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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
 + **CS(OS) 580/2024 & I.A. Nos. 34237-39/2024**  
**NARESH KUMAR** .....Plaintiff  
 Through: Mr. Kirti Uppal, Senior Advocate with  
 Mr. Daleep Dhyani, Ms. Riya Gulati,  
 Advocates  
 versus  
**SHRI TADBIR SINGH AND ORS** .....Defendants  
 Through: None

% Date of Decision: 14<sup>th</sup> August, 2024

**CORAM:**  
**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T(ORAL)**

1. The present suit has been filed by the plaintiff, thereby, seeking a decree for partition, rendition of accounts and for mandatory injunction in his favour and against the defendants herein. The suit has been filed with respect to 31 Kilas of agricultural land comprised in Khasra Nos. Nos.66/4 (4-16), 5 (4-16), 6/1 (0-3), 6/2 (6-16), 7 (3-2), 67/1 (4-16), 10 (4-15), 11/1min (2-14), 11/2 (2-14), 68/21/1 (4-2), 78/1/1 (0-2), 1/2 (4-14), 2 (4-16), 3 (4-16), 8 (4-16), 9 (4-16), 10 (4-16), 83/18/1 (3-14), 19 (4-4), 20 (4-4) 21(4-16), 22 (4-16), 23/2 (2-8), 110/11/2 (1-12), 12 (4-16), 128/7 (4-16), 8 (4-16), 28/21/2 (0-12), 30/2 min (4-3) and 9 min (4-13), situated in the revenue estate of Village Dichoan Kalan, Najafgarh, New Delhi ('said agricultural land'). The plaintiff further seeks a direction for mutation in his name qua his mother's share in the agricultural land.
2. Learned senior counsel for the plaintiff states that the plaintiff herein is



claiming rights in the agricultural land owned by his maternal grandfather- late Sh. Jug Lal, the recorded Bhumidar of the said land. He states late Sh. Jug Lal died on 25.10.1986 and he was survived by two sons and two daughters namely (i) late Sh. Saroop Singh, (ii) Sh. Tadbir Singh, i.e., defendant no. 1 herein, (iii) Smt. Raj Bala (mother of the plaintiff) and (iv) Smt. Saroopi.

2.1. He states that Smt. Raj Bala, who is plaintiff's mother, died on 30.11.1996.

2.2. He states that in the unamended plaint filed on 20.05.2024, the plaintiff herein had sought partition on the basis of the right of Smt. Raj Bala to inherit the agricultural land as the natural legal heir of late Sh. Jug Lal under the provisions of the Hindu Succession Act, 1956 ('Act of 1956') i.e., Section 8 therein. He states that, however, the plaintiff has now amended the plaint and seeks to claim inheritance in the said agricultural land on the basis of Section 6 of the Act of 1956.

2.3. He states that in the amended plaint the plaintiff has pleaded that late Sh. Jug Lal died intestate and following late Sh. Jug Lal's death, the said agricultural land formed part of a (Hindu Undivided Family) HUF and late Smt. Raj Bala is a co-parcener of the said HUF, given the amendment to Section 6 of the Act of 1956 on 09.09.2005. He states that the plaintiff claims the ownership rights in the said agricultural land, as the legal heir of the said coparcener i.e., late Smt. Raj Bala.

2.4. He states that the agricultural land owned by late Sh. Jug Lal has continued to remain undivided and there has been no final partition by metes and bounds of the said land, which is evident from the contents of the Agreement to Sell dated 01.07.2023, executed by the defendants with the prospective purchaser(s).



3. He states that Section 50 of the Delhi Land Reforms Act, 1954 ('DLR Act') would have no application to this agricultural land given the amendment to Section 6 of the Act of 1956 on 09.09.2005. He states that in addition, Village Dichoan Kalan has been urbanized, w.e.f. 17.05.2017, by virtue of a notification issued under Section 507 of the Municipal Corporation of Delhi Act, 1957 ('MCD Act').

