PROPERTY OF A HINDU FEMALE DYING INTESTATE

The Hindu Succession Act, 1956 ("**the Act**") was enacted nine years after India obtained independence and at that time the legislature did not contemplate that in times to come women in India would acquire properties of their own accord. Over the years, women have taken strides in multifarious spheres. The situation in India has changed considerably since then as women are becoming leaders in various fields and thus own properties in their individual right. However, the Act which also covers non-testamentary succession of not only Hindus, but also of Buddhists, Jains and Sikhs, still contains a lacuna with regards to self-acquired properties of women.

Section 15 of the Act envisages a definite and uniform scheme of succession of property of a Hindu female who dies intestate. Section 16 of the Act sets out the order of succession of the heirs of the Hindu female and is to be read along with Section 15 of the Act setting out the general rules of succession. However, Section 15 of the Act has failed to consider the equity of the fate of the self-acquired property of a Hindu female dying intestate. The legislators while framing the legislation did not contemplate, at that time, that Hindu females would hold self-acquired property.

The term 'property' although not specifically defined by the Act for the purpose of Section 15 of the Act, means the property of the deceased Hindu female heritable under the Act. It includes both movable and/ or immovable properties owned and acquired by a Hindu female by virtue of inheritance or at partition or by gift or by purchase. The Section does not differentiate between the property inherited by a Hindu female and the self-acquired property of a Hindu female. It only prescribes that if property is inherited from the husband or father-in-law, it would go to her husband's heirs and if the property is inherited from her father or mother, in that case, in the absence of her issues, the property would not go to her husband or his heirs but to the heirs of her father.

THE CURRENT POSITION IN LAW FOR SELF-ACQUIRED PROPERTY OF HINDU FEMALE DYING INTESTATE: Let's look at a situation where a married Hindu female dies intestate leaving behind her self - acquired properties. We shall assume she had no issue and was a widow at the time of her death. As per the present position of law, her property would devolve in the second category i.e. to her husband's heirs. Thus, in case the mother of her husband is alive, the deceased Hindu female's entire self-acquired property would devolve on her mother-in-law. If the mother-in-law is also not alive, it would devolve as per the rules laid down in the case of a Hindu male dying intestate. Thus, if the father of her deceased husband is alive, the next in line to inherit the property will be her father-in-law, and if the father-in-law is also not alive, then her property would devolve on the brother and sister of the deceased husband. Thus, the entire self-acquired property of the Hindu female would vest in the brothers and sisters of the of the pre-deceased husband and not that of the Hindu female even if she has siblings that are alive.

Therefore, where a Hindu female dies intestate leaving behind her self-acquired property and in case where her heirs in the first category fail, her property would devolve totally upon her husband's heirs who may be very remotely related or probably even unaware of each other's existence.

A similar issue was raised before the Hon'ble Supreme Court in Civil Appeal No. 3241 of 2009, ***Omprakash and Ors. V/s. Radhacharan and Ors.***[1] Smt. Narayani Devi was married to Sri. Dindayal Sharma in the year 1955 and within three months of her marriage, her husband passed away leaving her a widow. Consequently, she was driven out of her matrimonial home immediately after the demise of her husband.

She thereafter never stayed in her matrimonial home and returned to her parent's home where she was given an education and was also gainfully employed. Through the employment she acquired considerable liquid assets in the form of various bank accounts and also acuminated an enormous sum in her provident fund account. She subsequently passed away without preparing a will on 11th July, 1996. Her mother, Ramkishori, on the demise of Narayani Devi filed an application for grant of a succession certificate in terms of section 372 of the Indian Succession Act. The sons of Shri Dindayal's sister also filed a similar application. The same came before the Hon'ble Supreme Court for consideration.

The Apex Court while considering the issue held:

"[…] The law is silent with regard to self- acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in Sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited. It refers to a property which has vested in the deceased absolutely or which is her own. The self-acquired property of a female would be her absolute property and not the property which she had inherited from her parents […]

[…] This is a hard case. Narayani during her life time did not visit her in-laws' place […] She had not been lent any support from her husband's family […] and all support had come from her parents but then only because a case appears to be hard would not lead us to invoke different interpretation of a statutory provision which is otherwise impermissible. It is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous […]

The Court would not determine a question only on the basis of sympathy or sentiment. Stricto sensu equity as such may not have a role to play.

If the contention of Mr. Choudhury[2] *is to be accepted, we will have to interpret Sub-section (1) of Section 15 in a manner which was not contemplated by the Parliament. The Act does not put an embargo on a female to execute a will. Subsection (1) of Section 15 would apply only in a case where a female Hindu has died intestate. In such a situation, the normal rule of succession as provided for by the statute, in our opinion, must prevail."*

Thus, in case of the self-acquired property of a Hindu married female dying intestate, as in the above matter, if the husband pre-deceases her and in the absence of any issues, her property devolves on her husband's heirs. Her paternal and maternal heirs do not inherit her property, but the relations of her husband would inherit in the capacity as her husband's heirs, irrelevant of what relationship they shared.

With the growth of the nuclear family, a married woman's dependency on her natal family and continued closeness to it is much greater today even if it was not so earlier. Most married women would prefer that their parents/ siblings should be the preferred heirs to inherit their property in the absence of a husband and children.

CONCLUSION - SHOULD A HINDU FEMALE MAKE A WILL? We, due to our conditioning, still remain under the impression that it is always too early to make a Will and the right time would be when old age sets in.

[1] (2009) 15 SCC 66

[2] Advocate for the Appellant

However, based on the current position in law, it is advisable that a Hindu female should protect her assets after her demise and bequeath it to persons she desires, else, in the event of intestacy, as is evident from the case of Smt. Narayani Devi, the law will take its own course and a Hindu female's property will end up in the hands of persons whom she never had any intentions of bequeathing it to or even had any relation during her lifetime.

Thus, to answer the above question of "should I make a Will?", the answer would be 'Yes'.
