IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 7TH DAY OF JULY 2025 / 16TH ASHADHA, 1947

RSA NO. 436 OF 2018

AGAINST THE ORDER/JUDGMENT DATED IN OS NO.231 OF 2009 OF ASSISTANT SESSIONS COURT/III ADDITIONAL SUB COURT, KOZHIKODE ARISING OUT OF THE ORDER/JUDGMENT DATED IN AS NO.194 OF 2016 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, KOZHIKODE / III ADDITIONAL MACT/RENT CONTROL APPELLATE AUTHORITY - V, KOZHIKODE

APPELLANTS/PLAINTIFFS:

1 N.P.RAJANI, AGED 60 YEARS
D/O. CHANDU, 'JANU PRABHA',
VALAYANAD AMSOM DESOM,
NAGERI ILLAM PARAMBA, P.O.KOMMERI,
KOZHIKODE - 673 007.

2 N.P. RAMANI, AGED 58 YEARS
D/O. CHANDU, ABHILASH, KARIPPALA VAYAL,
KARUVISSERY P.O., VENGERI AMSOM,
KARUVISSERY DESOM, KOZHIKODE - 673 010.

3 N.P. RAJESWARI,(DIED) (LEGAL HEIRS IMPLEADED)
AGED 53 YEARS, D/O. CHANDU, SREYAS,
KUDILIL HOUSE, MAKKADA AMSOM DESOM,
P.O.MAKKADA, CHERUKULAM,
KOZHIKODE - 673 611.

4 **N.P. RATHIBHA**
AGED 48 YEARS
BABITHA NIVAS, S/O. CHANDU, KELACHOTH PARAMBA, THADAMBATTUTHAZHAM, P.O. KARAPARAMBA, NEDUNGOTTUR AMSOM, VENGERI DESOM, KOZHIKODE - 673 010.

ADDL. 5 **SRUTHI K.,**
AGED 29 YEARS,D/O.SUGUNAN K.,SREE SREYAS,CHERUKULAM,MAKKADA KAKKODI,KIZHAKKUMURI,KOZHIKODE-673 611.

ADDL. 6 **SREYAS K.,**
AGED 29 YEARS,S/O.SUGUNAN K., SREYAS KDUILIL,CHERUKULAM,MAKKADA KAKKODI,KIZHAKKUMURI,KOZHIKODE-673 611.

ADDL. 7 **NEDHIK V.,**
AGED 8 YEARS (MINOR),REPRESENTED BY HIS FATHER,NITHISH V.,S/O.V.SADASIVAN,MAYANPALLI,PARAMBA,KALAI P.O.,PANNIYANKARA,KOZHIKODE-673 003.

ADDL. 8 **SUGUNANA K.,**
AGED 64 YEARS,SREE SREYAS,CHERUKULAM, MAKKADA KAKKODI,KIZHAKKUMURI,KOZHIKODE-673 611.
(LEGAL HEIRS OF DECEASED 3RD APPELLANT ARE IMPLEADED AS ADDITIONAL APPELLANTS 5 T0 8 AS PER ORDER DATED 26.10.2022 IN IA.1/2020.)

BY ADVS.
SHRI.NIRMAL.S
SMT.VEENA HARI

RESPONDENTS/DEFENDANTS:

1 **RADHA NAMBIDI PARAMBATH**
AGED 73 YEARS
W/O. CHANDU, MAKKADA AMSOM DESOM, KOZHIKODE TALUK, PIN - 673 001.

2 N.P. PRABEESH
S/O.CHANDU, AGED 46 YEARS,
MAKKADA AMSOM DESOM, KOZHIKODE TALUK,
PIN - 673 001.

R1 AND R2 BY ADVS.
SHRI.SHYAM PADMAN (SR.)
SHRI.C.M.ANDREWS
SHRI.P.T.MOHANKUMAR
SMT.BOBY M.SEKHAR
SMT.LAYA MARY JOSEPH
SMT. IRENE PARAMEL
SRI.PIYO HAROLD JAIMON
SRI.S. RANJITH, SPL. GP
SRI. K. DENNY DEVASSY, SR.G.P.
SRI.P.B.KRISHNAN, AMICUS CURIAE

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18.06.2025, THE COURT ON 07.07.2025 DELIVERED THE FOLLOWING:

"C.R"

EASWARAN S., J.

RSA No.436 of 2018

Dated this the 7th day of July, 2025

J U D G M E N T

"***In a daughter, the goddess of prosperity resides always. She is established in her always. A daughter is glorious, endowed with all that is good, to be honoured at the beginning of every good work***."

This verse underscores the revered status of daughters in ancient Indian society, likening them to Lakshmi, the goddess of wealth and prosperity.

The 'Skanda purana' Chapter 23 Verse 46 -depicts the importance of a daughter in our society.

दशपुत्रसमा कन्या दशपुत्रान्प्रवर्ध्दयन्।

यत्फलं लभते मर्त्यस्तल्लभ्यं कन्ययैकया॥

Meaning thereby, 'One daughter is equal to ten sons. Whatever phala (merits, good results) a person attains by siring and upbringing ten sons, the same phala is attained by begetting a single daughter'.

The statement, however, does not always stand as a true reflection of a daughter's right when it comes to the right of inheritance to her father's property. In the ancient customary law like "Mitakshara Law" daughters are not entitled to any right by birth on the ancestorial property. When the Hindu Succession Act, 1956 was enacted, the position was the same. However, the law underwent a radical change when the Parliament enacted the Hindu Succession (Amendment) Act, 2005. However, in State of Kerala, we are faced with a peculiar situation wherein the Kerala Joint Family System (Abolition) Act, 1975 stands in the way of a daughter claiming the benefit of Hindu Succession (Amendment) Act, 2005. This Court is called upon to pronounce its views on certain intricate questions including the question of repugnancy of Kerala Joint family System(Abolition) Act 1975 *qua* the Hindu Succession (Amendment) Act 2005

Facts of the case

The plaintiffs in OS No.231 of 2009 on the files of the Third Addl. Sub Court, Kozhikode, a suit for partition, against the concurrent non-suit by the trial court, have come up before this Court raising the questions of substantial importance. The plaintiffs and defendant No.3 are siblings born out of the

wedlock of defendants 1 and 2. The plaint schedule properties originally belonged to one Nambidi Parambath Tharawad by a registered deed. The properties of the Tarvad were partitioned among its then members, including the 1st defendant. The plaint schedule properties with certain other items were allotted to the 1st defendant and on behalf of his branch. The 2nd defendant being his wife has no right over the plaint schedule properties, except maintenance. It is contended that after the Hindu Succession (Amendment) Act, 2005, the plaintiffs being the daughters of the deceased 1st defendant are also entitled to equal share in the plaint schedule property. Though the 1st defendant had executed a Will, he does not have a right to bequeath the properties in favour of the 3rd defendant Son. Thus, the Will is valid only to the extent of the share, the 1st defendant inherited over the property which was allotted to him as per the registered partition deed.

2. The defendants entered appearance and contested the case. The 1st defendant, who was alive at the time of filing of the suit, stated that he was in sound mind and the Will which was in question was executed by him. It was further contended that since the plaintiffs were married away by spending his own money, they are not entitled for partition. The 3rd defendant supported the

1st defendant. On behalf of the plaintiffs, Exts.A1 to A3 were marked and PW1 was examined and on behalf of the defendants, Exts.B1 to B19 were marked and DW1 and DW2 were examined. Based on the rival contentions, the following issues were framed by the trial court:

> "1. Whether plaint schedule properties are co-ownership properties available for partition?
> 2. Whether plaintiffs have got any form of right over plaint schedule property?
> 3. Whether plaintiffs' right if any is lost by adverse possession and ouster?
> 4. Whether plaintiffs have got any cause of action?
> 5. Whether plaintiffs are entitled to the reliefs sought?
> 6. Reliefs and costs?"

3. The trial court, on appreciation of the oral and documentary evidence, found that the Will is genuine and that it was executed by the 1st defendant and, therefore, dismissed the suit. On appeal by the plaintiffs, the first appellate court found that the Will bequeathing the entire extent of the plaint schedule property in favour of the 3rd defendant is not valid, inasmuch as the 1st defendant had only a fractional share over the property, since by the time the

Will was executed, the 3rd defendant was born into the family prior to the promulgation of the Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976]. Accordingly, the first appellate court passed a preliminary decree for partition dividing the plaint B schedule property item Nos.1, 3 and 4 and allotting the plaintiffs 1/12th share each in it. Insofar as item No.2 property is concerned, it was held as not partible. Aggrieved by the aforesaid finding that the plaintiffs have approached this Court in the appeal raising the following substantial questions of law:

i. **Whether the plaintiffs, being a female members can claim right over the plaint schedule property as a coparcener along with the 2nd respondent, male member in view of the Hindu Succession (Amendment) Act, 2005 in view of the decision of the Hon'ble Supreme Court in Vineeta Sharma v. Rakesh Sharma and Others (2020) 9 SCC 1 ?**

ii. **Whether after the promulgation of the Hindu Succession (Amendment) Act, 2005, the Kerala Joint Hindu Family System (Abolition) Act, 1975, will survive rigour of Article 254 (1) of the Constitution of India.**

4. Heard Sri.Nirmal S., the learned counsel for the

appellants/plaintiffs, Sri.Shyam Padman, the learned Senior Counsel assisted by Smt.Laya Mary Joseph on behalf of the respondents; Sri.S.Renjith, the learned Special Government Pleader to AAG appearing on behalf of the State, and Sri.P.B.Krishnan, the learned Senior Counsel appointed as *Amicus Curiae* by this Court.

