

Waryam Singh the petitioner. The petitioner will be entitled to his costs which are assessed to Rs. 50.

*v.*  
The Collector  
Agrarian Re-  
forms and  
another

R. S.

Mahajan, J.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

GOPI CHAND AND OTHERS,—Appellants.

*versus*

BHAGWANI DEVI,—Respondent.

Regular Second Appeal No. 338-D of 1962.

1963

Nov., 13th.

*Hindu Succession Act, (XXX of 1956)—S. 4—Delhi Land Reforms Act (VIII of 1954)—S. 50—Succession to bhoomidhari rights—Whether governed by Delhi Land Reforms Act or by general provisions of Hindu Succession Act—Delhi Reforms Act—Whether provides for prevention of fragmentation of agricultural holding—Bhoomidhari rights—Whether equivalent to tenancy rights.*

*Held*, that sub-section (1) (b) of section of the Hindu Succession Act, 1956, clearly lays down that 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. Certain exceptions have, however, been given in sub-section (2) of this section. The order of succession laid down in section 50 of the Delhi Land Reforms Act is inconsistent with the one prescribed in the Hindu Succession Act. Therefore the provisions of section 50 of the Delhi Reforms Act would not apply, unless it can be shown that the case is covered by the exceptions mentioned in sub-section (2) of section 4 of the Hindu Succession Act.

*Held*, that Delhi Reforms Act does not provide for prevention of fragmentation of agricultural holdings.

*Held*, that *bhoomidhars* are those persons, who hold land directly and are only liable to pay land revenue to the State like owners of the land. The ownership rights of these

persons were not taken away by the Government, except in cases of waste lands, pasture lands and common lands, etc., as mentioned in section 7 of the Delhi Reforms Act, 1954. However, certain restrictions, which are in the public interest, have been laid down by the Legislature on their rights, but it cannot be said that their status is that of the tenants.

*Regular Second Appeal from the decree of the Court of Shri P. N. Thukral, Additional District Judge, Delhi, dated the 30th day of August, 1962 affirming that of Shri Gian Inder Singh, Sub-Judge 3rd Class, Delhi dated the 30th August, 1961, passing a decree for possession as prayed for in favour of the plaintiff against the defendants. The Additional District Judge dismissed the appeal of the defendants with costs.*

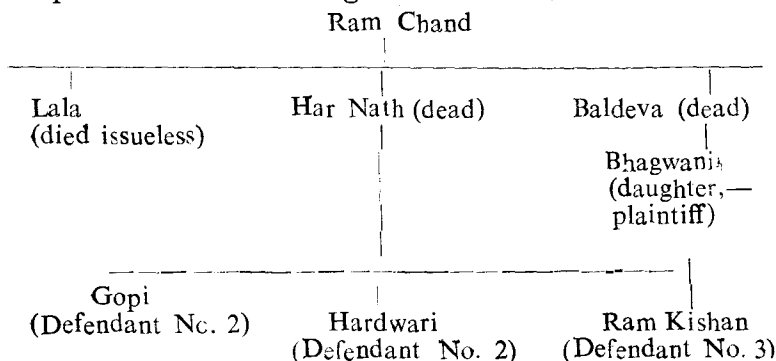
P. N. JOSHI, ADVOCATE, for the Appellant.

R. C. SAWHNEY AND B. R. MALIK, ADVOCATES, for the Respondent.

#### JUDGMENT

PANDIT, J.—The following pedigree-table will be helpful in understanding the facts of this case:—

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The dispute in the present case relates to land measuring 40 *bighas* and 10 *biswas* situate in Ran Hola, district Delhi. After the death of Lal, Har Nath and Baldeva were jointly declared *bhoomidhars* in respect of this land. On the death of Baldeva, his *bhoomidhari* rights were mutated in favour of his nephews, Gopi and others, defendants 1 to 3, in June, 1960. In August, 1960, Bhagwani, daughter of Baldeva, filed a suit for possession of one-half share in the land in dispute on the ground that she was, under law and

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custom, entitled to succeed to the estate of her deceased father. It was also alleged by her that she lived with her father and looked after him during his lifetime.

