

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

+ **L.A. Appeal Nos.115/2013 & 116/2013**

% **16th May, 2014**

1. **L.A. Appeal No.115/2013**

SANDEEP & ANR.

..... Appellants

Through: Mr. Arvind Chaudhary, Advocate.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sanjay Pathak, Advocate for
respondent No.1.
Mr. Manish Vats, Advocate for
respondent No.2.

2. **L.A. Appeal No.116/2013**

SANDEEP & ANR.

..... Appellants

Through: Mr. Arvind Chaudhary, Advocate.

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Sanjay Pathak, Advocate for
respondent No.1.
Mr. Manish Vats, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

L.A. Appeal No.115/2013 and C.M. Nos.8280/2013 (stay) & 8281/2013 (additional evidence)

1. This first appeal is filed under Section 54 of the Land Acquisition Act, 1894 impugning the judgment passed by the court below dated 4.5.2013 deciding the issue of apportionment of the compensation of the acquired land belonging to one Mr. Shri Krishan. Disputes were between two parties. On the one hand was the mother of the deceased Mr. Shri Krishan, one Smt. Mishro Devi and on the other hand was the widow and minor daughter of the deceased, namely Smt. Balvinder Rani and Ms. Preeti (who is now a major).

2. Appellants claim to be the legal heirs of Smt. Mishro Devi inasmuch as on the basis of the Will dated 8.1.2007 of Smt. Mishro Devi executed in their favour. Smt. Mishro Devi was the original party to the proceedings under Section 30/31 of the Land Acquisition Act, 1894 and who died during the pendency of the proceedings, and therefore the appellants relied upon the Will dated 8.1.2007 of Smt. Mishro Devi in their favour for being substituted in her place. At the time of adding the appellants, who are the grandsons of Smt. Mishro Devi, as parties, the court below by the order dated 18.4.2011 had clarified that the appellants will have a share as per the Will dated 8.1.2007 of Smt. Mishro Devi provided that Will is proved by the appellants in the

proceedings. Appellants, however, failed to prove not only the Will dated 3.2.1990 which Smt. Mishro Devi relied in her favour of her son Mr. Shri Krishan but also of the Will dated 8.1.2007 by which allegedly Smt. Mishro Devi bequeathed her share to the appellants. This is stated in para 8 of the impugned judgment and which reads as under:-

“8. The mother was required to prove the Will but she has not done so. None of the attesting witnesses has been examined which are essential in view of Section 63 of India Succession Act read with Section 68 of Indian Evidence Act for which reliance can be placed upon the judgment of Hon’ble Supreme Court given in the case titled as Janki Bhoir Vs. Narain Namdeo Kadam’ AIR 2003 SC 761. She has failed to prove the Will and further the LRs Sandeep and Kuldeep have also failed to prove the Will alleged to be executed in their favour by the mother. None of two Wills have proved as required and therefore, they failed to prove that son executed any Will in favour of the mother or the mother in favour of grandson. As a matter of facts, the original Wills have not seen the light of the day. Only photocopies were filed on the record.”

3. The effect of para 8 of the impugned judgment would be that appellants would not be the sole owners of the properties owned by Smt. Mishro Devi and once the appellants have failed to prove the Will dated 8.1.2007, the devolution to the properties of Smt. Mishro Devi will be as per the provisions of succession under the Hindu Succession Act, 1956. I am unable to agree with the counsel for the appellants that the appellants should be allowed to lead additional evidence to prove the two Wills, i.e one dated 3.2.1990 in favour of Smt. Mishro Devi and another dated 8.1.2007 in favour of the appellants, inasmuch as the object of

Order 41 Rule 27 of Code of Civil Procedure, 1908 (CPC) is not to allow a party who has failed to prove his case by leading evidence inspite of having sufficient opportunity and that another opportunity be again given for leading evidence to such a defaulting party. C.M. No.8281/2013 is therefore dismissed.