Submissions of behalf of the Appellants

5. Sri.Nirmal S., the learned counsel for the appellants, raised the following submissions:

(a) The Hindu Succession (Amendment) Act, 2005 [Act 39 of 2005] confers a right by birth on female Hindus on and from the appointed date as 20.12.2004. Under sub-Section (3) of Section 6 of the Hindu Succession (Amendment) Act, 2005 recognizes the right of the female Hindus and provides that on or from the commencement of the Act 39 of 2005, the interest of a Hindu in a joint family property shall devolve by testamentary or intestate succession under this Act and not by survivorship. With reference to clause (a), it is contended that the daughters are also allotted the same share as is allotted to a son.

(b) The Kerala Joint Hindu Family System (Abolition) Act, 1975

[hereinafter referred to as 'Act 30 of 1976', for short] no longer survives in the light of the amendment caused by Act 39 of 2005. The apparent conflict between Act 30 of 1976 and Act 39 of 2005 is so evident that, it is impossible for the court to reconcile the provisions of both the Acts. Section 3 of Act 30 of 1976, the State Act, abolishes any right by birth, whereas Act 39 of 2005, the Central Act, recognizes and re-affirms the said right. It is further pointed out that under Section 4(1) of Act 30 of 1976, a deemed partition is stated to have taken place among the members of a joint Hindu family, and they form as tenants-in-common. However, under Act 39 of 2005, the said method of partition is not recognized.

(c) The Division Bench of this Court in WP(C) No.17530/2020 observed that, the impact of the decision of the Supreme Court in **Vineeta Sharma v. Rakesh Sharma and Others [(2020) 9 SCC 1]** should be independently considered in the context of the changes in law as regards the rights of the daughters concerned and the implications of this decision on the facts and circumstances of each case, and thus the second appeal was de-tagged from the public interest litigation pending before the Division Bench and is now posted before this Court. Therefore, the decision of the Supreme Court in

Vineeta Sharma (*supra*) requires to be elaborately dealt with by this Court to find out as to whether the conflict between Act 30 of 1976 and Act 39 of 2005 could be reconciled and if not, what would be the resultant position.

(d) The intention of the Parliament to bring the amendment to Section 6 of the Hindu Succession Act, 1956 has been elaborately dealt with by the Parliament, which is evident from the speech given by the Minister of Law and Justice on 29.8.2005, when the amendment was tabled before the Parliament. The cabinet notes which preceded the tabling of the bill before the Parliament would clearly show that the Central Government was aware of the Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976] and its implications on the State. Despite this, the Central Government chose consciously to enact the changes to the Hindu Succession Act, 1956 thereby giving a clear indication that the provisions of Act 30 of 1976 were required to be superseded.

Submissions of behalf of the respondents

6. Sri.Shyam Padman, the learned Senior Counsel appearing on behalf of the respondents/defendants, would counter the submissions of the learned counsel for the appellants by raising the following submissions:

(i) Act 39 of 2005 will not apply to the State of Kerala, since there is no joint family in the State consequent to the promulgation of the Act 30 of 1976. In support of his contention, relied on the decisions of the Single Bench in **Babu v. Ayillalath Arunapriya [2012 (4) KHC 445]** and **Kali Ammal & Another v. Valliyammal & Others [2016 (5) KHC 332].** The Constitutional validity of the Act 30 of 1976 is upheld by the Full Bench of this Court in **Chellamma Kamalamma vs Narayana Pillai J [1993 KHC 35]** and therefore, the amendment brought to the Hindu Succession Act, 1956 will not affect the operation of the Act 30 of 1976. According to the learned Senior Counsel, the Presidential Assent to Act 30 of 1976 makes it a stand-alone Act qua the Hindu Succession (Amendment) Act, 2005 [Act 39 of 2005].

(ii) From 01.12.1976, which is the cut-off date mentioned in Act 30 of 1976, a deemed partition takes place on the joint family properties in the State of Kerala and the joint tenancy is replaced as tenancy-in-common with each of the sharers holding the share separately as full owners. From the date of coming into force of the State Act, a statutory abrogation of the joint family system takes place in the State and therefore the amendment

to the Hindu Succession Act, 1956 will not affect the joint Hindu family properties in the State of Kerala.

(iii) Section 6(3) cannot be interpreted in a manner, undoing the effects of Section 4 of the State enactment. There is nothing in the Act 39 of 2005, which gives an indication that the Parliament wanted to unseat the effect of operation of Section 4 of the Act 30 of 1976. Referring to the statement of objects to the Amending Act, it is contended that the Statutory Partition is protected under Section 6(1) of the Act 39 of 2005.

(iv) From 1.12.1976 onwards, there is no coparcenary property in the State of Kerala due to the operation of the Act 30 of 1976.

(v) Section 6(3) of the Act 39 of 2005 will apply to a coparcenary property governed by Mitakshara law. In the absence of any coparcenary property in the State, Section 6(3) will not apply and that is precisely the reason why the Parliament did not intend to make the aforesaid provision operative in the State of Kerala.

(vi) There is no repugnancy between the State enactment and the Central enactment, since the State enactment had received the assent of the President on 10.8.1976.

(vii) Going by the terms of Ext A 1 partition deed, the property was allotted to the share of 1st defendant and thus, it partakes the character of a self-acquired property as far as the 1st defendant is concerned. In view of Act 30 of 1976, the Will executed by the 1st defendant in favour of the 3rd defendant will survive and therefore, there cannot be any intestate succession after the promulgation of the Act 39 of 2005. In support of his contention, relied on the decision of the Supreme Court in **Angadi Chandranna v. Shankar and Others [2025 SCC Online 877].**

(viii) Going by the decision of the Supreme Court in **R.Balakrishna Warrier v. Santha Varassiar and Another [(1996) 11 SCC 50**0], the concept of tarvad has become extinct by virtue of Act 30 of 1976 and therefore, the Act 39 of 2005 cannot have any application to the State. It is further pointed out going by the decision of rendered by two different benches of co-equal strength, Act 39 of 2005 is held to be not applicable to the State of Kerala and therefore, in case this court doubts the decision the matter requires consideration by a Larger Bench.

(ix) The decision of the Supreme Court in **Vineeta Sharma** (*supra*) has not touched upon the, abrogation of rights by operation of a statute.

Therefore, the interpretation placed by the Supreme Court to sub-Section (5) of Section 6 of Act 39 of 2005 will not be of much consequence because there is a sea of difference as regards a deemed partition and a statutory partition. The testamentary succession is recognised under Section 30 of the Hindu Succession Act and therefore, the Will has to take effect in its entirety.

(x) It is further argued by the Learned Senior Counsel for the respondents that the appellants have failed to discharge that the plaint schedule property is a joint family property.

Reply by the appellants

7. In reply, Sri.S.Nirmal, the learned counsel appearing for the appellants, would contend that the argument raised as regards the statutory partition being affected by Section 4 has no sanctity, inasmuch as the Supreme Court in **Vineeta Sharma** (*supra*) has clearly refused to recognize the said mode of partition. Moreover, it is contended that in an appeal preferred by the plaintiffs before the first appellate court, the first appellate court had categorically found that the Will executed by the late father of the plaintiffs - the 1st defendant, is not absolute, inasmuch as the 3rd defendant was born at the

time of execution of the Will and, therefore, the 1st defendant and the 3rd defendant take equal right over the property. No appeal is preferred by the defendants against the said finding and, therefore, in a suit for partition, a preliminary decree being declaration of rights as provided under Order-XX Rule-18 of the Code of Civil Procedure, 1908, unless otherwise it is questioned in an appropriate appeal, the contention of the defendants that the testamentary succession has to be upheld, cannot be accepted. It is further contended that going by the decision of the Supreme Court in **N.V.Narendranath v. Commissioner of Wealth Tax, Andhra Pradesh [(1969) 1 SCC 748**], the Supreme Court has recognized the concept of a single coparcenary and, therefore, the contentions to the contrary are untenable.

Submissions of Amicus Curiae

8. Sri.P.B.Krishnan, the learned Senior Counsel as *Amicus Curiae*, raised the following submissions:

(1) Act 30 of 1976 is in direct conflict with the Central Act, in view of an apparent conflict between Sections 3 and 4 of the State Act with that of sub-Sections (1), (3) and (5) of Section 6 of the Act 39 of 2005 (Central Act).

