

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA No. 108/2014
% 28th April, 2014

SHRI MAHENDER SINGH & ORS. Appellants.
Through: Mr. Ruchir Batra, Advocate

VERSUS

SHRI DHARAM SINGH Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed under Section 100 CPC impugning the judgment of the first appellate court dated 3.2.2014. The appellate court dismissed the appeal of the plaintiffs/appellants (and who are therefore the appellants in this Court) against the judgment of the trial court dated 30.9.2013. Trial court had dismissed the suit of the appellants/plaintiffs by which the appellants/plaintiffs had sought nullification of the relinquishment deed dated 13.8.1999 executed by Smt. Chhotto whereby she had transferred her 1/6th share in the land comprised in 47 bighas and 7 biswas of land situated in the revenue estate of village Chhawla, New Delhi.

2. The only issue which was urged before the first appellate court, and is also the issue urged before this Court, is a purely legal issue as to whether the inheritance by Smt. Chhotto of the lands in question in the year 1939 when her husband Sh. Nathu died was only as a life estate, and that inheritance continued to be a life estate when the land holding became the land holding of a bhumidar on the passing of the Delhi Land Reforms Act, 1954 (in short 'DLR Act'). What is argued on behalf of the appellants-plaintiffs is that since Smt. Chhotto inherited only a life estate from her husband in 1939 as per the prevalent personal law applicable to females, the passing of the Delhi Land Reforms Act made no difference to the character of her holding of a life estate, and which continued only as a life estate, and the same did not become a full estate in view of Section 48(2) of the DLR Act. It is argued on behalf of the appellants by placing reliance upon the judgment of the Division Bench of this Court in the case of ***Ram Mehar Vs. Mst. Dakhan 1973(9) DLT 44*** that the provision of Section 14(1) of Hindu Succession Act, 1956 would not convert the life estate which Smt. Chhotto had at the time of passing of the Delhi Land Reforms Act, 1954 into a full estate merely on account of passing of Section 14(1) of the Hindu Succession Act, 1956 inasmuch as, Section 4(2) of the Hindu Succession which excluded applicability of this Act to the revenue/land laws existed in

the statute book on the date of relinquishment i.e on 13.8.1999, and hence the provisions of Hindu Succession Act would not prevail in supersession of the revenue laws such as the DLR Act which provide for prevention of fragmentation of holdings etc and as so recognized in the judgment in the case of ***Ram Mehar (supra)*** which holds that the provisions of the Hindu Succession Act would not prevail over the provisions of the DLR Act in view of Section 4(2) of the Hindu Succession Act. It is also argued that Section 4(2) of the Hindu Succession Act was repealed only w.e.f 9.9.2005 but the widow Smt. Chhotto died in this case on 8.2.2004 before the repeal of Section 4(2) of the Hindu Succession Act and consequently, and only when succession to her estate opens because the estate of the widow Smt. Chhotto remained a life estate and she was not entitled to execute the relinquishment deed of the suit property in favour of the defendant.

3. In sum and substance, the issue is that whether as on the date of execution of the relinquishment deed dated 13.8.1999 by Smt. Chhotto in favour of the defendant, Smt. Chhotto was having only a life estate, and hence she could not execute the relinquishment deed of the life estate in view of Section 48(2) of the DLR Act.

4. The issue in the present case, in my opinion, is squarely covered by the Division Bench judgment of this Court in the bunch of cases with lead

case bearing no.LPA No.92/2005 titled as ***Chand Ram and Anr. Vs. Financial Commissioner & Ors.*** decided on 9.8.2012. The Division Bench of this Court in ***Chand Ram's case (supra)*** referred to the earlier judgment of Division Bench in the case of ***Ram Mehar (supra)*** and also the two Supreme Court's judgments in the cases of ***Ram Jivan Vs. Smt. Phoola AIR 1976 SC 844***, and ***Bajaya Vs. Gopikabai (1978) 2 SCC 542***. The Division Bench in the case of ***Chand Ram's case (supra)*** reconciled the ratios of the judgments of the Supreme Court in the cases of ***Bajaya (supra)*** (in the context to Madhya Pradesh Land Revenue Code, 1954) and ***Ram Jivan (supra)*** (passed with respect to UP Zamindari Abolition and Land Reforms Act, 1950) and it was held that so far as DLR Act is concerned, what would apply is the ratio of the judgment of the Supreme Court in the case of ***Bajaya (supra)***. The relevant paras of the judgment of the Division Bench in the case of ***Chand Ram (supra)*** read as under:-

