

(2009) 09 DEL CK 0140
In the Delhi High Court
Case No : CS (OS) 2400 of 1990

Smt. Shakuntala Devi and Others

APPELLANT

Vs

Shri Kulbhushan Lal and Others

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
Delhi Land Reforms Act, 1954 — Section 185, 23, 50, 51
Delhi Municipal Corporation Act, 1957 — Section 507
Hindu Succession Act, 1956 — Section 4(2), 6
Limitation Act, 1963 — Article 113

Citation : (2009) 09 DEL CK 0140

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Saiful Islam, Surinder Anand and M.M. Ranade, Husband of plaintiff No, for the Appellant; V.K. Makhija and Inderjit Sharma, for Defendant No. 2 and Intervener, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The suit was filed for the relief of partition of immovable and movable properties and for rendition of accounts. The three plaintiffs and the defendants 3 and 4 are the sisters and the defendants 1 and 2, their brothers. The parties had another brother, namely, Shri Sudarshan Lal who died a bachelor and issueless. Shri Prem Prakash Sharma, the son of the defendant No. 2, claims that the said Shri Sudarshan Lal has left a Will in his favour. He had filed Probate Case No. 34/1988, i.e. before the institution of the present suit, in this court with respect to the said Will of Shri Sudarshan Lal. However, the plaintiffs did not implead the said Shri Prem Prakash Sharma as a party to the present suit though under the Will of Shri Sudarshan Lal set up by the said Shri Prem Prakash Sharma, the share in the properties of Shri Sudarshan Lal which the plaintiffs claimed to have devolved upon the parties to the suit because of the intestacy of the said Shri Sudarshan Lal, was bequeathed to the said Shri Prem Prakash Sharma. The said Shri Prem Prakash Sharma after the conclusion of the evidence in this suit, filed IA. No. 7172/2005 for being impleaded as a party. It was the

case of the said Shri Prem Prakash Sharma that since the plaintiffs were contesting the probate case filed by him, he had not earlier applied for impalement ;that the said probate case was vide judgment dated 2nd March, 2005 decided in his favour; the plaintiff No. 2 herein Smt Swaran Lata preferred FAO(OS) 103/2005 which had also been dismissed vide order dated 18th August, 2005. However, this court vide order dated 25th April, 2008 did not allow the said Shri Prem Prakash Sharma to be impleaded as a party, for the reason of the application having been filed belatedly, though he was allowed to intervene in the present case. In these circumstances the senior Counsel for the said Shri Prem Prakash Sharma was also heard.

2. The case of the plaintiffs in the plaint is that the father of the parties, namely, Shri Bakshi Ram was prior to 1947 settled and living in Qila Sheikupura which fell in Pakistan; the said Shri Bakshi Ram had a Joint Hindu Family and was running business, of petrol pump and as a contractor and had several properties; Shri Bakshi Ram was the karta of the said Joint Hindu Family in the name and style of Bakshi Ram & Sons and was also carrying on businesses in the said name which was a Joint Hindu Family Firm; the said Shri Bakshi Ram upon coming to India lodged claims with the Ministry of Rehabilitation and in the applications submitted also it was stated that the same were on behalf of the Bakshi Ram & Sons, Joint Hindu Family, through Bakshi Ram Karta.

3. It is further the case of the plaintiffs that Burmah Shell Company allotted a petrol pump at Badarpur, Tehsil Mehrauli, Delhi to the said Joint Hindu Family Firm in lieu of the petrol pump left behind in Pakistan. It was further averred that one kutti machine at village Azadpur Delhi belonging to the custodian of Evacuee Properties was also allotted to the said firm on rental basis; he was also acting as a contractor of rehra stand at Farash Khana, G.B. Road, Delhi. It is further the case of the plaintiffs that the said Shri Bakshi Ram in lieu of his compensation claim acquired house No. XVI/138/323, Joshi Road, Karol Bagh, New Delhi.

4. The said Shri Bakshi Ram died intestate on 10th February, 1960 whereafter Shri Sudharshan Lal aforesaid is stated to have started acting as a karta of the family till his own death in 1987. The wife of Shri Bakshi Ram, namely, Smt Chanan Devi died on 3rd August, 1978.

5. The plaintiffs plead that over the years other properties were acquired from the income of the Joint Hindu Family firm, namely, i) a plot admeasuring 5 bigha 1 biswas in village Tuglakabad, Tehsil Mehrauli, ii) plot No. B-43, Friends Colony, New Delhi, iii) plots of land bearing Khasra Nos. 38/28/1, 38/28/2 & 38/28/3 in village Badarpur, Tehsil Mehrauli, Delhi, iv) plot measuring 2 bighas 16 biswas in Khasra No. 231 at village Tajpaul, Tehsil Mehrauli, Delhi, v) yet another plot measuring 15 bighas in Khasra No. 36/28/2 & 29/2 also in village Badarpur Teshil Mehrauli and vi) house No. II-K/44, Lajpat Nagar, New Delhi where Shri Bakshi Ram was stated to be residing at the time of his death. It is further the case in the plaint that the said Joint Hindu Family was also carrying on businesses in the name of, a) Auto Grit at Tuglakabad, Tehsil Mehrauli, b) Auto Rink at Badarpur,

Tehsil Mehrauli, c) Auto Rest also at Badarpur, d) Auto Yard on Mathura Road, e) BE AR Sales at Badarpur, f) Sharma and Company at Badarpur. The family was also alleged to be having bank accounts, fixed deposits and jewellery.