(2) Though the State Act is titled as the Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976], there is no provision under the Act which abolishes the joint family system in the State of Kerala. The Preamble of the Act and the Headnote cannot control the provisions of the Act and, therefore, in the absence of any specific provision under the State enactment, which abolishes the joint family system, it must be construed that the joint family system still exists in the State of Kerala. In support of his contentions, relied on the decision of the Supreme Court in **Raichurmatham Prabhakar and Another v. Rawatmal Dugar [(2004) 4 SCC 766**].

(3) The findings rendered by the learned Single Judge in **Kali Ammal** (*supra*) and **Ayillalath Arunapriya** (*supra*) are no longer good law, in view of the pronouncement of the Supreme Court in **Vineeta Sharma** (*supra*). In terms of Article-141 of the Constitution of India, the law declared by the Supreme Court must be applied and, therefore, notwithstanding the law laid down by the Single Bench of this Court, the decision of the Supreme Court in **Vineeta Sharma** (*supra*) has to prevail.

(4) The continuation of the joint family system among Hindus in the State cannot be said to be abolished by virtue of Act 30 of 1976, in view of the decisions of this Court in **Sreedharan Nair v. State of Kerala [2002 (3) KLT 307]** and **Krishnakumar v. Cochin Devaswom Board [2012 (3) KLT SN 39]** and **Sathi Devi v. Uma [2017 (2) KLT 113]**.

(5) The receipt of the Presidential assent to Act 30 of 1976 is of no consequences, because when the Parliament amended Hindu Succession Act in the year 2005, it was conscious about the existence of Act 30 of 1976 and, therefore, the State ought to have made necessary amendments to the provisions of Act 30 of 1976 and should have obtained Presidential assent for the same. The Presidential assent obtained for the Act 30 of 1976 would apply only to the unamended provisions of Section 6 of the Hindu Succession Act.

(6) Only those transactions which are effected by a registered document after coming into force of the Act 30 of 1976 are saved under the provisions of sub-Section (4) of Section 6 and, therefore, there is a clear case of conflict, which would require this Court to apply Article

254(2) of the Constitution of India.

Submissions on behalf of the State of Kerala.

9. The learned Special Government Pleader to Advocate General , Sri.S.Renjith, who was required to address this Court on the question as to whether the provisions of the Act 30 of 1976 stands in conflict with the Act 39 of 2005, would contend that both the enactments are intended to operate on different fields altogether. According to the learned Special Government Pleader, Section 4 of the State Act recognizes a deemed partition over the joint family properties in the State of Kerala. However, the parties are further required to execute a registered document in order to get the protection of Sub Section 5 of Section 6 of the Act 39 of 2005. The repugnancy between the Hindu Succession Act, 1956 as it stood then and also the Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976] was considered by a Full Bench of this Court in Chellamma Kamalamma (supra) and the Full Bench of this Court has categorically held that State Act was framed under Entry-5 "Joint Family" of List-III of the Seventh Schedule of the Constitution of India, whereas the Hindu Succession Act is framed by the Parliament in exercise of the powers under Entry- 5 of List-III. Thus, both the Acts are intended to

operate in different fields altogether. In support of his contentions, relied on the decisions of the Supreme Court in **Gopalakrishnan C.S. etc. v. State of Tamil Nadu [2023 SCC Online SC 598]** and **Annamma K.A. v. Secretary, Cochin Co-operative Hospital Society Ltd. [(2018) 2 SCC 729].**

10. I have considered the rival submissions raised across the bar and have perused the judgments of the trial court and the records of the case.

Judicial Evaluation

A. History of the Hindu Succession Act, 1956

11. Before going into the intricate questions of law which have presented itself before this Court, it is necessary for this Court to consider the history of the Hindu Succession Act. The Statement of Objects and Reasons of the Hindu Succession Act reveals the intention of the Parliament to bring the aforesaid Act as a third installment of the Hindu Code, seeking to amend and codify the law relating to intestate succession. The draft provisions of the instate succession contained in the Rau Committee's Bill underwent substantial changes in the hands of the Select Committee which considered the Rau Committee's Bill in 1948. The Bill largely follows the scheme adopted by the Select Committee, but considers the various suggestions made from time to time

for the amendment of the Select Committee's version of the Bill. Special provisions have been included for regulating succession to the property of interstates governed by Marumakkathayam, Aliyasanthana or Nambudri Laws of inheritance. Section 6 of the Hindu Succession Act prior to the amendment reads as under:

> 6. Devolution of interest in coparcenary property,-
>
> When a male Hindu dies after the commencement of this Act, , having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :
>
> Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.
>
> *Explanation 1*.—For the purpose of this section the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.
>
> *Explanation 2*.—Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the cparcenary before the death of the deceased or any

of his heirs to claim on intestacy a share in the interest referred to therein.

12. Explanation-1 to the proviso to Section 6 provides that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. The proviso makes it clear that on and from the appointed day, the succession will be by interstate and not by survivorship, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative. Thus, the effect of Section 6 as noticed from Explanation-1 to the proviso is that a notional partition takes place among the joint family on the coming into force of the Act.

12.1 Section 23 of the Act provides for special provisions for dwelling houses. Section 23 of the Act reads as under

"**23- Special provision respecting dwelling- houses:**

Where a Hindu intestate has left surviving him or her both male and female heirs specified in Class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this

> Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein :
>
> Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

Although the right of a female heir to claim right on the death of her father was reserved to her by virtue of special provision under Section 23, the right to claim over the coparcenary property was not reserved under Section 6, though under proviso to Section 6, a female Hindu was entitled to claim the intestate succession under Section 8. It was easy to defeat her claim by executing documents providing testamentary succession or by executing partition deeds. Be that as it may, though the concept of inheritance over coparcenary property was recognised, the female heir was never considered eligible for inheritance by survivorship.

B. History of the Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976]

13. Despite the enactment of the Hindu Succession Act, 1956, the right

of inheritance by survivorship continued in Mitakshara Coparcenary. The State of Kerala realized that the said mode of inheritance has no place in the matter of succession to the interest of the member of a Tarwad, Thavazhee, Kudumba, Kavaru or Illom dying after the coming into force of the above Act. Thus a new Act was envisaged towards total abolition of surviving characteristic of Mitakshara families. Therefore, it was felt necessary for a better welfare and progress of Hindu Community. Hence, the Government of Kerala found that even after a quarter of century after the Central Government took steps to pass the Hindu Succession Act 1956, it could not bring any legislation for the abolition of the Doctrine of Right by Birth. Even after reorganization of the princely states and formation of the State of Kerala, various local laws continue to govern the system of succession among the persons following the joint family system. The State of Kerala decided to put an end to the operation of different local laws governing the succession and decided to introduce changes for a better welfare and progress of the Hindu community. Finding that no manager of a Hindu Undivided Family or Karnavan of a Namboothiri Illom or of a Marumakkathayam Tharavad has full right of alienation and continues to be governed by the dictum of the Judicial Committee of the Privy Council in

Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree [1856 SCC OnLine PC 7 : (1854-57) 6 Moo IA 393]. The State decided to promulgate Act 30 of 1976, more particularly because of the operation of Section 6 of the Hindu Succession Act, 1956. The Select Committee to which the Kerala Joint Hindu Family System (Abolition) Act Bill, 1973 was referred, had considered the Bill clause by clause and recommended the Bill to be passed without any changes to it. The State believed that with the abolition of the doctrine of right by birth the members in Hindu Joint Families, Namboothiri Illoms and Marumakkathayam Tharavads become absolute owners of their share, regarding which they are free to do anything. The result would be after the appointed day, a Hindu is competent to settle his properties by partition settlement or will not on the principle of equality, but on the more just and equitable human consideration of the necessity of each one of his descendants. By the enactment, the State intended to repeal eleven enactments which were in force governing the succession in the State of Kerala. They are given below:

. The Madras Marumakkathayam Act, 1932 (XXII of 1933)
. The Madras Aliyasanthana Act, 1949 (IX of 1949)
. The Travancore Nayar Act, II of 1100
. The Travancore Ezhava Act, III of 1100
. The Nanjinad Vellala Act of 1101 (VI of 1101).

. The Travancore Kshatriya Act of 1108 (VII of 1108).
. The Travancore Krishnavaka Marumakkathayee Act, (VII of 1115).
. The cochin Thiyya Act (VIII of 1107)
. The Cochin Makkathayam Thiyya Act (XXII of 1115)
. The Cochin Nayar Act (XXIX of 1113)
. The Cochin Marumakkathayam Act (XXXIII of 1113)
. The Kerala Namboodiri Act (XXVII of 1958)

14. Under Section 3 of the State Act, the right by birth recognised under the Central enactment was no longer available. Section 3 of the Act 30 of 1976 reads as under:

> "3. **Birth in family not to give rise to rights in property**.- On and after the commencement of this Act, no right to claim any interest in any property of an ancestor during his or her lifetime which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court."

