

## IN BRIEF

### BREAKING BOUNDARIES: MODERN LANDSCAPE OF HINDU ANCESTRAL PROPERTY RIGHTS



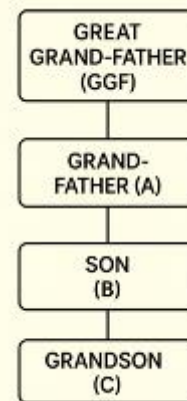
## Introduction

Ancestral property in Hindu law has evolved significantly, especially with the Hindu Succession Act of 1956 (HSA) and its 2005 Amendment. Traditionally inherited only through the patrilineal line, ancestral property created shared ownership within the joint family. After 1956, inherited property became personal unless the joint family system predated it. The 2005 amendment gave daughters equal inheritance rights as sons.

This article explores how these challenges have shaped property claims and ownership in Hindu families today.

### Concept of Ancestral Property before the Hindu Succession Act, 1956

It is important to note that if a person inherited such ancestral property and had any male descendant (up to three further generations) alive at the time of inheritance, the property was not his alone. Instead,



all these descendants acquired a joint interest by birth, and not just upon inheritance<sup>[2]</sup>. For instance, the great grand father inherits an ancestral property while his son A, grand son B and great grandson C are alive, all four, i.e., the great grandfather, A, B, and C become coparceners of the property with equal rights. The rights are fluctuating as per birth and death in the coparcenary. The term equal right is in the context of the case when a partition was to take place on a particular day and not in absolute terms.

If, however, the inheritor had no sons or grandsons alive when the property came to him, he became the sole beneficiary of the property, unburdened by

In traditional Hindu law, ancestral property occupied a special place, defining not only property rights but also reinforcing the structure of the Hindu joint family. Such ancestral property was created when a Hindu male inherited property, whether movable or immovable, from his father, grandfather, or great-grandfather.

This very specific route of inheritance was critical as property coming from a maternal ancestor or through the female line was excluded from the definition of ancestral property and would not attract the rules of coparcenary under the Mitakshara Law<sup>[1]</sup>.

coparcenary claims<sup>[3]</sup>. Moreover, no one outside the patriline could make any claim as the ancestral property was considered as an individual's personal asset.

The cycle of coparcenary was maintained till the partition of property. If a share was carved out for a coparcener in a family partition of ancestral property, it was considered ancestral but only for the recipient's own male issue. These male descendants, whether born before or after the division, automatically gained an interest by birth in the property.

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<sup>[1]</sup> Muhammad Husain Khan v. Kishva Nandan Sahai, 1937 SCC OnLine PC 48

<sup>[2]</sup> Mulla's Principles of Hindu Law, 15th Edition, p. 289

<sup>[3]</sup> Mulla's Principles of Hindu Law, 15th Edition, p. 289

If A, B, and C (grandfather, father, and son) had partitioned their ancestral land before 1956, the share of B will become ancestral land only for his son, and not for the other heirs of A's other children.

In *Dipo v. Wassan Singh*<sup>[4]</sup>, the sister stating that she was the nearest heir of her deceased brother who died in 1952, initiated a suit to claim possession of his property. The Supreme Court held that if the recipient of the partitioned share died without leaving any male descendant, his share was deemed a separate property and would pass to his heirs by succession, not by survivorship.

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<sup>[4]</sup> AIR 1983 SC 846

A radical reform was enacted with the enforcement of the HSA which changed how inherited property was treated in law. In the earlier system, ancestral property almost always translated into joint family property, but this automatic transition ended after 1956.

Legal precedents set by decisions such as Commissioner of Wealth Tax, *Kanpur v. Chander Sen*<sup>[5]</sup> and *Yudhishter v. Ashok Kumar*<sup>[6]</sup>, and further explained in *Surender Kumar v. Dhani Ram*<sup>[7]</sup> by the Delhi High Court established that if a person inherited from his paternal ancestors after 1956, that inheritance was recognized as self-acquired and not as a coparcenary property.

