



2024:DHC:10088



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(OS) 10/2023 & I.As. 194-195/2023, 10432/2023, 14090/2023, 16055-56/2023, 17122/2023, 20291/2023, 20999/2023***Reserved on: 23rd September, 2024
Date of Decision: 24th December, 2024***KAILASH DEVI SAINI****.....Plaintiff**Through: **Mr. Ashok Gurnani, Dr. Manish Aggarwal, Mr. Harshit Gupta and Ms. Bamali Paul, Advocates.**

versus

VED KAUR AND OTHERS**.....Defendants**Through: **Mr. Devraj Singh, Advocate for D-1 to 13.
Mr. M. Hasibuddin, Advocate for D. nos. 28 to 33 and 38 & 38 (Through VC)
Mr. Pradeep Kr. Saini, Advocate for D. nos. 39, 40, 42 & 44 (Through VC)**

%

CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:****CS(OS) 10/2023 & I.A. 14090/2023 (under Order VII Rule 7 of CPC by defendant nos. 1 to 13)**

1. By way of this judgment, this Court shall decide the application filed on behalf of the defendant nos. 1 to 13 under Order VII Rule 11 of the Civil Procedure Code, 1908 ('CPC') seeking rejection of plaint.



2024:DHC:10088



Pleadings in the plaint

1.1. This suit has been filed seeking partition of the agricultural land falling in Village Hiranki and forming part of the estate of late Shri Balbir Singh. The details of the said agricultural land are set out at paragraph 1 of the plaint i.e., property area bearing 40-18 bighas in Khata Khatauni no. 107/97, Khasra no. 165, 197, 198 199, 200, 201, 202, 203, 205 situated in Village Hiranki Dist. Narela (NW) Delhi-110036 ('subject agricultural land').

1.2. It is stated in the plaint that the subject agricultural land was the exclusive property of the father of the plaintiff i.e. late Shri Balbir Singh, who died intestate on 15.03.1980. The exclusive ownership of late Shri Balbir Singh is pleaded at paragraph nos. 1, 4 and 6(I) of the plaint.

1.3. It is stated that late Shri Balbir Singh was survived by his widow, five (5) sons and four (4) daughters. It is stated that thereafter his widow Smt. Sheelawati also passed away in the year 1995.

1.4. It is stated that in these facts the subject agricultural land has devolved upon his nine (9) children and thus, the plaintiff has filed this suit claiming 1/9th undivided share in the said land.

1.5. It is stated that plaintiff has acquired proprietary rights in the subject agricultural land after Section 6 of the Hindu Succession Act, 1956 ('Hindu Succession Act') was amended in the year 2005. It is stated that the plaintiff has a right to maintain the present suit for partition in her capacity as a coparcener. The relevant pleadings in the plaint to this effect read as under: -

“6. (I) That the self-acquired agricultural land property (suit property), area bearing 40-18 bighas in Khata Khatauni no. 107/97, Khasra no. 165, 197, 198, 199, 200, 201, 202, 203, 205 situated in



Village Hiranki Dist. Narela (NW) Delhi-110036, **exclusively belong to Late Balbir Singh**, the lawful owner of the aforesaid suit property and the father of the Plaintiff and all the Defendants to this suit.

6. (II) That in the year 1980, the father of the Plaintiff, Late Balbir Singh expired intestate, and thereafter, the mother of the Plaintiff, Late Seelvati W/o Late Balbir Singh also expired intestate in 1995, leaving behind the following legal heirs as mentioned in para 5 of the suit. However, no immediate partition, by metes and bounds took place following the death of Late Balbir Singh and Late Seelvati. Therefore, in the view of the amendment in the Hindu Succession Act, 1956, in the year 2005, recognizing and treating the daughter as coparcener equivalent to the son and further providing that partition before that is recognized only by way of a decree of the court or by a registered deed of partition, which eventualities are not there in the present case, as such no partition has taken place and the property forming the subject matter of the present suit are to be partitioned as if the same have not been partitioned in any manner in the eye of law till date, except in the manner as mentioned in para III of the present suit, which does not have any effect of the rights of the Plaintiff to seek the partition of the properties as prayed for in the present suit.

