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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 217/2021, I.A. 5406/2021 and I.A. 1736/2022**

Date of Decision: **13.02.2025**

IN THE MATTER OF:

SUMITRA

..... PLAINTIFF

Through: Mr. Nitin, Mr. Anas, Mr. Pradnya,
Mr. Ebad Ur Rahman, Mr. Abhinanda,
Mr. Masoom and Mr. Zainab,
Advocates.

Versus

GANGA RAM AND OTHERS

.... DEFENDANTS

Through: Mr. Vishal Maan and Mr. R.S.
Verma, Advocates for D-1 and 3.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

I.A. 1736/2022 (under Order VII Rule 11 of CPC by defendant nos.1 and 3)

1. The instant application under Order VII Rule 11 of the Code of Civil Procedure, 1908, has been filed by defendant nos.1 and 3.
2. Learned counsel appearing on behalf of the applicant-defendant nos.1 and 3 submits that the present civil suit is barred by law, as the relief sought is not maintainable in view of the provisions of Section 50 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the DLR Act).



3. Learned counsel submits that it remains an undisputed fact that the father of the plaintiff, Mr. Udami Ram, who passed away on 12.10.1991, was the recorded *bhumidar* of the agricultural lands mentioned in paragraph no. 2(a) and 2(b) of the plaint.

4. He submits that upon the demise of Mr. Udami Ram, the succession of the said agricultural land was effected in favour of his five sons, namely, defendant nos. 1, 2, 3, and 7, along with Mr. Surender Singh, the father of defendant no. 9 herein. Upon the subsequent demise of Mr. Surender Singh, his legal heir, defendant no. 9, succeeded to his share in accordance with Section 50 of the DLR Act, with the corresponding mutation duly recorded in the revenue records.

5. He further submits that since the succession to the properties in question took place in 1991, it was solely governed by Section 50 of the DLR Act, as the provisions of the Hindu Succession Act, 1956, were then subject to Section 4(2) of the said Act, which preserved the application of laws governing agricultural land tenure. He further submitted that the Hindu Succession (Amendment) Act, 2005, which omitted Section 4(2) of the Hindu Succession Act, 1956, was not in force at the time when succession to the suit property was determined. Thus, he contends that the devolution of agricultural land in the present case was solely governed by the DLR Act, which is a complete code in itself. In support of this proposition, he places reliance on the judgments of *Ram Mehar v. Dakhan*¹, and *Hatti v. Sunder Singh*².

6. Learned counsel further refers to the provisions of the DLR Act and

¹ 1972 SCC OnLine Del 64

² (1970) 2 SCC 841



submits that with the commencement of the Act in 1954, all ownership rights in agricultural land stood abolished, and only the rights of tenure holders were recognized. He contends that this is the reason why the terms *Bhumidhars* and *Asamis* were specifically used to describe tenure holders over agricultural land instead of owners. To substantiate this aspect, he places reliance on the decision in *Nathu v. Hukam Singh*³.

7. Additionally, he argues that the DLR Act does not recognize the concept of Joint Hindu Family or Hindu Undivided Family (HUF) properties within its framework, as the said Act exclusively governs the devolution of tenancy rights in agricultural land. In support of this contention, he relies on the judgment in *Brij Narain Aggarwal v. Anup Kumar Goyal*⁴.

8. Learned counsel for the applicants places reliance on the decisions of this Court in *Indu Rani v. Pushpa*⁵ and *Naresh Kumar v. Tadbir Singh*⁶, to contend that the rights of lineal descendants under Section 50 of the DLR Act stood crystallized and remain unaffected by the subsequent deletion of Sub-section (2) of Section 4 of the Hindu Succession Act, 1956.

9. Learned counsel further submits that the decision of the Supreme Court in *Vineeta Sharma v. Rakesh Sharma*⁷, has no application to the present case, as the suit properties do not fall within the category of Joint Hindu Family (JHF) properties. He contends that since the properties in question are agricultural lands governed exclusively by the DLR Act, the provisions of the Hindu Succession Act, 1956, including the exposition of

³1981 SCC OnLine Del 345

⁴2007 SCC OnLine Del 924

⁵(2022) 6 HCC (Del) 661

⁶2024 SCC OnLine Del 5755

⁷(2020) 9 SCC 1



law rendered in *Vineeta Sharma*, do not apply.

10. He emphasizes that the DLR Act provides a distinct statutory framework for the devolution of agricultural land, which overrides general Hindu law principles. Consequently, any reliance on *Vineeta Sharma*, which pertains to the coparcenary rights of daughters in Joint Hindu Family property, is misplaced in the present case.