6. The plaintiffs claiming to be the class I heirs, under the Hindu Succession Act, of Shri Bakshi Ram and Smt Chanan Devi claimed to be entitled to 1/7 equal share each in the aforesaid properties of Joint Hindu Family. It was further claimed that since Shri Sudarshan Lal had died intestate as a bachelor, the plaintiffs and the defendants were also his legal heirs. The plaintiffs claimed to have demanded partition vide legal notice dated 26th April, 1990 and averring that the defendants 1 and 2 had failed to respond to the same, the suit was filed for partition of the aforesaid properties and for rendition of accounts.

7. The defendants 1 and 2 alone filed the written statement. The defendants 3 and 4 failed to appear and were ordered to be proceeded against ex parte. The defendants 1 and 2 in their written statement pleaded:

i. that the plaintiffs were not members of the Joint Hindu Family and were married prior to the coming into force of the Hindu Succession Act and were thus not entitled to any share;

ii. that after the demise of Shri Bakshi Ram on 10th February, 1960, on 21st February, 1960 all the members of the Joint Hindu Family had assembled at the Kriya ceremony and had agreed to sever the Joint Hindu Family; the plaintiffs were party to such agreement and were estopped from questioning the validity and legality of the partition after a lapse of 30 years; it was pleaded that the suit is barred by time;

iii. that as per the aforesaid settlement, the plaintiffs relinquished their rights in the house at Joshi Road, Karol Bagh vide registered document in favour of Shri Sudarshan Lal the plaintiffs had concealed the said facts and were for this reason not entitled to any relief;

iv. that the petrol pump in Pakistan belonged not to the Joint Hindu Family but to the partnership firm of Shri Bakshi Ram, Shri Sudarshan Lal and the defendant No. 1; else the existence of Joint Hindu Family in the name and style of Shri Bakshi Ram & Sons of which Shri Bakshi Ram was the karta was admitted;

v. that the claims for properties left in Pakistan were also preferred in the name of four co-sharers i.e. Shri Bakshi Ram and his three sons who constituted members of the Joint Hindu Family having 1/4th share each;

vi. the petrol pump dealership at Badarpur was of a partnership firm of M/s Bakshi Ram & Sons of Shri Bakshi Ram and his three sons and not of the Joint Hindu Family; upon the defendant No. 2 joining government service he ceased to be the partner; upon the demise of Shri Bakshi Ram the said partnership firm stood dissolved and Burmah Shell removed all its equipment and vacated the site;

vii. the kutti machine and rehra stand were denied and in any case it was

contended that the same were no longer in existence;

viii. at the time of demise of Sh. Bakshi Ram, the joint family properties comprised only of, a) house at Joshi Road, b) Plot No. 43 comprising of Khasra No. 36/28/2 and 36/29/2 at village Badarpur and c) land in Khasra No. 32/28/1 and 32/28/2 at village Badarpur

ix. with respect to the house at Joshi Road, Karol Bagh it was stated that the same was acquired against compensation payable to Shri Bakshi Ram and his three sons, in the name of Shri Bakshi Ram.; on the demise of Shri Bakshi Ram the three plaintiffs and the defendants 1, 2 and 3 relinquished their rights in the said house in favour of Shri Sudarshan Lal vide registered deed; similarly, the defendant No. 4 through her attorney, defendant No. 2, also relinquished her right in the said house vide another registered deed in favour of Shri Sudarshan Lal the said property was thus mutated in the name of Shri Sudarshan Lal in the records of the MCD and DDA and under the Will aforesaid, Shri Sudarshan Lal bequeathed the said property to Shri Prem Prakash Sharma aforesaid;

x. with respect to the plot No. 43 (bearing Khasra No. 36/28/2 & 36/29/2) at Badarpur, it was stated that the same was acquired by Shri Bakshi Ram from Ministry of Rehabilitation against the claims; upon the demise of Shri Bakshi Ram and dissolution of the Joint Hindu Family the said plot vested in the mother of the parties Smt Chanan Devi. Smt Chanan Devi had in or about the year 1960 filed a suit in the court of Senior Sub-Judge, Delhi with respect to the plot No. 43 seeking declaration of her rights as owner and Bhumidar thereof and on the statement of her three sons a decree for declaration was passed declaring her to be the owner and Bhumidar of the said lands; the said lands were also mutated in her name in the revenue records;

xi. With respect to the plot in Khasra No. 32/28/1 & 32/28/2, it was stated that the same in the family settlement aforesaid vested in the three sons of Shri Bakshi Ram and also mutated in their names;

xii. that in the dissolution of HUF, three brothers had agreed to pay Rs. 10,000/- to each of the sisters and which stood paid;

xiii. that since September, 1958 all the brothers had been residing separately; it was denied that any of the businesses were of the Joint Hindu Family;

xiv. with respect to the land admeasuring 5 bighas and 1 biswas in Tuglakabad it was stated that the same had been acquired by Shri Sudarshan Lal out of his own personal fund and vide registered sale deed dated 11th June, 1960 and Shri Bakshi Ram and Sons had nothing to do with the said land; Shri Sudarshan Lal had leased out a part of the plot to Burmah Shell for the petrol pump and the petrol pump in the name and style of BE-AR Sales (Auto Grit) was functioning there since 1961 in partnership, by Shri Sudarshan Lal and the Defendant No. 1; subsequently Shri Prem Prakash Sharma joined the said firm. It was denied that the petrol pump (Auto Grit) belonged to Shri Bakshi Ram and Sons; it was

