

(2002) 08 DEL CK 0003

In the Delhi High Court

Case No : IA No. 1595/02 in S. No. 354/02

Master Vijender Singh through his mother Smt. Raj Bala and
Others

APPELLANT

Vs

Shri Ram Chander and Others

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Delhi Land Reforms Act, 1954 — Section 11, 13, 185, 31, 32
Hindu Succession Act, 1956 — Section 4(1), 4(2)
Land Acquisition Act, 1894 — Section 30, 31

Citation : (2002) 08 DEL CK 0003

Hon'ble Judges : Sharda Aggarwal, J

Bench : Single Bench

Advocate : P.K. Sharma, for the Appellant; K.N. Popli, for the Respondent

Final Decision : Dismissed

Judgement

Sharda Aggarwal, J.—The plaintiff No. 1 being the grand son of defendant No. 1 has filed the present suit for partition through his mother, plaintiff No. 2. plaintiff No. 3 is the eldest son of defendant No. 1. plaintiff No. 2 is the widow of shri Dharamvir Singh, a pre-deceased son of defendant No. 1. Defendant No. 2 is the wife of defendant No. 1 whereas defendants 3 and 4 are the sons of defendant No. 1 and defendant No. 5 is the wife of defendant No. 3. Defendant No. 6 is the wife of defendant No. 4. Defendants No. 7 and 8 are the minor sons of defendant No.3 and defendants No. 9 and 10 are the minor sons of defendant No. 4. The plaintiffs have claimed partition of moveable and immovable properties of defendant No. 1 alleging that. he is holding the same as ancestral property. The immovable properties " being agricultural land and residential plots and houses have been mentioned in para No.5(I) of the plaint whereas moveable properties have been mentioned in para No. 5(II) of the plaint. The properties shown in sub paras a, b, c and d of para 5(I) of the plaint have been shown as residential plots and houses , out of which two plots, as shown in sub-para "d" of para 5(I) have

been allegedly sold by defendant No. 1 to defendants 7 and 10, his minor grand sons. The agricultural land, shown at sub-para "e" and "f" in para 5(I) is alleged to have been sold to some outsiders. The agricultural land shown in sub-para "g" of para No. 5(I) has been acquired by the Government and the amount of compensation has been put in fixed deposits by the Court of Additional District Judge where the claim of parties including the plaintiffs No. 2 and 3 is pending adjudication u/s 30/31 of Land Acquisition Act. Another piece of land shown in sub-para "h" of para 5(I) of the plaint has also been acquired by the Government and the matter is pending before the Land Acquisition Collector where also the plaintiffs have filed objections. Some more agricultural land, shown in sub-para "i" and "j" of para 5(I) of the plaint, is in possession of defendant No. 1 . Moveable properties, mentioned in para 5(II), include fixed deposits in the name of defendant No. 1 and other defendants with banks., Kisan vikas partras, some vehicles existing and already sold, furniture, household goods and jewellery etc. The plaintiffs' averment is that defendant No. 1 made all the moveable and immovable properties out of the income of agricultural property which he inherited from his father. Even the moveables including the fixed deposits and kisan vikas patras etc. in the names of defendant 2 to 10 are alleged to have been created from defendant No. 1's agricultural income. The plaintiffs have, Therefore, claimed partition of all the moveable and immovable properties mentioned in para 5 of the plaint. Along with the suit, plaintiffs have moved an application under Order 39 Rules 1 & 2 CPC for interim injunction for restraining the defendants from disposing off/alienating or parting with possession of all the moveable and Immovable properties as mentioned in para 5 of the plaint. The plaintiffs have also sought direction to the Additional District Judge where apportionment proceedings, under Land Acquisition Act are pending, not to pay the compensation amount to defendant No. 1 . By this order, I propose to dispose of the said application.

2. The defendants have filed the Written Statement and reply to the application and have contested the plaintiffs' claim, inter alia, on the ground that defendant No. 1 is a recorded Bhoomidar under Delhi Land Reforms Act, 1954 (in short, the Act) and no civil suit for partition of land of which he is a Bhoomidar is maintainable. It is submitted by the learned counsel for the defendants that the Act is a complete Code in itself and devolution of bhoomidari rights is provided under the Act. It is submitted that the Act abolished the ownership of agricultural land by previous proprietors. By virtue of Section 11 and 13 of this Act, the proprietors became Bhoomidars in respect of the lands, which were their khudkasht or Sir, while tenants became Bhoomidars in respect of their holdings. Referring to the provisions of the Act, it is submitted that Sections 31 to 47 deal with transfer of Bhoomidar 's interest in land whereas Sections 48 to 54 deal with the devolution of his interest in Bhoomidari rights and Sections 55 to 61 deal with the partition of holding by a Bhoomidar. Learned counsel for the defendants has also referred to Section 185 of the Act to show that the jurisdiction of a Civil Court is barred. Reference is made to decision of the

