IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 340 of 2005

Reserved on: September 3, 2013
Decision on: October 28, 2013

BIMLA DEVI & ORS. ..... Plaintiffs
Through: Mr. Gagan Gupta, Advocate.

versus

ZILE SINGH & ORS. ..... Defendants
Through: Mr. V.P. Rana and Ms. Hetal Vora, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
28.10.2013

1. Bimla Devi, Plaintiff No.1 and her two daughters Mamta Dagar and Anita Sindhu, Plaintiffs 2 and 3 respectively, have filed this suit against Zile Singh and seven others for a declaration that the Plaintiffs are co-sharers in joint possession of 1/8th share out of 1/3rd share in the agricultural land comprising of Khewat No. 24, Rect. No.19 (in several Killa Nos. as set out in para 5 of the plaint) to the total extent of 144 Kanals 15 Marlas (hereinafter the 'suit property') one-third of which works out to 48 Kanals and 5 Marlas.

2. The Plaintiffs state that there existed a Joint Hindu Family ('JHF') consisting of Zile Singh (Defendant No.1) and his sons Raj Kapoor (Defendant No.2), Jagbir (Defendant No.3), Baljeet (Defendant No.4),

Satish Kumar (Defendant No.5), Dan Singh (Defendant No.6) and Ram Naresh (Defendant No.7). It also included Shri Rajpal, the deceased son of Zile Singh who died on 31st March 1982. Plaintiff No.1 was married to Rajpal and Plaintiffs 2 and 3 were born to her and Rajpal. It is stated that Defendant No.1 Zile Singh also had two daughters both of whom are married. The Plaintiffs contend that the common ancestor of the parties Shri Mohan Lal (i.e. father of Shri Zile Singh and the grandfather of late Shri Raj Pal) held the suit property and some other properties as well. After the death of Shri Mohan Lal, his coparceners inherited one-third share each in the suit property. It is stated that since it was a JHF coparcenary property, all coparceners including deceased Rajpal and Defendants 1 to 7 acquired right, title and interest in equal shares in the suit property to the extent of one-eighth share each in the said one-third share. It is stated that late Shri Rajpal had one-eighth share of that one-third share and the said share has now been inherited in equal shares by the Plaintiffs who are his Class I legal representatives in terms of the Schedule to the Hindu Succession Act, 1956 ('HSA'). Thus it is contended that the Plaintiffs become co-sharers alongwith Defendants 1 to 7 in the suit property.

3. It is stated that a *kareva* marriage of Plaintiff No.1 with Defendant No.5 was performed after the death of Shri Rajpal but she has been staying with her daughters separately. It is stated that this did not take away the right, title and interest of the Plaintiffs in the suit property. The plaint states that the Defendants had started denying the right, title and interest of the Plaintiffs for about six-seven months prior to

the filing of the suit and were threatening to alienate the Plaintiffs' share in the suit property. Accordingly, the suit was filed seeking the aforementioned declaration.

4. A written statement was filed on behalf of Defendants 1 to 8 on 31st May 2005. A preliminary objection has been taken that the suit property is governed by the Delhi Land Reforms Act, 1954 ('DLRA') which recognises *bhumidhari* rights. Under the DLRA, it is the Defendant No.1 who is the *bhumidhar* and neither the Plaintiffs nor any other Defendants have got any right, title or interest in the suit property. Any person who wishes to acquire *bhumidhari* rights had to be recognised as such under the DLRA and should seek remedies under the DLRA.

5. It is stated that Defendant No.1 had acquired *bhumidhari* rights to the extent of one-third share in the suit property at the time of commencement of the DLRA and was recognised as *bhumidhar* on the basis of his cultivatory possession of the suit property. It is stated that the concept of coparcenary JHF is not available under the DLRA and the HSA does not apply to the land in question. DLRA is a special Act which prevents fragmentation and, therefore, all other acts and provisions stood repealed under Section 2 of the DLRA. It is stated that no right of the Plaintiffs in the suit property ever existed and, therefore, no declaratory suit can be maintained by the Plaintiffs. It is stated that even the deceased Shri Rajpal had no rights in the suit property and, therefore, the question of the Plaintiffs inheriting such right does not arise. It is further contended that this Court lacks jurisdiction to try the suit in terms of Section 185 of the DLRA. A suit

for declaration of *bhumidhari* rights and partition can only be filed before the revenue court, the forum provided under the DLRA. Thirdly, it is contended that suit is not properly valued for the purposes of jurisdiction particularly. Since the Plaintiffs are not in possession of any part of the suit property, *ad valorem* and not a fixed court fee was required to be paid. It is denied that any cause of action arose in favour of the Plaintiffs since no threat, as alleged by the Plaintiffs, was given to them.

