the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their unmarried minor daughters, if any;

ii. In the case of an individual who has no spouse, such individual and is or her minor sons and unmarried minor daughters;

iii. In the case of an individual who is a divorced husband and who has not remarried, such individual and his minor sons and unmarried minor daughters, whether in his custody or not; and

iv. Where an individual and his or her spouse are both dead, their minor sons and unmarried minor daughters.’

As per sec. 3(f), the ‘family unit’ taken into consideration, for the
purpose of the Act, an individual or his or her spouse and their minor sons and their unmarried minor daughters. Married major daughters are not included in the definition of the ‘family unit’.

Under section 4 of the Act, ‘Ceiling Area’ is prescribed, with explanation as under-

(i) The ceiling area in the case of family unit consisting of not more than five members shall be an extent of land equal to one standard holding.

(ii) The ceiling area in the case of a family unit consisting of more than five members shall be an extent of land equal to one standard holding plus an additional extent of one-fifth of one standard holding for every such member in excess of five, so however that the ceiling area shall not exceed two standard holdings.

(iii) The ceiling area in the case of every individual who is not a member of a family unit, and in the case of any other person shall be an extent of land equal to one standard holdings.

Explanation- in the case of a family in it, the ceiling area shall be applied to the aggregate of the lands held by all members of the family unit.

Again section 4 A conferred on major sons an additional benefit. It reads
as follows-

“Notwithstanding anything in section 4, where an individual or an individual who is a member of a family unit, has one or more major sons any such major son either by himself or together with other members of the family unit of which he is a member, holds no land or holds an extent of land less than the ceiling area, then, the ceiling area, in the case of the said individual or the family unit of which the said individual is a member computed in accordance with section 4, shall be increased in respect of each such major son or the family unit of which he is a member, or as the case may be, by the extent of land by which the land held by such major son or the family unit of which he is a member falls short to the ceiling area.”

The benefit according to section 4 is given only to persons who are major sons as on the date of commencement of the Act. In the definition of the ‘family unit’, the major sons are not included. If on computation of the ceiling area of an individual or a family unit in accordance with section 4 the individual or family units hold in excess of the ceiling area, to which it is entitled, that entire extent would be determined as excess of the ceiling area, to which it is entitled, that entire extent would be determined as excess under Sec. 9 of the Act and the excess would be surrendered as per section 10 of the Act. But in case of an individual, who is a member of family unit has one or more major sons and any such major son either by himself or together with the
members of the family unit of which he is a member holds an extent of land less than the ceiling area of the individual or of the family unit which he is a member has to be increased as laid down under Section 4-A. If an individual or major son holds an extent which falls short of the ceiling area, that deficit would be added to the said individual or the individual who is a member of the family. If there is more than one major son, the extent by which the holding of each of his major sons falls short of the ceiling area would be added to the holding of said individual.

The appellant counsel argued that the same benefit should be extended to the major unmarried daughters. It is submitted that as on the date of the commencement of the Act, appellants 6 and 7 were major unmarried daughters staying with the declarant. Appellant 6 got married on 29th August, 1986 and the appellant 7 remained unmarried. The contention of the appellant’s counsel is that the section 29-A of the Hindu Succession Act being applicable to the State of Andhra Pradesh, the daughters are to be treated as members of the coparcenary and they are entitled to equal shares as sons. In that view of the matter, they are entitled to the benefit of section 4-A of the Act.

The proviso to sub-sections (iv) and (v) of section 29-A are significant in the sense that it is specifically mentioned that the benefit of Section 29-A of the Act. The said provision came into effect from 15th May, 1986. Appellants Nos. 4 and 5 married prior to 15th May, 1986. The sixth appellant was married
on 29th August, 1986, i.e., after the commencement of section 29-A. Appellants 6 and 7 were minor daughters as on 1st January, 1975, the date of the commencement of the Act. Kumudini Devi the Appellant No. 6, was born on 1st May, 1962 and the appellant No. 7 Sridevi was born on 2nd March, 1971. Appellant 4, 5 and 6 were major daughters and they were married at the time of commencement of the Ceiling Act and appellant Nos. 6 and 7 were minors on that date, and were unmarried. They were treated as members of the family and the declarant must have derived benefit of such fixation of the ceiling. So, in any view of the matter, section 29-A has no impact on the fixation of the ceiling as far as these appellants are concerned. It is true that by section 29-A of the Hindu succession Act, the daughters acquired a right by birth as they were deemed to be treated as coparceners of the joint family and they have got a right to seek partition of the joint family property but as regards the fixation of the ceiling, in the instant case, section 29-A does not confer any additional benefit to the appellant Nos. 6 and 7.

