- (Amendment) Fact from the ability of the tipola success (Amendment) Fact from the ability at two popular can appear the applicant, the attens of legal heir the property of her decoarsed hisband at par with, two mines points.
- 2. Whollies the amendment has come faire force in both;
- 3. Whether the Government of Delhi has endorsed the Ac
- 4. If so copy of emborsoment may please be to available.

to relation to issues no. 2,3, and 4 the issues has I examined, as per section I the Hindu Succession Act extra whote of India and therefore the Hindu Success (Amendment) Act, 2005 applies to Delhi on and after date of commencement

In respect of (sine no.t, it is observed that Amendment Act, 2005 emitted sub-section (2) of section / the HS Act, which provided for protection to the spectaws in every state providing the the prevention (random takion of agricultural balding or for textion tand coiling or for devolution at telency rights in respect such holdings. In Delhi, section it to 54 the Delhi reforms Act, 1954 provides special privisions in respect succession of the holding.

Both Acts are Content! (!)

section (2) of section 4 of the HS A = 1956-tf : protect available in HS Act, 1956 to the protection of section 4 of bethi built resonant Act, 1955 have be a custom for 54 of bethi built resonant of characters the common section 4 of the section 4 of

Theretore after out in the 1956, the provisions of interpretate the following the first the first Act, 1956 shall cease to apply a minus.

It is advised accordingly.

(Manish Kumar Gaur) Begel Assistant 27.04.2006

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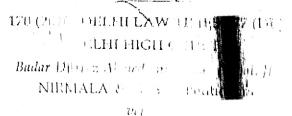
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as enabled me to cover a wide range of case law.

#2. Before closing, I must appreciate the labority as istance rendered by the gasel involved in this case and the others who we requested to assist, which

93. A copy of this judgment be sent to the Chairing in Delhi 1 1/2 al Academy, further, as this problem arises often, and to prove parties from misusing the process of Taw [Section 156(3), Cr.P.C.], the the fisher formeral of this Court will ensure that a copy of paragraph 52A (containing the fishers) is an excerpt to all subordinate [in 1 and officers in Delha.

Per trone aller



GOVERNMENT OF NCT OF DELIH & OF -Respondents WP (C) No. 6435 of 2007-Decided 6. 6.2010

(i) Delhi Land Reforms Act, 1954 — Section 50 — Landu Succession (Amendment) Act, 2005 — Section 6 — Hindu Succession Act, 1966 — Sections 4(2), 4(1)(a), 4(1)(b) — Succession from Males — Provisions of Hindu Succession Act, after amendment of 2005, have overriding effect over provisions of Section 50, DLR Act — In case of inconsistency, provisions of DLR Act would yield to provisions of Hindu Succession Act — Rule of succession provided in Hindu Succession Act would apply as opposed to rule prescribed under DLR Act — Petitioners (widow and two minor daughters of deceased) entitled to succeed to disputed agricultural land in terms of Hindu Succession Act — Respondent Nos. 1 to 2 directed to mutate disputed agricultural land, to extent of deceased's share in favour of petitioners and respondent Nos. 3, 4 and 5 as per Hindu Succession Act.

[Paras 28, 351]

(ii) Delhi Land Reforms Act, 1954 -- Section 50 -- Constitution of India, 1950 -- Articles 14, 16, 19, 31ii -- Hindu Succession (Amendment) Act, 2005 -- Section 6-Hindu Succession Act, 1956-Sections 4(2), 4(1)(a), 4(1)(b) - Scope and ambit of provisions of Sections 4(1) and 4(2), Hindu Succession Act — If no reference was made to Section 4(2) as it then existed, Hindu Buccession Act had virtually abrogated provisions of Section 50 of DLR Act in its application to Hindus to extent of inconsistency between rule of succession prescribed in Hindu Succession Act and as stipulated in Section 50 1 DLR Act - Oraissian of Section 4(2) of Hindu Succession Act by virtue of Amendment Act of 2005 has removed specific exclusion of DLR Act from overriding effect of Hindu Succession Act which hitherto existed because of Berlion 4(2) - Result is DUR Act gets relegated to position of subservience to Hindu Succession Act to extent of inconsistency in provisions of two Acts - Immunity of Article 31B is not blanket immunity and is subject to power of any competent Legislature to repeater amend the protected Act -- Rule of succession provided in Hindu Succession Act would apply as opposed to rule prescribed under DLR Act. (Paras 33, 34)