6. Along with the written statement, the original *fard* of *khasra girdawari* for the year 2004-05 and its English translation have been annexed. Column 4, which indicates the name of the tenure holder as classified in para 1 of the *khatoni* shows the names of Zile Singh and Kartar Singh both having two-thirds share.

7. In the replication, it is denied by the Plaintiffs that the suit property is governed by the DLRA or that the HSA does not apply to the suit property. It is stated that the suit is only for a declaration that the Plaintiffs are co-sharers in the suit property and that they are entitled to get possession by way of partition. It is contended that the suit is not for the declaration of the *bhumidhari* rights or even partition and, therefore, DLRA is not applicable in the facts and circumstances of the case. Since the possession of one co-owner is, in the eyes of law, possession of all co-owners, court fee has been accordingly paid by the Plaintiffs.

8. By an order dated 22nd February 2006, the following issues were framed:

"1. Whether the suit as framed is not maintainable before this Court as per provisions of Delhi Land Reforms Act? OPD

2. Whether Defendant No.1 is sole *bhumidhar* of the land in question and neither Plaintiffs nor other Defendants have got any right, title or interest in the suit property? OPD

3. Whether the suit has not been valued properly for the purposes of court fee and jurisdiction? OPD

4. Whether the land in question is coparcenary Joint Hindu Family Property and all coparceners including the deceased Shri Rajpal and Defendant Nos. 1 to 7 acquired right, title and interest in equal shares in the said land? OPP

5. Whether the Plaintiffs being legal heirs of deceased Shri Rajpal are entitled to the decree of declaration as prayed for? OPP
6. Relief."

9. On behalf of the Defendants, affidavits of examination-in-chief were filed on 13th March 2006 and by Plaintiff No.1 on 29th March 2006. In her cross-examination, Plaintiff No.1 maintained that since the suit property was ancestral, and since no property was distributed by Zile Singh to any of his sons, she did not feel any necessity to move any application before the revenue authority for claiming her share in the suit property. She volunteered: "now my father-in-law has started giving share to the extent of one *kila* or 2 *kila* each to my brother-in-law and sister-in-law about two years back so that is why I have moved to the Court for claiming share in the property".

10. In his cross-examination, Zile Singh he stated that he had been cultivating the land in question as *bhumidhar* since 1940. He stated that consolidation proceedings in village Sultanpur Dabas took place

in 1954-55 and before such consolidation he was in cultivatory possession of the very same land. He stated that he was recorded as *bhumidhar* of the suit property in the revenue record by the *Ilaka Patwari* in 1951. He stated that "there was a joint land of Mohan Lal, Kishan Lal and Jawahar Singh in the revenue estate of village Sultanpur Dabas in their own name". He stated that Kishan Lal and Jawahar Singh expired in 1946 and 1970 respectively and he did not know what happened to their share of the land. He further stated that "it is correct that the suit property is the same property which was owned by Mohan Lal, Kishan Lal and Jawahar Singh. He volunteered that "I am *bhumidhar* of the suit property. Besides me there are two other *bhumidhars* of the land mentioned in Ex.DW1/A, who are my brothers namely Kartar Singh and Bhim Singh. Bhim Singh is not alive". He further stated that "it is wrong to suggest that the suit property is ancestral or that the same has been inherited by the legal heirs of Mohan Lal (my father), Kishan Lal and Jawahar Singh. During the lifetime of Rajpal till one year after his marriage, we remained together in one house as joint family".

11. In other words, nothing has been elicited in the evidence of Zile Singh which would doubt his statement that he is the *bhumidhar* in respect of the suit property.

12. A significant development that took place during the pendency of the present suit is that Zile Singh, who was already recognised as a *bhumidhar*, died leaving behind a Will. Plaintiffs 2 and 3 have admittedly filed a separate suit being CS (OS) No. 3481 of 2012 challenging the said Will of Zile Singh. Learned counsel for the

Plaintiffs did not deny the above fact. He maintained that the present suit could nevertheless be pursued since the son, Rajpal, had a right to succeed to the *bhumidhari* rights of this grandfather and through him his widow and daughters also had a similar right.