The Appellant counsel contended that if major unmarried daughters are not treated as the members of the family unit and there is denial of justice to daughters, vis-à-vis sons, there is clear violation of principles of equality and there is discrimination between unmarried major daughters on the one hand, the major sons and minor children on the other hand, in the matter of fixation of ceiling area under A.P. Land Reforms (Ceiling on Agricultural Holding)
The appellants have not challenged any of the provision of the Act. Hence the appeal is dismissed in absence of merit.

Case no. 23

Naraini Bai (smt) vs. State of Harayana,

In this case writ petition was filed involving the question as to whether the Government could deny payment of compensation in relation to parents who were killed during 1984 riots to their married daughter. In this case the parents of the petitioner were killed in November 1984 riots. The Haryana Government adopted a policy decision to pay ex-gratia compensation to the heirs of those who were killed in the said riots. Accordingly petitioner and her brother Balwant Singh had furnished the succession certificate to entitle the declared compensation. Balwant Singh received 50 percent of the compensation to the tune of Rs. 1,65,000/ for each of the passed- parents, but the remaining 50 percent has been illegally denied to the daughter on the ground of being married. As per Section 8 of the Hindu Succession Act, 1956 there is no distinction between an unmarried daughter and married one. And daughters be married or unmarried stand as a class I heir under section 8 of the Act and are entitled to succeed father’s property who dies intestate. Again

31. 2004 (1) HLR 478 (P&H)
Section 15 (1) (a) of the act categorically shows that property of a female Hindu dying intestate shall devolve upon the sons and daughters and the husband. Therefore the married daughter is also eligible to succeed the property of their parents dying intestate. And by nullifying the arbitrary decision of the Government, the High Court has commanded the respondent to pay the unpaid 50 percent of the compensation.

The High Court has pronounced a sound decision in favour of married woman which established a precedent of gender justice in special reference to married woman. The married women should not be deprived to inherit their parents property only on the ground of being married that too is supported by the decision of this court.

Case no. 24

Prakash vs Pushpa Vani32,

It was held in this case “Under section 14 of the Act, the word used is ‘Hindu Female’ but not ‘Hindu Widow’ as used in Hindu Women’s Right to Property Act. Under the explanation to this section, any female Hindu, who acquired or possessed any property either before or after the commencement of the Act is entitled to exercise the full ownership rights over the property

32. AIR 2004 NOC 463 (AP)
and not as limited owner. From the above explanation, it is made clear that any property acquired by a female Hindu in lieu of maintenance, apart from other forms of acquisition of property gets enlarged as an absolute estate.

Even if the property is given to a Hindu female, in view of her pre-existing right even after the Act came into force, it becomes absolute property notwithstanding the limits or restrictions contained in the instrument.”

Case no.25

Naresh Jha vs Rakesh Kumar Jha

In this instant case the appeal was made by the defendant against the judgment passed by the appellate Court affirming the judgment of the trial Court.

One of the substantial questions raised by the Senior Counsel for the defendant- appellant is that the Trial Court has committed grave error of law in holding that both the plaintiff and the defendant will get half share in the suit property. The substantial question of law which the counsel seeks to frame is that since original owner died leaving behind his widow and two sons, the share of the widow will be inherited by her own son and not by the step son.

33. AIR 2004 Jhar 2
Both the Courts below have come to a finding that the plaintiff and the defendant will get half share in the suit property.

The recorded tenant Janardan Jha had two wives. From the first wife Chakradhar Jha was the son and from the second wife Kedar Jha was the son. Kedar Jha expired in 1968 leaving behind his widow who is plaintiff No.1 and Kedar Jha is defendant No.1. Kanti Jha, the second wife of Janardhan Jha, expired in 1977.

On these admitted facts certainly defendant would have inherited 2/3rd share had the widow of Janardhan Jha died after coming into force of Hindu women’s Right to Property Act, 1937. The High Court (as was held) cannot presume her to be in constructive possession of the Joint Family Property and thereby acquired absolute ownership by virtue of section 14 of the Hindu Succession Act. Admittedly in this instant case Jananrdhan Jha expired in 1929 leaving behind a widow and two sons. The High Court was therefore, of the opinion that the widow Kunti Devi did not even acquire any right of maintenance in the suit property.