further averred that the land underneath the same was acquired and Shri Sudarshan Lal had filed a writ petition in this court challenging the said acquisition; during the pendency of the writ petition Shri Sudarshan Lal expired and Shri Prem Prakash Sharma was substituted in his place;

xv. Shri Sudarshan Lal had with his own monies in the year 1968 acquired the land measuring 2 bighas and 10 biswas at village Tehkhand and the sale deed thereof was in his name only and was his exclusive property; the same was acquired and in lieu thereof plot No. B-43 Friends Colony, New Delhi was allotted to Shri Sudarshan Lal

xvi with respect to the land in Khasra No. 32/28/1 & 32/28/2 in village Badarpur it was stated that though the same belonged to Shri Bakshi Ram but on his demise were mutated in the name of his three sons under the provision of the Delhi Land Reforms Act; the said lands were acquired and the said acquisition was also challenged by the three sons only of Shri Bakshi Ram;

xvii that there was no land bearing Khasra No. 32/28/3 described by the plaintiffs;

xviii. with respect to the land measuring 2 bighas 16 biswas in Khasra No. 231, village Tajpaul, Tehsil Mehrauli it was stated that it was the exclusive property of Shri Sudarshan Lal acquired in 1957 and that in 1968 Shri Sudarshan Lal had formed HUF in the name and style of Bakshi Ram and Sons and was its karta.

xix with respect to the house at Lajpat Nagar it was stated that it was in the tenancy of the defendant No. 2 since 1958; it was averred that the said house was purchased by Shri Prem Prakash Sharma vide sale deed dated 10th August, 1989; the said house is since informed to have been sold;

xx BE-AR Sales was stated to be a partnership of Shri Sudarshan Lal and the defendant No. 1 and it was stated to be carrying on business in the name and style of Auto Rest, Auto Rink and Auto Grit; subsequently Shri Prem Prakash Sharma was also stated to have joined the said partnership. The petrol pump Auto Yard was stated to be the sole proprietary of the defendant No. 2 since April, 1966 and which had been converted into a partnership firm of the defendant No. 2 and his wife since February 1987. The existence of any firm in the name and style of Sharma and Company was denied.

8. The plaintiffs filed a replication. On 8th September, 1994 the following issues were framed:

1. Whether plaintiffs 1 and 2 have any subsisting right and interest in the Joint Family Property despite their marriages in 1994 (1944) and 1951 respectively?
OPP

2. Whether plaintiffs have a right to sue for partition of Joint Family Property?

3. Whether the suit is barred by time under Article 113 of the Limitation Act?
OPD1D2

4. Whether there was severance of status of Joint Hindu Family of Bakshi Ram & Sons on 21.2.60? OPD1D2
5. What properties were held by Bakshi Ram & Sons at the time of death of Sh. Bakshi Ram on 10.2.60 OPP
6. What was the share of Bakshi Ram in the Joint Family Property at the time of his death? OPP
7. To what share of the share of late Shri Bakshi Ram in the Joint Family Property is each plaintiff entitled? OPP
8. Whether the plaintiffs who alongwith defendant No. 4 relinquished their right/claim over house No. XVI/318 and 323, Joshi Road, Karol Bagh, New Delhi, in favour of their brother Sudarshan Lal under registered documents can still lay claim over that house? OPP
9. Whether the plaintiffs can claim any share in lands bearing khasra Nos. 32/28/1 and 32/28/2 which were mutated on the death of Bakshi Ram in the name of his three sons under the Delhi Land Reforms Act? OPP
10. Whether the plaintiffs can claim any share in plot No. 43 bearing khasra No. 36/28/2 and 36/29/2 situated in village Badarpur, Delhi, which was mutated in the name of their mother Chanan Devi on 18.2.63, after she had been declared as Bhumidar? OPP
11. Whether the plaintiffs can claim a share in any other property which was purchased or acquired by defendants 1 and 2 out of their own funds after the death of their father Bakshi Ram? OPP
12. Relief.

On 11th December, 2001 the following was framed as additional issue No. 11(A).

11(A). Whether the suit is properly valued for the purpose of court fee and jurisdiction? If not its effect?

9. The plaintiff No. 1 examined herself as PW-1; besides reiterating the case set-up in the plaint, she denied that there was any division of the properties after death of Shri Bakshi Ram and also denied having received any monies from her brother in the said division; she however admitted that the land at Badarpur had been transferred in the name of the mother but claimed the same to have happened in the lifetime of the father only. She however did not make any attempt whatsoever to prove any document in support of her case which had been controverted by the defendants No. 1&2 in the written statement. In her cross examination, she admitted the claim application Exhibit D-1 which was made by Shri Bakshi Ram on behalf of Joint Hindu Family of Bakshi Ram & Sons comprising of himself and his three sons only and describing himself and his three sons as co-sharers; she also admitted several other documents relating to the properties received in the claim; she admitted the certified copy of