Additionally, sons and grandsons no longer obtained a share in this property by birth unless a joint family structure remained unbroken prior to 1956. Should a Hindu want to create a Hindu Undivided Family post 1956, the law requires an express act like moving one's self-acquired property into a pool, or creating a common reserve, and documenting the same when this was done.<sup>[8]</sup>

In practical terms, the law after 1956 ended the automatic right by birth in property that was earlier handed down along the male line. Inheritance now resulted in personal ownership unless a clear choice was made to revert to a joint family arrangement.

### **Position of Women Post 2005**

This is a position in law that has not been directly dealt with by the courts yet. It is, however, important to note that the rights of grandchildren can be understood by taking into consideration the position of ancestral property inherited by their mother.

The Supreme Court<sup>[11]</sup> held that irrespective of whether the father was alive before the 2005 Amendment, the daughter would also be considered as a joint legal heir with equal rights as a son in inheriting ancestral property.

In the case of *Arunachala Gounder v. Ponnusamy*<sup>[12]</sup>, the Supreme Court however laid down that if the woman dies intestate and issueless, any property inherited by her from her father or mother would go to the heirs of her father, whereas the property inherited from her husband or father-in-law would go to the husband's heirs. It appears that the basic legal position as set out in Section 15(2) of the HSA is to ensure that inherited property of a female Hindu dying intestate and issueless goes back to the source.

On examining the history of cases under the HSA, a demand for partition by a daughter's children during their mother's lifetime and to claim a coparcenary right in the mother's ancestral property was found to be a rare occurrence. Nevertheless, from a bare reading of the Amendment, it appears that the grandchildren may not have a right in their maternal grandfather's property, even in cases where it is their mother's absolute property. They can however claim a right to it after her demise.

Before 2005, women did not have any right to claim property as it was believed that after marriage she will join another family, hence cannot inherit the father's property. Ironically however, women did not get a right in the father-in-law's property because she was not of the same bloodline.

After intense debates and discussions regarding women's rights, the amendment to Section 6 of the HSA bestowed equal rights on sons and daughters to inherit property. Now, by birth, daughters become coparceners in the ancestral property and can demand partition just like a son. For instance, A has a son B and a daughter C, both born before 2005. After the 2005 amendment, both B and C will have equal rights in ancestral property.

There were questions regarding the applicability of the 2005 Amendment which was finally settled by the Supreme Court in *Vineeta Sharma v. Rakesh Sharma*<sup>[9]</sup> where the daughter claimed a 1/4th share in the ancestral property. The Apex Court in this case, overruling the decision in *Prakash v. Phulwati*<sup>[10]</sup>, held that Section 6 of the HSA confers the status of coparcener on daughters born before or after Amendment in the same manner as the son. Hence, the 2005 Amendment had a retrospective effect and applicability.

Additionally, women have been given a right to hold an absolute property under Section 14 of the HSA. Hence, whether the property has been acquired or inherited before or after commencement of the HSA, a woman is considered as a complete owner with unrestricted rights, which include the right

## Conclusion

The evolution of Hindu ancestral property rights reflects a gradual but decisive move from rigid, male-dominated inheritance rules towards gender equality and individual ownership. The HSA changed the devolution of property inherited after its commencement, making post-1956 inheritance, separate property, unless an existing coparcenary structure was already in place. Pre-1956 coparcenars continue to operate under traditional principles, while new coparcenars can be created through express acts of pooling self-acquired property. While the 2005 amendment ensured daughters' equal rights with sons, cementing their position as coparceners, certain questions such as the nature of the rights of a daughter's children remain unresolved. Nevertheless, the modern framework balances tradition with constitutional principles of equality, reshaping property relations in Hindu families.

<sup>[11]</sup> Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1

<sup>[12]</sup> (2022) 11 SCC 520

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to sell, mortgage, or for her legal heirs to inherit her share in the ancestral property.

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[5] 1986 SCC OnLine SC 184

[6] (1987) 1 SCC 204

[7] 2016 SCC OnLine Del 333

[8] Surender Kumar v. Dhani Ram, 2016 SCC  
OnLine Del 333

[9] (2020) 9 SCC 1

[10] AIR 2016 SC 769

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