But the decision of the High Court not to provide any maintenance to second wife cannot be held as sound decision. Because if she was divested from getting maintenance then how come the rights of Kedar Jha, son of the
deceased father by second wife of Janardhan Jha, can be established and determined and given by two lower courts, is justified. It raised the doubt regarding the quality of judgement delivered by the High Courts in protection of women’s right to property.

Case no. 26
Subbayyajoga Naik vs Narayani 34

In this case the Plaintiff filed the suit for declaration that the entries in the R.T.C. in respect of ‘A’ Schedule properties showing the names of the plaintiff and defendants on the basis of alleged partition, are wrong, illegal and they are liable to be deleted and that the names of plaintiff and defendants 2 to 6 have to be substituted as legal representatives of deceased Joga Hanuman Naik, who died intestate. A further relief for partition by metes and bounds of the said properties into six equal shares and to deliver one such share with five mudi rice per year from the date of suit till delivery of possession was bought for in the original suit. The defendants filed written statement denying the plaint averments. It is claimed that Joga Hanuman Naik executed a Will on 6/5/1985 bequeathing the properties in favour of the 6th defendant. On the basis of the pleadings, the trial Court framed issues and went for trial. Parties adduced evidence and produced documents in support of their respective case.

34. 2004 AIR Kant HCR 2379
Upon consideration of the material brought on record, the trial Court dismissed the suit holding that plaintiff is not entitled for 1/6th share. In the appeal preferred, the said judgment and decree of the trial Court are reversed by the first Appellate Court and decreed the suit. Aggrieved by the same, the defendant no 6th has filed the second appeal. The judgment and decree of the first Appellate Court as was held by the High Court were perfectly justified.

4.3 Role of Courts After 2005:

Case no.27

Ruben Borah vs. Anju Borah & ors.35

While dealing with section 166 of the Motor Vehicles Act that Hindu daughters can be treated as the legal representative as provided under section 2(ii) of the Code and applicable to compensation proceeding under the Act. The Court has held that the daughter, whether married or unmarried are Class I heirs under Section 8 (a) read with schedule of Hindu Succession Act, 1956 are entitled to get the compensation awarded by MACT. Without making any discrimination on the ground of married and unmarried, the court really upholding the sanctity of equal distribution of property among the daughters is no doubt a significant decision.

35. 2005 (4) GLT 127
Case No. 28

Gaddam China Dodamma vs Gaka Pedde Dodamma,

In the instant case the plaintiff and defendant were daughters of property owner who had no male child. The defendant claimed that the suit house which was ancestral property of their father was given to her husband by her parents at time of marriage as they adopted him as illatom son in law as per custom. No document in proof of conveyancing property in favour of son-in-law was required under the custom has been made out. After death of parents unless there is sufficient proof of ouster of plaintiff from suit property, the plaintiff continues to have constructive possession, even though defendant is in physical possession of same. Hence the defendant cannot claim absolute right on suit house by claiming adverse possession.

In this case, inconsistency between custom and law has arisen. Custom permits but before law if fails to produce evidence in document then the law prevails. In this connection it is necessary for reconsideration of customary practices and legal consequences thereof.

Case No. 29

Akkayamma vs State of Karnataka

36. 2005 (3) A.L.D. 531 (A.P)
In this case the word “possession” under section 14 of the Hindu Succession Act, 1956 has been interpreted. In this case the daughter is not shown to be cultivating Salyat land as tenant independently at any point of time. The father did not surrender his tenancy rights in favour of his daughter. And also there is no documentary proof which shows that the daughter had taken possession of the land in question from her father. Even the record of revenue showed that it was father who was in possession and cultivation of the land in suit. It was held that the daughter could not be full owner. It was pronounced that the word possession under section 14 of the Hindu Succession Act, 1956 means not merely in possession of property without any sort of rights in it.

But this decision cannot be called as a sound decision, because the record of revenue was in favour of father. And being the legal heir of the father she had the right to claim for the land was not ignorable merely on the ground of the intensity of the word ‘possession’.

Case no. 30

Lekhabai vs Sevantibai 38

The joint family consisted of father and his only son. The son died and survived his childless widow. The father expired later. The mother died

37. AIR 2007 (NOC) 125 (KAR)

38. 2007 (1) MP L.J 254 (M.P)
thereafter leaving her daughter-in-law and four daughters. It was held that the share of the daughter-in-law was ½ and that of each daughter was 1/6.