relinquishment deed executed by her and by the defendant No. 4 with respect to share in the house at Joshi Road in favour of Shri Sudarshan Lal but stated that the sisters have given a Power of Attorney in favour of Shri Sudarshan Lal and not the relinquishment deed; she denied the suggestion that she along with the other plaintiffs had signed the relinquishment deed and received Rs. 10,000/- each; she admitted having filed the certified copy of the plaint of the suit for declaration filed by the mother Smt. Chanan Devi against her three sons and five daughters (in the said plaint the mother has pleaded that during the lifetime of Shri Bakshi Ram there was a family arrangement whereunder it had been agreed that the house at Joshi Road will be inherited exclusively by her and had sought declaration of her rights with respect thereto); she also admitted the Sale Certificate of the Joshi Road house in the name of Shri Bakshi Ram and the written statements filed by the brothers and sisters in the suit filed by the mother giving no objection to declaring the mother as the owner of the Joshi Road house. At this stage, it may be recorded that there also exists on the file the certified copies of the order sheets in the said suit which show that the same was dismissed as withdrawn; plaintiff No. 1 appearing as PW-1 did not remember whether the lands at Badarpur had been acquired by the government but admitted that Shri Sudarshan Lal alone had filed the writ petition challenging the said acquisition.

10. Though the plaintiffs No. 2&3 also examined themselves as PW- 2 & 3, nothing different was deposed/proved by them.

11. The defendant No. 2 appeared as DW-1. He inter-alia deposed that after the withdrawal of the suit aforesaid by the mother, all the family members decided that the house at Joshi Road be given to Shri Sudarshan Lal and accordingly two relinquishment deeds proved as Exhibit P-21 & 22 were executed; he also deposed that though the sum of Rs. 10,000/- as agreed was offered to each of the sisters, only the plaintiffs had accepted the same and the other two sisters defendants No. 3&4 had refused to accept the same; that the plaintiffs No. 2&3 had in their written statement in the suit aforesaid filed by the mother admitted having received the sum of Rs. 10,000/-; he also deposed that only the plaintiffs were contesting the Probate Petition filed by his son Shri Prem Prakash Sharma with respect to the Will of Shri Sudarshan Lal and no one else had filed any objection thereto; he also proved as Exhibit P-7 the plaint of the suit filed by the mother with respect to plot No. 43, Badarpur (the said suit was filed against the brothers only and not against the sisters, the mother in the plaint in the said suit claimed that the said plot had been gifted to her by Shri Bakshi Ram in his lifetime); he further deposed that after the demise of the mother the said plot had been mutated under Bhumidari Rights in favour of the three brothers under the Delhi Land Reform Act. In his cross examination he admitted that till the time of the partition he was a student and denied the suggestion that no family settlement had taken place or that in terms of the said settlement no monies had been paid to the sisters.

12. During the pendency of the suit, the defendant No. 3 died; being ex-parte, vide order dated 11th December, 2001, her heirs were exempted from being brought on record. The defendant No. 1 also died; vide order dated 15th January, 2004 his adopted daughter was substituted in his place. On demise of plaintiff No. 1, her heirs were substituted on 9th January, 2007.

13. Synopsis of submissions has also been filed by Counsel for plaintiff No. 3 & Counsel for defendant No. 2. In the aforesaid state of pleadings and evidence, my issue-wise findings are as under.

14. However, before returning findings issue wise, it is deemed appropriate to generally discuss the matter in controversy.

15. The plaintiffs have approached the court with the case of the properties with respect where to the suit has been filed being of the Joint Hindu Family of Bakshi Ram & Sons (HUF). The contesting defendants though admit the existence at one point of time of the said Joint Hindu Family, contend that the same was dissolved/partitioned 30 years prior to the institution of the suit. The plaintiffs, in spite of demise of their father in 1960 and mother, in the year 1978, till 1990 did not claim any share in the properties. This litigation appears to have been ignited by Shri Prem Prakash Sharma S/o defendant No. 2, setting up a Will of Shri Sudershan Lal in his favour. Though these proceedings are informed to have been conclusively decided against the plaintiffs, this litigation lingers on, though appears to have lost much of its steam.

16. The parties are also at issue as to the extent of the properties of the said Joint Hindu Family i.e., whether all the properties with respect where to the suit has been filed belonged to the said Joint Hindu Family, as contended by the plaintiffs or only some of them as contended by the contesting defendants and if so which ones.

17. Only upon it being found that the Joint Hindu Family existed till the institution of the suit as claimed by the plaintiffs and upon it being determined as to which of the properties belonged to the said Joint Hindu Family, would the question of determining the interest/share of the plaintiffs therein would arise.

18. The plaintiffs have instituted the suit with respect to the properties mentioned in paras 3 and 5 hereinabove. The contesting defendants however admit only three properties, namely, i) the house at Joshi Road, Karol Bagh, ii) Plot No. 43 comprising of Khasra No. 36/28/2 and 36/29/2 at village Badarpur, and iii) the land in Khasra No. 32/28/1 and 32/28/2 at village Badarpur to be of the Joint Family.