Result: Writ Petition allowed.

ELECTION TABLE (July)

Cases referred

- Ram Mghan v. Mot. 1827 San p. (1974) DUA 44. (No. 2007) Swapper (1974).
- Smt. Mickesh and endex Pharm Singh and Ors., 149 (2008) DLF 114. (Net Applicable)

[Para 18]

3. Smt. Har Naraini Devi and Another v. Union of India and Others, 162 (2009) DLT 663 (DB). (Not Applicable)

[Par. 21]

Counsel for the Parties

For the Petitioners . Mr. Vined Selft ant, Advocate

For the Pespendent No. 1 Jar. A. Supta, Advance

I in that I expendent Nos. 3 and 4 Austra Maline Adre

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- I r Darrez Ahmed [] Heugh etitioners are in rection for an Ara Alphy as were sectional desired Land Reforms the DUN TERMINE Act. 19. a hereinafter re 100 de e of Articles 14, le am lott Costs the ine all it imple epealed by the Hindli Succession V 11. 10. e also seeking a direction to the and a that the disposed again to and land left by the deceased husband it intoner to I. squally, a leveur of the petitioners and respondent Nos. 3, 4 and 5
- 2. The petitioners herein are the widow (petitioner No. 1) and two minor daughters (petitioner Nos. 2 and 3) of Late Shri Inder Singh, the owner of the disputed land, who died intestate on 15.12.2006. Prior to his marriage with petitioner No.1 (Nirmala), Late Shri Inder Singh was married to another lady called Nirmla (shown as Nihali Devi in the counter-affidavit), with whom he had two sons and a daughter. He married petitioner No.1 in 1997, after the death of his first wife in 1995. Respondent Nos. 3, 4 and 5 are the children of Late Shri Inder Singh and his first wife.
- 3. Late Shri Inder Singh had Bhumidhari rights in respect of agricultural land to the extent of 1/6th share in Khata No. 136/132 consisting of Kh. No. 30/24 (4-16) and Kh. No. 31/13/1/2 (1-8) admeasuring 6 Bighas 4 Biswas and 1/6th share in Khata No. 78/76 consisting of Kh. No. 35/1 (4-16), 35/2 (4-16), 9/1 (3-14), 10 (4-15), 27(0-3), 36/4/2 (3-10), 5/2 (4-4), 6 (4-16), 7/2 (2-12), 14/1/2 (1-4), 54/45 (0-18) and 51(0-2) admeasuring 35 Bighas 10 Biswas. The total agricultural land admeasuring 41 Bighas 14 Biswas (hereinafter referred to as the disputed agricultural land) is situated in the revenue estate of village Tazpur Kalan, Delhi.
- At After the death of Late Shri Inder Singh on 15.12.2006, petitioner No.12 moved an application before the concerned Tehsildar on 5.2.2007, to mutate the abovementioned disputed agricultural land in favour of the petitioners, but he refused to do so in view of Section 50 of the DLR Act. Being aggrieved by the decision of the Tehsildar, petitioner No. 1 called a meeting of the Panchayat of the village and in that meeting dated 12.2.2007, it was unanimously decided by the Panchayat as well as by respondent Nos. 3-5, that the petitioners be allotted 1/3rd share in the disputed agricultural land holdings owned by the deceased Shri Inder Singh. In pursuance of this decision, the petitioners were given possession of their

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THE SELECTION OF STREET

But even then, he provided Nov. To were pating his loss of an ing the petitioners is small in their fields per folly. Petitioner start proached the converse to it M and Deputy Conf. Shower of the according but her applications of not entertainer. It are appreciately to be sed in August 2007.