13. One of the first issues to be considered is whether in terms of the Section 185 of the DLRA, the suit is maintainable. Under Section 4(1) of the DLRA, for the purposes of the DLRA, there shall be "only one class of tenure holder, that is to say, '*bhumidhar*' and one class of sub-tenure holder, that is to say, '*asami*'. Under Section 5 of the DLRA every person belonging to the classes mentioned in clauses (a) to (c) therein shall be a *bhumidhar* and shall have all the rights subject to all the liabilities conferred or imposed upon a *bhumidhar*. This includes under clause (c) every person who, after the commencement of DLRA is admitted to land as *bhumidhar* or who acquires *bhumidhari* rights under any provisions of the DLRA.

14. In ***Nathu v. Hukam Singh AIR 1983 Delhi 216*** it was explained that *bhumidhari* rights are special rights created on the abolition of ownership of agricultural land and are controlled and regulated by the provisions of the DLRA. A reference was made to the decision of the Supreme Court in ***Hati v. Sunder Singh (1970) 2 SCC 841*** which analysed various provisions of DLRA and concluded that "there is no warrant to travel outside the Act and the Rules for further restrictions in the right or manner of transfer of the *bhumidhari* rights". It was concluded that "the right of transfer of interest by a *bhumidhar* of his *bhumidhari* rights in the agricultural land is controlled only by the provisions of the Act". The provisions of customary law do not apply

to transfer of *bhumidhari* rights. In ***Hati v. Sunder Singh*** the Supreme Court explained that in view of Section 185(1) of the DLRA, a civil court would have no jurisdiction to entertain a suit where the Plaintiff claims a declaration that he is entitled to *bhumidhari* rights in respect of land or for possession of the land because the reliefs sought by the Plaintiff were within the competent jurisdiction of the Revenue Assistant. It was further explained in para 7 as under:

> "7. The High Court, in this connection, referred to Section 186 of the Act under which any question raised regarding the title of any party to the land, which is the subject-matter of a suit or proceeding under the First Schedule, has to be referred by the Revenue Court to the competent Civil Court for decision after framing an issue on that question. Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an inference. On the contrary, Section 186 envisages that questions of title will arise before the Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a revenue Court, an issue will be framed and referred to the Civil Court, Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. The jurisdiction of the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of title is raised in an application for declaration of *bhumidhari* rights under item. 4 of Schedule I of the Act, that question will then be referred by the Revenue Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim *bhumidhari* right cannot directly approach the Civil Court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as a *bhumidhar*, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact

that a declaration has been issued in respect of his holding in favour of another. A declaration by a *Gaon Sabha* of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under Section 84 read with item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil Court had no jurisdiction to entertain the suit".

15.1 Before discussing the effect of the amendments to the HSA on the provisions of the DLRA, it is necessary to understand what the legal position under the HSA was prior to its amendment as regards joint coparcenary property. This is brought out in the decision in ***Bhanwar Singh v. Puran (2008) 3 SCC 87***. One Bhima was the owner of the suit property who died in 1972 leaving behind his son Sant Ram and three daughters, Shanti, Manti and Shakuntala. On the death of Bhima the properties were partitioned between Sant Ram and sisters and their names were mutated in the revenue records. They were each shown holding one-fourth share of the properties of the deceased Bhima. Bhanwar Singh son of Sant Ram was born in 1977 and attained majority in 1995. He filed a suit for setting aside the sale made by Sant Ram in favour of Respondents in 1985 of his share stating that it was not out of legal necessity and was in any event an ancestral property.

15.2 The suit was decreed by the learned trial Judge holding that the property was the joint family property and Sant Ram being the Karta could not have transferred the property except by way of legal necessity. The first appellate court reversed the findings stating that once the properties stood partitioned and an entry was made in the

revenue record, the property lost the character of an ancestral property in terms of Section 8 of the HSA.

15.3 Before the Supreme Court, in the appeal filed by Bhanwar Singh, the only question that arose for consideration was whether he had acquired any interest in the suit property by birth in 1977 with Bhima having died in 1972. It was noticed that Section 8 HSA lays down the general rule of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Class I of the Schedule. While natural sons and daughters are placed as Class I heirs, a grandson, so long as father is alive, has not been included therein. Section 19 of the HSA provides that in the event of succession by two or more heirs, they will take the property per capita and not per stripes, as also tenants-in-common and not as joint tenants. The Supreme Court affirmed the judgment of the High Court and held that having regard to Sections 8 and 19 of the HSA, the properties ceased to be joint family properties and all heirs and legal representatives of Bhima would succeed to his interest as tenants-in-common and not as joint tenants. It was held that in the facts and circumstances of the case the joint coparcenary did not continue.

16. Turning to the DLRA, Section 50 thereof sets out the general order of succession from males. It reads as under:

> "50. Subject to the provisions of section 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 mate 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) unmarried daughter;
(j) brother being the son of same father as the deceased;
(k) unmarried sister;
(l) brother's son, the brother having been 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."