.....

8. It is submitted that the Plaintiff became co-parcener with respect to the aforesaid property since birth, and in view of the amendment in section 6 of Hindu Succession Act, 1956, treating and recognizing a daughter as a coparcener in the property of the father even though being married, as such (she) has right, share and lien in **the suit property belonging to her father Late Balbir Singh being the owner of the suit property**, in which Plaintiff has legitimate share as per Hindu Succession Act. It is stated that Defendants have been illegally controlling the said suit property for undue profit out of it and on behalf of all the coparceners including the Plaintiff herein as such, she also has right to share the profit of the same.”

(Emphasis Supplied)

1.6. It is stated that the cause of action arose when the brothers of the plaintiff illegally and arbitrarily transferred/sold portion of the subject



2024:DHC:10088



agricultural land (which is a coparcenary property) without the knowledge and consent of other female coparceners including the Plaintiff herein which is mandatory by virtue of the Hindu Succession law, since 2005 onwards.

1.7. It is thus stated that the captioned suit has been filed on behalf of the plaintiff seeking (i) a decree of declaration of plaintiff being a coparcener and entitled to 1/9th undivided share in the suit property, (ii) partition of the suit property, (iii) rendition of accounts relating to the profits earned from the suit property, and (iv) permanent injunction restraining the defendants from selling, alienating, transferring or creating any third-party in the suit property.

Submissions on behalf of the counsel for parties

2. Learned counsel for the applicant/defendant nos. 1 to 13 in the captioned application I.A. 14090/2023 states that late Shri Balbir Singh was recorded Bhumidar of the subject agricultural land and upon his death on 15.03.1980, the devolution of interest of late Shri Balbir Singh was governed by Section 50(a) of the DLR Act. He states that in accordance with the said provision, the subject agricultural land stood mutated in favour of his five sons and his widow Smt. Sheelawati in equal shares to the exclusion of the plaintiff and the other daughters. He states that the fact of the mutation is evident from the document filed by the plaintiff along with the paper-book.

2.1. He states that at the relevant time in 15.03.1980 when the succession opened, the subject agricultural land was admittedly agricultural land and the devolution of interest was governed by DLR Act. As per Section 50 (a) of the DLR Act, the plaintiff herein had no right to succeed to the interest of



2024:DHC:10088



late Shri Balbir Singh in the land. He placed reliance upon judgment of Supreme Court in **Har Naraini Devi v. Union of India**¹ in support of the contention that subsequent amendment of 2005 to the Hindu Succession Act will not undo the effect of the succession which opened on 15.03.1980 and was recorded with the statutory authorities. He states that provisions of the special act i.e. DLR Act shall prevail over the general act i.e. Hindu Succession Act qua agricultural land, therefore, the present suit filed invoking provisions of Section 6 of the Hindu Succession Act does not give rise to any cause of action in favour of plaintiff.

2.2. He states that since then, the widow Smt. Sheelawati and two of the sons Shri Jaswant Singh and Shri Bir Singh have also passed away. And, the rights of the legal heirs of the said deceased have also been mutated as per Section 50 of the DLR Act. The rights of the widow Smt. Sheelawati devolved as per Section 51 of the DLR Act.

3. In reply to the captioned application, learned counsel for the plaintiff states that Village Hiranki in which the subject agricultural land is situated was declared as urban area under Section 507(a) of the Delhi Municipal Corporation Act, 1957 vide notification dated 20.11.2019. He states that after the said notification, the provisions of 'DLR Act' have ceased to apply to the subject agricultural land. He states that after this notification of 2019, the subject agricultural land is governed by provisions of Hindu Succession Act and DLR Act has ceased to apply.