- 5. Before we consider the DEP Vetorial and the period of the gislative developments the DEP Vetorial and the period of the provider and application of the Punjab and Agra systems to tenancy have a force in the State of ethic and to make provision for other matters connected therewith. Section 50 of the Act provided that only male members of a family had the primary right of accession to agricultural land; it excluded female members from succeeding to uch land holdings when male lineal descendants were available. Section 50 of the DLR Act is reproduced hereunder:
 - "50. General order of succession from mules -- Subject to the provisions of Sections 48 and 52, when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below.
 - (a) Male lineal descendants in the male line of the descent:

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased son howsoever low shall inherit the share which would have devolved upon the deceased if he had been then alive:

- (b) Widow;
- (c) Father;
- (d) Mother, being a widow:
- e) Step mother, being a widow;
- (f) Father's father.
- (g) Father's mother, living a widow;
- (h) Widow of a male lineal descendant in the male line of descent;
- (i) Brother, being the son of same father as the deceased;
- k) Unmarried sister;
- (I) Brother's son, the brother having been a son of the same father as the deceased;
- (m) Father's father's son;
- (n) Brother's son's son;
- (o) Father's father's son's son;
- (p) Daughter's on,

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(July) 201.

6. Thus, Claure tayor be transcripting. It is twhen a male Bhumidsar of Asami dies, the property shall first excelve to in the male bacal descendants in the male line of defect therefore ver low to the constitution of tennie descendants. Given the fact that the associated there being to male line of Maryadants at all are extremely low, the supporty in all like file to will not be a cup of the formula descendants it is associated.

2. The Happen conception Act, 17 the mafter referred as the passed and could be for each 7.6 infinitely marks at a passed and could be for each 7.6 infinitely marks at a passed and could be formed as the intervence of the History marks at the property in the History marks at the property of the History marks and the property of the History devolution of tenancy rights in respect of the holdings of the History marks at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced becomes at the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks are produced by the History marks and the History marks

"4. Openriding effect of Ac

(1) XXXX

XXXX

(2) For the removal of douets it is hereby declared that nothing contained in this Act shall be deemed positively the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

8. In 1964, the DLR Act was placed in the Ninth Schedule of the Constitution of India (Entry 61), by virtue of the Constitution (Seventeenth Amendment) Act, 1964, with effect from 20th June, 1964. Article 3TB of the Constitution provides that no Act that has been placed in the Ninth Schedule can be the subject matter of challenge on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by the provisions of Part III of the Constitution. Article 3TB reads as under:

"Are 522. Validation of certain Acts and Regulations-

We hour prejudice to the generality of the provisions contained in Article 31.4, none of the Acts and Regulations specified in the Ninth Schedule nor at most the provisions thereof shall be deemed to be void, or ever to have Lorence void, on the ground that such Act, Regulation or provision is moonsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the continuy, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

9. In 2005, the HSA was amended by Parliament by passing the Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as 'the Amendment Act'), which came into type on 9.91, 105. By virgor the Amendment Act, Section 4(2) of the 115A was counted.

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JOL CLAX STRMALA & ORS. C. GOVE OF TOF DULIER ORS.

or, 10. In the backdrop of this ingustative first of the main questions that arise for hour consideration in this case is.

"Whether Section 50 of the DLR Act was a ten repealed by the Amendment Act inasmuch as by omitting Section 4(2, at the HSA, 1956, it has removed the immunity that the DLR Act had with respect to the laws of succession in respect of agricultural land? Also, if that be the case, do the petitioners, being female, now have the right to succeed to the disputed agricultural land?"