3.1. He states that after the demise of the plaintiffs' maternal grandfather, late Sh. Jug Lal, the agricultural land was mutated in the revenue records on 30.01.1987, in favour of his two sons [Sh. Saroop Singh and Sh. Tadbir Singh], excluding the two daughters i.e. Smt. Raj Bala (plaintiffs' mother) and Smt. Saroopi. He states, however, the fact of the mutation in revenue records was not within the knowledge of the plaintiff, who only learnt about it in the year 2023 and therefore, the plaintiff is not bound by the said revenue record.

3.2. He states that in the year 2023, the plaintiff had filed an appeal under Section 64 of the Delhi Revenue Act, 1954 to challenge the said mutation; however, the said appeal was dismissed as not maintainable on 04.03.2024 on account of a notification issued by MCD under Section 507 of the MCD Act.

3.3. He states that the judgment of the Supreme Court in **Har Naraini Devi v. Union of India**<sup>1</sup>, wherein it has been held that the devolution of interest of a Bhumidar in an agricultural land situated in Delhi would be governed by Section 50 of the DLR Act and not by amended Section 6 of the Act of 1956 is per incuriam, as it has been passed in ignorance of the Section 6(5) of the Act of 1956.

3.4. He relies upon the judgment of the Division Bench of this Court in

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<sup>1</sup> 2022 SCC OnLine SC 1265



**Swaran Lata v. Sh. Kulbhushan Lal and Ors.**<sup>2</sup> to contend that a claim for partition of agricultural land situated in Delhi and forming part of the HUF would be governed by amended Section 6 of the Act of 1956 and not by Section 50 of the DLR Act.

3.5. He states that though Sh. Jug Lal died on 25.10.1986 and the plaintiff's mother died on 30.11.1996, this suit filed in 2024 is within limitation and places reliance upon Article 110 of the Limitation Act, 1963.

3.6. He has also orally relied upon the judgment of the Division Bench of this Court in **Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.**<sup>3</sup> to contend that the suit cannot be rejected under Order VII Rule 11 the Code of Civil Procedure, 1908 ('CPC') at this early stage of the proceedings. The copy of the judgment was handed over by Mr. Daleep Dhyani, Advocate, the counsel on record after mentioning the matter who, however, conceded that the said judgment has no application to the exercise of jurisdiction by this Court under the provisions of Order VII Rule 11 of CPC.

4. This Court has heard the learned senior counsel for the plaintiff and perused the record.

***Non-application of Section 6 of the Act of 1956***

5. This Court would first like to deal with the contention of the plaintiff raised by way of the amended plaint, as to whether the said agricultural land acquired the character of a coparcenary property upon the death of late Sh. Jug Lal on 25.10.1986?

5.1. It is a matter of record that after the death of late Sh. Jug Lal on 25.10.1986, his sons, Sh. Saroop Singh and Sh. Tadbir Singh had filed an

<sup>2</sup> 2014 SCC OnLine Del 499 [Paragraphs 21-33 and 38]

<sup>3</sup> 227 (2016) Delhi Law Times 320 (DB)



application for mutation before the Tehsildar, thereby, seeking mutation of late Sh. Jug Lal's half share in the said agricultural land, exclusively in their favour. The Tehsildar thereafter, vide order dated 30.01.1987 passed a mutation order in favour of late Sh. Saroop Singh and Sh. Tadbir Singh.

5.2. The plaintiff has placed on record a copy of the statutory appeal<sup>4</sup> filed by him before the Court of the District Collector, Kapashera, Delhi under Section 64 of the Delhi Land Revenue Act, 1954, thereby, challenging the mutation order dated 30.01.1987, whereby the Tehsildar had sanctioned mutation in favour of the two sons of late Sh. Jug Lal. In this appeal the plaintiff challenged the said mutation order on the basis that the Tehsildar ought to have issued legal notices to all the Class I legal heirs of late Sh. Jug Lal in accordance with the provisions of the Act of 1956. The claim of the plaintiff in this appeal was based on Section 8 of the Act of 1956, as Class I legal heirs of a male Hindu is a classification, which falls under the said Section. In the said appeal, there was no reference to Section 6 of the Act of 1956 or to the existence of a coparcenary or a HUF. There was absolutely no plea in the said appeal that late Smt. Raj Bala was a coparcener and/or the said agricultural land is a coparcenary property.