In this case it seemed that joint family stood as a bar to equal distribution of property among the female heirs. Such bar created discrimination among the women heirs.

Case no.31

Bhawar Singh vs. Puran\(^{39}\)

One Bhima was the owner of the suit property. He died in 1972 leaving behind a son by name Santram and three daughters. The son and the three daughters partitioned the properties equally each taking ¼ shares and mutation of names had taken place accordingly in the jamabandi of 1973-74. Subsequently a son was born to Santram in 1977 and he attained majority in 1995. He then filed a suit to set aside the alienation made by his father claiming to be a coparcener with his father. It was held by Their Lordships of the Supreme Court that Santram and three sisters had inherited the properties of their father in equal shares and consequently the properties. The son and the daughters of Bhima became tenants-in-common and took the properties allotted to them per capita and not per stripes and each one thereof was entitled to alienate his or her share. The son of Santram had therefore no right

\(^{39}\) AIR 2008 S.C 1490
and section 6 of the parent Act had no application.

The decision pronounced by the Supreme Court in this case is remarkable. By keeping the interest of the daughter heirs and existing laws the Court has given sound judgment in advocating female rights over property.

Case No. 32

In Surendranath Sharma vs. Rajendra Kumar Sharma40

In this case the plaintiff filed a suit against his brothers and their father Shri Lal Sharma for partition of joint family property. During the pendency of the litigation Hindu Succession (Amendment) Act, 2005 has come into force. An application was filed in the trial court for impleading the three daughters of Shri Lal Sharma namely, Savitri Devi, Usha Devi and Mino Devi as defendants on the ground that they became coparceners having equal right, title and interest in the ancestral property. The application was resisted by the plaintiff and the learned trial Judge rejected the application holding that as the suit had been filed prior to the coming of the Hindu Succession (Amendment) Act, 2005, and the daughters had no right in the ancestral property. On appeal M. Y. Iqbal, J. held that the case was pending and no partition had taken place, so the mentioned daughters and Shri Lal Sharma, who was alive became

40. 2008 (56) B.L.J.R: 1355 (JHR)
coparceners and were entitled to be impleaded as defendants in the said suit, which fulfill the two essential requirement for application of section 6(1) of the Hindu Succession (Amendment) Act, 2005. By giving the right of coparcener to the suit filed before the Hindu Succession (Amendment) Act, 2005 the court of appeal has raised the voice towards justice to women, which was ignored by the learned trial Judge.

Case No. 33
In Khirodini Mohapatra vs. State of Orissa41,

In this case the Court has analysed Section 14(1) & (2) as:

Section 14 sub section (1) is large in its scope and includes every kind of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

The language of section 14 sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a

41. AIR 2009 Orissa 176
restricted estate for her in the property and this would apparently cover a case where property is given to a female Hindu at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property.

Case no. 34

S. Narayanan vs. Meenakshi

The property sought to be partitioned is having only an extent of three cents and it is a Kudikkidappu. It was owned by Ramayi who died on 12-9-1976. Ramayi left behind her four daughters including the plaintiff and a son, the defendant. After the death of Ramayi, plaintiff obtained purchase certificate from the Land Tribunal in her name, but on behalf of the other co-owners as well. The three sisters of the plaintiff released their fractional right in the property to the plaintiff. Thus the plaintiff claimed 4/5 shares and contended that the defendant has only 1/5 share.

The right to claim the benefit under section 23 is personal to the male heir of the deceased Hindu intestate. Such personal right of a male heir is taken away by the omission of section 23 of the Hindu Succession Act, 1956,

42. AIR 2009 Ker 143
by the Hindu succession Amendment Act, 2005. The effect of such omission would be retroactive. Hence by the omission of section 23 the right of the male heir to claim the benefit of section 23 would get defeated even in pending litigations.

The omission of section 23 by the Hindu Succession (Amendment) Act, 2005 seems to jeopardize the interest of the son, though the provision brings a relief to the Hindu women who can use her property in any manner she likes as given under section 6 and 14 of the Act of 2005.

