

# News

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**The Kerala High Court overturns a state statute that grants Hindu girls an equal portion of family property.**



*Sections 3 and 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 were declared unconstitutional by Justice S. Easwaran, who also determined that they violated Section 6 of the Hindu Succession (Amendment) Act, 2005.*

Sections 3 and 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (the State Act) have been declared unconstitutional by the Kerala High Court on the grounds that they violate Section 6 of the Hindu Succession (Amendment) Act, 2005 (the Central Act). **Radha Nambidi Parambath & Anr. v. NP Rajani & Ors.**

**Justice Easwaran S** noted in a July 7 ruling that Section 3 of the State Act barred anyone from asserting a birthright to ancestral property. However, a daughter can assert such a privilege thanks to central legislation.

A deemed partition under the Act is shown by the fact that Section 4 of the State Act allowed the members of the joint family to take their separate portions of the family as tenants-in-common. However, unless a registered document or a court-issued final order is used, the Central enactment does not recognize any kind of partition.

As a result, the Court determined that Section 6 of the Central Act and Sections 3 and 4 of the State Act were directly at odds.

*"The moment the operation of Section 3 of the State Act is pitted against Section 6(1) of the Central legislation, an irreconcilable conflict arises and the collusion between Section 3 and Section 6 is so evident that the State enactment must give way in order to give effect to the provisions of Section 6(1) of the Central legislation, even if the finer details of whether or not a statutory abrogation of a joint family property occurs by virtue of Section 4 are left as such. According to the ruling, this is exactly what the philosophy of repugnancy, which is established in Article 254(2) of the Indian Constitution, teaches.*

In Kerala, daughters of Hindus who passed away after December 20, 2004, are entitled to an equal portion of the family property and would benefit from the 2005 revision to the Hindu Succession Act, the Court ruled, striking down sections of the State Act.

*"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," the Supreme Court ruled.*

A Hindu man's female heirs filed a partition claim seeking equal rights to their late father's ancestral property, and the suit was decided. Citing the State Act, the male heirs contested their claim.

The Court began its ruling by comparing daughters to the Goddess Lakshmi, emphasizing how highly regarded they were in ancient India.

*"The goddess of prosperity always resides in a daughter. She is constantly rooted in herself. A daughter deserves to be honored at the start of every good deed because she is magnificent and blessed with everything nice.*

The Skanda Purana, which states that one daughter is equivalent to 10 sons, was also cited

by the Court.

"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," the Court stated.

Daughters were not born with any rights to the ancestors' property under old customary rules like the Mitakshara Law. The same was true in 1956 when the Hindu Succession Act was passed.

However, the Court noted that when the parliament passed the Hindu Succession (Amendment) Act in 2005, the law saw a significant shift.

However, the Kerala Joint Family System (Abolition) Act, 1975 prevented a daughter from claiming the benefits of the Hindu Succession (Amendment) Act, 2005, creating a unique circumstance in the State of Kerala.

The Court decided to invalidate Sections 3 and 4 of the State Law after reviewing several rulings and clauses pertaining to Hindu succession, inconsistencies between Central and State legislation, and the idea of repugnancy of laws as stated in Article 254 of the Indian Constitution.

The plaintiffs in this case cannot have their claim to the contested ancestral property disallowed, the Supreme Court ruled in *Vineeta Sharma v. Rakesh Sharma & Ors.*, noting that the 2005 change to the Central Act is retroactive.

Advocates Veena Hari and Nirmal S. represented the plaintiffs.

Senior Advocate Shyam Padman, together with lawyers CM Andrews, PR Mohankumar, Bobby M Sekhar, Laya Mary Joseph, Irene Paramel, and Piyo Harold Jaimon, represented the defendants.

The State was represented by Senior Government Pleader K Denny Devassy and Special Government Pleader S Renjith.

As an amicus curiae, Senior Advocate PB Krishnan provided assistance to the Court.