4. The effect of the abovesaid discussion would be that the appellants would not be the sole and exclusive owners of the compensation which was to be awarded for the lands which were owned by Mr. Shri Krishan and such compensation will devolve as per succession under the Hindu Succession Act.

5. The next issue which arises is as to even if Smt. Mishro Devi fails to produce the Will dated 3.2.1990, whether Smt. Mishro Devi yet was legally entitled to a share in the compensation on account of her being a legal heir of Mr. Shri Krishan under the Hindu Succession Act or that it is only the widow and daughter of Mr. Shri Krishan i.e Smt. Balvinder Rani, Ms. Preeti who would be entitled to the estate of Mr. Shri Krishan in view of the fact that under the relevant provision of Section 5(d) of the Delhi Land Reforms Act, 1954, a mother does not have a right to the property of the son and which position continues inspite of repeal of Section 4(2) of the Hindu Succession Act inasmuch as the death of the son Mr. Shri Krishan had taken place in 1991 and which is prior to repeal of Section 4.2 of the Hindu Succession Act in 2005. This aspect is dealt with in paras 9 to 12 of the impugned judgment and which read as under:-

“9. Now, the only question remains whether the inheritance will be governed by Hindu Succession Act subsequent to its amendment carried out in section 4 w.e.f. 09.09.05 or will be governed by section 50 of DLR Act. It is admitted fact that the said son Krishan Kumar did not leave behind any male descendant. He left behind a widow and minor daughter. Ld. Counsel for mother has relied upon the Judgment of Hon'ble Supreme Court given in the case titled as 'Darshan Singh & Ors. Vs. Gujjar Singh (dead) by L.Rs & Ors.' AIR 2002 SC 606 and has argued in respect of death of a missing person, there cannot be a presumption of the date of death and the person who claims succession on the basis of presumed death u/s 107-108 of Indian Evidence Act is required to prove the date of death and since the widow has failed to prove the date of death, succession will be governed by Hindu Succession Act after amendment in section 4.

10. Ld. Counsel for widow has argued that death of the son is not disputed as the mother and widow applied for mutation separately prior to coming into force of the amendment in Hindu Succession Act and now, the mother cannot take different stand in respect of date of death. It is further argued that once mother applied for mutation claiming that her son is missing, now she cannot claim that she is entitled to get compensation under Hindu Succession Act. He has submitted that in view of Judgment of High Court given in the case titled as 'Mukesh (Smt.) & Ors. Vs. Bharat Singh & Ors.' 149 (2008) DLT 114, the amendment is not retrospective and the case is of period prior to 2005, the inheritance will be governed by DLR Act. It is not disputed by the counsel for mother that amendment is not retrospective and further, if inheritance will be governed by section 50 of DLR Act, the mother will not get any share.

11. I have perused the record including the application moved by the mother before the revenue authorities for mutation to be carried out in her favour. This application clearly shows that the mother has prayed that her son Krishan Kumar is missing since 20.03.91 for which an FIR No.175/94 at PS Pehladpur Banger is lodged and since she is mother, mutation should be done in her favour. The mutation was carried out in her name on the basis of her application. Further in the claim filed by her before this court, she has taken the specific plea that since her son is not heard of about 7 years since 1991, he is presumed to be dead and therefore, she is entitled to receive entire compensation on the basis of the Will. Once she relied upon a Will to claim mutation of land of her son, she cannot take the plea that since no date of death has been adjudicated, she is entitled to inherit under Hindu Succession Act. She cannot be permitted to blow hot

and cold in the same breadth since once she claims that her son is dead and she is entitled to inherit on the basis of the Will, she cannot claim that her son should be presumed to be dead only after the amendment of Hindu Succession Act in 2005.