Case no.35

Gajendra vs Vasantha Bai,

In this case appeal laid against the judgement and decree of the IV Additional Judge, City Civil Court, Chennai, in O.S. No. 983/1996 dated 6.5.1997. In the instant case the plaintiff had filed the suit against her sister and brother for partition and separate possession of her one-third share in the suit property bearing door No. 109, Bazzar Road, Periyapettai, Saidapet, Chennai: 15, which belonged to their mother Mrs. Saradammal under a deed of settlement dated 5.2.1953 executed in her favour by her mother Lakshmi Ammal, the grandmother of the

43. 2009 2 MLJ 159
plaintiff and defendants 1 and 2 and for mesne profits. According to the
plaintiff, her mother redeemed a prior mortgage over the property, put up a
first floor and rented out the front portion to various tenants. She was getting a
monthly rent of Rs.600/- and she was living in a portion thereof till her death
intestate on 12.5.1980. The 1st defendant remained ex parte in the suit. Even
prior to the suit, she has admitted the claim of the plaintiff in her reply to the
plaintiff’s notice for partition dated 14.7.1995. The second defendant who is
the brother of plaintiff denied the plaintiff’s claim and contended that he
discharged the mortgage, put up a new construction and let out the same to the
tenants. He pleaded an oral partition among him and his two sisters and for
allotment of the suit property to him. He further questioned the maintainability
of the suit by virtue of section 23 of the Hindu Succession Act 1956 being the
property was a dwelling house. The learned IV Additional Judge, accepted the
claim of the plaintiff and passed a preliminary decree for partition and separate
possession of her one- third share in the suit property and relegated the
question of mesne profits to a separate enquiry under Order 20, Rule 12 of the
Code of Civil Procedure, 1908.

The aggrieved 2nd defendant preferred the Appeal in A.S. No. 19/1998
before the Hon’ble High Court of Madras and it took ten long and tedious
years to be heard by the learned single Judge in 2008. His Lordship took up
only the question of maintainability of the suit and held that the suit property
was a dwelling house and though section 23 of the Act has been repealed by
the Hindu Succession (Amendment) Act 39 of 2005 with effect from 9.9.2005,
the said section was in force at the time of filing of the suit in 1996 and on the
date of the and decree of the Court below on 6.5.1997 and hence the plaintiff
had no cause of action to file the suit which was hit by section 23 of the Act
and it was not therefore maintainable. Consequently, the learned single judge
allowed the appeal, set aside the judgement and decree of the Court below and
dismissed the suit for partition with an advice to plaintiff to file a fresh suit for
partition in view of the Hindu Succession (Amendment) Act, 2005 uninhibited
by any plea of res judicata.

It is respectfully submitted that the judgement delivered by single judge
cannot be a sound one. Because the court is bound to take notice of subsequent
change of law and administer the law in force on the date of its judgement.
Section 23 of the Hindu Succession Act, 1956 had been repealed and deleted,
at the time of delivering the judgement by the single Judge. The learned Judge
has acted upon the annulled, non-existent provision of law and denied to the
plaintiff the relief of partition of her one-third share in the suit property. Such
denial of justice is in contravention of the law in force i.e. amended provision
of section 23 as per Act of 2005. Such decision requires reconsideration in
view of rendering proper justice to the helpless lady. This case also reflects the
picture of Indian judiciary of taking long time to give justice to the judgment
holder.
In this case, the plaintiff filed a suit for partition prior to 1993 against his father as the first defendant, his brother as the second defendant and his two sisters as defendant 3 and 4 for partition of coparcenary properties and the self-acquired properties of his deceased mother. The plaintiff claimed onethird share in the coparcenary properties, the father- the first defendant and the brother- the second defendant being entitled to the remaining one-third share each. The plaintiff also claimed one-fifth share in the properties of his deceased mother. The first defendant father died in 1993 during the pendency of the suit. The trial Court by its decree dated 13.3.1999, declared that the plaintiff was entitled to one-third share in the coparcenary properties and a further one-fourth share in the one-third share left by the deceased first defendant-father. As regards the properties of the mother, he was declared entitled to one-fifth share. The learned trial Judge inadvertently omitted to give a share to the plaintiff in the one-fifth share which devolved upon his father as an heir to his wife. The above preliminary decree was accordingly amended by the trial Court subsequently on 29th September 2003.