“22. Though, Section 51 (2) (a) supra refers to the “personal law applicable to the female” to determine whether she was entitled to life estate only in the agricultural holding or entitled to the holding absolutely and though the Succession Act, applicable in the present cases, by virtue of Section 14 thereof converts the limited/life estate earlier held by a female into an absolute one but the learned Single Judge still held the females in all the cases to be having a limited/life estate only and thus governed by Section 51 (2) (a) (i) for the reason of the Apex Court in Ram Jivan supra having held that the origin of title of the bhumidhar or the source from which the bhumidhar has derived interest in the holding being determinative and further for the reason of the Supreme Court having held that the interests

subsequently acquired by the female by virtue of law could not destroy the origin or the source of her title which was inheritance of a life/limited estate. A distinction was also carved out between the holding of agricultural and the interest of the female therein. It was held that it is the holding which devolves and not the interest which ceased on the death of the female.

23. Though Section 172 of the UP Act also refers to the personal law applicable to the female for determining whether the female was entitled to a life estate only in the holding or entitled to the holding absolutely but the learned Single Judge did not notice that the “subsequent law” in Ram Jivan, which was converting the life estate inherited by the female in that case into an absolute interest, was not a “personal law”. The husband of the female in Ram Jivan was a tenant with respect to the land, governed by the provisions of Oudh Rent Act, 1886 whereunder the widow of a tenant was entitled to continue in the possession of the land for the unexpired portion of the period for which the deceased tenant might have held the holding and was not entitled to renewal of the same; the said Rent Act was amended by the UP Act (4 of 1921) under which the female acquired the status of a statutory tenant and which statutory tenancy rights were heritable; the said land in the year 1939 came to be governed by the UP Tenancy Act (17 of 1939) whereunder the statutory tenants acquired the status of a hereditary tenant; ultimately the land came to be governed by the UP Zamindari Abolition & Land Reforms Act, 1950 supra, Section 172 whereof are para materia to Section 51 of the DLR Act. Moreover the female in that case died in September, 1952 i.e. prior to the coming into force of the Succession Act.

24. Thus when the Apex Court in Ram Jivan held that interests acquired by a female by operation of law could not destroy the origin or source of her title, it was not referring to the personal laws applicable to the female but to the Rent/Tenancy Act which by no stretch of imagination can be classified as personal law applicable to the female. We thus cannot agree with the reasoning of the learned Single Judge that the matter is squarely covered by the dicta of the Apex Court in Ram Jivan.

25. However that still leaves us to deal with the reasoning in Ram Jivan that it is the origin of the title of the female as bhumidhar which is determinative of whether Section 51 (2)(a)(i) or Section 51(2)(a)(ii) is applicable. The question which falls for consideration is whether, when legislature referred to “personal law applicable to her” it meant

the personal law as applicable on 20th July, 1954 when DLR Act came into force or personal law as applicable from time to time.

26. Our research in this respect leads us to Bajaya Vs. Gopikabai (1978) 2 SCC 542 where the Supreme Court was concerned with the Madhya Pradesh Land Revenue Code, 1954, Section 151 whereof dealt with devolution of tenancy rights titled Bhumiswamis and Bhumidharis, in agricultural holdings. The Supreme Court held:-

(A). that it was not necessary to decide whether Section 151 of the Madhya Pradesh Land Revenue Code was a law for devolution of tenancy rights in agricultural holdings,

because even on the assumption that it is such a law, Section 151 thereof itself in terms makes personal law applicable in the matter of devolution of interest of a deceased tenure holder;

(B). the words “on his death” used in Section 151 clearly show the legislative intent to be that the personal law as amended up to the date on which the devolution takes place to be determinative;

(C). that in the absence of any words in the Section or Statute limiting the scope of the expression “personal law” to that prevailing on the date of enactment of the Madhya Pradesh Land Revenue Code, they have to be read as “personal law” as amended from time to time; where a Statute incorporates by general reference a law concerning a particular subject as a genus, it can be presumed that the legislative intent was to include all the subsequent amendments also made from time to time in the generic law on the subject adopted by general reference; the expression “personal law” in Section 151 of the Madhya Pradesh Land Revenue Code was thus held to comprehend the Succession Act which subsequently came into force to deal with the subject of succession/inheritance.