19. The question which arises is, whether the plaintiffs on whom the onus in this regard rested have established any other property to be of the joint family as on the date of institution of suit. Though the plaintiffs have suggested that the properties which are not in the name of the Joint Hindu Family or Sh. Bakshi Ram were also acquired with the monies of the businesses being carried on by the

family, but there is no cogent evidence in this regard. The only evidence in this regard before the court, to rebut the stand of the contesting defendants of there being only three properties aforesaid of the family at the time of demise of Shri Bakshi Ram, is Exhibit P-20. It is a photocopy of a partnership deed dated 1st April, 1968 between the defendants No. 1&2 and their deceased brother Sudershan Lal and mother Smt. Chanan Devi. This document was admitted by the contesting defendants and admitted into evidence on 8th March, 1995. This document records that (i) Bakshi Ram & Sons (HUF) have been carrying on business of Petrol Pumps at various places in the name of M/s BE-AR Sales, in the name of Auto Rest at 231, Tajpaul, Mathura Marg, Delhi, in the name of Auto Grit at Tughlakabad, Delhi and in the name of Auto Rink at Khasra No. 32/28, Badarpur, Delhi, (ii) that the signatories, being all the members of HUF have decided to take out the said business from the family fold and to convert it into partnership concern w.e.f. 1st April, 1968, and (iii) the HUF of Bakshi Ram & Sons is the owner of - (a) Plot No. 231, Tajpaul, Delhi, (b) Plot at Tughlakabad, Delhi, (c) Plot No. 32/28, Badarpur, Delhi, (d) Plot No. 36/28 and 36/29 Badarpur, Delhi and (e) House at Joshi Road, Delhi and which will remain in the ownership of Bakshi Ram & Sons (HUF).

20. Similarly, the only other evidence before the court (besides adverse oral testimonies) to rebut the plea of the contesting defendants of dissolution/partition of the HUF, soon after demise of Shri Bakshi Ram, in 1960, is Exhibit P-28, being photocopy of Civil Writ No. 1921/1986 preferred in the name of Bakshi Ram & Sons (HUF) in this court with respect to land bearing khasra No. 32/28/1 and 32/28/2, Badarpur. In this writ petition, Shri Sudarshan Lal has signed as the karta of the said HUF.

21. The plaintiffs have also proved as Exhibit P-24 the letter written by Shri Sudarshan Lal for mutation of plot No. 231 village Tajpaul, Delhi, from his name, to the name of Bakshi Ram & Sons (HUF), in accordance with the partnership deed dated 1st April, 1968 (supra).

22. There can be no better evidence than admission. The aforesaid documents contain admission not only of certain properties other than the three properties admitted by the contesting defendants, to be also belonging to the Joint Hindu Family, but the said documents also notify the stand of dissolution of the HUF in 1960.

23. The contesting defendants have as aforesaid taken a plea that Shri Sudarshan Lal had in 1968 formed a new HUF in the same name and style of Bakshi Ram & Sons (HUF). However, the defendants have failed to establish the said plea and the same is also inconsistent to the language of Exhibit P-20 which was contemporaneously executed.

Re. Issue No. 1 (Whether plaintiffs 1 and 2 have any subsisting right and interest in the Joint Family Property despite their marriages in 1994 (1944) and 1951 respectively? OPP)

24. Though Section 6 of the Hindu Succession Act, 1956 has been amended w.e.f. 2005 but the said amendment is not relevant for the present purposes. This suit for partition is pending since 15 years prior to the amendment to Section 6 of the said Act. Also, the coparcener/karta of the HUF namely Shri Bakshi Ram, whose daughters, the plaintiffs are, died 35 years prior to the said amendment. The rights/shares if any crystallized then only and will not be affected by the subsequent amendment. This court in Smt. Mukesh and Others Vs. Shri Bharat Singh and Others, held the amendment of 2005 to Section 6 of Hindu Succession Act to be not retrospective.

25. Section 6 of the Hindu Succession Act prior to the amendment also though recognizing Mitakshara Coparcenary provided that if the deceased left a female heir in class-I, the interest of the deceased in such coparcenary shall devolve in terms of the said Act. In this regard it may be also noticed that the Division Bench of this court in Kanhaya Lal Vs. Jamna Devi and Others, has held that joint family property is synonymous with coparcenary property and it makes no difference in construction and effect of Section 6, for the widow and daughters are members of the Joint Hindu Family and not of the coparcenary. Under the Hindu Law relating to coparcener/Joint Hindu Family, the married daughters cease to have any right/claim to the same. Thus the plaintiffs per se had no rights in the Bakshi Ram & Sons (HUF). However, since the Hindu Succession Act had come into force prior to the demise of Shri Bakshi Ram and it being not the case that Shri Bakshi Ram has left any Will, there is deemed to be a partition of the said HUF at the moment of the demise of Shri Bakshi Ram and his share in the said HUF would devolve according to the Succession Act i.e. on his widow and his children equally.

26. Thus, issue No. 1 is answered as that though the plaintiffs had no subsisting right or interest in the joint family property upon their respective marriages but they would be an heir of their father Shri Bakshi Ram with respect to his share therein.

Re. Issue No. 2 (Whether plaintiffs have a right to sue for partition of Joint Family Property?)

27. Though the plaintiffs have sued on the premise that all the parties having equal share but it being the case of the plaintiffs that the properties with respect where to relief is claimed were/are of the Joint Hindu Family, the plaintiffs in spite of having been held above to be having no right or claim to the Joint Hindu Family, would still have a share in the said properties as a heir under the Hindu Succession Act of their father Shri Bakshi Ram but only out of his share in the HUF, determined at the moment of his demise. Thus, the plaintiffs have a right to sue for partition.