During the pendency of final decree proceedings, the Hindu Succession

44. (2011) 5 LW 612 (SC)
(Amendment) Act, 2005 came into force. Defendants 3 and 4 who are the two sisters of the plaintiff and the second defendant made an application for passing of a revised preliminary decree in their favour, claiming one-fourth share each in the joint family property by virtue of section 6 of the Amendment Act of 2005 as coparceners with their brothers. An application was filed by them before the trial Court for passing an amended preliminary decree. The learned trial Judge allowed the application and amended the preliminary decree. On appeal by the plaintiff, a learned single Judge of the High court of Andhra Pradesh allowed the appeal and set aside the order of the trial court. The matter came up before the Supreme Court by special leave. Their Lordships held that “on and from 9th September 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son..... The right accrued to a daughter in a property of a Joint Hindu family governed by the Mitakshara law by virtue of the Amendment Act 2005 is absolute, except in the circumstances provided in the proviso appended to sub-sec (1) of section 6.” Consequently, their Lordship found that defendants 3 and 4 were entitled to claim as coparceners equal shares with their brothers. It is respectfully submitted that the conclusion of their Lordships of the Supreme Court that the defendant 3 and 4 who are the sisters of the plaintiff and the first defendant whose father died in 1993 were entitled to the benefit of the provisions of section 6 of the Amendment Act and became coparceners with their brothers, is unsound and untenable. Their Lordships have failed to
consider the prospective nature of section 6 of the Hindu Succession (Amendment) Act 2005, which opens with the words “On and from the commencement of the Hindu Succession (Amendment) Act 2005.” The daughter of a coparcener becomes a coparcener only on and from the commencement of the Hindu Succession (Amendment) Act, 2005 i.e. from 9th September 2005 and that too only if her father is alive as a coparcener. Their Lordship of the Supreme Court have themselves categorically asserted in paragraph 14 of their judgment, “thus, on and from 9th September 2005 the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.” But their decision has the effect of rendering the daughters defendants 3 and 4 as coparceners from the date of the death of the father in 1993 more than twelve years before the commencement of the Amendment Act 2005. This view is legally unacceptable. Moreover, the learned Judges have totally ignored the significance of the expression “daughter of a coparcener”. This expression postulates in unmistakable terms that a female Hindu in order to become a coparcener, be the “daughter of a coparcener” and not the “sister of a coparcener”. As is the case on hand when the Amendment Act came in to force in 2005, the father having died in 1993. The court have not considered the scope of section 6 (1) of the Hindu Succession (Amendment) Act, 2005 seriously.
Case No 37.

Smt. Basanti Jaiswal & Anr.vs. Sri Gauri Shankar Gupta & Ors.45

In this case revision petition was made against the order dated 17.3.2009, passed by the learned Member of MACT, Tinsukia, in MAC case No. 62 of 2007 and the order passed on 22.05. 2009 refusing to review the earlier order whereby it has been held that the proforma respondent No. 4 (Respondent No.1 herein) is entitled to get Rs. 1,12,500/-, the claimant/respondentNo.2 will get the rest of the amount and the married daughters of the deceased late Rameswar Prasad Gupta are not entitled to any compensation they being married daughters of the deceased, thereby rejecting the petition No. 248/08 filed by the daughters of late Rameswar Prasad Gupta.

In this case Rameswar Prasad Gupta died on 2.6.2006, due to injuries sustained in a Motor Accident which occurred on 25.4.2006 at Tinsukia leaving behind, Uma Shankar Gupta, Gauri Shankar Gupta, Lajwanti Jaiswal, Basanti Jaiswal and Devanti Jaiswal as heirs. On the death of Rameswar Prasad Gupta, it was decided in a family that the claim petition would be filed by Uma Shankar Gupta and on getting the compensation award, it should be divided in 5 equal installments amongst the brother and the sisters deducting the medical expenses incurred by Uma Shankar. Accordingly a claim petition was filed before the MACT on 4.10.2007 by Uma Shankar Gupta claiming

45. 2012 (1) GLD 840 (Gau)
compensation of Rs. 3,90,000/- making the insurance company, the owner of the vehicle, the driver as opposite parties and Guari Shankar Gupta as proforma opposite party. But the sisters were not made parties in the claim petition which was registered as MAC No. 62 of 2007. In the claim petition wherein the proforma respondent No. 4 though was made a party filed his written statement claiming 50% total compensation. The claim petition being No. 62/07 was however placed before the Lok Adalat on 09.02.2008 wherein a joint compromise petition was filed by the claimant and the insurance company and (as per the agreement) the insurance company was directed to pay a sum of Rs. 2,25,000/- only to the claimant within two months. In connection with the MAC Case No. 62/07 the proforma opposite party No.4 claimed 50% of the total amount awarded as compensation alleging that no notice was served on him when the case was settled by Lok Adalat and prayed for necessary order reviewing the order dated 09.02.2008 being petition No. 247/08. On receipt of the petition filed by the proforma respondent No.4 the claimant put an objection along with the other sisters being petition No. 248/08 contending inter alia that the amount awarded be into five parts equally after deducting the medical expenses and accordingly the learned Tribunal sought for legal heir certificate which was produced before the learned Tribunal. Thereafter the proforma opposite party No. 4 filed another petition alleging fraud by the claimant and obtained the order on 9.2.2008 without serving notice on him, contended that the married daughters are not entitled to
get compensation.