3.1. The learned counsel for the plaintiff has also filed its written submissions on 01.10.2024 to contend that the law laid down by Supreme

¹ 2022 SCC OnLine SC 1265



2024:DHC:10088



Court in **Har Naraini Devi** (supra) is not correct and therefore ought not to be applied to the averments in this plaint for examining its maintainability. It is reiterated in the submissions that plaintiff has a right to seek partition of the subject agricultural land under Section 6 of the Hindu Succession Act as amended in the year 2005.

Findings and Analysis

4. This Court has considered the submissions of the parties and perused the record.

5. In the aforementioned submissions of the parties, the following facts are undisputed: -

- (i) Shri Balbir Singh died on 15.03.1980.
- (ii) Shri Balbir Singh was the recorded Bhumidar for the said subject agricultural land.
- (iii) At the time of Shri Balbir Singh's death, the subject property was agricultural land and governed by the provisions of DLR Act.
- (iv) In 1980, Section 50 of the DLR Act governed the succession of interest of a Bhumidar in the agricultural land. As per Section 50(a) of the DLR Act the interest of the Bhumidar devolves upon his male lineal descendants to the exclusion of other family members.
- (v) The subject agricultural land was the exclusive property of Shri Balbir Singh.
- (vi) The subject agricultural land is located in Village Hiranki, District Narela (NW), Delhi and this Village was a rural village as on 15.03.1980 until the notification was issued under Section 507(a) of Delhi Municipal



2024:DHC:10088



Corporation Act, 1957 ('MCD Act') declaring it as urbanized w.e.f. 20.11.2019

(vii) The provision of DLR Act, thus, ceased to apply to the subject agricultural land only w.e.f. 20.11.2019.

6. In the aforementioned facts, the judgment of the Supreme Court in **Har Naraini Devi** (supra) is applicable on all fours as the facts are near identical. The Supreme Court in this judgment has categorically held that devolution of interest of a Bhumidar in agricultural land in Delhi will be governed by Section 50 of the DLR Act and not the provisions of Hindu Succession Act. The Supreme Court in this judgment also held that devolution of interest of a Bhumidar in his land holding for succession has to be determined with reference to the date on which the Bhumidar died and the law which was applicable on the date of the death. The Supreme Court has categorically held that with respect to agricultural land governed by DLR Act, subsequent amendments to the Hindu Succession Act in the year 2005 would not have impact on the inheritance, which has already occurred prior to 2005. The relevant paras of the judgment read as under: -

23. Section 4(2) of the 1956 Act read as follows:

"4. Overriding effect of Act:

(1)

(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 ceilings or for the devolution of tenancy rights in respect of such holdings."

24. Till 2005, to be specific 09.09.2005, when the Hindu Succession (Amendment) Act of 2005 was enacted, the aforesaid provision



remained on the statute. It is not in dispute that the property in question is agricultural property, and therefore, in 1997 at the time when Mukhtiyar Singh died, the devolution of interest (inheritance) would be determinable on the said date, in accordance with the law existing at that time. In 1997 Section 4(2) of the 1956 Act, was very much on the statute, its subsequent deletion would not have any impact on the rights of inheritance, which had already accrued and crystallized, prior to the amendment. Therefore, on facts deletion of Section 4(2) of the 1956 Act would not help the appellants.

25. It is well settled that all amendments are deemed to apply prospectively unless expressly specified to apply retrospectively or intended to have been done so by the legislature.....

26. In the present case there is no such intention reflecting from the amending Act.

...

28. The deletion of Section 4(2) took place w.e.f. 09.09.2005. Therefore, the effect of the deletion can only be in respect of successions which opened on or after 09.09.2005. This is because under Section 6(b) and 6(c) of the General Clauses Act repeal cannot affect the previous operation of any enactment so repealed and cannot affect any right which may have been acquired or accrued. In the present case, it is to be held that succession has opened prior to 09.09.2005, the rights of the descendants in terms of Section 50 became crystallized on account of the said Section read with Section 4(2) of the 1956 Act. Therefore, the deletion of Section 4(2) cannot have retrospective effect.