Re. Issue No. 3 (Whether the suit is barred by time under Article 113 of the Limitation Act? OPD1D2)

28. The plea of limitation was set-up in the written statement of the defendants

No. 1&2 averring that there was a partition of the joint family properties immediately after the demise of Shri Bakshi Ram in the year 1960; that in the said partition the plaintiffs were given Rs. 10,000/- each in lieu of their shares in the property; that the suit for partition filed in the year 1990 is barred by time. However, the defendants have failed to prove that any such partition took place. Else, it has been found above, that the contesting defendants admitted existence of the HUF in partnership deed of 1st April, 1968 and in Writ Petition No. 1921/1986. Thus the suit for partition qua immovable properties found to be of the HUF is not found to be barred by limitation. The limitation for a suit for partition would commence from the date when partition is claimed and is denied. It thus cannot be said that the relief of partition claimed is barred by time.

29. However, as far as the relief for partition of HUF businesses and accounts thereof is concerned, even though in the partition deed Exhibit P-20, certain businesses were admitted to be of the HUF, but they were w.e.f. 1st April, 1968 i.e. nearly 22 years prior to the institution of the suit, taken out of the fold of HUF and were thereafter carried on in partnership, though of the members of HUF. Be that as it may, they ceased to be of the HUF. The claim for partition or accounts thereof is barred by limitation. The plaintiffs have not been vigilant in this case. The businesses even if earlier of the HUF are such an asset which cannot be static. The plaintiffs cannot wake up after long and claim a share therein when the same for long prior to the institution of the suit had ceased to be of HUF and when others had been carrying on the same, treating to be in partnership. Thus, claim qua businesses is barred by time.

Re. Issue No. 4 (Whether there was severance of status of Joint Hindu Family of Bakshi Ram & Sons on 21.2.60? OPD1D2).

30. As already observed above, the defendants have failed to prove severance of status of the Joint Hindu Family of Bakshi Ram & Sons on 21st February, 1960. On the contrary, there is admission of existence of HUF in 1968 and 1986, as aforesaid.

Re. Issue No. 5 (What properties were held by Bakshi Ram & Sons at the time of death of Sh. Bakshi Ram on 10.2.60 OPP)

31. Though the defendants claimed that only three of the several properties with respect where to suit was filed, were the joint family properties of Bakshi Ram & Sons (HUF) but as aforesaid, the contesting defendants in partnership deed dated 1st April, 1968 Exhibit P-20 (Supra) and with respect where to there is no explanation whatsoever, admitted certain other properties also to be of Bakshi Ram & Sons (HUF). On the basis of said admission, finding is returned of the following properties being held by Bakshi Ram & Sons (HUF) at the time of demise of Shri Bakshi Ram:

a. House at Joshi Road.

b. Plot No. 43 comprising of Khasra No. 36/28/2 & 36/29/2 at village Badarpur,

Delhi.

c. Plot of land in Khasra No. 32/28/1 & 32/28/2 at village Badarpur, Delhi.

d. Plot of land No. 231, village Tajpaul, Tehsil Mehrauli, Delhi.

e. Plot of land at Tughlakabad.

Re. Issue No. 7 (To what share of the share of late Shri Bakshi Ram in the Joint Family Property is each plaintiff entitled? OPP).

32. Shri Bakshi Ram his wife and his three sons had an equal share in the joint family properties i.e. of 1/5th each. The plaintiffs would be entitled to a share under Hindu Succession Act out of said 1/5th share only of Shri Bakshi Ram in the joint family properties. The said 1/5th share would devolve upon the eight children and widow of Shri Bakshi Ram equally. Thus each of the plaintiffs would have 1/8th share out of 1/5th share of Shri Bakshi Ram in the aforesaid joint family properties.

Re. Issue No. 8. (Whether the plaintiffs who alongwith defendant No. 4 relinquished their right/claim over house No. XVI/318 and 323, Joshi Road, Karol Bagh, New Delhi, in favour of their brother Sudarshan Lal under registered documents can still lay claim over that house? OPP)

33. The relinquishment deeds are registered and have been admitted by the plaintiffs. The plaintiffs in their evidence in fact admitted the said relinquishment deed and the explanation offered with respect thereto i.e. that they intended to sign a Power of Attorney has not been proved and/or established. Upon execution of the relinquishment deed, the share of the plaintiffs as aforesaid in the Joshi Road house stood transferred to Shri Sudarshan Lal. The Counsel for the plaintiffs has also not shown anything as to how the plaintiffs would in spite of the relinquishment deed have a share in the said house. It is also worth mentioning that the plaintiffs in spite of the suit having remained pending for so long have not claimed any relief for setting aside of the said relinquishment deeds and the said claim even if any of the plaintiffs stands barred by time.

34. Though the application of the plaintiffs being CrI.M. 481/1994 u/s 340 of Cr.P.C. with respect to the said relinquishment deed is pending but in my view the same is immaterial. The house at Joshi Road bears municipal No. XVI/138/318-323. It is the case of the plaintiffs in their application u/s 340 of the Cr.P.C. that the defendants have in the certified copy filed before the court changed 321 to 323. The plaintiffs have filed copies of the said relinquishment deed themselves in which the municipal No. mentioned are 318 and 321. However, the same would be immaterial inasmuch as the relinquishment deed also contains the area of the property and which is the entire area of the property i.e., 293 sq yds and not merely the area of the portions bearing No. 318 & 321. Thus, the change even if any effected by the defendants in the certified copy filed by them does not lead me to hold that the relinquishment was of a part of the said house only. Also considering the relationship of the parties and

long time for which the parties have already been litigating, I do not find any case u/s 340 of the Cr.P.C. also to be made out and the application in that regard is also dismissed.