Supreme Court in Hatti Vs. Sunder Singh, where the Apex Court, after discussing various provisions of the Act, held that the jurisdiction of a Civil Court is barred by Section 185 read with various items of the first Schedule to the Act. It was also held that the Act is a complete Code under which it is clear that anyone,, wanting a declaration of his right as a Bhoomidar" or aggrieved by the declaration issued without notice to him in favor of another can approach the Revenue Assistant under Item 4 of the First Schedule, The Apex Court held that the jurisdiction of the Civil Court is limited to decide the issue of title referred to it by the Revenue Court. It was further observed that there can be no suit by any person claiming to be a proprietor, because the Act does not envisage a proprietor as such continuing to have rights after the commencement of the Act. With regard to the proposition that with the coming into force of this Act, the proprietary rights stood abolished, the Apex Court held as under : -

"After the Act cam(c) into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor, he became a Bhoomidar of it. If it was part of a holding of some other person, such as a tenant or a sub-tenant etc. he became either a Bhoomidar or an Asami whereupon the rights of the proprietor in that land ceased. Lands, which were not holdings of either the proprietor or any other person, vested in the Gaon Sabha."

3. It is submitted that in the instant case, defendant No. 1 is a recorded Bhoomidar and his Bhoomidari rights can devolve upon his heirs only after his death and that too as provided in the Act. Neither the plaintiffs, nor defendants 2 to 10 can claim partition in the life time of defendant No. 1 and after his death it would be governed by the provisions of Delhi Land Reforms Act. During his life time, he can transfer and create interest therein, subject to the restrictions imposed under the Act. As such, plaintiffs cannot claim partition of the land of which defendant No. 1 is a Bhoomidar, by way of a civil suit.

4. Learned counsel for the plaintiffs strenuously refutes the contentions raised by the defendants and contends that the property in the hands of defendant No. 1 being ancestral having been inherited from his father, is governed by the Hindu Succession Act, 1956 and not by Delhi Land Reforms Act 1954. It is urged that the order of succession in the case of death of a Bhoomidar, as laid down u/s 50 of the Act, being inconsistent with the provisions of Hindu Succession Act and within the meaning of Section 4(1)(b) of Hindu Succession Act, the succession of a Hindu Bhoomidar will be governed by the Hindu Succession Act. The contention is that Delhi Land Reforms Act being an Act not providing for fragmentation of agricultural holding is not saved by Section 4(2), of the Hindu Succession Act. For this proposition, Mr . Sharma, learned counsel for the plaintiffs has placed reliance on Gopi Chand and Ors. v. Smt. Bhangwanti Devi, 1964 P&H 272. In this case, the learned Single Judge referred only to the preamble of the Act and held that the Act being one not providing for the prevention of fragmentation of agricultural land, is not .saved by Section 4(2) of Hindu Succession Act and as such, the succession of a Bhoomidar will be governed by Hindu Succession Act

and not by Delhi Land Reforms Act. At this juncture, it is worth noting that the learned counsel for the plaintiffs has relied upon an over-ruled authority. The aforesaid judgment was over-ruled by a Division Bench of this Court in *Ram Mehar v. Smt. Dakhan*, 1973 RLR 279. In this case one Krishan, a Bhoomidar,, died after the passing of Hindu Succession Act leaving behind a son and a daughter. The Revenue Officer mutated the land of the deceased Bhoomidar in the names of both the son and the daughter in equal shares. The son, sued for declaration and Injunction that under the provisions of the Act h(c) alone was entitled to inherit the land of his father. The suit and the first appeal were dismissed. In the second appeal by the son., the learned Single Judge referred the case to a larger Bench. The question to be decided was as to whether the rule of succession in Delhi Land Reforms Act or the rule of succession under the Hindu Succession Act would apply to the parties. If Hindu Succession Act is applied, both son and the daughter would get equal shares and if Delhi Land Reforms Act is applied, u/s 50 of the Act, the son alone would inherit, as a married daughter had no right of succession to a Bhoomidar. The Delhi Land Reforms Act being an Act prior in time to Hindu Succession Act, the question as to whether the subsequent Act i.e. Hindu Succession Act over-ruled the same, had to be decided with reference to Section 4 of the Hindu Succession Act. For proper appreciation., Section 4 of the Hindu Succession Act is reproduced 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.