17. In ***Ram Mehar v. Mst. Dakhan ILR (1972) 2 Delhi 922***, the Division Bench of this Court held that the DLRA was saved by Section 4(2) of HSA (as unamended) and that the rule of succession in governing *bhumidhari* is found in Section 50 DLRA and not HSA. The legal position changed when Section 4(2) of the HSA, which excluded the applicability of the HSA to agricultural land, stood repealed by Hindu Succession (Amendment) Act, 2005 ('HSAA') which came into force on 9th September 2005. In ***Mukesh (Smt.) v.***

Bharat Singh [149 (2008) DLT 114], it was clarified that the HSAA could not be retrospective and the succession which had taken place prior to the promulgation of HSA cannot be disturbed.

18.1 In ***Nirmala v. Govt. of NCT of Delhi 170 (2010) DLT 577***, Section 50 of DLRA was challenged as being violative of Articles 14, 16 and 19 of the Constitution of India and also as having been impliedly repealed by the HSAA. Like in the present case, the Petitioners in that case were seeking a direction to the Respondents to mutate the joint agricultural land left by the deceased husband of the Petitioner No.1 equally in favour of the Petitioners and Respondents 3, 4 and 5. However, interestingly the application for such mutation was filed before the *Tehsildar* who refused to mutate the property in view of Section 50 of the DLRA. Aggrieved by the decision of the *Tehsildar*, a *Panchayat* was called and a meeting held on 12th February 2007. It was unanimously held that the Petitioner will be allotted one-third share in the agricultural land held by late Inder Singh. Despite being put in possession of the said share, the Petitioner was not allowed to work in their fields and, therefore approached the concerned Sub-Divisional Magistrate and Deputy Commissioner. However, her application was not considered. Consequently, she filed the writ petition.

18.2 The contention of the Petitioner was that after the repeal of Section 4 (2) HSA by the HSAA said date only the rule of succession of property in HSA was applicable to Hindus in respect of properties in India including agricultural land. Contending that by virtue of the amendment the HSA recognised that a daughter of a coparcener shall

also become a coparcener in the same manner as the son, the Petitioner claimed to have become a coparcener of the agricultural land along with the sons of late Inder Singh.

18.3 In the facts of ***Nirmala v. Govt. of NCT of Delhi***, it was held that with the repeal of Section 4(2) HSA by the HSAA of 2005, the specific exclusion of DLRA from the overriding effect of HSA stood removed. The result was that the DLRA was relegated to a position of subservience to HSA to the extent of inconsistency in the provisions of the two statutes. The Petitioners were held entitled to succeed to the agricultural land in terms of the HSA and Respondents 1 and 2 were directed to mutate the disputed agricultural land to the extent of late Inder Singh's share in favour of the Petitioners and Respondents 3, 4 and 5 as per the HSA.

19. Learned counsel for the Plaintiff however sought to rely upon two decisions in support of his plea that the suit was maintainable since it was for mere declaration of a right. The first decision relied upon was ***Anand Prakash v. Ram Kala 167 (2010) DLT 225***. There the Plaintiffs and the Defendants were both claiming that they had succeeded to the *bhumidhari* rights of their deceased brother who admittedly was a *bhumidhar*. The Defendant propounded a will in his favour by the deceased brother. The Plaintiffs contended that the will was forged and fabricated. The trial court upheld the preliminary objection of the Defendant that the suit was barred by Section 185 DLRA. It was further held that the question of the validity of the will could be examined only by a probate court and not the civil court. Reversing the trial court decision, this Court held that since the

Plaintiffs were not claiming any right on the basis of any Will they were not required to approach the probate court. It was further held that since the Plaintiffs were only seeking a permanent injunction on the basis that they were the joint *bhumidhars* along with their deceased brother, and the *bhumidhari* right of the deceased brother was not challenged by either party, the suit was maintainable.

20. In the present case, Zile Singh was already recognised as a *bhumidhar*. He died during the pendency of the suit purportedly leaving behind a Will. As already noticed, Plaintiffs 2 and 3 have filed a separate suit, CS (OS) No. 3481 of 2012, challenging the said Will of Zile Singh. In the considered view of the Court, the recognition in law of the *bhumidhari* rights of Zile Singh and there being no challenge to the entries in that regard changes the situation even as regards the rights of the deceased Rajpal. Unless Rajpal's *bhumidhari* rights are recognised and declared, the question of the right of Plaintiffs to succeed to such rights does not arise. It is inconceivable that for such relief the procedure set out under the DLRA can be by-passed. In any event the question whether Zile Singh could have left a Will bequeathing such rights is being examined in the other pending suit instituted by Plaintiffs 2 and 3. In the considered view of the Curt, the decision in ***Anand Prakash v. Ram Kala*** is distinguishable on facts and does not help the case of the Plaintiffs.

