

(2012) 08 DEL CK 0161

In the Delhi High Court

Case No : LPA No's. 92, 1554-59 and 333 of 2005

Chand Ram and Another

APPELLANT

Vs

Financial Commissioner and Others
 Smt. Sarla
Sharma and Others Vs Prem Prakash (Deceased) Through Lrs
and Others
 Shri Bhule Vs Shri Narayan Singh
(Deceased) and Another

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Constitution of India, 1950 — Article 13, 15, 21
Delhi Land Reforms Act, 1954 — Section 4, 48(2), 50, 51(2), 51(2)(a)
Delhi Land Revenue Act, 1954 — Section 11, 14, 2(1)(vi), 48, 48(2)
General Clauses Act, 1897 — Section 8(1)
Hindu Succession Act, 1956 — Section 14, 14(1), 15, 4, 4(2)

Citation : (2012) 131 DRJ 405

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Sethi with Mr. P.S. Bindra, in LPA No. 92/2005, Mr. C.B. Verma with Mr. V.K. Sharma, in LPA No. 1554-59/2005 and Mr. Bijender Singh, Ms. Sarika Kumari Sharma, in LPA No. 333/2005, for the Appellant; Sube Singh in LPA No. 92/2005, Mr. Arun Khosla with Ms. Shreeanka Kakkar, in LPA No. 1554-59/2005 and None in LPA No. 333/2005, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—These three Intra-Court appeals arise out of the common judgment dated 9th December, 2004 of the learned Single Judge in W.P.(C) No. 1170/2001, W.P.(C) No. 293/1988 & W.P.(C) No. 1721/1980 respectively. Notices of these appeals were issued and operation of the judgment of the learned Single Judge stayed. The learned Single Judge has noticed that the matters, though in diversity of facts, entail common question of law relating to interpretation of Sections 48, 51 & 53 of the Delhi Land Reforms Act, 1954 (DLR Act) i.e. who is to succeed to/inherit the agricultural holding to which a female, whether as a mother or a widow, had acquired interest prior to coming into force on 20th July,

1954 of the DLR Act.

2. Section 51(2) of the DLR Act deals with such situation. It provides that where such female, in accordance with the personal law applicable to her,

(i). was entitled to a life estate only in the holding, such holding shall devolve on the nearest surviving heir of the last male proprietor; and

(ii). was entitled to the holding absolutely, such holding shall devolve in accordance with Section 53 i.e. on the heirs/successors of such female, as mentioned therein.

3. The Financial Commissioner, in all the cases held that the females having acquired interest in land prior to coming into force on 20th July, 1954 of DLR Act, they were Khudkasht as on 20th July, 1954 and bhumidhari rights in their favour were created by virtue of Sections 5 & 11 of the DLR Act and hence it was irrelevant whether prior to such statutory creation of bhumidhari rights the females had a limited interest as under the DLR Act they became bhumidhar and the agricultural holding so held by them as bhumidhar is to devolve to their heirs/successors u/s 53 and not to the heirs/successors of the last male proprietor on whose demise the females had inherited interest in the holding. Reference in one of the orders was also made to Section 14 of the Hindu Succession Act, 1956 (Succession Act), the females in all the cases having died after the coming into force thereof. Such females were also held entitled to bequeath the agricultural holding through a Will.

4. The learned Single Judge allowed the writ petitions, disagreeing with the orders of the Financial Commissioner and while doing so, observed/found/held:-

(a) that as per the judgment of the Division Bench of this Court in Ram Mehar Vs. Dakhan, succession to bhumidhari rights in Delhi, after 1954 is governed by the DLR Act and not by the Succession Act;

(b) the DLR Act applies to persons of all religions and covers the field of agricultural land in Delhi, including inheritance of bhumidhari rights; it is impermissible to take aid of personal laws of the parties to determine succession except where, under the personal or customary laws, a female had a limited interest which matured into full interest by a subsequent legislation; however, if customary law created only a life interest in agricultural land, it could be argued that by virtue of Succession Act the right matured as an absolute interest; but with the enactment of DLR Act, issue of succession has to be decided as per provisions of the DLR Act;

(c) that the provisions of the DLR Act are para materia to UP Zamindari Abolition & Land Reforms Act, 1950 (UP Act) and therefore the dicta of the Apex Court in Ram Jivan Vs. Smt. Phoola (Dead) by Lrs. and Others, though in the context of U.P. Act, would apply to DLR Act also;

(d) that in Ram Jivan supra origin of the title of the bhumidhari was held to be

determinative of the issue and it was further held that it is the holding which devolves and not the interest (which ceases on death); and

(e). it thus has to be held in the context of the DLR Act also, that the holding devolved upon the nearest surviving heir of the last male proprietor and the Will of the female bhumidhar, by virtue of Section 48(2) is inoperative.