The suit was resisted on a number of grounds, which gave rise to the following issues:—

1. Whether the suit land has devolved on the defendants by survivorship under law and custom?
2. Whether the plaintiff looked after her father during his lifetime, if so to what effect?
3. Whether mutation No. 563 dated 4th June, 1960 in favour of the defendants was wrongly sanctioned?
4. Whether the plaintiff was dispossessed by the defendants as alleged?
5. Whether the plaintiff is entitled to the possession claimed?
6. Relief.

The trial Judge held that the plaintiff was entitled to succeed to the property left by Baldeva under the provisions of the Hindu Succession Act, 1956, which applied to the present case; that the suit land did not devolve on the defendants by survivorship under law and custom; that the mutation in favour of the defendants was wrongly sanctioned by the Revenue Authorities; and that the plaintiff was not in possession of the property in suit and, therefore, she was entitled to its possession. No finding was given on issue No. 2, in view of the finding on issue No. 1. As a result, the plaintiff's suit was decreed.

When the matter went in appeal before the learned Additional District Judge, two matters were argued before him by the learned counsel for the defendants. On the first point, he held that the plaintiff had a right to succeed to the land in dispute in preference to the defendants by virtue of the provisions of the Hindu Succession Act and the provisions of section 50 of the Delhi Land Reforms Act did not govern the present case. As regards the second point his decision was that though it was true that the civil Court had no right to direct the cancellation of any mutation, but this point was immaterial, because the mutation in favour of the defendants would be automatically revised in favour of the plaintiff on the basis of the decree for possession, which had been granted in her favour. A decree for possession involved a declaration that the plaintiff was entitled to succeed in preference to the defendants and it was conceded that the civil Courts had jurisdiction to declare the rights of the plaintiff in the land in dispute. On these findings, the appeal was dismissed. Against this, the present second appeal has been preferred by the defendants.

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The sole point for decision in this case is whether succession to *bhoomidhari* rights in Delhi State is governed by section 50 of the Delhi Land Reforms Act, 1954, or by the general provisions of the Hindu Succession Act, 1956.

Section 50 of the Delhi Land Reforms Act, 1954, is in the following terms:—

“S. 50. Subject to the provisions of sections 48 and 52, when a Bhumidar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of succession given below:—

(a) male lineal descendants in the male line of descent:

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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 how lowsoever shall inherit the share which would have devolved upon the deceased if he had been then alive;

- (b) widows;
- (c) father;
- (d) mother, being a widow;
- (e) step-mother, being a widow;
- (f) father's father;
- (g) father's mother, being a widow;
- (h) widow of a male lineal descendant in the male line of descent;
- (j) unmarried daughter;
- (i) unmarried daughter;
- (j) brother, being the son of the same father as the deceased;
- (k) unmarried sister;
- (l) brother's son, the brother having been a son of the same father as the deceased;
- (m) father's father's son;
- (n) brother's son's son;
- (o) father's father's son's son;
- (p) daughter's son.

This section lays down the order of succession in the case of the death of a *bhumidhar* of an *Asami*. Ordinarily, this section would have applied to the present

case, but in 1956, the Hindu Succession Act was enacted and section 4 thereof is as under—

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“S. 4. (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 provisions 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.”

Sub-section (1)(b) of this section clearly lays down that 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. Certain exceptions have, however, been given in sub-section (2) of this section. Admittedly, the order of succession laid down in section 50 of the Delhi Land Reforms Act is inconsistent with the one prescribed in the Hindu Succession Act. Therefore, the provisions of section

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50 of the Delhi Act would not apply to the present case, unless it can be shown that it is covered by the exceptions mentioned in sub-section (2) of section 4 of the Hindu Succession Act. The three exceptions enumerated there relate to the laws for the time being in force providing for the (1) prevention of fragmentation of agricultural holdings (2) fixation of ceilings and (3) devolution of tenancy rights in respect of such holdings. The appellant's case is that the Delhi Act is covered by exceptions (1) and (3).

