

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR PARTITION

FAO No.354-55/2006

RESERVED ON: 15.02.2008

DATE OF DECISION: 18.02.2008

Smt.Mukesh and Others Appellants
through: Mr.Ruchir Batra, Advocate

VERSUS

Shri Bharat Singh and OthersRespondent
through: Mr.I.S.Dahiya, Advocate

PRADEEP NANDRAJOG, J.

1. Appellants had filed a suit for partition and injunction alleging that they were the daughters of late Shri Khem Chand. They impleaded their 3 brothers and their sister as defendants 1, 2, 3 and 4 respectively. It was stated in the plaint that the suit land measuring 4.5 kila in Khata No.88/54 in the revenue estate of Village Mundla Khurd, Tehsil Najafgadh, Delhi was owned by their father and on his death the sons and the daughters each acquired 1/6th share in the suit land. On said basis, alleging that no partition had been effected, partition was prayed for.

2. In the written statement filed by the defendants 1, 2 and 3 i.e. the brothers, it was stated that Khem Chand expired on 10.6.1993 and as per the Delhi Land Reforms Act, 1954 succession to the holding being governed under Section 50 thereof, as sons, they alone were entitled to succeed to the holding since their sisters were married. Thus, entitlement of the plaintiffs was denied. It was stated that on death of the father the suit lands were mutated in the names of the 3 sons. It was alleged that the mutation entry had attained finality. Lastly, it was urged that right, if any, was to seek partition of the suit land before the revenue authorities. It was pleaded that by virtue of Section 185 of the Delhi Land Reforms Act, 1954 the civil court had no jurisdiction to entertain the suit for the reason under Section 55 of the Delhi Land Reforms Act a Bhumidar was entitled to sue for partition and as per entry at

serial No.11 of the Ist Schedule to the Act the court of Revenue Assistant was the court of competent jurisdiction.

3. In replication filed by the appellants it was pleaded that by virtue of the Hindu Succession (Amendment) Act, 2005, since Sub-Section 2 to Section 4 of the Hindu Succession Act, 1956 was deleted, succession to the holding of late Khem Chand had to be as per the Hindu Succession Act, 1956. It was further stated that the provisions of the Delhi Land Reforms Act do not apply to the suit land.

4. By and under the impugned order learned Trial Judge has found a prima facie case against the plaintiffs and in favour of defendants No.1 to 3 on account of the fact it has been held that the succession opened when Khem Chand died in the year 1993 and as per law then applicable succession was in favour of the sons. Holding no prima facie case in favour of the appellants on the maintainability of the suit, injunction has been declined.

5. Section 4 of the Hindu Succession Act, 1956 as originally enacted read as under :- “4.Over-riding effect of Act.-(1)Save as otherwise expressly provided in this Act,- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act. 2. For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision 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.”

6. Section 50 of the Delhi Land Reforms Act, 1954 reads as under :- “50. General order of succession from males.- Subject to the provisions of section 48 and 52, when a Bhumidar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below: (a) male lineal descendants in the male line of the descent: Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive: Provided further that the son or sons of a predeceased son howsoever low shall inherit the share which would have devolved upon the deceased if he had been then alive; (b) widow; (c) father; (d) mother, being a widow; (e) step mother, being a widow; (f) father's father; (g) father's mother, being a widow; (h) widow of a male lineal descendant in the male line of descent; (i) brother being the son of same father as the deceased; (j) unmarried sister; (k) brother's son, the brother having been son of the same father as the deceased; (l) father's father's son; (m) brother's son's son; (n) father's father's son's son; (o) daughter's son.

7. Due to Sub-Section 2 to Section 4 of the Hindu Succession Act, 1956 the rule of succession stipulated under the Hindu Succession Act, 1956 was subject to any law for the time being in force relating to agricultural holdings. Thus, if succession to an agricultural holding was stipulated in any local law applicable to an agricultural holding, provisions thereof would apply relating to devolution of interest in a holding. The effect of deletion of Sub- Section 2 to Section 4 of the Hindu Succession Act, 1956 due to the promulgation of the Hindu Succession (Amendment) Act, 2005 is that with effect from the date when the Amending Act was promulgated succession would be as per the Hindu Succession Act, 1956.

8. Prima facie, the Amending Act of 2005 cannot be read retrospectively as the Amending Act has not been given a retrospective operation. Meaning thereby, successions which had taken place prior to the promulgation of the Amendment Act of 2005 cannot be disturbed.

9. Section 3 of the Amending Act has substituted the existing Section 6 of the Hindu Succession Act. One gets a clue of the legislative intent when one looks at Sub-Section 3 of Section 6, as amended. It stipulates that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 his interest in the property of a joint family governed by Mitakshara Law shall devolve by testamentary or intestate succession and not by survivorship. A daughter is given a share equal to that of a son.

10. In respect of the co-parcenary property the right of a daughter to receive a share equal to that of a son applies only if the death of male Hindu is after commencement of the Amendment Act, 2005.

11. Thus, the prima facie view recorded by the learned Trial Judge is correct.

12. On the issue whether the Delhi Land Reforms Act was or was not attracted to the suit land, suffice would it be to state that in the plaint there are no averments that the land is not governed by the Delhi Land Reforms Act, 1954. In the written statement filed a defence has been taken in unequivocal terms that the land, being agricultural land, is governed by the Delhi Land Reforms Act, 1954. In replication filed by the appellants there is a bald denial to the pleas in the written statement pertaining to the applicability of the Delhi Land Reforms Act.

13. Thus, appellants have prima facie no case to establish that the Delhi Land Reforms Act did not apply to the suit land. My prima facie reasoning is reinforced on account of the plea in the plaint itself where reference is made to the land with a reference to the measurement in kilas and entry in the khata khatoni which entries are maintained only in respect of the agricultural lands.

14. I may note that at the hearing an attempt was made to urge that as of today industries have been set up around the suit land and that the land is urbanized. I am afraid, this issue cannot be looked into at this stage in the absence of adequate pleadings on the subject. Secondly, succession took place when Khem Chand died in the year 1993. Issue of inheritance in relation to the land has to be determined with respect to the nature of the land when Khem Chand died. Needless to state, once inheritance acquires finality as per law, unless there is a retrospective amendment to the law, vested rights cannot be taken away.

15. Be that as it may, since I am dealing with an issue pertaining to an interim injunction I need not express any conclusive opinion lest case of the parties is prejudiced at the trial.

16. The view taken by the learned Trial Judge is reasonable and probable.

17. I find no merits in the appeal.

18. Before concluding I may note that nothing stated in the present order would be treated as a conclusive finding of this Court for the reason observations are being made with respect to an interim application filed by the appellants. Learned Trial Judge would decide the suit in light of the evidence led and law applicable.

19. Appeal is dismissed.

20. No costs.

21. LCR be returned forthwith.

Sd/-
(PRADEEP NANDRAJOG)
JUDGE