5. The learned Single Judge in accordance with the aforesaid findings held the agricultural holding to be devolving on the nearest reversioner of the husband or son from whom the females in each case, before the commencement of the DLR Act had acquired the interest and not on the successors under the personal law applicable to the females.

6. The learned Single Judge however, having held so, proceeded to observe that since the Society recognized equal rights for men and women and deprecated gender discrimination, time has come for the legislature to re-think whether women, in matter of succession to land, can be discriminated on the ground of sex re-think on the law i.e. the DLR Act has thus been suggested to the legislature.

7. We may notice that a Division Bench of this Court also, in Smt. Har Naraini Devi and Another Vs. Union of India (UOI) and Others, though holding Section 50 of the DLR Act to be heavily loaded in favour of male descendants of a bhumidhar and thereby unnecessarily being prejudicial against the rights of women and thus being discriminatory on the ground of sex and finding its hands to be tied owing to the DLR Act having been placed in the IXth Schedule to the Constitution of India in the year 1964 i.e. prior to 24th April, 1973 had called upon the legislature to remedy the inequality. It may also be noticed that the legislature, though has not brought about any amendment in the DLR Act, has vide amendment w.e.f. 9th September, 2005 to the Succession Act, deleted sub Section (2) of Section 4 thereof which made the provisions of Succession Act inapplicable to laws for prevention of fragmentation of agricultural holdings or for fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. DLR Act, in Ram Mehar supra was held to be one such law and thus having supremacy over Succession Act.

8. At this stage it would be apposite to give a brief factual background.

9. The lis in LPA No. 92/2005 is qua the agricultural land of one Smt. Khajano. She, when already a widow, inherited the rights in agricultural land on demise of her son in the year 1937; thereafter she married one Shri Bal Kishan and of which wedlock the two appellants were born. The claim of the said sons of Smt. Khajano from her second husband is being contested by the heirs of her first husband.

10. In LPA No. 1554-59/2005, one Shri Raghunath Sahai was the owner of the land; he died in the year 1952 leaving two sons and the widow of the pre-deceased son namely Smt. Vidya Devi as his heirs and in whose favour the land

was mutated and who became the bhumidhars upon enactment of the DLR Act in the year 1954; Smt. Vidya Devi died on 20th January, 1987 leaving a Will; the dispute is between the brothers of her deceased husband and the beneficiaries under her Will.

11. The lis in LPA No. 333/2005 is with respect to the land of Smt. Ram Devi which was inherited by her prior to the coming into force of the DLR Act; she died in the year 1973 leaving a Will. The dispute again is whether she was entitled to execute the Will and the land is to succeed to the beneficiaries under the Will or to the reversioner of the male heir on whose death she had inherited the land prior to the year 1954.

12. The senior counsel for the appellants in LPA No. 92/2005 has argued, that Smt. Khajano though re-married in the year 1937 did not lose the right to the land inherited from her son - reference is invited to the Hindu Widows' Remarriage Act, 1856 which since stands repealed vide the Act of 1983; that upon coming into force of the Succession Act the limited right of Smt. Khajano in the land was, u/s 14 of the Succession Act converted into an absolute right; that the applicability of Section 14 was not excluded by Section 4(2) of the Succession Act (and which stands deleted as aforesaid w.e.f. 9th September, 2005) because the DLR Act itself in Section 51(2) (a) refers to the personal law. It is further argued that Section 4(2) of the Succession Act as it earlier existed did not exclude the applicability of Succession Act to agricultural holdings because Section 4(2) was intended to prevent fragmentation of holdings and Section 14 of the Succession Act by converting the limited right of a female into a absolute right was not resulting in fragmentation of holdings. Reliance in this regard is placed on Vijay Pal Singh and another Vs. Deputy Director of Consolidation and others, The judgment in Ram Jivan, being the sole repository of the reasoning of the learned Single Judge, is sought to be distinguished by arguing that succession of the female in that case had opened prior to the coming into force of the Succession Act and thus she did not have the benefit of Section 14 thereof.