III. Effect of the judgment given in the case of Vineeta Sharma:

30. The argument advanced by the learned counsel for the appellants is that the applicability of amendment in Section 6 and the deletion of Section 4(2) from the 1956 Act would have retrospective effect, which is also of no help to the appellants. Once we are holding that succession in the present case with respect to the property in question is governed by the 1954 Act, any amendment even if it has a retrospective effect in the 1956 Act will have no



bearing or impact on the provisions of succession governed by the 1954 Act. Moreover, this Court in the judgment of Vineeta Sharma has given retrospective application only to Section 6 of the 1956 Act as amended in 2005. There is no declaration regarding deletion of Section 4(2) being retrospective. This argument, therefore, also fails.

...

33. For all the reasons recorded above, the appeal fails and is accordingly dismissed. No order as to costs.”

(‘Emphasis Supplied’)

7. The said judgment was also followed and applied in similar facts by the Co-ordinate Bench of this Court in the judgment titled as **Indu Rani v. Pushpa**².

8. The subsequent Section 507(a) notification under MCD Act declaring Village Hiranki as urbanized would not have any effect in altering and/or affecting the devolution of interest of late Shri Balbir Singh in favour of his male lineal descendants in March, 1980.

9. This Court is unable to accept the submissions of the plaintiff that the law laid down by the Supreme Court in **Har Naraini Devi** (supra) is incorrect and ought not to be followed. This Court is bound by the law laid down in the aforesaid judgment of the Supreme Court and in view of the law laid down therein, the claim of the plaintiff is without any cause of action.

10. Notwithstanding the aforesaid finding based on Section 50(a) of the DLR Act, the plaintiff has filed the present suit on the plea that the subject agricultural land is a coparcenary property and the plaintiff is entitled to seek partition as a coparcener under Section 6 of the Hindu Succession Act

² 2022 6 HCC (Del) 661



2024:DHC:10088



as amended in 2005. The said plea of the plaintiff is untenable as the subject agricultural land is not a coparcenary property.

11. The plaintiff at paragraph no. 1, 4 and 6(I) of the plaint has unequivocally stated that the subject agricultural land was the exclusive property of late Shri Balbir Singh. The said property does not acquire the character of coparcenary upon the death of late Shri Balbir Singh; the said property remains his personal property and the legal heirs, who inherit the said property also hold it as their personal property. The averment of the plaintiff that the property is coparcenary is a mere ipse dixit of the plaintiff and has no basis in fact or law.

12. In this regard, it would be relevant to refer to judgment of Supreme Court in **Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors.**³ and **Yudhishter v. Ashok Kumar**⁴, wherein the Supreme Court has categorically held that after the enactment of the Hindu Succession Act, any property inherited by a male Hindu from his ancestor is held by him as his personal property and it does not acquire the character of a HUF/coparcenary property. So also, under the DLR Act, there is no provision under which the agricultural land inherited by the legal heirs from a Bhumidar in 1986 would acquire the character of coparcenary.

13. Thus, the invocation of Section 6 of Hindu Succession Act, as amended in 2005, by the plaintiff to contend that she became a coparcener in the subject agricultural land is misconceived and without any basis as the agricultural land did not acquire the character of a coparcenary property and

³ (1986) 3 SCC 567 paragraphs 15 to 22

⁴ 1987 1 SCC 204 paragraph 10



2024:DHC:10088



on this ground as well the suit is liable to be dismissed for being without any cause of action.

14. In the given facts of this case, if Shri Balbir Singh had passed away intestate after 20.11.2019, the devolution of interest in the subject agricultural land would have been governed by Section 8 of the Hindu Succession Act; and in those facts the plaintiff would have been entitled to 1/9th share in the subject agricultural land being his Class-I legal heir as per the Schedule. However, this is not the factual matrix in the present case. Therefore, in view of the applicable law, and from the averments made and the bundle of facts stated in the plaint, this Court is of the considered opinion that the suit is without any cause of action, and hence, it is liable to be dismissed.

15. Accordingly, the caption application is accordingly allowed and the plaint is hereby rejected.

16. In view thereof the captioned suit stands disposed of. The pending applications are disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 24, 2024/mt/ms/rhc