12. As far as the plea of the mother that daughter in law was not in possession of the property is concerned, though the same has not been proved as claimed by the mother, yet even if it is presumed for the sake of arguments that the widow was not in possession even in these circumstances, it cannot be held that widow is not entitled to compensation since mere non-participating in the agriculture activity does not amount to ouster to give title to other by adverse possession. For which reliance can be placed upon the Judgment of Hon'ble Supreme Court reported in 1980 (4) SCC 396. Contrary to it, the widow has proved that she was in possession through the independent witnesses namely Ranvir Singh and Phool Kumar who have claimed that she was in possession and they were helping her in cultivating the land. In view of the aforesaid, widow is entitled to receive entire compensation and mother is not entitled to any compensation. Therefore, the claim of mother is dismissed. Issue No.1 is accordingly decided.”

6. A reading of the aforesaid paras shows that the court below has held that the provisions of Hindu Succession Act will not apply and what will apply are the provisions of Delhi Land Reforms Act.

7. The issue as to whether the Hindu Succession Act will prevail or Delhi Land Reforms Act will prevail has been recently answered by a Division Bench judgment of this Court in the case reported as ***Chand Ram and Anr. Vs. Financial Commissioner & Ors.*** decided on 9.8.2012 in LPA No.92/2005. The Division Bench in this judgment has held that the provisions of Hindu Succession Act will prevail notwithstanding the provisions of the Delhi Land Reforms Act which gives inheritance only to a limited number of persons of the

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properties falling under the Delhi Land Reforms Act and not to all the legal heirs under the Hindu Succession Act. I have recently had an occasion to consider the Division Bench judgment of **Chand Ram (supra)** in the case decided by me titled as **Sh. Mahender Singh & Ors. Vs. Sh. Dharam Singh**, RSA No.108/2014 decided on 28.4.2014. The relevant paras of this judgment read as under:-

“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.” (underlining is mine)

8. In view of the law laid down in ***Chand Ram's*** case (supra) I hold that the inheritance to the property (i.e acquired lands) of Mr. Shri Krishan will be as per the provisions of Hindu Succession Act and not as per the Delhi Land Reforms Act. Entitlement to succession as per the Hindu Succession Act would be in spite of the existence of Section 4 of the Hindu Succession Act at the time of death of Mr. Shri Krishan in around the year 1991 although Section 4 was repealed only subsequently in the year 2005.

9. In view of the above, the appeal is disposed of by observing that though the impugned judgment will stand to the extent that Smt. Mishro Devi failed to prove the Will dated 3.2.1990 in her favour and also that the appellants failed to prove the Will dated 8.1.2007, however, the succession to the property of the deceased Smt. Mishro Devi will take place as per the provisions of the Hindu Succession Act and as per which provisions the mother Smt. Mishro Devi would be the legal heir to the estate of Mr. Shri Krishan as per the share as provided under the Hindu Succession Act. The share of Smt. Mishro Devi itself will devolve as per the provisions of the Hindu Succession Act because Smt. Mishro Devi has died without leaving behind any Will as held by the court below. The effect therefore is that the compensation of the acquired land which belonged to Mr. Shri Krishan will devolve on all legal heirs of Mr. Shri Krishan as per the Hindu Succession Act and such apportionment will be as per the shares as

provided under the Hindu Succession Act i.e the mother Smt. Mishro Devi will have 1/3rd share in the estate of the deceased Mr. Shri Krishan, and the widow of the deceased namely, Smt. Balvinder Rani as also the minor daughter of the deceased Mr. Shri Krishan (and who has now attained majority namely Ms. Preeti) will have 1/3rd share each in the compensation payable with respect to the estate of the deceased Mr. Shri Krishan and the share of Smt. Mishro Devi will further be sub-divided as per the shares as provided under the Hindu Succession Act. Parties are left to bear their own costs.

+ L.A. Appeal No.116/2013 and C.M. Nos.8283/2013 (stay) & 8284/2013 (additional evidence)

This appeal is also against the same impugned judgment and will therefore stand disposed of in terms of the observations made while deciding L.A. Appeal No.115/2013.

MAY 16, 2014
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VALMIKI J. MEHTA, J.