11. With respect to property 2(c), as mentioned in the plaint, learned counsel submits that the plaintiff has failed to produce any documentary evidence, establishing the said property to be falling within the ambit of residential property or to demonstrate any link establishing that the property was ever owned by late Mr. Udami Ram. He contends that for a party to seek partition of a property as a right through succession, it is imperative to first establish the ownership or interest of the predecessor in the property.

12. Learned counsel further submits that the plaintiff has vaguely alleged that the defendants are coparceners, descendants, and legal heirs of late Mr. Udami Ram and are the joint owners of the immovable property situated in the urbanized area of Safipur Ranhola, Delhi. He contends that there is a marked legal distinction between coparceners, descendants, and legal heirs. The plaintiff has conflated these distinct concepts. He submits that coparcenary rights arise only in the context of Joint Hindu Family property, and in the present case, the plaintiff has failed to establish the existence of any Joint Hindu Family or Hindu Undivided Family property.

13. He argues that in the absence of any proof of ownership or co-ownership by late Mr. Udami Ram over property 2(c), the question of claiming partition rights does not arise. He submits that the mere fact that the property is situated in a village does not automatically make it



coparcenary property, particularly when the plaintiff has not shown any documentary nexus between the suit property and late Mr. Udami Ram.

14. Learned counsel submits that it is admittedly an old residential *abadi*, and any *abadi* or extended *abadi* is governed under Section 3(12) of the DLR Act. In support of this contention, learned counsel places reliance on the decision of this Court in *Subhadara v. Surender Singh*⁸.

15. The submissions advanced by learned counsel for defendant nos.1 and no. 3 are strongly opposed by learned counsel appearing on behalf of the plaintiff.

16. Learned counsel for the plaintiff, vehemently rejecting the arguments advanced by the learned counsel for the defendants, contends that the present application is misconceived and devoid of merit, and therefore, deserves to be dismissed. He submits that even assuming, without prejudice, that property 2(a) is agricultural land, Properties 2(b) and 2(c) remain residential in nature. Consequently, the suit would be maintainable in respect of these properties.

17. In support of his contention, learned counsel places reliance on the decision of the Supreme Court in *Geetha v. Nanjundaswamy*⁹, to argue that in the exercise of power under Order VII Rule 11 CPC, a plaint cannot be rejected in part.

18. He contends that the Hindu Succession (Amendment) Act, 2005, is prospective in its operation and that the agricultural land in question was inherited under section 50 of the Delhi Land Reforms Act by the male lineal descendants of late Mr. Udami Ram. He submits that prior to the 2005

⁸2016 SCC OnLine Del 1927

⁹2023 SCC OnLine SC 1407



Amendment Act, the provisions of the Delhi Land Reforms Act, which were inconsistent with the Hindu Succession Act, 1956, were preserved solely by virtue of Section 4 of the Hindu Succession Act.

19. He further argues that since the Amendment Act of 2005 has been held to be retrospective in operation and Section 4 of the Hindu Succession Act, 1956, has been omitted, the provisions of Section 50 of the DLR Act have become inoperative and of no legal consequence. Consequently, any succession carried out or revenue entries made exclusively in favour of male lineal descendants prior to the amendment have no legal sanctity. He asserts that, by virtue of their birth in a Hindu family, daughters are now entitled to an equal share in the property along with sons, and therefore, the estate of late Mr. Udami Ram, having devolved through intestate succession, must be divided equally among all his sons and daughters. Learned counsel places reliance on ***Vineeta Sharma*** to substantiate his contention.

20. I have considered the submissions made by learned counsel appearing on behalf of the parties and perused the record.

21. It is a well-settled principle that a plaint cannot be rejected in part under Order VII Rule 11 of the CPC. The Supreme Court in ***Geetha v. Nanjundaswamy*** has reiterated this principle, holding that a plaint must either be rejected in its entirety or not at all. The relevant portion of the said decision states:-

“12. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsood Ahmad v. Mathra Datt & Co.⁴. This principle is also explained in a recent decision of this Court in Sejal Glass Ltd.v. Navilan Merchants (P) Ltd.,⁵ which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd.⁶ The relevant portion



of Madhav Prasad (*supra*) is extracted hereinunder:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.”

22. Thus, the reliance of the plaintiff on the said decision is well-founded. The Court concurs with the submission of the plaintiff that the plaint cannot be rejected in part, and the suit must be considered in its entirety.

23. This brings the Court to the fundamental issue in the present case, namely, whether the three properties that are the subject matter of partition can be classified as agricultural properties for the applicability of the DLR Act.