13. The counsel for the respondents in LPA No. 92/2005 have argued that Section 4(2) of the Succession Act as it then existed gave supremacy to the provisions of the DLR Act and thus succession was to be governed by the DLR Act and not in accordance with the Succession Act. It is further argued that even under the Succession Act the property does not devolve on children of the second husband. Reliance is placed on Bhagat Ram (D) by Lrs. Vs. Teja Singh (D) by Lrs., laying down that for applicability of Section 15 of the Succession Act it is not necessary that such inheritance should have been after commencement of the Act, the intent of the legislature being that if the property originally belonged to the parents of the deceased female, it should go to the legal heirs of the father and that it is the source from which the property was inherited by the female which is more important for the purpose of devolution of her property and that even if the female Hindu who is having a limited ownership becomes full

owner by virtue of Section 14(1) of the Succession Act, the Rules of succession given u/s 15 can be applied. Attention is yet further invited to Section 48(2) of the DLR Act to contend that such female bhumidhar, owing to the limited right, does not even have any right to Will the land.

14. The senior counsel for the appellants in LPA No. 92/2005, in rejoinder has clarified that the inheritance in the present case is not from the husband but from the son. Attention is also invited to G. Sekar Vs. Geetha and Others, holding that the 2005 amendment to the Succession Act is prospective.

15. The counsel for the appellants in LPA No. 1554-59/2005 has invited attention to the judgment of the Supreme Court in Vidya Devi alias Vidya Vati (Dead by L.R''s) Vs. Prem Prakash and others, in the lis between the same parties and has contended that in view thereof the 1/3rd right of the widow Smt. Vidya Devi stands recognized and the dispute now raised by the respondents i.e. by the brothers of her deceased husband is barred by res judicata. He has further argued that the provisions of the DLR Act are not para materia to the provisions of the U.P. Act on the basis of judgment whereon the learned Single Judge has rendered the decision. It is further argued that the judgment supra in Ram Jivan is not applicable. It is yet yet further argued that the respondent No. 3 had died during the pendency of the petition and the costs, subject to which his legal heirs were substituted was not paid and all these facts have not been considered by the learned Single Judge.

16. The counsel for the respondents in LPA No. 1554-59/2005 has argued that the proceedings culminating in the judgment aforesaid in Vidya Devi @ Vidya Vati of the Supreme Court were a suit for partition filed in the year 1973; that the substitution in the Supreme Court of the heirs of Smt. Vidya Devi was only for pursuing the said partition suit and thus cannot be res judicata. It is reiterated that the provisions of the DLR Act are para material to that of the U.P. Act. Attention is invited to Nathu Vs. Hukam Singh AIR 1983 Del. 216 holding that bhumidhari rights are special rights created on the abolition of ownership of agricultural land and the right of a bhumidhar to transfer his bhumidhari rights in the agricultural land is controlled only by the provisions of the DLR Act and the provision of customary law placing further restrictions on transfer of bhumidhari rights would stand repealed by Section 2(1) (vi) of the DLR Act as being inconsistent with the provisions of the DLR Act and would not be applicable. Attention is also invited to Ramji Dixit and Another Vs. Bhrigunath and Others, Attention is yet further invited to Nirmala Vs. Government of NCT of Delhi 2010 (170) DLT 7577 to contend that it was held by the Division Bench of this Court that the Succession Act prevails over the DLR Act post amendment to the Succession Act w.e.f. 9th September, 2005; it is thus argued that Succession Act was not applicable to the matters covered by the DLR Act prior to 9th September, 2005 and to which period the present dispute pertains.

17. The counsel for the appellants in LPA No. 1554-59 in rejoinder has argued that there is a difference between acquiring bhumidhari rights on

commencement of the Act and being admitted to bhumidhari rights after commencement of the Act and thus the provisions of the UP Act do not apply. In this regard reliance is placed on Fateh Singh and Another Vs. Sewa Ram and Others, Reference is also made to Neeraj Munjal and Others Vs. Atul Grover Minor and Another, to contend that no Court has jurisdiction to direct a matter to be governed by a statute other than that what is really applicable. Reference is also made to Haryana State Coop. Land Development Bank Vs. Neelam, to contend that a decision is an authority on what it decides and not what can logically be deduced therefrom. It is contended that Smt. Vidya Devi was declared co- bhumidhar on the basis of revenue entries and her rights are to be interpreted accordingly and cannot be compared with the rights of a widow admitted to bhumidhari rights after coming into force of the Succession Act.