The consequences of the abolition of the right by birth under Section 3 is followed under Section 4, which reads as under:

> **"4. Joint tenancy to be replaced by tenancy in common**.-
>
> (1) All members of an undivided Hindu Family governed by the Mitakshara law holding any coparcenary property on the

day this Act comes into force shall, With effect from that day, be deemed to hold it as tenants-in-common as If a partition had taken place among all the members of that undivided Hindu family as respects such property and as if each one of them holding his or her share separately as full owner thereof.

Provided that nothing in this sub-section shall affect the right to maintenance or the right to marriage or funeral expenses out of the coparcenary property or the right to residence, if any of the members of an undivided Hindu family, other than persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Act had not been passed.

(2) All members of a Joint Hindu Family, other than an undivided Hindu family referred to in sub-section (1), holding any joint family property on the day this Act comes Into force, shall, with effect from that day be deemed to hold 1t as tenants-in-common, as if a partition of such property per capita had taken place among all the members of the family living on the day aforesaid, whether such members were entitled to claim such partition or not under the law applicable to them, and as if each one of the members is holding his or her share separately as full owner thereof."

Section 4, thus provides for a deemed partition consequent to the promulgation

of the Act and makes it clear that the members of the joint family governed by Mitakshara law holding any coparcenary property will become tenants-in-common and will be entitled to hold his or her share separately as a full owner. Therefore, it is said that a notional partition takes place in the joint family. Ultimately, the Act aimed at abolishment of Joint family and Doctrine of right by birth and ended short of abolishment of Joint family.

C. Constitutional validity of the State Act and its effect on the dispute in the present case.

15. It is argued by the Learned Senior counsel for the respondent that, since the constitutional validity of the Act 30 of 1976 is upheld by the Full Bench in **Chellamma Kamalamma VS Narayanaa Pillai J. [1993 KHC 35],** the impact of the Act 39 of 2005 will not be felt in the State of Kerala. In **Chellamma Kamalamma (***supra*), this Court was called upon to decide as to whether the State Act encroached the field occupied of the Central enactment and that, while enacting the State Act, whether the State legislature intended to overreach the realm of law making authority of the Parliament under Entry-5 to List-III of the Seventh Schedule to the Constitution of India. On a detailed consideration on the issues framed, the Full Bench held that both the Hindu

Succession Act, 1956 as well as the Act 30 of 1976 were enacted under Entry-5 of List-III to the Seventh Schedule, the State enactment did not occupy the field relating to 'wills, intestacy and succession', whereas the State framed the enactment under the head 'Joint Family' in Entry-5 List-III of the Seventh Schedule and thus went on to hold that the State enactment is not in conflict with Section 17 of the Hindu Succession Act, 1956.

15.1 When we read Section 17 of the Hindu Succession Act, 1956, we find that, the provision intended to operate as regards the special laws which were prevailing as in the State like Marumakkathayam and Aliyasantana laws. Therefore, one needs to understand the decision rendered by the Full Bench in the context of the questions posed before it. Once the Full Bench of this Court held that State enactment did not intend to touch upon the entries of 'Wills and Intestacy and Succession', it becomes inevitable for this Court to conclude that the constitutional validity of the State enactment was tested upon a different context. Therefore, the decision of the Full Bench cannot be said to be laying down as an absolute proposition, to mean that the Act 30 of 1976 is immune to all challenges. In a given case, where a question of repugnancy of the Act 30 of 1976 *qua* Act 39 of 2005 is raised under Article 254(2) of the Constitution of

India , the decision of the Full Bench upholding the constitutional validity is of no consequence, since the repugnancy of the statue is tested based on well-defined constitutional principles. Therefore, this Court is of the considered view that the decision of the Full Bench of this Court in **Chellamma Kamalamma** (*supra*) will not deter this Court from considering the repugnancy of the enactment.

D. Impact of the Hindu Succession (Amendment) Act, 2005 [Act 39 of 2005]

16. Before proceeding further to answer the question, it is necessary to have an in-depth analysis of the various provisions of the Hindu Succession Act in the year 2005. The substantial changes were brought into Section 6, which is extracted hereunder

> **"6. Devolution of interest in coparcenary property**.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-
>
> (a) by birth become a coparcener in her own right in the same manner as the son;
>
> (b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been

divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter,

as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great- grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act,

2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted

prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a Court.

17. The essence of the amendment is, a daughter of a coparcener is given a right by birth, to become a coparcener in her own a right in the same

manner as the son. Sub-Section (3) provides that after the commencement of the Hindu Succession (Amendment) Act, 2005, the cut-off date being 20.12.2004, when a Hindu dies, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition has taken place and the daughter will take the same share as that of the son. Under sub-Section (4), the pious obligation on a son of the debt incurred by the father is abolished. Under sub-Section (5), the Parliament provided a saving clause to the partition effected before 20.12.2004. The Explanation to sub-Section (5) recognizes a partition effected by execution of a deed and duly registered under the Registration Act, 1908 or partition effected by a decree of a Court alone. Read in cumulative, sub-Sections (1)(a), (3) and the Explanation to sub-Section (5) of Section 6 make it clear that a daughter of a Hindu male is given a right by birth in the joint family property. The amendments brought in would lead to an inference that, when the Parliament decided to confer benefits on a daughter by birth in a joint Hindu family, it intended to continue the joint family system in the country. The Parliament also thought it fit to recognize only two modes of

partition: (a) by execution of a registered document, and (b) by a decree of a court for partition.

18. However, the question whether the parliament was aware of the existence of Hindu Joint Family System(Abolition) Act 1976 when the Hindu Succession Act Amendment Act 2005 was enacted. In order to ascertain this aspect, one needs to understand the circumstances which led to the amendment. The law commission of India in its 174th report noticed that , even after the Hindu Succession Act, 1956 was brought into force, certain States alone recognized the right of a daughter of a coparcener to claim right by birth. However, the States of Kerala and Andhra Pradesh had a different model presented. The background on which the report was framed shows the inequality meted out to daughters since time immemorial of framing of property laws. A woman in Joint Hindu family, consisting of man and woman had a right of sustenance, but the control and ownership of property did not vest in her. The patrilineal system like the Mitakshara School of Hindu Law, a woman was not given a birth right in the family property like son. Quite contrastingly, law commission found that in Dayabhaga School, daughters were given the right by birth. Further down in the report at para 3.3.1. the Law Commission notices the

existence of Kerala Joint Family System (Abolition) Act 1975 and noticed that though the Kerala model abolished the Mitakshara coparcenary, it also abolished Marumakkathayam and Aliyasantana and Nambudiri System which protected matrilineal system of inheritance. It was further noticed that the State enactment fails to protect the share of daughter and widow from being defeated by making a testamentary disposition in favour of another or by alienation. Finally, the law commission recommended suitable amendment to Hindu Succession Act 1956 to protect the gender equality guaranteed under the Constitution. Once the recommendations were received, the central Government deliberated on the report extensively. The Cabinet note made on 29.7.2005 with respect to partition reveals as follows:

> "5.2- In this connection it may be noted that the amendment made in the Hindu Succession Act 1956 by the States of Andhra Pradesh, Karnataka, Maharastra and Tamil Nadu and the Kerala Joint Hindu Family System (Abolition) Act, 1975 will be superseded by any subsequent Central enactment containing provisions to the contrary as the central legislation will prevail over the State enactments by virtue of operation of doctrine of repugnancy enunciated in Article 254 of Constitution."

19. Normally, this Court would not have undertaken the exercise of ascertaining the intention behind the introduction of the 2005 amendment. However, since the respondents assert before this Court that even after the introduction of the Hindu Succession (Amendment) Act, 2005, the Act 30 of 1976 remains unaffected, it was felt a deeper analysis was required to weed out any doubt as regards the true purport behind the amendment.

20. As normal rule of interpretation of statutes, the court will not look around the Statute to find out the true intention of the legislature. However, in case of ambiguity, certain external tools may be resorted to. One such tool of interpretation is the parliamentary debates and speeches of ministers. Though the debates in the Parliament, and the minister's speech cannot be used as a direct tool to interpret the statues in the absence of any ambiguity, nothing precludes the court from looking into the debates in the Parliament and into the speeches of the minister to find out the real reason behind the enactment. This, in turn enables the court to understand the true objects of the statute. When the courts are called upon to interpret a statute, the preliminary assumption is that Parliament will not legislate unnecessarily.

21. In **Dharani Sugars and Chemicals Limited Vs Union of India**

[(2019) 5 SCC 480] when the supreme Court was called upon to interpret Section 35AA of the Banking Regulation Act 1949, the speech made by the Finance Minister in the Parliament was used to ascertain the intention behind the introduction of the provision.