27. We are of the view that the ratio at (A) & (B) above of the aforesaid judgment in Bajaya, though in the context of Madhya Pradesh Land Revenue Code, applies on all fours to the DLR Act also. The same also makes redundant, the argument raised at the bar as to the very applicability of Section 14 of the Succession Act to agricultural holdings, owing to the then Section 4(2) of the Succession Act. Even if it were to be held that the DLR Act provides 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 (with all of which we entertain serious doubts) and thus

supersedes the Succession Act, Section 51(2) of the DLR Act itself makes Succession Act, which is a personal law, applicable in the matter of devolution of interest in a holding. Further, though Section 51(2) does not use the words “on his/her death” but the use of the words in Section 51(2)(a) “dies and such bhumidhar was on the date” is similarly indicative of legislative intent of the personal law applicable, being the personal law on the date of death.

28. As far as the third reason at point (C) supra in Bajaya is concerned, there is indeed a dichotomy between the dictas of the Supreme Court in Ram Jivan and Bajaya, both of Three Judge Benches. While in Ram Jivan it was held that the law on the date on which the female inherits is determinative, in Bajaya the law applicable on the date of death of the female was held to apply. It falls on us to decide, of course for reasons to be recorded, which of the two judgments to follow.

29. The learned Single Judge, though has followed Ram Jivan (of course without noticing Bajaya), but has found the outcome to be resulting in discrimination on the basis of gender and has in the impugned judgment made suggestions to the legislature to remedy the situation. Now that we have a choice, we certainly would adopt a reasoning which does not result in such discrimination and is in consonance with the constitutional doctrine against discrimination on the basis of gender. A Single Judge of this Court recently in Shri U.N. Bhardwaj Vs. Shri Y.N. Bhardwaj 173 (2010) DLT 483 has rightly held that keeping the commandment of Article 13 of the Constitution in mind and contextualizing it in relation to Sections 4 and 6 of the Hindu Succession Act, read with Article 15 of the Constitution of India, the Court is under an obligation to avoid the odium of a gender discriminatory interpretation to any law which denies property rights to women. A Division Bench of this Court also in Dimple Singla Vs. Union of India 94 (2001) DLT 917 emphasised the need for giving de facto equality between man and woman to the extent the Constitution intended. It was observed that unless attitudes change, elimination of discrimination against women can not be achieved. A Division Bench of Bombay High Court in Arati Durgaram Gavandi Vs. Managing Director, Tata Metaliks Limited MANU/MH/0936/2008 observed that the right to gender equality is intrinsic to the right to life under Article 21 of the Constitution and an affront to or the invasion of gender is destructive of the right of every woman to live with dignity. It was further held that the provisions of the Constitution recognize gender equality as a fundamental right and the said right comprehends and postulates protection of women against all those practices which

invade upon the dignity of being a woman. It was yet further observed that gender equality postulates the realization of societal values that travel beyond a mere notion of sexual equality.

30. Even otherwise, we are of the view that the reasoning in Bajaya is in consonance with the Principles of Interpretation of Statutes. Section 8(1) of the General Clauses Act, 1897 also provides that reference in any other enactment to a statute which is re-enacted, with or without modification, shall, unless a different intention appears, be construed as reference to the provision so re-enacted. Supreme Court in Mahindra & Mahindra Ltd. Vs. Union of India (1979) 2 SCC 529, carved out a difference between „mere reference to or citation of one enactment in another without incorporation“ and „ incorporation of one statute in another“ and held that while in former case the reference is to the enactment as modified from time to time, in the case of latter, the incorporated provision becomes an integral part of the statute in which it is transposed with the subsequent amendments not having any effect. To the same effect is the subsequent judgment in Rakesh Vij Vs. Raminder Pal Singh Sethi AIR 2005 SC 3593. Section 51(2) of the DLR Act merely refers to the personal law applicable to the female and does not incorporate any provision of the personal law in the DLR Act. Thus, such reference, has to be the personal law as on the date when the female dies and not the personal law as on the date of enactment of the DLR Act.

31. Applying the aforesaid principles, even though the females in the present appeals, before the commencement of the DLR Act, had a life estate only in the agricultural holding and became a bhumidhar with such life estate only but on the coming into force of the Succession Act such life estate was (by virtue of Section 14 thereof) converted into an absolute estate. Thus when the said females died, they in accordance with the personal law applicable to them, were entitled to the said agricultural holding absolutely, within the meaning of Section 51(2) (a)(ii) of the DLR Act. Accordingly, such holding shall devolve in accordance with Section 53 and not upon the nearest surviving heir of the last male proprietor, under Section 51(2) (a) (i). The appellants here are the heirs under Section 53 and thus the applications have to be allowed.

32. In the light of the reasoning aforesaid adopted by us, need is not felt to deal with the judgments cited at the bar and recorded hereinabove.