The learned Member, MACT after hearing the parties allowed the petition No. 54/09 filed by the proforma opposite party No. 4 in the claim petition thereby awarded 50% of the compensation to him rejecting the petition No.248/08 dated 28.3.2008 holding that the married daughters are not entitled to get the compensation. Aggrieved by the order dated 17.3.2009, the petitioner filed a review petition bearing No.308/09 under Order XLVII, Rule 1 read with Section 151 of the Code of Civil Procedure on 20.3.2009 contending inter alia that none of the legal heirs of late Rameswar Prasad Gupta are dependent on the earning of the deceased and the petitioners are the legal representative as defined under Section2 clause (ii) of the Civil Procedure Code and prayed for the review of the order dated 17.2.2009. But the learned Tribunal after hearing the parties rejected the review petition holding that the same is not maintainable and hence instant petition is not tenable under Article 227 of the Constitution of India challenging the orders dated 17.3.2009 and 22.5.2009. As per Section 6 of the Hindu Succession (Amendment) Act, 2005, the devolution of interest in coparcenary property on and from the commencement of the Act, 2005 in a Joint Hindu Family governed by Mitakshara law, the daughter of a coparcener shall by birth becomes a coparcener in her own right in the same manner as the son has the same right in the coparcenary property as she would have had if she had been
a son; 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 view of section 6 of the Hindu Succession (Amendment) Act, 2005 the court is of view to have no hesitation to hold married daughters of Hindu under Hindu Succession Act are entitled to get the compensation awarded by MACT, Tinsukia. Hence the petition is allowed. The orders dated 17.3.2009 and 22.5.2009 passed in MAC Case No. 62/2007 by the learned MACT, Tinsukia are set aside and quashed. And it is directed by the Single Judge Bench of Gauhati High Court, that after deducting the medical expenses incurred by Uma Shankar, the rest of the compensation amount awarded, would be equally distributed amongst the legal heirs of late Rameswar Prasad Gupta, viz; Uma Shankar Gupta, Gauri Shankar Gupta, Basanti Jaiswal, Lajwanti Jaiswal and Devanti Jaiswal.

The judgment delivered by the single Judge of the Gauhati High Court is commendable in view of section 6 of the Hindu Succession ( Amendment) Act, 2005, giving equal rights to the daughters with the son.
Case no. 38

M.P. Lathika vs. Jayasree Sivanand

In this case the immovable property was gifted by way of ‘Will’ to wife along with her three sons with condition that she would have life estate. The intention of donor was only to create life interest in favour of wife and property was not allotted in lieu of maintenance. It was held that the Limited estate which was created would not mature into absolute ownership under section 14 (1) but will be covered under section 14(2).

The decision in the instant case, however is again proved to be against the property right imparted to the women. Here the Will is seemed to be used with an intent to put restriction on the women’s right to property. So Will is creating bar on the path of inheritance by woman despite of having law for gender justice.

46. (2008) 63 AIC 344 (Kar)
Summary:

The main object of this chapter is to analyse the role of judiciary. The role performed by the Privy Council, different High Courts of States and the Supreme Court in safeguarding the rights of property of Hindu female has been discussed with the help of facts of the decided cases. It is found after exploration of the decided cases that the Privy Council never intended to violate the prevailing custom of the locality in absence of codified Hindu law. Initially they did not intend to formulate the law according to their own, however with the passage of time Privy Council seemed to apply the rule of equity, justice and good conscience in deciding cases in absence of laws and customary practices. It is observed that High Courts of different states are sometimes interpreting the provisions of the Act with variations, which are controlled and supervised by the Apex Court. However the Supreme Court in this respect is seemed to perform a significant role in safeguarding the rights and interest of the female folk by interpreting the legal provisions in right direction.