22. In **Mandvi Cooperative Bank Limited Vs Nimesh B Thakore [(2010) 3 SCC 83]**, the Supreme Court while considering the impact of Section 145 of the Negotiable Instruments Act 1881 relied on to the speech of the finance minister in the parliament to ascertain the true intention behind the introduction of the special provisions relating to trial of cases under Section 145.

23. While answering the motion for consideration of the Hindu Succession Amendment Bill, 2005 tabled before the 14th Lok Sabha on 29.8.2005, the Minister for Law and Justice stated before the Parliament that, though Articles 14 and 15 of the Constitution of India, prohibits discrimination on the ground of gender, the State of Kerala by enacting Act 30 of 1976, has totally abolished the right by birth of males and put an end to the joint family system instead of tinkering with the coparcenary, and by this Bill the Parliament intended to amend Section 6 to enable devolution of interest in coparcenary property to the daughters both married and unmarried, and also omitting Section

4(2) of the Act read with Sections 23 and 24 to give effect to the removal of gender bias. Thus, it is evident that Parliament intended to enact Act 39 of 2005, acknowledging the existence of Act 30 of 1976. In the concluding portion of his speech, Minister of Law and Justice, it stated that the Act intended to bring about an extinct on the discrimination meted out to women. Therefore, this Court has no hesitation to conclude that when the Act 39 of 2005 was enacted, the Parliament intended the Act to occupy the field of 'succession' and 'joint family' under Entry-5 of List-III Seventh Schedule. Therefore, even if we were to assume that the Act 30 of 1976 enacted by the State of Kerala intended to occupy the field of 'joint family', immediately on introduction of Act 39 of 2005 , it governs both 'succession' and 'joint family' since without the other, amendment will not serve purpose.

E. The impact of the decisions of this Court in Babu v. Ayillalath Arunapriya [2012 (4) KHC 445] and Kali Ammal & Another v. Valliyammal & Others [2016 (5) KHC 332]

24. Though rendered in different contexts, both these decisions to some extent has touched upon the amendment to the Hindu Succession Act by Act 39 of 2005, but failed short of considering the issues in form presented before this Court.

25. In **Babu v. Ayillalath Arunapriya [2012 (4) KHC 445]** a Single Bench of this Court held that, as on the day on which the Act 39 of 2005 came into force, there is no coparcenary property existing in the State of Kerala because of Act 30 of 1976. The learned Single Judge held that the Amendment Act (Act 39 of 2005) had no effect to the State of Kerala because of the abolishment of the coparcenary property and the Joint Hindu Family.

26. In **Kali Ammal & Another v. Valliyammal & Others [2016 (5) KHC 332]** another learned Single Bench of this Court held that by virtue of the provisions of the Act 30 of 1976, a notional partition has taken effect on the date of commencement of the Act and, therefore, no joint family survived thereafter. By a legal fiction, all Hindu joint families that existed in any form as mentioned therein stood disrupted by the statutory provision, and therefore, there is no question of any Hindu joint family continuing and, so much so, there can be no question of anyone claiming a right by birth.

27. If this Court, entertains doubt regarding the sustainability of these two decisions, then the judicial propriety demands that the matter be referred before the Larger Bench. But the discussions at bar, has led to certain interesting aspects. The Learned Judges while deciding Ayillalath Arunapriya (supra) and

Kali Ammal (supra) formed an opinion that the Joint Family System(Abolition) Act 1975, abolished the Joint Family System in the State of Kerala. But, did the Act actually abolish the joint family system in the State? On a reading of the provisions of Act 30 of 1976, it indicates that there exists no provision under the statue which abolishes the Joint family system in the state. It is true that, the heading and the preamble of the Act shows the object which the Act intended to achieve. Heading prefixed to the sections or entries cannot control the plain word of the provisions. It is not an unusual fact that the heading fails to refer to all the matter which the framers of the section wrote into the text. The heading is but a shorthand reference to the general subject -matter involved. If the language of the Section is clear, heading are not to be taken into consideration. No doubt, headings in the body of an Act are of some help in clearing up obscurities when there an ambiguity, but they cannot control the provisions of the Section when they are unambiguous and clear.

28. In **Raichurmatham Prabhakar and Another v. Rawatmal Dugar [(2004) 4 SCC 766]** Supreme Court, held that the headings or titles prefixed to the Section or group of Sections cannot control the main enactment and in case of conflict between the plain language of the provisions and meaning of the

headnote or title, the heading or title would not control the meaning, which is clearly and plainly discernible from the language of the provisions thereunder.

29. It is indisputable that none of the provisions of Kerala Joint Family System (Abolition) Act, 1975 expressly abolishes the joint family system in the State of Kerala stood abolished. At any rate, Sections 3 and 4, do not indicate that, the joint family system stood abolished in the State of Kerala. This aspect has not been noticed by this court in the above decisions.

30. In **Sreedharan Nair v. State of Kerala [2002 (3) KLT 307],** while considering the impact of Rule 10 of the Viruthi Services Rules, a learned Single Bench of this Court found that though the Preamble of the Act showed the intention of the legislature to abolish the joint family system among Hindus, the Act confined itself towards abolishment of right by birth and a deemed partition. Though on appeal by the respondent, a Division Bench of this in Saraswathy Vs Sreedharan Nair 2010(2) KLT 925, reversed the decision of the Learned Single Judge, the same was on another point.

31. In **Krishnakumar v. Cochin Devaswom Board [2012 (3) KLT SN 39],** a learned Single Judge of this Court was again called upon to decide this issue and it was held that notwithstanding the abolition of Act 30 of 1976,

joint family remains and rights of the members of the joint family was converted into tenants-in-common as the partition took place on the commencement of the Act.

32. In **Sathi Devi v. Uma [2017 (2) KLT 113],** another learned Single Bench of this Court held that notwithstanding Act 30 of 1976, the joint family will remain with all its incidents even after the notional partition under Section 4(1) of the Act. While holding so, the Learned Judge relied on the decision of the Supreme court in **Gurupad Khandappa Magdum Vs Hirabai Khandappa Magdum & ors (1978) 3 SCC 383** wherein it was held that even on a notional partition under Section 6 of the Hindu Succession Act 1956, the joint status of the family is not lost.

33. It follows that, the Act 30 of 1976 though intended to abolish joint family system in the State of Kerala did not actually do so. When **Ayillalath Arunapriya (supra) and Kali Ammal (supra)** were decided, this court did not notice the binding decisions of the Supreme Court and the decision of bench of co-equal strength or the infirmity noticed by this court in Act 30 of 1976. Resultantly, this court holds that aforesaid decisions cannot be said to lay down the correct principles of law and thus enabling this Court to proceed with the

consideration of the core issue in the appeal on merits.

F. Impact of the Supreme Court decision in Vineeta Sharma v. Rakesh Sharma and Others [(2020) 9 SCC 1]

34. A public interest litigation in the form of WP(C) No.17350 of 2020 came to be filed before this Court, raising a similar issue as now been raised in this appeal. Finding that the writ petition is pending, this Regular Second Appeal was also tagged with the writ petition. However, a Division Bench of this Court by judgment dated 19.02.2025 closed the writ petition requiring the respective parties to agitate the cause based on the decision of the Supreme Court. In the light of the decision of the Division Bench in WP(C) No.17530/2020, this second appeal which was initially tagged along with the public interest litigation, has been de-tagged and placed before this Court, and therefore, it becomes inevitable for this Court to decide the impact of the decision of the Supreme Court **Vineeta Sharma v. Rakesh Sharma and Others [(2020) 9 SCC 1**)

35. A brief narration of the circumstances which led to pronouncement of the decision in **Vineeta Sharma** (*supra*) is required before proceeding further. After the commencement of the Hindu Succession Act, there were two

conflicting decisions of the Supreme Court which necessitated the reference before the Full Bench. The first decision is in **Prakash & Ors v. Phulavati & Ors [2016 (2) SCC 36]** and the second is **Danamma @ Suman Surpur & Anr v. Amar & Ors [(2018) 3 SCC 343**]. A Division Bench of the Supreme Court in **Phulavati** (*supra*) held that Section 6 is not retrospective in operation, and it applies when both coparcener and his daughter were alive on the date of commencement of the Amendment Act, i.e. 9.9.2005. The notional partition is deemed to have taken place, to ascertain the share of the deceased coparcener which is not covered either under the proviso to Section 6(1) or Section 6(5), including its Explanation. The requirement of registration is inapplicable to the partition of property by operation of law, and therefore, Section 6 can only be held to be prospective in nature. Whereas, in **Danamma** (*supra*), a subsequent Division Bench of the Supreme Court held that the provisions of Section 6 confer full rights upon the daughter coparcener. While resolving the conflict, the supreme court in **Vineeta Sharma** (*supra*) held as follows.

> "**63. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been**

recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Section 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).

64. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment

and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

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73. It was vehemently argued that if the daughter is given the right to be a coparcener by birth and deemed to become a coparcener at any point in the past, in the normal working of the law, uncertainty would be caused. In our opinion, no uncertainty is brought about by the provisions of Section 6 as the law of Mitakshara coparcenary makes the share of surviving coparceners uncertain till actual partition takes place. Uncertainty in the right of share in a Mitakshara coparcenary is inhered in its underlying

principles, and there is no question of upturning it when the daughter is treated like a son and is given the right by birth; to be exercised from a particular date, i.e., 9.9.2005. It is not to resurrect the past but recognising an antecedent event for conferral of rights, prospectively. There is no doubt about it that advancement brings about the enlargement of the size of the coparcenary and disabling it from treating the daughter unequally. Even otherwise, its size could be enlarged by the birth of a son also. By applying Section 8, the joint possession was not repudiated by the fact that a female, whether a wife or daughter, inherited the share of coparcener under the proviso to original Section 6. She was an equal member of the joint Hindu family and deemed statutory partition did not bring disruption of the coparcenary.

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75. A finding has been recorded in Prakash v. Phulavati that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary

to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in Prakash v. Phulavati. In our opinion, the daughters should be living on 9.9.2005. In substituted Section 6, the expression 'daughter of a living coparcener' has not been used. Right is given under Section 6 (1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9.9.2005 and as provided in Section 6 (1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6 (1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9.9.2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part.

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109. The Cabinet note made on 29.7.2005 with respect to 'partition' is quoted hereunder:

> **"5.2 In this connection it may be noted that the amendments made in the Hindu Succession Act, 1956 by the States of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu and the Kerala Joint Hindu Family System (Abolition) Act, 1975 will be superseded by any subsequent Central enactment containing provisions to the contrary as the Central legislation will prevail over the State enactments by virtue of operation of doctrine of repugnancy enunciated in Article 254 of the Constitution. Innumerable settled transactions and partitions which have taken place hitherto will also become disturbed by the proposed course of action. Further, there could be heartburning from the majority of the Hindu population. In the circumstances, it is proposed that we may remove the distinction between married and unmarried daughters and at the same time clearly lay down that alienation or disposition of property made at any time before the 20th day of December, 2004, that is, the date on which the Hindu Succession**

(Amendment) Bill, 2004 was introduced in the Rajya Sabha will not be affected or invalidated. Consequential changes are also suggested in sub-section (5) of proposed Section 6."

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127. A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence,

may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defense is taken, the Court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intendment of Explanation to section 6(5). It has to be remembered that

courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.

128. The expression used in Explanation to Section 6(5) 'partition effected by a decree of a court' would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by Court. Even if partition is supported by a registered document it is necessary to prove it had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final decree of a court. In case partition, in fact, had been worked out finally

in toto as if it would have been carried out in the same manner as if affected by a decree of a court, it can be recognized, not otherwise. A partition made by execution of deed duly registered under the Registration Act, 1908 , also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of Section 6(5) conferring rights on a daughter. There is a clear legislative departure with respect to proof of partition which prevailed earlier; thus, the Court may recognise the other mode of partition in exceptional cases based upon continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of Section 6(5) and its Explanation.

129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th

day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of ClassI as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition

> **is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."**

36. Thus, the Supreme Court held that, there is a clear legislative departure with regard to the proof of partition and only in exceptional cases, the courts are to recognise any other mode other than which is mentioned under the Explanation to sub-Section (5) of Section 6. The impact of the decision of the Supreme Court is having far reaching consequence so far as the State of Kerala is concerned. Going by the decision of the Supreme Court, Section 6 will have to be given full effect to. The categoric finding rendered by the Supreme Court so far as exclusion of any other mode of partition other than execution of a registered document and a decree passed by the civil court, will certainly have an impact on the present case, inasmuch as there is no registered document entered between defendants 1 and 3 before coming into force of Act 39 of 2005. In this context, it is worthwhile to mention that the decisions of this Court in **Kali Ammal** (*supra*) and **Ayillalath Arunapriya** (*supra*) proceeded on the assumption that under Section 4 of the Act 30 of 1976, a notional partition is

effected under Section 4. When the subsequent Central legislation does not recognize such a mode of partition, it will be futile for the respondents/defendants to contend that there is a statutory abrogation of the joint family system and the coparcenary property. Still further, a daughter gets a right over the family property by birth. The incidence of accrual of the right is by birth. Therefore, it is immaterial as to whether the Act 39 of 2005 came into effect only from 9-9-2005 with the cut off dated as 20-12-2004. When pitted against Section 3 of the Act 30 of 1976, it appears that there is a conflict with the central Act since it gives right by birth to a daughter which the State Act does not recognize. When Supreme Court in **Vineeta Sharma** (*Supra*) held that Act 39 of 2005 is retroactive, it renders the decision of the court in **Kali Ammal** (*supra*) and **Ayillalath Arunapriya** (*supra*) ineffective, thus eroding its precedential value.

G. Repugnancy under Article 254(1) of the Constitution of India

37. Under the scheme of our Constitution, the Central Government and State Government are given separate powers to legislate on different subject. However, under List III of Seventh Schedule, the Central Government and State Government gets power to legislate on the subjects given. There may be

occasions where both Central and State Government legislate on the same subject thus giving rise to a conflict. This conflict is often resolved by application of Article 254 of the Constitution of India.

38. Article 254 of the Constitution of India reads as under:

> "254**. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**
>
> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause
>
> (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

39. Question of repugnancy under can arise when a law framed by the State Government conflicts with the law framed by the Central Government in the concurrent list. Then Article 254(1) will apply. However, when the Central Government frames the law in the concurrent list on a subject where a State law exists, then to the extent of conflict the central enactment will prevail.

40. No doubt, when a question of repugnancy is raised before the court, it is for the party who is raising the issue to demonstrate the same. Before going into the said question, it is imperative for this court to ascertain how the

repugnancy arise. The question of repugnancy between the law made by the parliament and the law made by the state legislature may arise in case both the legislations occupy the same field with respect to matters enumerated under List III and when there is a direct conflict between the two.

41. The principles regarding the repugnancy were succinctly stated by the Supreme Court in **Hoechst Pharmaceuticals Vs Union of India [(1983) 4 SCC 45].** In paras 66 and 67 of the judgment read as under.

> "66- This court has considered the question of repugnancy in several cases and in Deep Chand Vs State of U.P [AIR 1959 SC 648] the result of authorities was stated by Subha Rao, J. as follows :
>
> "Nicholas in *Australian Constitution* 2nd edition page. 303 refers to three tests of inconsistency or repugnancy.
>
> *1.There may be inconsistency in actual terms of the competing statutes;*
>
> *2. Though there may be no direct conflict, a state law may be inoperative because, the commonwealth law, or award of the commonwealth court, is intended to be an complete exhaustive code and*
>
> *3. Even in the absence of intention, a conflict may arise when both state and the commonwealth may seek to exercise the power over the subject matter.*
>
> In Tikka Ramji Vs State of U.P. [AIR 1956 SC 676], this Court accepted the above three rules evolved by Nicholas, as useful guide to test the question repugnancy
>
> 67. Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent

List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in clause (1), clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act, will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together: See Zaverbhai Amaidas v. State of Bombay [AIR 1954 SC 752]; M. Karunanidhi v. Union of India [AIR 1979 SC 898] and T. Barai v. Henry Ah Hoe [(1983) 1 SCC 177]."

42. Later, a Constitution Bench of the Supreme Court in **State of West**

Bengal Vs Kesoram Industries Ltd. [(2004) 10 SCC 1] held as follows:

> "Para 31(5)) Where the legislative competence of the legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded."

43. A three bench of the Supreme Court in **Vijay Kumar Sharma VS State of Karnataka [(1990) 2 SCC 562]** was called upon to decide whether there is any conflict between Karnataka Contract Carriage (Acquisition)Act 1976 and Motor Vehicles Act, 1988. In Para 53 of the Judgement, it was held as follows:

> Para 53. The aforesaid review of the authorities makes it clear that whenever repugnancy between the State and Central legislation is alleged, what has to be first examined is whether the

> two legislations cover or relate to the same subject matter. The test for determining the same is the usual one, namely, to find out the dominant intention of the two legislations. If the dominant intention, i.e. the pith and substance of the two legislations is different, they cover different subject matters. If the subject matters covered by the legislations are thus different, then merely because the two legislations refer to some allied or cognate subjects they do not cover the same field. The legislation, to be on the same subject matter must further cover the entire field covered by the other. A provision in one legislation to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation. But such partial coverage of the same area in a different context and to achieve a different purpose does not bring about the repugnancy which is intended to be covered by Article 254(2). Both the legislations must be substantially on the same subject to attract the article."