33. That however still leaves us with the question of interpretation of Section 48(2) of the DLR Act. The restriction therein prohibiting a bhumidhar entitled to a holding in the right of a widow, mother etc. from bequeathing such holding by Will has to be necessarily held to be limited to a female bhumidhar whose holding is to devolve upon the heirs of the last male bhumidhar and cannot be read as applicable to a female bhumidhar who in accordance with the personal law applicable to her is entitled to holding absolutely in as much as the same cannot be read as a restriction on such absolute right qua the holding. We thus hold the prohibition in Section 48(2) of the Act to be not applicable to females covered by Section 51 (2)(a)(ii) of the DLR Act.” (underlining is mine)

5. A reading of the aforesaid paras shows that three crucial paras are paras 22, 31 and 33, and more particularly paras 31 and 33, whereby the Division Bench has reconciled the apparent conflict between Section 48(2) and Section 51(2)(a) (ii) of the DLR Act and held that when a female inherits a limited estate, and which estate is a limited estate at the time of the passing of the DLR Act, that limited estate becomes a full estate by virtue of Section 51(2)(a) (ii) in view of the personal law provision of Section 14(1) of the Hindu Succession Act whereby a life estate gets converted into a full estate. In the present case, even assuming that Smt. Chhotto originally had only a life estate the bhumidari rights which were got by her in her favour by virtue of DLR Act, the life estate gets converted into a full estate by virtue of Section 51(2)(a) (ii) as held by the Division Bench in ***Chand Ram’s case (supra)***. The judgment in the case of ***Ram Mehar (supra)*** having been duly considered and analyzed in the judgment of ***Chand Ram (supra)*** cannot be

read to hold that the life estate which a widow had at the time of passing of the Delhi Land Reforms Act does not get converted into a full estate by virtue of Section 14(1) of the Hindu Succession Act read with Section 51(2)(a)(ii) of the DLR Act. It is also relevant to note that the judgment in the case of ***Ram Mehar*** (supra) was not dealing with the reconciling of Section 48(2) with Section 51(2)(a)(ii) of the DLR Act and it was only dealing with a general proposition of the Hindu Succession Act not applying in view of Section 4(2) of the Hindu Succession Act as it then existed to the Delhi Land Reforms Act. There was no reference in ***Ram Mehar's case*** (supra) to the provision of Section 51(2)(a)(ii) and how the same has to be interpreted in relation to Section 48(2) of the DLR Act.

6. Learned counsel for the appellant sought to argue that since in the present case, the widow Smt. Chhotto died on 8.2.2004 and on this date, the devolution will open in terms of the ratio in the case of ***Chand Ram's case (supra)***, and since as on 8.2.2004 Section 4(2) of the Hindu Succession Act existed giving primacy to Section 48(2) of DLR Act, therefore, no relinquishment deed executed prior to 8.2.2004 i.e on 13.8.1999 is valid. In my opinion, the argument is without basis for two reasons. Firstly, so far as the facts of the present case with respect to execution of the relinquishment deed is concerned, that would in effect can also be taken as on the death of

the female because the ratio in *Chand Ram's case (supra)* really was dealing with the aspect of opening of the inheritance and which opening of inheritance took place in *Chand Ram's case(supra)* on account of death of the female, but in the present case the transfer/opening of the inheritance is in the sense of transfer of interest taking place by virtue of the execution of the relinquishment deed on 13.8.1999, and therefore, one does not have to go to the actual date of death of Smt. Chhotto on 8.2.2004, and the ratio in *Chand Ram's case (supra)* when read with the facts of the case will be subject to holding that the relinquishment deed leads to the transfer of interest as on the date of transfer of interest and when Smt. Chhotto should be taken to have a full estate. In any case, even if the first reasoning is not applied, para 33 of the judgment in *Chand Rams's case (supra)* makes it more than abundantly clear that the life estate of the widow holding bhumidari rights gets converted into full estate by virtue of Section 14(1) of the Hindu Succession Act read with Section 51(2)(a)(ii) of the DLR Act. The argument therefore urged on behalf of the appellant by seeking to draw benefit of the actual date of death of Smt. Chhotto i.e 8.2.2004 and Section 4(2) of the Hindu Succession Act being deleted only later on 9.9.2005 is an argument without merit in view of the ratio of the Division Bench judgment in the case of *Chand Ram's (supra)* stated in para 33.

7. In view of the above, I do not find any substantial question of law arising inasmuch as the issue is squarely covered by the judgment of the Division Bench in the case of *Chand Ram's case (supra)*.

8. In view of the above, the second appeal is dismissed, leaving the parties to bear their own costs.

APRIL 28, 2014
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VALMIKI J. MEHTA, J.