21. The other decision relied upon is ***Krishna Gupta v. Rajinder Nath 2013(134) DRJ 246*** which again turned on its own facts. There the question was whether the HSAA 2005 covered the case of a daughter whose father had expired prior to 9th September 2005. The facts were

that Plaintiffs 1 and 2 and Defendant No.3 were the daughters of late Shri Rajinder Nath. Defendant No.2 was the son. Defendant No.1 was Rajinder Nath & Co. HUF with Defendant No.2 as its Karta. Defendant No.4 was another HUF with Shri Ashok Nath as its Karta. The case of the Plaintiff was that Defendant No.4 had a common undivided joint family business and movable and immovable assets alongwith HUF and both HUFs were engaged in joint family business with joint undivided assets. The joint family businesses were purportedly partitioned under an Award dated 26th October 1978 made by sole Arbitrator after which the separate HUF was set up. The Award was made as a rule of the Court and finally decreed on 21st August 2006. The Plaintiffs, relying on the HSAA, contended that they had become coparceners in the HUFs along with their brothers. The Court discussed the decision of the Supreme Court in ***Ganduri Koteshwaramma v. Chakiri Yanadi (2011) 9 SCC 788*** which held that since the partition had been effected prior to coming into force the HSAA, any right that may have accrued to the daughters could not be set to have been extinguished and that it would be open to the Court to amend even a preliminary decree or pass any preliminary decree re-determining the rights and interests of the parties having regard to the changed circumstances.

22. In ***Krishna Gupta v. Rajinder Nath***, the question whether the provisions of the DLRA applied did not arise for consideration. In any event, the issue in the said case regarding the effect of the HSAA was addressed in the context of valuation of the suit for the purposes of the court fee as well as limitation since it was contention of the

Defendants that with the initial partition already having been taken place during the lifetime of Shri Rajinder Nath and with the HSAA not being retrospective, the Plaintiffs could not seek declaration of their respective shares. In the present case, there is no question of any partition being sought since Zile Singh was already declared *bhumidhar*. He held his one-third share in his own name and an entry to that effect has been made in the register. Any person claiming *bhumidhari* rights would have to go before the authorities under the DLRA. Consequently, the decision in ***Krishna Gupta v. Rajinder Nath*** also does not assist the Plaintiffs.

23. In light of the law explained in the above decisions, the legal position that emerges as far as the present case is concerned is as under:

(i) Rajpal had died even prior to coming into force the HSAA 2005. Since the HSAA 2005 is not retrospective, the present case would not be governed by the decision in ***Nirmala v. Govt. of NCT of Delhi***. Even prior to the HSAA 2005, the one-third share of Zile Singh in the ancestral property already stood identified and recognised with the said share being entered in the revenue records and with his being declared as a *bhumidhar*. The recognition in law of the *bhumidhari* rights of Zile Singh and there being no challenge to the entries in that regard changes the situation even as regards the rights of the deceased Rajpal.

(ii) Unless Rajpal's *bhumidhari* rights are recognised and declared, the question of the right of Plaintiffs to succeed to

such rights does not arise. Although the prayer in the suit is for a declaration of the rights of the Plaintiffs as co-sharers in joint possession of one-eighth of the one-third share in the suit property, which is admittedly an agricultural land governed by DLRA, the Plaintiffs are in effect seeking a share in the *bhumidhari* rights. As explained by the Supreme Court in ***Hati v. Sunder Singh***, the DLRA is a complete code by itself. For the reliefs sought, the Plaintiffs would have to approach the authorities under the DLRA.

(iii) Zile Singh died during the pendency of the present suit purportedly leaving behind a Will which has been challenged by Plaintiffs 2 and 3 in a separate suit, CS (OS) No. 3481 of 2012. Zile Singh's *bhumidhari* rights have already been recognised and an entry has been made in revenue record. The Plaintiff would necessarily have to challenge that entry and for which again they would have to go before the revenue authority under the DLRA.

24. The first issue being decided in favour of the Defendants and against the Plaintiffs, the other issues are not examined. The suit is dismissed as not maintainable. In the circumstances, there will be no order as to costs.

S. MURALIDHAR, J.

OCTOBER 28, 2013
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