

**INTERPRETATION OF SECTION 6 OF THE HINDU
SUCCESSION ACT, 1956
EFFECT OF PENDING LITIGATIONS AS ON
09TH SEPTEMBER 2005**

Section 6 - Amendment - dated 09/09/2005
Text of Amendment
Retrospective – Prospective - Retroactive

Father died before 09/09/2005
But suit was pending on 09/09/2005
Daughter is entitled to the benefits of
Amendment



Case Laws-

- i) **S. Sai Reddy Vs S. Narayan Reddy**
(1991, CJ, SC, 506)
- ii) **Ganduri Koteswaramma &
another Vs Chakiri Yenadi &
another**
((2011)9, SCC, 788)
- iii) **Danamma@Suman Surpur &
another Vs. Amar & Others**
(Civil Appeal nos. 188 & 189 of
2018) - decided on 01st Feb. 2018.

Father - alive
Daughter - alive
Property available } as on 09/09/2005

(Daughter's birth may be even before
17/06/1956 or after 17/06/1956)

Daughter is entitled --- the benefits of
Amendment



Case Laws-

- i) **Pushplata Vs Padama**
(2010) CJ (Kar) 1933
- ii) **Phulavati & others Vs Prakash & Others**
((2010) CJ (Kar) 1786)
- iii) **Vaishali Ganorkar Vs Satish Ganorkar**
(AIR,2012, Bom. 110)
- iv) **Ashok Gangadhar Shedge Vs. Ramesh G.
Shedge**
- v) **Badrinarayan Bhandari Vs. Om Prakash
Bhandari**
(AIR, 2014, Bom. 151)
- vi) **Prakash & others Vs Phulavati & Others**
((2016), 2, SCC.36)

But the following issues are not clear-

- 1) On - 09/09/2005, father is not alive as well as suit is not pending - but right to sue is available to Daughter Whether she will be entitled to the benefits of Amendment?
- 2) On - 09/09/2005 - suit has been decided and Appeal is pending..... Whether she will be entitled to the benefits of Amendment?

The Supreme Court of India while deciding the case of **Prakash & Others v/s Phulavati & Others** has held that as a consequence of the amendment act, the living daughters of living co-parceners as on 09th September 2005 are entitled to the benefits of the Amendment Act.

There were three requirements laid down by the Bombay High Court in the case of **Badri Narayan Shankarlal Bhandari v/s Om Prakash Shankarlal Bhandari** that for the application of the Amendment Act, three conditions must be satisfied –

- (a) Father must be alive on 09.09.2005.
- (b) Daughter must be alive on 09.09.2005.
- (c) Property should be available on 09.09.2005.

The Supreme Court of India approved the aforesaid decision of Bombay High Court in the case of **Prakash & Others v/s Phulavati & Others**.

Thus, to confer such benefits on the daughters on 09.09.2005, it is necessary that the father should be alive on 09.09.2005. However, there is a distinguishing feature of this requirement followed by the Supreme Court of India in following cases:

- (1) **S.Sai Reddy v/s S.Narayan Reddy (1991, CJ, SC, 506)**
- (2) **Ganduri Koteswaramma & another v/s Chakiri Yenadi & another (2011, CJ, SC, 113)**
- (3) **Danamma @ Suman Surpur & another v/s Amar & Others (Civil Appeal nos.188 & 189 of 2018) – decided on 1st February 2018.**

So as to understand such a distinguishing feature, let us see the above mentioned cases.

- (1) **S.Sai Reddy v/s S.Narayan Reddy (1991, CJ, SC, 506)**

The case relates to the regional amendment in the State of Andhra Pradesh. In the year 1987, there was amendment in Hindu Succession Act in Andhra Pradesh State by way of insertion of section 29 (a). The amendment provided for conferring status of son on the daughter and equal rights to the

daughters who were unmarried on the date of commencement of the Amendment Act.

In the given case, there was a suit filed for partition. There was a preliminary decree drawn and the same was challenged before the Appellate Court. Thereafter, before the final decree was drawn, the amendment came into force. The issue was before the Trial Court whether the amended provision would be applicable to the existing litigation, wherein a preliminary decree was drawn, but final decree was not drawn.

While interpreting the provisions of the Amended Act, the court held that the shares were not decided and divided by *metes and bounds* in the preliminary decree and hence, there can be no bar of the preliminary decree for the application of the Amendment Act. The Amendment Act would be applicable and the daughter would be entitled to the benefits thereof. Final decree is to be drawn in terms of the Amended Law.