5.3. Similarly, in the unamended plaint filed before this Court on 20.05.2024 the entire claim in the plaint is based on natural succession as legal heirs of late Sh. Jug Lal under the Act of 1956. There is no plea in the unamended plaint that the said agricultural land is a coparcenary property or that there exists an HUF, prior or after the death of late Sh. Jug Lal.

5.4. When the matter was first listed before this Court on 25.07.2024, the

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<sup>4</sup> Case ID No. 34027 titled *Mahesh Kumar v. Tadbir*



plaintiff was called upon to address arguments on the maintainability of his claim of succession as per Act of 1956, in view of the law settled by the Supreme Court in the judgment of **Har Naraini Devi** (supra). In the said judgment, the Supreme Court categorically held that devolution of interest in respect of agricultural land situated in Delhi, where the Bhumidar has died before 09.09.2005, will be governed by Section 50 of the DLR Act and not by the provisions of the Act of 1956. Learned senior counsel for the plaintiff on the said date had sought time to address arguments in this regard.

5.5. Thereafter, the plaintiff on 27.07.2024, filed an application being I.A. No. 35324/2024 under Order VI Rule 17 of CPC, thereby seeking amendment of the plaint, in order to incorporate a plea at para 3.3 of the plaint that his mother, late Smt. Raj Bala has inherited rights in the said agricultural land after the demise of late Sh. Jug Lal on 25.10.1986, as a coparcener. The said pleading is abrupt and there is absolutely no basis in the plaint to substantiate the plea in the plaint, as regard to formation of a coparcenary between the legal heirs of late Sh. Jug Lal on the date of his death in 1986. The plaint does not refer to any existence of a coparcenary prior to 25.10.1986 (i.e., the death of late Sh. Jug Lal). The plaint proceeds on a presumption that a coparcenary comes into existence on the date of the death of Sh. Jug Lal in 1986. This presumption in the plaint is without any basis in law.

5.6. The Supreme Court in **C.W.T v. Chander Sen**<sup>5</sup> and **Yudhishter v. Ashok Kumar**<sup>6</sup> has categorically held that after the enactment of the Act of 1956, 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 coparcenary

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<sup>5</sup> (1986) 3 SCC 567

<sup>6</sup> (1987) 1 SCC 204



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. Therefore, the plea in the plaint that upon the death of late Sh. Jug Lal in 1986, Smt. Raj Bala became a coparcener in the said agricultural land is misconceived and without any legal basis, as the agricultural land did not acquire the character of a coparcenary property. The plea of coparcenary in paragraphs 3.3 and 3.4 of the amended plaint is therefore, without any basis in law or facts.

5.7. Since, the said agricultural land is not a coparcenary property, the question of application of Section 6 of the Act of 1956 does not even arise for consideration. As discussed hereinafter, in view of the judgment of the Supreme Court in **Har Naraini Devi** (supra), the provisions of Act of 1956 have no application to the devolution of interest in the agricultural land in the facts of this case.

***Non-application of Section 8 of the Act of 1956***

6. This Court therefore, proceeds to examine the plea originally raised by the plaintiff in the unamended plaint and the appeal filed before the District Collector under the Delhi Land Revenue Act, 1954, wherein the plaintiff had claimed that late Smt. Raj Bala had succeeded to the suit property by virtue of being a Class I, legal heir of late Sh. Jug Lal.

6.1. It is an admitted fact that the suit land is agricultural and late Sh. Jug Lal was recorded as a Bhumidar in the Khatauni records. The Khatauni records the date of commencement of the Bhumidari rights in 1966-67.