44. In one of the earliest decisions on the point, a constitution bench of Supreme Court in **A.S.Krishna Vs State of Madras [AIR 1957 SC 297]** considered the scope of Section 107 if the Government of India Act, 1935 which was the Constitution Act in force when a subsequent Act Namely the Madras Prohibition Act 1937 was question. It was held that 'For this section to apply, two conditions must be fulfilled; 1) The provisions of the Provincial laws and those of the central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other.

It is only when both these requirements are satisfied that the provincial law will, to the extent of the repugnancy, falls withing the Provincial List, in which as Section 107 would be inapplicable or is it one which falls within the concurrent list, in which case the further question, whether it is repugnant to the central Legislation will have to be decided?.

45. In **Naeem Bano Vs Mohammas Rahees [2024 Online SCC 3815],** the Supreme Court was called upon to decide the repugnancy between Section 106 of the Transfer of Property Act, 1882 amended w.e.f 31.12.2002 and the State of U.P. Amendment to Section 106 of the T.P.Act. While the central Act provided that a lease is terminable on the part of either lessee or lessor by six month's notice, the State of U.P. Amendment provided only 15 days notice. It was held by the Supreme Court that, the State amendment was in direct conflict with the Central Legislation and clause 2 of Article 254 comes into operation. However, as far as the present case is concerned, the difficulty is how to ascertain under which entry the amendment to Hindu Succession Act, 2005 was introduced.

46. While deciding the question of repugnancy under Article 254(1) of the Constitution of India, courts must ignore the incidental encroachment is any

by the State enactment. Only in a case where, a direct conflict exists, the Central legislation will prevail. In this case, different perspective is presented by both sides on the question of repugnancy of Act 30 of 1976 qua Act 39 of 2005. While the Learned Counsel for the appellant and Learned Amicus Curiae submits that Act 30 of 1976 is in direct conflict with Act 39 of 2005, the Learned Senior Counsel for respondent submits that both the enactment intends to operate on different fields and hence no case of repugnancy is made out.

47. The trust of argument of the learned Senior Counsel for respondents is based on the decision of the Full Bench of this court in **Chellamma** (*supra*). The full bench held that the State enactment is under the head 'joint family', whereas the Central enactment comes under the head 'wills, intestacy, and succession. It is beyond doubt that, both the enactments come under List III. Entry 5 deals with the following subject. "***Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.'***

48. On a cursory look at the Statement of objects of the Hindu Succession

(Amendment) Bill 2004 introduced in the Lok Sabha shows that the Parliament was aware of the existence of the Kerala Joint Family System (Abolition) Act 1975. Statement of Objects and Reasons behind the introduction of the bill reads as under:

" STATEMENT OF OBJECTS AND REASONS"

> The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary

disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakashara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

3. It is proposed to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a

joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.

4. The above proposals are based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".

5. The Bill seeks to achieve the above objects.
NEW DELHI,
The 16th December, 2004"

Read along with the 174th report of the Law Commission, the Statement of objects of the amending act, the speech rendered by the Minister of Law in the parliament, and the entire text of the amendment, it becomes imperative for this court to hold that Act 39 of 2005 intended to govern the field, " succession" and "joint family".

49. Whether the state enactment will survive despite the conflict will largely depend upon how far the provisions of the two Act can be reconciled. On a bare reading of the provisions shows that conflict is irreconcilable. A brief overview on the areas of conflict will show the extent of repugnancy.

Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976]	Hindu Succession (Amendment) Act, 2005 [Act 39 of 2005]
Section 3 : Birth in family not to give rise to rights in property. On and after the commencement of this Act, no right to claim any interest in any property of an ancestor during his or her lifetime With is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court.	Section 6 : Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,- (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in
Section 4 : Joint tenancy to be replaced by tenancy in common. (1) **All members of an undivided Hindu Family governed by the Mitakshara law holding any coparcenary property on the day this Act comes into force shall, With effect from that day, be deemed to hold it as tenants-in-common as If a partition had taken place among all the members of that undivided Hindu family as respects such property and as if each one of them holding his or her share separately as full owner thereof.**	

Provided that nothing in this sub-section shall affect the right to maintenance or the right to marriage or funeral expenses out of the coparcenary property or the right to residence, if any of the members of an undivided Hindu family, other than persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Act had not been passed. (2) **All members of a Joint Hindu Family, other than an undivided Hindu family referred to in sub-section (1), holding any joint family property on the day this Act comes Into force, shall, with effect from that day be deemed to hold 1t as tenants-in-common, as If a partition of such property per capita had taken place among all the members of the family living on the day aforesaid, whether such members were entitled to claim such partition or not under the law applicable to them, and as if each one of the members rs holding his or her share separately as full owner there of**	this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition. (3) **Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-** **(a) the daughter is allotted the same share as is allotted to a son;** (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be. Explanation.- For the purposes of this

	sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. (4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great- grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005

	had not been enacted. Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005. (5) **Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.** **Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.**

50. Thus, the repugnancy in the present case arises out of the very operation of Section 3. The State Act prevents any person from claiming right by birth. But the Central legislation enables a daughter to claim such a right. Section 4 enables the members of the joint family to take respective shares of the family as tenants in common, thereby indicating that there is a deemed partition. Sub-Section (3) of Section 6 gives a clear indication as regards the intention of the Parliament to continue with the joint family system. The State

enactment though recognizes a statutory deemed partition; the Central enactment refuses to recognize any form of partition other than through a registered document or through a final decree passed by the court. Even if the finer nuances as to whether a statutory abrogation of a joint family property takes place by virtue of Section 4 or not is left as such, the moment the operation of Section 3 of the State Act is pitted against Section 6(1) of the Central legislation, there arises an irreconcilable conflict and that the collusion between Section 3 and Section 6 is so evident that in order to give effect to the provisions of Section 6(1) of the Central legislation, the State enactment has to give its way. This is precisely what is imbibed under the doctrine of repugnancy enshrined under Article 254(2) of the Constitution of India.

51. It is however, argued by the learned Special Government Pleader that the repugnancy in the present case does not arise at all in view of the decision of the Supreme Court in **Gopalakrishnan C.S. v. State of Tamil Nadu [2023 SCC OnLine SC 598]**. This Court is afraid that, the decision may not apply to the facts of the present case inasmuch as the Supreme Court was considering the repugnancy in the context of discrimination under Article 14 and also for striking down the enactment of the State. In the present case, there

is no case of discrimination under Article 14 is argued and what is argued is regarding the supremacy of the Central legislature by virtue of the operation of Article 254(2).

52. It is next contended by the learned Special Government Pleader, supporting the arguments of the respondents that by virtue of the Presidential assent obtained on 10.8.1976 for the Act 30 of 1976, it will prevail. No doubt, the Presidential assent would give the Act 30 of 1976 predominance over Section 6 of the Hindu Succession Act, 1956. But, the said presidential assent will not enable the State to claim immunity for the Act 30 of 1976, when a subsequent amendment is brought into the Central legislation by the Parliament. Once the Hindu Succession Act, 1956 was amended by the amending Act 39 of 2005, it was incumbent upon the State legislature to have caused subsequent amendment to the Act 30 of 1976, thereby making sufficient safeguards for the operation of the Act and send the said amendment for the presidential assent in order to save it from repugnancy under Article 254(2). Therefore, as on today, Section 6 as amended by the Parliament by Act 39 of 2005 is the law as far as the State of Kerala is concerned. Since the Act 30 of 1976 has not received the presidential assent qua the Act 39 of 2005, it is inevitable to hold that Section 3

of the Act 30 of 1976 is in collusion caused to Section 6(1) and 6(2) of the Act 39 of 2005 and Section 4 of the Act 30 of 1976 is inconsistent and repugnant to Section 6 of the Amendment Act [Act 39 of 2005].

53. The question as to whether a subsequent amendment to the State legislation, which had earlier received a presidential assent, would render the Act immune to the repugnancy under Article 254 of the Constitution of India was considered by the Supreme Court in ***Annamma K.A. v. Secretary, Cochin Co-operative Hospital Society Ltd. [(2018) 2 SCC 729***]. The Supreme Court considered the question as to whether the Kerala Co-operative Societies Act [1 of 2002] would prevail over the provisions of the Industrial Disputes Act. Paragraph Nos.59, 60 and 61 of the said decision read as under:

> "59. That apart, the amending KCS Act (1 of 2000) having received the Assent of the Governor did not bring about any inconsistency or repugnancy with the provisions of the ID Act. In any event, in the absence of the Assent of the President to the amending KCS Act 1/2000, even if any inconsistency or repugnancy exists between the provisions of the KCS Act and the ID Act, it is the ID Act which will prevail over the KCS Act by virtue of Article 254(1) of the Constitution but not vice-a-versa.
>
> 60. The law in relation to Article 254 of the Constitution and how it is applied in a particular case is fairly well settled by the series of decisions of this Court. This Article is attracted in cases where the law is enacted by the Parliament and the State

> Legislature on the same subject, which falls in List III - Concurrent list.
>
> 61. In such a situation arising in any case, if any inconsistency or/and repugnancy is noticed between the provisions of the Central and the State Act, which has resulted in their direct head on collusion with each other which made it impossible to reconcile both the provisions to remain in operation inasmuch as if one provision is obeyed, the other would be disobeyed, the State Act, if it has received the Assent of the President will prevail over the Central Act in the concerned State by virtue of Article 254 (2) of the Constitution."