5. A perusal of Section 4(1)(b) of Hindu Succession Act shows that any law in force immediately before the commencement of this Act shall cease to apply to Hindus, if it is inconsistent with the provisions of the Act. Sub-section (2) of Section 4 of Hindu Succession Act states that the Act will not affect the provisions of any law which is in force if it provides for prevention of fragmentation of agricultural holdings or fixation of ceiling or for the devolution of tenancy rights in respect of such holdings. The Division Bench, after considering the provisions of the two Acts, found that the provisions of Delhi Land Reforms Act were inconsistent with the Hindu Succession Act. Keeping in

view Sub-section (2) of Section 4 of Hindu Succession Act, it was observed that the question of succession would, Therefore, depend wholly on whether the Delhi Land Reforms Act is a Law which prevents fragmentation of agricultural holdings. Referring to the provisions of Delhi Land Reforms Act, it was found that it provided for prevention of fragmentation of holdings and as to which Act would govern the succession to a Bhoomidar, it was held as under :

"In view of the conclusion that Delhi Land Reforms Act provided for the prevention of fragmentation of agricultural holdings and also dealt with the devolution of tenancy rights on such holdings, It must be held that this law was saved by Section 4(2) of Hindu Succession Act and this would mean that the rule of succession governing Bhoomidars is to be found in Section 50 of the Delhi Land Reforms Act and not in the Hindu Succession Act, 1956."

6. From the above discussion, prima facie it appears that defendant No. 1 being a Bhoomidar, would be governed by Delhi Land Reforms Act and a suit for partition by the plaintiff would not lie. However, question of maintainability of the suit cannot be finally decided at this stage and would be decided at the appropriate stage after framing the issues.

7. The plaintiffs suit is otherwise based on the assumption that the property in the hands of defendant No. 1 is ancestral. This fact is denied by defendant No. 1 in para 5 on merits of his Written Statement. A reading of the plaint would show that the plaintiffs have made vague allegation that the property in the hands of defendant No. 1 is ancestral. He has failed to show as to which of the properties belonged to the father of defendant No. 1, when did defendant No. 1's father die and what properties devolved upon defendant No. 1, The plaintiffs have failed to make even an averment in the plaint as to when the residential plots, as mentioned in para 5(1) (a), (b), (c) and (d) allegedly devolved on defendant No.1. No prima facie evidence of existence of any joint Hindu Family and its nucleolus has been shown to the Court. As per the allegations made in the plaint, the agricultural and shown in sub-para (f) of para 5(1) of the plaint has been acquired under the Land Acquisition Act and the amount of compensation has been put in the fixed deposit by the Court of Additional District Judge where claim of the parties including plaintiffs 2 and 3 is pending adjudication u/s 30/31 of the Land Acquisition Act. With regard to another piece of agricultural land, mentioned in sub-para (h) of para No. 5(1) of the plaint, the same has also been acquired and is pending before the Land Acquisition Collector for determination of compensation to be awarded. Even before the Land Acquisition Collector, plaintiffs have filed objections. Much stress has been laid on the statement of defendant No. 1 , recorded in the proceedings for apportionment u/s 30/31 of the Land Acquisition Act between the interested parties. It is submitted that in his statement before the Additional District Judge, defendant No. 1 has admitted that he had inherited the land from his father. Learned counsel for the defendants has pointed out that in the said statement, defendant No. 1 has also stated that since after the commencement of Delhi Land Reforms Act he is a

recorded Bhoomidar, Be that as it may, it is for the Court of the Additional District Judge to appreciate the evidence of the parties recorded in the proceedings u/s 30/31 of the Land Acquisition Act to determine the rights of the interested parties. This Court cannot sit in appeal over the said proceedings.

8. Admittedly said land of which defendant No. 1 was a recorded Bhoomidar stands acquired under the Land Acquisition Act. Once the land of a Bhoomidar is acquired, his interest as Bhoomidar stands extinguished. It was held in the case of Pyare Vs. The Financial Commissioner and others, , that u/s 67(b) of the Act, interest of a Bhoomidar automatically gets extinguished when the land comprised in his holdings is acquired under any law such as Land Acquisition Act or any other law relating to the acquisition of land and no civil suit for declaration and claiming any right in the compensation amount is maintainable.

9. Regarding the moveables like fixed deposits, kisan vikas patras etc, also, defendant No. 1 has denied that the same were acquired from the proceeds of any ancestral property. He has in fact denied that the properties in his hand are ancestral. As such, it is urged that the plaintiffs have no right to claim partition.

10. In view of the above discussion, I am of the considered opinion that the plaintiffs have failed to make out a prima facie case In their favor,, Therefore the question of balance of convenience or irreparable injury does not arise. The application is accordingly dismissed. It is, however, made clear that my observations in this order shall not have any reflection on the merits of the case.