6.2. Sh. Jug Lal died on 25.10.1986 and on the said date the devolution of interest (inheritance) in this agricultural land was governed by Section 50 of the DLR Act. Admittedly, as per Section 50(a) of the Act, the two sons of Sh. Jug



Lal i.e., Sh. Saroop Singh and Sh. Tadbir Singh alone were entitled to inherit the agricultural land. In fact, the said Sh. Saroop Singh and Sh. Tadbir Singh duly applied for mutation and the land was mutated in their favour on 30.01.1987.

6.3. There is no dispute that in 1986 late Smt. Raj Bala was not entitled to succeed to the agricultural land in view of Section 50 of the DLR Act, however, the plaintiff relies upon Section 8 of the Act of 1956 to claim succession to the said agricultural land and claims on behalf of late Smt. Raj Bala.

6.4. In the opinion of this Court, the issue of law raised in the present suit is no longer res integra in view of the judgment of the Supreme Court in Har Naraini Devi (supra), where in the identical facts, it was held that the Act of 1956 would have no application to devolution of interest in an agricultural land situated in Delhi; and the said devolution would be governed by Section 50 of the DLR Act. In the said case before the Supreme Court, the Bhumidar i.e., Mukhtiar Singh had expired on 06.06.1997 and the agricultural land was mutated in favour of his grandsons as per Section 50(a) of the DLR Act. The challenge to the said mutation was raised by the widow of Mukhtiar Singh and her daughters who contended that the devolution of interest in the agricultural land should be governed by the Act of 1956, especially, in view of the deletion of Section 4(2) of the Act of 1956 [w.e.f. 09.09.2005]. However, the said challenge by the petitioners, therein, was rejected by the Supreme Court and it was held that repeal of Section 4(2) of the Act of 1956 came into effect on 09.09.2005, whereas, the devolution of interest (inheritance) in the agricultural land occurred on 06.06.1997, the date on which Mukhtiar Singh died. The Supreme Court held that the subsequent deletion of Section 4(2) of the Act of 1956 would have no impact on the rights of inheritance, which had already



accrued and crystallised in favour of the grandsons of Mukhtiar Singh in 1997, prior to the amendment of Act of 1956. The relevant paras of the judgment read as under:

***“II. Deletion of Section 4(2) of the 1956 Act:***

***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 crystallised, 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)

6.5. Pertinently, the ratio of judgment in the case of **Vineeta Sharma v. Rakesh Sharma**<sup>7</sup> was also duly considered by the Supreme Court in the aforesaid judgment of **Har Naraini Devi** (supra) to conclude that DLR Act is a special law and once it is held that inheritance in an agricultural land will be governed by DLR Act, any amendment even if it has a retrospective effect in the Act of 1956, will have no bearing on the provisions of succession governed by DLR Act.

6.6. The facts arising for consideration in the present matter are identical with the facts considered by Supreme Court in **Har Naraini Devi** (supra). In the present case, as well, Sh. Jug Lal died on 25.10.1986. The inheritance to the said agricultural land opened on this date and the land devolved upon his two sons [Sh. Saroop Singh and Sh. Tadbir Singh] as per Section 50(a) of the DLR Act. Thus, the rights of inheritance in favour of Sh. Saroop Singh and Sh. Tadbir Singh had already accrued and crystallised on 25.10.1986, prior to the deletion of Section 4(2) of the Act of 1956 on 09.09.2005. Therefore, no rights

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<sup>7</sup> (2020) 9 SCC 1



of inheritance in the said agricultural land devolved upon late Smt. Raj Bala on 25.10.1986 or upon the deletion of Section 4(2) of the Act of 1956 on 09.09.2005.

6.7. Therefore, the present suit filed by the plaintiff as the legal heir of late Smt. Raj Bala, claiming to be a co-owner in the said agricultural land is without any basis in law and is thus, without any cause of action.