24. Before addressing this question, it is pertinent to note that Mr. Udami Ram passed away on 12.10.1991. The Coordinate Bench of this Court in **Indu Rani** examined an almost similar factual matrix and, in paragraph 22 of the said decision, held that the repeal of sub-section (2) of Section 4 of the Hindu Succession Act does not have a retrospective effect. The Court unequivocally held that the rule of succession prescribed under Section 50 of the DLR Act would govern cases where succession had opened prior to 09.09.2005. It was further clarified that in such cases, the male legal heirs would acquire *Bhumidari* rights in the suit land, and the subsequent legislative amendment would not disturb these vested rights. The relevant portion of the decision reads as follows:-

“22. The present case is squarely covered by the aforesaid dicta of Har Naraini Devi case [Har Naraini Devi v. Union of India 2022 SCC OnLine SC 1265]. In the present case, the father of the plaintiff expired in 1993, when sub-section (2) of Section 4 of the Hindu Succession Act was still in existence. Devolution of interest in respect of the suit land would be determinable in accordance with the law prevailing at the time of the death of the father of the plaintiff. Therefore, rule of succession in terms of Section 50 of the DLR Act, would prevail in the present case and the brothers of the plaintiff would acquire interest in the bhumidari rights of their father in the suit land. The subsequent deletion of sub-section (2) of Section 4 of the Hindu Succession Act would not affect the same.”

25. The decision rendered in **Vineeta Sharma** also explicitly indicates that the amendments to the Hindu Succession Act are not retrospective but only retroactive in nature. The relevant portion of the decision reads as follows:-

“61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in



the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.

62. *The concept of retrospective and retroactive statute was stated by this Court in Darshan Singh v. Ram Pal Singh [Darshan Singh v. Ram Pal Singh, 1992 Supp (1) SCC 191] , thus: (SCC pp. 211-13, paras 35-37)*

“35. Mr Sachar relies on Gokal Chand v. Parvin Kumari [Gokal Chand v. Parvin Kumari, (1952) 1 SCC 713 : AIR 1952 SC 231] , GarikapatiVeeraya v. N. Subbiah Choudhry [GarikapatiVeeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] , Jose Da Costa v. BascoraSadasiva Sinai Narcornim [Jose Da Costa v. BascoraSadasiva Sinai Narcornim, (1976) 2 SCC 917] , Govind Das v. CIT [Govind Das v. CIT, (1976) 1 SCC 906 : 1976 SCC (Tax) 133] , Henshall v. Porter [Henshall v. Porter, (1923) 2 KB 193] , United Provinces v. Atiq Begum [United Provinces v. Atiq Begum, 1940 SCC OnLine FC 11 : AIR 1941 FC 16] , in support of his submission that the Amendment Act was not made retrospective by the legislature either expressly or by necessary implication as the Act itself expressly provided that it shall be deemed to have come into force on 23-1-1973; and therefore there would be no justification to giving it retrospective operation. The vested right to contest which was created on the alienation having taken place and which had been litigated in the court, argues Mr Sachar, could not be taken away. In other words, the vested right to contest in appeal was not affected by the Amendment Act. However, to appreciate this argument we have to analyse and distinguish between the two rights involved, namely, the right to contest and the right to appeal against the lower court's decision. Of these two rights, while the right to contest is a customary right, the right to appeal is always a creature of statute. The change of the forum for appeal by enactment may not affect the right of appeal itself. In the instant case we are concerned with the right to contest and not with the right to appeal as such. There is also no dispute as to the propositions of law regarding vested rights being not taken away by an enactment which is ex facie or by implication not retrospective. But merely because an Act envisages a past act or event in the sweep of its operation, it may not necessarily be said to be retrospective. Retrospective, according to Black's Law Dictionary, means looking backward; contemplating what is past; having reference to a statute or things existing before the Act in question. Retrospective law, according to the same dictionary, means a law which looks backwards or contemplates



the past; one which is made to affect acts or facts occurring, or rights occurring, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Retroactive statute means a statute which creates a new obligation on transactions or considerations already past or destroys or impairs vested rights.

36. In Halsbury's Laws of England (4th Edn., Vol. 44, at para 921) we find:

'921. Meaning of "retrospective".—It has been said that "retrospective" is somewhat ambiguous and that a good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; or is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing.'

37. We are inclined to take the view that in the instant case the legislature looked back to 23-1-1973 and not beyond to put an end to the custom and merely because on that cut-off date some contests were brought to abrupt end would not make the Amendment Act retrospective. In other words, it would not be retrospective merely because a part of the requisites for its action was drawn from a time antecedent to the Amendment Act coming into force. We are also of the view that while providing that "no person shall contest any alienation of immovable property whether ancestral or non-ancestral or any appointment of an heir to such property", without preserving any right to contest such alienations or appointments as were made after the coming into force of the Principal Act and before the coming into force of the Amendment Act, the intention of the legislature was to cut off even the vested right; and that it was so by implication as well. There is no dispute as to the proposition that retrospective effect is not to be given to an Act unless, the legislature made it so by express words or necessary implication. But in the instant case it appears that this was the intention of the legislature. Similarly courts will construe a provision as conferring power to act retroactively when clear words are used. We find both the intention and language of the Amendment Act clear in these



respects.”