Therefore, it becomes evident that the provisions of the Act 30 of 1976 and the amendments caused to the Hindu Succession Act, 1956 by Act 39 of 2005 are in direct conflict and therefore, after the amendment to the Hindu Succession Act, 1956, by Act 39 of 2005, it has to be said, the Act 30 of 1976 has lost its efficacy and will have to cede to the Act 39 of 2005.

54. In this context, it is important for this court to take note of submissions of the Special Government Pleader that, only on execution of a registered partition deed after the notional partition having been effected, the parties will get true benefit of Section 4. The argument is, perfectly in consonance with the intention of the Parliament under sub-Section (5) of Section 6 and also the principles laid down by the Supreme Court in Vineeta

Sharma (supra). The above stands appears to be in tune with the averments in the counter affidavit filed by the State before the Division Bench in WP(C) No.17530/2020. Of course, the State could not have resiled from their stand in the counter affidavit filed before the Division bench in WP No 17530 of 2020 and contend otherwise before this Court in the present appeal. But when the understanding of the author of the legislation, Act 30 of 1976, is made evident before this Court, the argument of the learned Senior Counsel for the respondents that the Amendment Act of 2005 does not affect the statutory partition effected under the Act 30 of 1976 will pale into oblivion. Accordingly, the question of law framed in answered by holding that Kerala Joint family System(Abolition) Act 1975 is in direct conflict with the Hindu Succession (Amendment) Act 2005.

Whether there can be a single coparcener

55. The question assumes significance, in view of the argument of the learned Senior Counsel, Sri.Shyam Padman, that once Ext.A1 partition deed has been executed between the members of the tharavad and the 1st defendant received his share and that he becomes the absolute owner of the property and that there is no concept of single coparcener in the Hindu law, the claim of the

plaintiffs has to be nonsuited. This argument, at first blush, appears to be appealing, but has its own infirmities.

56. In **N.V.Narendranath v. Commissioner of Wealth Tax, Andhra Pradesh [(1969) 1 SCC 748**], the Supreme Court quoting the views of the judicial committee in **Attorney General for Ceylon v. A.R.Arunachalam Chettiar [1957 AC 540]** held as follows:

xxx xxx xxx

> …..“The Judicial Committee observed at page 543 of the Report
>
> ".....though it may be correct to speak of him as the owner', yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality; it is such, too, that female members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so- called ownership, just because the property has been and has not ceased to be joint family property. Once again their Lordships quote from the judgment of Gratiaen, J., (1953) 55 C.N.L.R. 496-501;
>
> > "To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener". To this it may be added that

> it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners".
>
> The Judicial Committee rejected the contention of the appellant that since a single coparcener had full power over the property ,held by him, he must be held to be the absolute owner and observed that fact that he possesses a large power of alienation ".....appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable : that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it and, if he does not alienate it, that is what it remains. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as joint property' of the undivided family."(1) The basis of the decision was that the property which was the joint family property of the Hindu Undivided Family did not cease to be so because of the "temporary reduction of the coparcenary unit to a single individual". The character of the property, viz., that it was the joint property of a Hindu Undivided Family, remained the same.

57. The same principle was reiterated by the Supreme Court in **Gowli Buddanna vs Commissioner Of Income-Tax, Mysore [(1966) 60 ITR 293 : AIR 1966 SC 1523].**

58. In **Rohit Chauhan v. Surinder Singh [(2013) 9 SCC 419],** the

Supreme Court had an occasion to consider the effect of the partition of an ancestral property. The Supreme Court held that though the property received as share in a family partition would be considered as a separate property qua the relatives of the sharer, as soon as he marries and the moment a son is born, the property becomes a coparcenary property, and the son would acquire an interest in that property. The impact of the Act 39 of 2005 was also incidentally considered by the Supreme Court. Para 11 of the decision reads as under:

> "11. ….In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener."

59. However, learned Senior Counsel Sri.Shyam Padman raised different proposition as regards the status of the plaint schedule property at the hands of the 1st defendant. According to the Learned Senior Counsel, the plaint schedule property is a self-acquired property. In support of his contention relied on the decision in **Angadi Chandranna v. Shankar and Others [2025 SCC OnLine SC 877]**, The facts presented before the Supreme Court shows that the property in question was a self-acquired property purchased from the brother of the 1st defendant therein. In fact, the Supreme Court relied on the decision in **Rohit Chauhan** (*supra*), but, since the facts presented before the Supreme Court were quite different, and hence the question was answered in a different way. At any rate, the impact of the Act 39 of 2005, never came up for consideration before the Supreme Court in the said decision nor the impact of **Vineeta Sharma** (*supra*) was considered. Still further, this Court, with all due respect, would conclude that in the light of the decisions of the Larger Bench of the Supreme Court in **N.V.Narendranath** (*supra*) and **Vineeta Sharma** (*supra*), the plaintiffs cannot be denied their right to claim share over the plaint schedule property since there is no concept of single coparcenary in Hindu law.

60. Lastly, it is contended by the learned Senior Counsel for the respondents, Sri.Shyam Padman, that in the light of the decision of the Supreme Court in Har **Naraini Devi and Another v. Union of India and Others [(2022) 18 SCC 470]**, the State enactment is not repugnant to the Central enactment. Reference is made to the observation of the Supreme Court in paragraph 30 of the said decision. Paragraph No.30 reads as under:

> "III. Effect of the judgment given in the case of Vineeta Sharma:
>
> 30. The argument advanced by the learned counsel for the appellants is that the applicability of amendment in Section 6 and the deletion of Section 4(2) from the 1956 Act would have retrospective effect, which is also of no help to the appellants. Once we are holding that succession in the present case with respect to the property in question is governed by the 1954 Act, any amendment even if it has a retrospective effect in the 1956 Act will have no bearing or impact on the provisions of succession governed by the 1954 Act. Moreover, this Court in the judgment of Vineeta Sharma has given retrospective application only to Section 6 of the 1956 Act as amended in 2005. There is no declaration regarding deletion of Section 4(2) being retrospective. This argument, therefore, also fails."

However, this Court is afraid that the said contention runs contrary to the stand

taken by the State before this Court. In the light of the specific submissions made by the learned Special Government Pleader, this Court is of the view that the argument of the respondents against repugnancy must be rejected. For the reasons recorded, this Court has clearly depicted the manner under which the repugnancy exists in this case.

Conclusions and Relief

61. Summarizing the discussion as above, this Court concludes as follows:

(a) Section 3 and Section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 [Act 30 of 1976] are repugnant to Section 6 of the Hindu Succession (Amendment) Act, 2005 [Act 39 of 2005], and thus cannot have any effect.

(b) The decisions of this Court in **Babu v. Ayillalath Arunapriya [2012 (4) KHC 445]** and **Kali Ammal & Another v. Valliyammal & Others [2016 (5) KHC 332]** are no longer good law, in the light of the decision of the Supreme Court in **Vineeta Sharma v. Rakesh Sharma and Others [(2020) 9 SCC 1].**

(c) On and from the commencement of the Hindu Succession (Amendment Act), 2005, daughter of a Hindu who dies after 20.12.2004, in the State of Kerala is entitled to equal share in the ancestral property, subject to the exception provided under sub-Section (5) of Section 6 and the Explanation to sub-Section (5) of Section 6.

(d) The substantial questions of law framed by this Court are answered in favour of the appellants and the judgment and the decree in OS No.231/2009 on the files of the III Additional Sub Court, Kozhikkode and the judgment and decree of the IV Additional District Court, Kozhikkode in AS No.194/2016 are reversed. Resultantly, a preliminary decree is passed ordering partition of the plaint schedule property by metes and bounds and that the plaintiffs and the defendant No.3 will be entitled to equal share in the plaint schedule properties.

e) Parties are free to apply for passing of final decree. Equities if any shall be worked out during the final decree proceedings.

f). The appellants/plaintiffs are entitled to costs throughout the proceedings.

Before parting with case the Court records its appreciation and acknowledges the valuable assistance rendered by the learned counsel for the appellant, learned Senior Counsel P.B.Krishnan, the *Amicus Curiae*, learned Senior Counsel Sri Shyam Padman and Senior Government Pleader Sri S Renjith who presented their case with clarity, diligence, and with a sound grasp of constitutional principles. Submissions were well-reasoned and were of considerable assistance in the adjudication of the matter and contributed meaningfully to the resolution of complex constitutional issues.

Sd/-

EASWARAN S.
JUDGE

jg