

Cases referred:

1. *Ram Mehar v. M. J. Dasgupta* (1973) DLT 44 (N.D.). (Not applicable) [Para 14]
2. *Smt. Mukesh and others v. Phari Singh and Ors.*, 149 (2008) DLT 114. (Not applicable) [Para 18]
3. *Smt. Har Naraini Devi and Another v. Union of India and Others*, 162 (2009) DLT 663 (DB). (Not applicable) [Para 21]

Counsel for the Parties:

For the Petitioners - Mr. Vinod Selhi, Advocate.

For the Respondent No. 1 - Mr. Anil Gupta, Advocate.

For the Respondent Nos. 3 and 4 - Mr. Ashu Malhotra, Adv.

JUDGMENT

1. The petitioners are seeking to set aside the order of the Tehsildar dated 12.2.2007, which is in violation of Section 50 of the Land Reforms Act, 1956 (hereinafter referred to as the DLR Act) and Articles 14, 16 and 19 of the Constitution of India. The order is also seeking a direction to the respondents to allot the disputed agricultural land left by the deceased husband (petitioner No. 1) equally in favour 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 Nirmala (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.

4. After the death of Late Shri Inder Singh on 15.12.2006, petitioner No. 1 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

But even then, respondent Nos. 3, 4 and 5 were not willing to vacate their fields. Petitioner No. 1 approached the concerned DM and Deputy Commissioner of the district on 07.08.2007, but her application was not entertained. Finally, she approached the court on 07.08.2007.

5. Before we consider the issue at hand, it is pertinent to point out the legislative developments. The DLR Act came into force on 01.01.1956. It states that it is "[a]n Act to provide for the consolidation of Bhumidari rights to create an uniform body of peasant proprietors with all Bhumidari rights in force in the Punjab and Agra systems of tenancy laws in force in the State of Delhi 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 succession to agricultural land; it excluded female members from succeeding to such land holdings when male lineal descendants were available. Section 50 of the DLR Act is reproduced hereunder:

"50. General order of succession from male. - 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, being 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;
- (l) 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 son;

6. Thus, Clause (a) of Section 50 requires that when a male Bhumiidar or Aasmi dies, the property shall first devolve on the male legal descendants in the male line of descent, whether or not there are any female descendants. Given the fact that the chances of there being any male line legal descendants at all are extremely low, the possibility in all likelihood will not be taken up by the female descendants in any case.

7. The Hindu Succession Act, 1956 (hereinafter referred to as "the Act") was passed and came into force on 26.9.1956. It was a landmark legislation in that it was [a]n Act to amend and codify the law relating to intestate successions among Hindus. However, Section 50 of the Act was a provision which dealt with the HSA which made it clear that it was intended to be a law which would provide any provision of law for the time being in force which provides for the prevention of fragmentation of agricultural holdings, for the fixation of ceiling or for the devolution of tenancy rights in respect of such holdings. Section 4(2) of the HSA is reproduced hereunder:

"4. Overriding effect of Act—

(1) XXXX

XXXX

XXXX

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect 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 ceiling 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 31B 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 31B reads as under:

"Art. 31B. Validation of certain Acts and Regulations—

Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent 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 contrary, 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 force on 9.9.2005. By virtue of the Amendment Act, Section 4(2) of the HSA was omitted.

10. In the backdrop of the legislative history, the main questions that arise for their consideration in this case is:

"Whether Section 50 of the DLR Act has been repealed by the Amendment Act inasmuch as by omitting Section 4(2) of 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 omission 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 omission 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 reproduced hereunder:

Old Section 6 before substitution by the Amendment Act--

"6. Devolution of interest of coparcenary property.—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in 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 intestate succession, as the case may be, and not by survivorship.

Explanation 1: For the purposes of this section, the interest of the deceased in Mitakshara coparcenary property shall be deemed to be that which he would have been allotted to him by 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 has separated himself from the coparcenary before the death of the deceased (or any of his heirs) to claim on intestacy a share in the interest referred to therein.

New section after the Hindu Succession Act

1. 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 pre-deceased daughter, as the case may be.

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

(4) After the commencement of this Act, a daughter, son, grandson or great-grandson of the deceased shall not be liable 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 of 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."

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 Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry in the same class; and the second entry shall be preferred to the third entry; and so on in succession.