(2) **Ganduri Koteswaramma & another v/s Chakiri Yenadi & another (2011, CJ, SC, 113)**

In this case, there was a suit for partition filed by a son against his father and brothers. During the pendency of the suit, father died in the year 1993. There was a preliminary decree drawn and the same came to be amended on September 27, 2003. Thereafter, the Amendment Act of 2005 came into force. The daughter of the deceased co-parcener i.e. father, filed an application for amendment that she is entitled to the benefits of the Amendment Act and as such, should be treated as if a son. As such, she claimed equal share with that of a son. The issue was decided by the Trial Court as well as by the High Court. Against the decision of the High Court, civil Appeal was filed before the Hon'ble Supreme Court. The bench of the Supreme Court, comprising of Hon'ble Justices **R.M.Lodha, Jagdish Singh Khehar**, decided the case on 12th October 2011. The Court set aside the Judgment of the High Court and held that as per the decision of the Supreme Court in the case of **Phulchand & another v/s Gopal Lal (AIR, 1967, SC, 1470)**, wherein the Supreme Court has stated as follows:

“We are of the opinion that there is nothing in the Code of Civil Procedure, which prohibits the passing of more than one preliminary decree, if circumstances justify the same and that it may be necessary to do so particularly in partition suits, when after the preliminary decree, some parties die and shares of other parties are augmented thereby”, is to be followed.

The Supreme Court ultimately held that if on the commencement date, i.e. 09.09.2005, there is a pending litigation and father has died before 09.09.2005, the daughter would be entitled to the benefits of the Amendment Act.

- (1) Thereafter, the case of **Prakash & Others v/s Phulavati & Others** came to be decided by the Hon’ble Supreme Court as reported in (AIR, 2016, 2, SCC, 36). The Supreme Court by following the decision of the Bombay High Court in the case of **Badri Narayan Shankarlal Bhandari v/s Om Prakash Shankarlal Bhandari, (AIR, 2014, Bom. 151) (FB)** held that the living daughters of living co-parceners are entitled to the benefits of the Amendment Act.

As such, there is apparent confusion created as the Supreme Court in **Prakash v/s Phulavati’s** case has observed that the benefit shall be given to the living daughters of the living co-parceners as on 09.09.2005. On the other hand, the Hon’ble Supreme Court has, in the case of **S.Sai Reddy v/s S. Narayan Reddy** and in the case of **Ganduri Koteswaramma & another v/s Chakiri Yenadi & another**, held that the living daughters of the deceased fathers (father died before 09.09.2005) can also take the benefit of the Amendment Act if there is a pending litigation on 09.09.2005.

On this backdrop, issue arose before the Hon’ble Supreme Court of India in the case of **Danamma @ Suman Surpur & another v/s Amar & Others, Civil Appeal Nos.188 & 189 of 2018, decided on February 01, 2018**, whether daughter alive on 09.09.2005, but father has died before 09.09.2005 and there is a pending litigation on 09.09.2005, is entitled to the benefit of the Amendment Act. The case has been decided by **Hon’ble Justices, A.K. Sikri and Ashok Bhushan**. The Supreme Court considered all the previous cases on the point. Following cases have been considered –

- (2) **Anar Devi & Others v/s Parmeshwari Devi & Others (2006 – 8, SCC, 656**
- (3) **Vaishali Satish Ganorkar v/s Satish Keshavrao Ganorkar (AIR, 2012, Bom. 110)**
- (4) **Sadashiv Sakharam Patil v/s Chandrakant Gopal Desle 2011 (5), Bom. CR. 726**
- (5) **Badri Narayan Shankar Bhandari v/s Om Prakash Shankar Bhandari (AIR, 2014, Bom. 151)**
- (6) **Prakash & Others v/s Phulavati & Others (AIR, 2016, 2, SCC, 36)**
- (7) **Ganduri Koteswaramma & another v/s Chakiri Yenadi & another - 2011, (9) SCC, 788**

The Supreme Court has held that the issue has been made explicitly clear in the judgment of **Prakash & others v/s Phulavati & Others**. The law is settled by the authority to pronouncement of the Supreme Court in that case. So also, the Supreme Court confirmed the decision in **Badri Narayan Bhandari's case**, as decided by the Bombay High Court FB. In these cases, the basic principle was laid down as follows.

- (a) Father should be alive on 09.09.2005.
- (b) Daughter should be alive on 09.09.2005.
- (c) Property should be available on 09.09.2005.

However, if we consider the abovementioned three cases, **i.e. S.Sai Reddy v/s S.Narayan Reddy, Ganduri Koteswaramma v/s Chakiri Yenadi and Danamma v/s Amar**, then there is a distinguishing feature that father is not alive on 09.09.2005. Nevertheless daughter is entitled to the benefits of the Amendment Act. The only distinguishing feature is in these cases there is a partition suit pending on 09.09.2005.

Thus, to conclude, we can say that the Supreme Court decisions may be divided into two categories.

- (1) The cases wherein father is alive, daughter is alive and property is available on 09.09.2005.

(2) The cases wherein suit for partition is pending on 09.09.2005, daughter is alive on 09.09.2005, but father died before 09.09.2005.

The Amendment Act would be applicable in these two categories of cases.

However, the issue as to what would happen if father died before 09.09.2005 and no suit was filed before 09.09.2005 but right to sue was available to the daughter on 09.09.2005, is silent. If she is entitled to the benefit of pending litigation on 09.09.2005, then she should be equally entitled to if she had right to sue available on 09.09.2005.

Dr. Sudhakar E. Avhad,
B.Sc.(Hons);LL.M;Ph.D.
Advocate
Mob. No. 9822045791
email: advseavhad@gmail.com