35. Thus I find the plaintiffs to have relinquished their share in the Joshi Road house.

Re. Issue No. 9.(Whether the plaintiffs can claim any share in lands bearing khasra Nos. 32/28/1 and 32/28/2 which were mutated on the death of Bakshi Ram in the name of his three sons under the Delhi Land Reforms Act? OPP)

36. The senior Counsel for the intervener has contended that the land in khasra No. 32/28/1 and 32/28/2 with respect where to only this issue has been framed, is governed by the provisions of the Delhi Land Reforms Act; that the said land was recorded in the name of Shri Bakshi Ram as Bhumidar thereof; that on demise of Shri Bakshi Ram the said land was mutated in the names of the three sons of Shri Bakshi Ram. The said mutation is sought to be proved through Exhibit P-17 and Exhibit P-19. Upon execution of the partnership deed dated 1st April, 1968 Exhibit P-20 (supra), the said land was mutated from the names of Shri Sudarshan Lal and the defendants 1 and 2, to the name of M/s Bakshi Ram and Sons, (HUF). Thus, the Civil Writ No. 1921/1986 Exhibit P-28 challenging the validity of acquisition of the said land and which is stated to be still pending was filed in the name of M/s Bakshi Ram & Sons, (HUF). The contention is that the mutation in accordance with provisions of Section 50 of the Delhi Land Reforms Act having been carried out in the names of Shri Sudarshan Lal and defendants 1 and 2, the plaintiffs or the defendants 3 and 4 have no share in the said land even if held to be of the HUF.

37. The Counsel for the plaintiffs has not disputed the applicability of the provisions of the Delhi Land Reforms Act to the land. However, he has argued that since the said lands were being used, not for agricultural purposes, but for the purposes of a petrol pump, they u/s 23 of the said Act ceased to be governed by the provisions of the Delhi Land Reforms Act. It is orally also argued without producing any documents that the said lands were urbanized in 1959 and thus also ceased to be governed by the Delhi Land Reforms Act and the inheritance with respect thereto shall be governed by the Succession Act and not the Land Reforms Act.

38. The Division Bench of this Court in Ram Mehar Vs. Dakhan, has held that as the Delhi Land Reforms Act provides for the prevention of the fragmentation of agricultural holdings and also, at the material time fixed ceilings on agricultural holdings and also dealt with the devolution of tenancy rights (bhumidari rights) in respect of such holdings, it is saved by Section 4(2) of the Hindu Succession Act and the rule of succession governing Hindu Bhumidars is to be found in Section 50 of the Delhi Land Reforms Act and not in the Hindu Succession Act, 1956. On the basis of the said dicta, even though the said land is established to be the property of the Joint Hindu Family of Bakshi Ram & Sons at the time of

demise of Shri Bakshi Ram but the plaintiffs under the provisions of the Hindu Succession Act also would not get a share therein.

39. The Supreme Court Subsequently in Madhu Kishwar and others Vs. State of Bihar and others, appears to have dealt with the subject of such inheritance under laws as the Delhi Land Reforms Act, to males only. However, since Shri Bakshi Ram died long prior to the said dicta of the Supreme Court also and further since mutation in accordance with Delhi Land Reforms Act were carried out in the names of Shri Sudarshan Lal and the defendants 1 and 2 only, in my view the said dicta of the Supreme Court also does not come to the rescue of the plaintiffs.

40. As far as the arguments of the Counsel for the plaintiffs of the said land having been urbanized and thus the provisions of Section 50 of the Delhi Land Reforms Act ceasing to apply to succession thereof is concerned, this court recently in Narain Singh v. Financial Commissioner 2009 (I) AD (Delhi) 695 after review of the earlier judgments including in Trikha Ram Vs. Sahib Ram, to which reference has been made by the contesting defendants in another context, has held that the urbanization of the land by a notification u/s 507 of the Delhi Municipal Corporation Act, 1957 would not stop the provisions of the Delhi Land Reforms Act applying to such lands. Thus, the said argument is of no avail.

41. The Counsel for the plaintiffs has also referred to Section 23 of the Delhi Land Reforms Act. However, the same only prohibits use of the land covered by the said Act for industrial purposes and enables the Chief Commissioner to sanction use of the land by a Bhumidar for industrial purposes with a proviso that, upon the same happening, the provisions of the said Act relating to devolution shall cease to apply to the bhumidar with respect to such land. However, in the absence of it having been established that the use of the land for petrol pump which is stated to be the non-permitted use has been sanctioned by the Chief Commissioner, Section 23 would have no application.

42. However, the said land was in partnership deed dated 1st April, 1968 Exhibit P-20 (supra) admitted to be of HUF and is now again mutated in the name of Bakshi Singh & Sons, (HUF). On said admission, plaintiffs will have a share therein.

43. While on the subject and since it has come on record that the land has been acquired and the acquisition is challenged in Civil Writ No. 1921/1986 pending in this court, I may also notice that this court in Jai Prakash v. Smt Pushpa 81 (1990) DLT 519 has held that the provisions of Section 50 of the Delhi Land Reforms Act relating to succession have no application where the land has been acquired and qua the entitlement for compensation under the Land Acquisition Act.