26. The Supreme Court, in *Har Naraini Devi v. Union of India*¹⁰, has reiterated that the decision in *Vineeta Sharma* does not impact successions that had already opened prior to 09.09.2005. Consequently, the rights of male lineal descendants under Section 50 of the DLR Act, which had vested prior to the said date, remain unaffected by the subsequent deletion of Sub-Section (2) of Section 4 of the Hindu Succession Act, 1956.

27. Thus, the contention of the plaintiff that the 2005 amendment to the Hindu Succession Act applies retrospectively and, therefore, nullifies the provisions of the DLR Act does not find merit. The settled legal position indicates that succession must be determined in accordance with the law prevailing at the time of the demise of the predecessor, and any subsequent amendment does not disturb vested rights.

28. In *Naresh Kumar*, the co-ordinate bench of this Court, in paragraph 6.6, once again examined the law laid down in *Har Naraini Devi* and reiterated that where succession had already opened prior to 09.09.2005, the provisions of Section 50 of the DLR Act would govern devolution, and a claim under the Hindu Succession Act, 1956, could not be sustained. The Court observed that in cases where a predecessor had passed away before the omission of Section 4(2) of the Act, the rights of inheritance in favour of male legal heirs had already accrued and crystallized, rendering any subsequent the amendments in law inapplicable. Consequently, in the present case, since the succession opened prior to 09.09.2005, the plaintiff could not have claimed any right over the estate of the deceased, as the

¹⁰(2022) 18 SCC 470



inheritance was to be governed by Section 50 of the DLR Act. The relevant portion of the said decision reads as under:-

“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 (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.”

29. With respect to the contention of the plaintiff regarding Properties 2(b) and 2(c) being residential in nature and thus falling outside the purview of the DLR Act, the Co-ordinate Bench of this Court in **Subhadara**, has categorically held in paragraph 31 that the classification of land, whether in the old *abadi* or extended *abadi*, is governed by Section 3(12) of the DLR Act. The Court clarified that even **Lal Dora** land falls within the ambit of the DLR Act, thereby making its provisions applicable. The relevant portion of the decision reads as under:-

*“31. The definition of land under section 3(12) of the Delhi Land Reforms Act categorically defines as to what types and what kind lands are to be considered as land for the application of the provisions of Delhi Land Reforms Act. Any Lal Dora plot, whether in the old *abadi* or extended *abadi*, is covered under section 3(12) of the Act. Thus the provisions of Delhi Land Reforms Act are applicable to Lal Dora land as well and, in the first instance, the appellant could have approached the revenue courts only.”*

30. Consequently, the argument that the properties in question do not fall within the jurisdiction of the DLR Act due to their residential nature does not hold merit.



31. In the present case, based on the pleadings of the plaintiff, property 2(b) has been stated to be vested in the Gram Sabha of Village Safipur, Ranhola, which clearly indicates that it was *abadi* land. Similarly, property 2(c) is shown to be part of the old residential *abadi* of Village Safipur, Ranhola. Even as per the assertions made in the plaint, both properties 2(b) and 2(c), as they stood in the year 1991, fall either within the category of agricultural land or under the old or extended *abadi*. This position is further reinforced by the principles laid down by this Court in *Subhadara*. Accordingly, in view of the settled legal position and its applicability to the present case, the suit is barred under Section 50 of the DLR Act.

32. Thus, in view of the settled legal position, the Court is unable to accede to any of the prayers made in the instant suit. The defendant has successfully demonstrated that the principles under Order VII Rule 11 have been met by establishing that the plaintiff has no cause of action. The jurisprudence under Order VII Rule 11, as enunciated in *Dahiben v. Arvindbhai Kalyanji Bhanusali*¹¹, mandates that a Court must determine whether the plaint and allied documents itself disclose the cause of action. In the present case, upon a thorough examination of the pleadings and the legal framework governing the dispute, given the clear jurisprudence on the subject, the Court finds no merit in allowing the suit to proceed and accordingly deems it appropriate to reject the plaint under Order VII Rule 11 of the CPC.

33. Consequently, the instant application filed by the defendants stands allowed.

¹¹(2020) 7 SCC 366



CS(OS) 217/2021 & I.A. 5406/2021

34. In light of the decision rendered in I.A. 1736/2022, the instant suit, along with pending applications, stands dismissed.

FEBRUARY 13, 2025
Nc/sp

PURUSHAINDRA KUMAR KAURAV, J

Click here to check corrigendum, if any