7. The plaintiff has relied upon the facts that the land of village Dichoan Kalan has been urbanised w.e.f. 17.05.2017, and therefore, the said agricultural land is no longer considered agricultural land. However, the said reclassification of the land would not have any effect on the issue of devolution of interest (inheritance) of late Sh. Jug Lal which took place on 25.10.1986, when admittedly the suit land was still classified as agricultural land and it was governed by Section 50 of the DLR Act.

8. The reliance placed on the judgment of **Swaran Lata** (supra) is of no assistance to the case of the plaintiff in view of the finding above that there is no coparcenary property in this matter. In the said case before the Division Bench, the existence of the HUF was admitted and the ownership of the HUF in the suit land therein was also admitted. However, in this case under consideration, the agricultural land is not a coparcenary property.

9. Moreover, the judgment of the Supreme Court in **Har Naraini Devi** (supra) has come subsequently and in view of the judgment of the Supreme Court the devolution of interest in agricultural and would have to be governed by Section 50 of the DLR Act and to that extent this Court is bound by the dicta of the judgment in **Har Naraini Devi** (supra).

10. The submission of the learned senior counsel for the plaintiff that the **Har Naraini Devi** (supra) is per incuriam is misconceived and incorrect as the



Supreme Court in this judgment has specifically taken note of amendment to Section 4(2) of the Act of 1956, amended Section 6 of Act of 1956 and the judgment of **Vineeta Sharma** (supra) in its judgment and in fact, held that since DLR Act is a special law it would exclusively govern devolution of interests in agricultural holding notwithstanding the deletion of Section 4(2) of the Act of 1956. This Court is therefore, unable to accept the submissions of the plaintiff as regards the applicability of provisions of the Act of 1956 to this agricultural land.

11. In the facts of this case, the plaintiff has filed this suit claiming share in the agricultural land from his maternal uncles and his cousins. However, the plaint is replete with false statements. The plaintiff at paragraph 3.5 of the amended plaint has alleged that he was assured by his ‘maternal grandfather’ that as and when the property is partitioned, the plaintiff will be given an apportioned share of his ‘late mother’. The falsity of this plea is writ large on the record. The plaintiff’s maternal grandfather passed away on 25.10.1986, whereas, his mother Smt. Raj Bala passed away subsequently on 30.11.1996; therefore, the alleged assurances of late Sh. Jug Lal pleaded at paragraph 3.5 are clearly impossible in law and facts.

11.1. Furthermore, at paragraph 7 of the amended plaint, the plaintiff has submitted that he is the joint holder and is in joint possession of the agricultural land; however, upon this Court’s query as to whether the plaintiff is in possession of the said agricultural land, it was submitted by the learned senior counsel that the plaintiff is not in possession. Admittedly, the plaintiff is not in the physical possession of the agricultural land, and it is plaintiff’s maternal uncles and their family, who is in the exclusive possession of the said agricultural land. The same is also evident from the ATS dated 01.07.2023



placed on record by the plaintiff.

12. Late Sh. Jug Lal passed away on 25.10.1986 and the devolution of interest in favour of his two sons, Sh. Saroop Singh and Sh. Tadbir Singh crystallised on the said date. The revenue records duly recorded this devolution of interest of Bhumidari rights way back in 1987. In agricultural land, revenue records of Bhumidari rights form the basis of title to the land. Sh. Saroop Singh and Sh. Tadbir Singh along with their families have been in exclusive possession of the agricultural land since then. The present suit filed in 2024 (after 38 years) to challenge the said inheritance is clearly driven by the ATS dated 01.07.2023 wherein plaintiff has learnt about the proposal of sale of a part of the agricultural land and the sale has triggered these claims. The filing of the present suit seeking partition of land, despite the plaintiff having no physical possession, after 38 years, is primarily driven by monetary interests to create a cloud on the title of the land and lacks a genuine actionable claim.

13. The present plaint is accordingly rejected for being without any cause of action.

14. The pending applications are dismissed.

**MANMEET PRITAM SINGH ARORA, J**

**AUGUST 14, 2024/msh/MG**