18. The counsel for the appellant in LPA No. 333/2005 has also filed synopsis of submissions. He contends that the learned Single Judge has decided the lis treating Smt. Ram Devi as the widow of a bhumidhar when in fact she was a widow bhumidhar; other distinctions are also carved out between the DLR Act and U.P. Act to contend that the judgment of the Apex Court in Ram Jivan does not apply; it is further contended that Section 53 is not subject to Section 48.

19. None has appeared for the respondents in LPA No. 333/2005.

20. At this stage it is apposite to set out Sections 48, 51 & 53 which are as under:-

48. Bequest by a Bhumidhar.- (1) A Bhumidhar may by will bequeath his holding or any part thereof except as provided in sub- section.(2).

(2) No Bhumidhar entitled to any holding or part in the right of a widow, mother, step- mother, father's father, father's mother, unmarried daughter, or unmarried sister, may bequeath by will such holding or part.

(3) Every will made under provisions of sub-section (1) shall,

notwithstanding anything contained in any law, custom or usage, be in writing and attested by two persons.

51. Succession in the case of a woman holding an interest inherited as a widow, mother, daughter etc.- (1) When a Bhumidhar or Asami, who has after the commencement of this Act inherited an interest in any holding as a widow, mother, step-mother, father's mother, unmarried daughter or unmarried sister, dies or marries or the Asami abandons or surrenders such holding, it shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of section 50) of the last male Bhumidhar or Asami other than one who inherited as a father's father.

(2) When a Bhumidhar who has before the commencement of this Act, inherited an interest in any holding as a widow, mother, step- mother, father's mother, daughter, sister or step- sister.

(a) dies and such Bhumidhar was on the date a proprietor of the land comprised in the holding and -

(i) she was in accordance with the personal law applicable to her entitled to a life estate only in the holding, the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 50) of the last male proprietor or tenant aforesaid; and if

(ii) she was in accordance with the personal law applicable to her entitled to the holding absolutely the holding shall devolve in accordance with the table mentioned in Section 53;

(b) dies or marries and such Bhumidhar on the date immediately before the said date held the holding otherwise than as a proprietor, the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 50) of the last male tenant other than one who inherited as a father's father.

(3) The provision of sub-section (1) shall mutatis mutandis apply to an Asami who inherited the holding before the commencement of this Act.

(4) Nothing in sub-section (1) shall apply to a person, succeeding to an interest in any holding under the provisions of Section 53.

53. Succession to a woman holding an interest otherwise.- When a Bhumidhar or Asami, other than one mentioned in section 50 or 51, who is a woman dies, her interest in the holding shall devolve in accordance with the order of succession given below:

(a) male lineal descendants in the male line of 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 shall inherit the shares which would have devolved upon the deceased if he had been then alive;

(b) husband

(c) widow of male lineal descendant in the male line of descent;

(d) daughter;

(e) daughter's son;

(f) husband's brother;

(g) husband's brother's son

21. 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.

22. 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.

23. 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.

24. 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.

25. Our research in this respect leads us to *Bajaya Vs. Gopikabai and Another*, 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.

26. 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.

27. 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.

28. 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 and Others, 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 and Others, 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 and Others, 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.

29. 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 and Mahindra Ltd. Vs. Union of India (UOI) and Another, 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. Dr. Raminder Pal Singh Sethi and Others,

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.

30. 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, u/s 51(2) (a) (i). The appellants here are the heirs u/s 53 and thus the applications have to be allowed.

31. 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.

32. 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.

33. The argument of the counsel for respondents in LPA 92/2005 relating to Section 15 of the Succession Act (as recorded in para 14 above) is also meritless. Section 15 applies to the property inherited by the female from her father or mother and when the females dies without any son or daughter. However, Smt. Khajano (in LPA 92/2005) had inherited the land from her son and died leaving the appellants as her sons, albeit from second marriage. We thus allow these appeals and set aside the judgment of the learned Single Judge. Resultantly, the writ petitions filed by the respondents are dismissed and the orders of the Financial Commissioner in favour of the appellants and which were set aside by the learned Single Judge are restored. In the light of the facts aforesaid, no order as to costs.