11. The main contention of the Counsel on behalf of the petitioners was that due to the onession of Section 4(2) of the HSA, the rule of succession as contained in Section 50 of the DLR Act has been eclipsed and, thus, after 9.9.2005, only the rule of succession provided under the HSA (as amended) is applicable to Hindus in respect of all properties in India, including agricultural land. Also, because of the substitution of the old Section 6 of the HSA by the new one, the petitioners have become co-parceners of disputed agricultural land along with the sons of Late Shri Inder Singh, and thus all the petitioners have acquired rights, equal to those of respondent Nos. 3-5, in the property in question.

12. The learned Counsel for the petitioners submitted that due to the omesion of Section 4(2) and substitution of the old Section 6 of the HSA by the new one, by virtue of the Amendment Act, the State law contained in Section 50 of the DLR Act has become repugnant to the Union law contained in Sections 6, 8 and 9 of the HSA and the said Section 50 of the DLR Act is thus void.

13. The relevant sections of the HSA are approduced hereunder:

Old Section 6 before substitution by the Amendment Act--

"6. Devolution of interest of coparceoury properly.—When a male Hindu dies after the commencement of this with baving at the time of his death an interest in Mitakshara coparcenary property his interest to the property shall devolve by survivorship upon the survivors members of the coparcenary and not in accordance with this Acti

Provided that, if the deceased had left him to lying a few de relation specified in class the five Schedule of a material type specified in that control who claims through such temate relative the appropriate of the deceases the Mitakshura with a unary property shall solve by the mare intestate successful as the case may be a feet this feet and not by survivorship.

Explanation I: For the purposes of a late of the inner the Mitakshara coparcelled shall the about the propert of taken place immediately before his a crispective of whether he was entitled to claim partition or not.

Explanation 2: Nothing contained in the provise to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or day of his heirs to claim on intestacy a share in the interest referre. To the ein.

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New Section 6 arter the server dimit their

- of Development of interest viscopy charge provides (1) On and from the commencement of the Hurdus (common (Amendment) Act, 2005, in a Joint Hindu family governed by the Mital shara law, the daughter of a copargener shall—
- (a) by birth become a coparcener in her own right in the same manner the 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 the 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 dam, her is allowed the same thare as is allotted to a son;
- (b) the share of the prodeceased sen or a pre-deceased daughter, as they would have a had they been alive at the time of partition, shall be allotted to the giving child of such pre-deceased son or of such pre-deceased data ter; and
- the share of the produced sed chief of a predeceased daught annuch chief would be a produced in the or she been alive at a without proportion of the life of the cre-deceased pre-deceased the produced of the pre-deceased the pre-deceased

Mitale a parcene shall be decreed to the property that would have a ren allested to him it would have a ren allested to him it would not be property had taken place immediately before his death, mespective of whether he was entitled to claim partition or not.

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(4) After the mine where of the fit ties to encomend to the 2005, notice is shall recognise to a process to encountry and additional statement of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment of the fitter or great grant to every experiment or great grant to every experiment of the fitter or great grant to every experiment or grant grant

Provided that in the case of any deot commence 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 orth satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manuter and to the same extent as it would have been entorceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation—For the purposes of Clause (1), 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 dead of partition duly registered under the Registration Act 1908 (16 of 1908) or partition effected by a decree of a Court."

Sections 8 and 9

- '8. General rules of succession in the case of males—The property of a male. Hindu dying intestate shall devolve according to the provisions of this Chapter—
- (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;
- (b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Set dule;
- (c) thirdly, if there is no heir of any sixty of the deceased; and
- (d) lastly, if there is no agnate, then upon to cognates of the decease
- 9. Order of statements many beins withe Schooling. Among the Learn special the Schooling, these in Class I shall take multaneously and to be exclusion of all the hears; those in the flat entry and the preferred to those as he second entry the second entry that he preferred to those has been dentry; when he had every