Now, the first question is whether the Delhi Act is a law, which provides for the prevention of fragmentation of agricultural holdings.

The preamble of the Delhi Act shows that this was enacted for modification of *zamindari* system so as to create a uniform body of peasant proprietors, without intermediaries, and for the unification of the Punjab and Agra systems of tenancy laws in force in the State of Delhi and to make provisions for other matters connected therewith. So it will be seen that the preamble does not mention that this Act provides for the prevention of fragmentation of agricultural holdings like the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, which was applied to Delhi State in 1950, and is still in force. The argument of the learned counsel is that under section 50 of the Delhi Act, a limited number of heirs are provided, whereas under the Hindu Succession Act, a large number of heirs would jointly succeed to the estate, with the result that on partition, there would be more claimants in the case governed by Hindu Succession Act and, consequently, more fragmentations would take place. This argument is without any force, because under section 50 of the Delhi Act it is not provided that no fragmentation would take place. The argument that in one case

there would be less number of heirs, while in the other more, does not carry any weight, because, ultimately, fragmentations will take place under both the enactments and it cannot be said that the Delhi Act was promulgated to prevent fragmentations altogether.

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As regards the second contention that the *Bhumidhari* rights are equivalent to tenancy rights and are thus covered by exception 3 mentioned above, there is no force in the same as well. In the first place, it was conceded before the lower appellate Court that *bhumidhari* rights were, admittedly, not tenancy rights. Secondly, section 4 of the Delhi Act defined the "*bhumidhars*". It has been stated in sub-section (1) that there shall be only one class of tenure-holders, that is to say, *bhumidhar*, and one class of sub-tenure-holders, that is to say '*assami*'. It is mentioned in sub-section (2) that tenure-holders means a person who holds land directly under and is liable to pay land revenue for that land to the State and sub-tenure holder is a person, who holds land from a tenure-holder or *gaon sabha* and is liable to pay rent therefor to the tenure holder or *gaon sabha*. It is, thus, clear that the *bhumidhars* are those who hold land directly and are only liable to pay land revenue to the State like owners of the land. Admittedly, the ownership rights of these persons were not taken away by the Government, except in cases of waste lands, pasture lands and common lands etc., as mentioned in section 7 of this Act. However, certain restrictions, which are in the public interest, have been laid down by the Legislature on their rights, but it cannot be said that their status is that of the tenants. The status of the sub-tenure holders, that is, *asamis*, however, is that of a tenant and they pay rent to the *bhumidhars*. It may be mentioned that the tenants of the superior type, who have been declared as *bhumidhars*, have to pay compensation which shall be paid to the proprietors



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of the land, whereas those, who were already proprietors and have now been declared as *bhumidhars*, have not to pay any kind of compensation to anybody. This means that the status of the *bhumidhars* is that of the proprietors or landlords. Besides, it has not been shown that they are the tenants of anybody.

In the present case, admittedly, Baldev and Har Nath were the owners of the land in dispute in 1953/1954, when the Delhi Act was passed. After the coming into force of this Act, they became *bhumidhars*. In view of what I have said above, the succession to their rights would be governed by the provisions of the Hindu Succession Act, 1956, and not the Delhi Land Reforms Act, 1954. That being so, when Baldev died in June, 1960, his rights would devolve on the plaintiff, who is his daughter. Under these circumstances, both the Courts below were right in decreeing her suit.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in this Court.

K. S. K. . .

CIVIL MISCELLANEOUS

*Before Mehar Singh and H. R. Khanna, JJ.*

NEMI CHAND JAIN,—*Petitioner*

*versus*

THE FINANCIAL COMMISSIONER, PUNJAB, AND  
ANOTHER,—*Respondents.*

**Civil Writ No: 1379 of 1961**

1963  
Nov., 14th.

*Punjab Security of Land Tenures Act (X of 1953)—S. 2(8)—Banjar Jadid or Banjar Qadim land—Whether covered by “land” as defined in the Act.*