44. Though issue No. 9 has been framed with respect to the land in Khasra No. 32/28/1 and 32/28/2 only but since I have hereinabove held that the land in Village Tajpaul and the land in Tuglakabad also are part of the Joint Family

Property, it is necessary to deal with respect to the said lands also, qua the Delhi Land Reforms Act.

45. The land in village Tajpaul was originally in the name of Shri Sudarshan Lal only. However, Shri Sudarshan Lal in the partnership deed dated 1st April, 1968 Exhibit P-20 (supra) admitted the same to be of Bakshi Ram & Sons, (HUF) of which Shri Bakshi Ram was the karta. The said land is mutated in the name of Bakshi Ram & Sons, (HUF) as of today. Since the land is mutated in the name of the HUF, the plaintiffs would have a share in the said land, irrespective of provisions of Delhi Land Reforms Act.

46. With respect to the land at Tuglakabad, the plea in the written statement is that the same was acquired by Shri Sudarshan Lal. However, Shri Sudarshan Lal in partnership deed dated 1st April, 1968 Exhibit P-20 (supra) admitted the same to be of Bakshi Ram & Sons, (HUF) of which Shri Bakshi Ram was the karta. Thus, the plaintiffs would have a share in the said land also out of the share in the said land of Shri Bakshi Ram at the time of his demise, irrespective of provisions of Delhi Land Reforms Act.

Re: Issue No. 10 - Whether the plaintiffs can claim any share in plot No. 43 bearing khasra No. 36/28/2 and 36/29/2 situated in village Badarpur, Delhi, which was mutated in the name of their mother Chanan Devi on 18.2.63, after she had been declared as Bhumidar? OPP

47. The plot No. 43 bearing Khasra No 36/28/2 and 36/29/2 is also now established to be of the Bakshi Ram & Sons, (HUF) at the time of demise of Shri Bakshi Ram. However, the case of the contesting defendants is that in the settlement/partition of the HUF after the demise of Shri Bakshi Ram, the said property vested in the mother. This plea of the contesting defendants of settlement/partition has not been accepted by this court. However the factum of the said property having been mutated in the name of the mother stands admitted and established. Though the defendants have urged that after the demise of the mother, the said land has also been mutated in their names under the provisions of the Land Reforms Act but that mutation is of a date after the institution of this suit and would be of no avail. It is also informed that the plaintiffs have also got mutated their names, with respect to the said land, in the revenue record and challenge whereto has been made by the defendant No. 2 by filing a suit in the court of the Civil Judge, Delhi. It is the contention of the defendants on the basis of Trikha Ram (supra) that this land was urbanized vide notification of 3rd June, 1996 and thus the mutation by addition of the names of the plaintiffs in the said land is bad. However, as aforesaid, the urbanization of the land, even if any, does not stop the application of the provisions of the Delhi Land Reforms Act. Thus, this land would continue to be governed by the provisions of the said Act. It being the admitted position that the mother Smt Chanan Devi was recorded as a bhumidar with respect to the said land after the demise of Shri Bakshi Ram, the succession with respect to the said land would be governed by Section 51 of the Delhi Land Reforms Act and as per which,

succession again the said land would vest in the male descendants only and the plaintiffs as heirs of Shri Bakshi Ram or of Smt Chanan Devi would have no right to the said land. Having said so, it must be clarified that since the dispute as to the mutation affected in the names of the plaintiffs also with respect to the said land is not subject matter of this suit, nothing contained herein ought to be deemed to be adjudicating the same.

Re: Issue No. 11 - Whether the plaintiffs can claim a share in any other property which was purchased or acquired by defendants 1 and 2 out of their own funds after the death of their father Bakshi Ram? OPP

48. In view of what has been held hereinabove, the plaintiffs can claim a share only in the properties which were admitted in the partnership deed dated 1st April, 1968 as properties of the HUF and in no other properties. The position with respect to each of the said properties had also been dealt with hereinabove.

Re: Issue No. 12 - Relief.

49. Resultantly, it is held that out of the five HUF properties, the plaintiffs have a share only in:

- i. Plot in Khasra No. 32/28/1 and 32/28/2, Badarpur, Delhi
- ii. Plot of land bearing No. 231, Village Tajpaul, Tehsil Mehrauli, Delhi.
- iii. Plot of land at Tuglakabad.

As aforesaid, the share of Shri Bakshi Ram in M/s Bakshi Ram & Sons (HUF) at the time of his demise was 1/5th. The said 1/5th share is to devolve on his three sons and five daughters and widow i.e. to the extent of 1/8th each. Thus each of the plaintiffs and the defendants are entitled to 1/8th out of 1/5th share of Shri Bakshi Ram in the aforesaid three properties. The plaintiffs have not acquired anything from the share of Shri Sudarshan Lal in the said properties inasmuch as it has been established that Shri Sudarshan Lal left a Will with respect to his properties in favour of the intervener Shri Prem Prakash Sharma.

50. However that brings up another question, with respect where to no issue has been framed but which affects the jurisdiction of this court. Section 185 of the Delhi Land Reforms Act bars the jurisdiction of this court to partition properties governed by the said Act. All the aforesaid three properties are governed by the Delhi Land Reforms Act. This court is not competent to partition the same. Hence, in spite of the suit having remained pending for long, there is no option but to dismiss the same. No order as to costs. Decree sheet be drawn up.