2025:DHC:11638-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 09.12.2025***
Judgment pronounced on: 20.12.2025
Judgment uploaded on: 20.12.2025

\+ RFA(OS) 3/2023, CM APPL. 7480/2023, CM APPL. 7481/2023, CM APPL. 7482/2023, CM APPL. 57284/2023 & CM APPL. 15708/2025

INDU RANI ALIAS INDU RATHI (DECEASED) THROUGH LRS .....Appellants

Through: Ms. Kajal Chandra, Ms. Hatneimawi, Mr. Suyash Swarup and Mr. Ananyay Bhardwaj, Advs.

versus

PUSHPA VARAT MANN AND ORS .....Respondents

Through: Mr. Madan Lal Sharma, Ms. Tejaswini Verma, Mr. Pankit Bhardwaj, Ms. Manika Gaba and Mr. Abhay Singh, Advs. for R-1 and 5 to 7.
Mr. A. K. Sen, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant assails the correctness of the order dated 01.12.2022 [hereinafter referred to as 'Impugned Order'] passed by the learned Single Judge [hereinafter

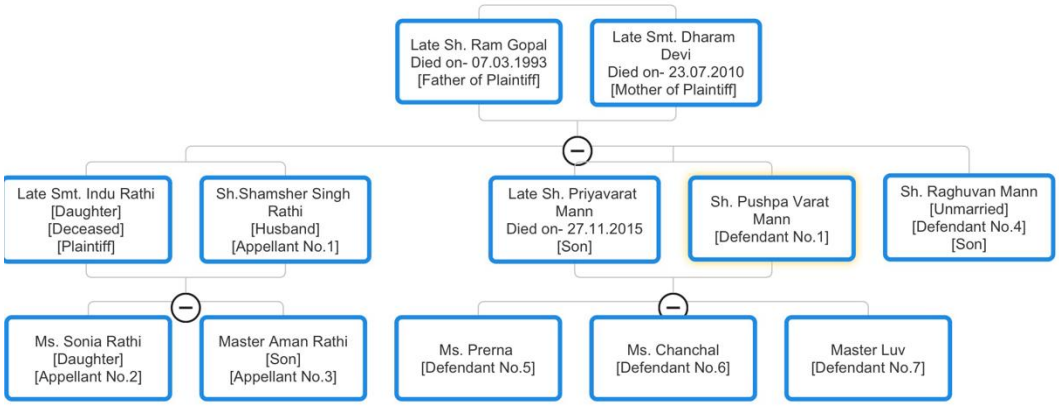
referred to as 'LSJ'], while allowing the application under Order VII Rule 11 of the Civil Procedure Code, 1908 [hereinafter referred to as 'CPC'].

2. For the sake of convenience, the parties before this Court shall be referred in accordance with their status before the LSJ.

FACTUAL MATRIX

3. For a comprehensive consideration of the issues involved, requiring adjudication, it is apposite to first delineate the family genealogy and the attendant factual matrix, which are set out in the ensuing paragraphs.

4. The genealogy of the family reads as under:



5. While instituting the suit and the interim applications, the Plaintiff, in brief, asserted as under:

5.1 The Plaintiff is the daughter of Sh. Ram Gopal and Smt. Dharam Devi. Sh. Ram Gopal died intestate on 07.03.1993, while Smt. Dharam Devi died on 23.07.2010, leaving behind two sons and

one daughter i.e. the Plaintiff. One of the Plaintiff's brothers, Sh. Priyavarat Mann, died on 27.11.2015, while leaving behind his widow, Smt. Pushpa Varat Mann/Defendant No.1 and Defendant Nos.5 to 7 as children. The other brother, Sh. Raghuvinder Mann/Defendant No.4 is unmarried and had been suffering from Chronic Schizophrenia for some time and now, he has recovered.

5.2 The present suit pertains to the ancestral land belonging to the Plaintiff's father, situated in the revenue estate of village Iradat Nagar, Naya Bans-110082, comprising of 41 bighas and 9 Biswas [hereinafter referred to as 'Suit Land'].

5.3 After the demise of the Plaintiff's father, the Plaintiff claims that she, along with her mother and two brothers, became the lawful co-owners of the Suit Land and other ancestral properties, each entitled to 1/3rd share each of the same.

5.4 Plaintiff, being a co-owner, consistently initiated discussions with her brothers since 2006 for partition of her due share, as no partition had ever been carried out by metes and bounds. However, the brothers remained reluctant and continued to delay the same for their own vested interests.

5.5 On 03.03.2011, the Plaintiff visited the concerned Revenue authorities to check the status of the Suit Land owned by her Late father. Upon inspection, she discovered that the Suit Land had already been clandestinely mutated in the names of her two brothers on 29.06.1994 i.e. soon after her father's death and without her knowledge and consent.

5.6 During the inspection, the Plaintiff further discovered that both her brothers had already sold off the ancestral Suit Land in separate portions to the Defendant No.1, 2 and 3 respectively. A portion of the suit land [4 bighas 14 biswas] was sold to Defendant No. 3 vide Sale Deed dated 16.11.1995, another portion measuring [14 Bighas 01 Biswas] was sold to Defendant No.2 through Sale Deed dated 11.07.2007 and the remaining portion measuring [22 Bighas 14 Biswas] was sold to the Defendant No.1 vide Sale Deed dated 11.07.2007.

5.7 The Plaintiff submits that the aforesaid sales were executed fraudulently and in collusion with Revenue Officials, as both her brothers had no right to sell her share without having obtained the proper No Objection Certificate from the Plaintiff.

5.8 The sale of the Suit Land in favour of the Defendant No.1 to 3 by the brothers of the Plaintiff is also blatantly illegal, as upon coming into force of the Amendment to the Hindu Succession Act 1956, particularly, in view of the amended section 6 thereof, the Plaintiff became entitled to one-third share in the suit from the time of her birth itself.

5.9 Upon discovering the fraudulent sales of the ancestral Suit Land, the Plaintiff immediately filed a civil suit being CS No.346/11, for a decree of Declaration and Permanent Injunction against the Defendants, which was later withdrawn on 06.04.2013.

5.10 With respect to the properties located in residential area, the Plaintiff filed another suit on 27.05.2012 being CS No. 1705 of 2012

seeking Partition, Permanent Injunction and Declaration. The Defendants did not appear, and an *ex-parte* preliminary decree was passed in favour of the Plaintiff, followed by a final decree on 20.12.2017. No appeal has been filed against this judgement by any of the Defendants till date and the decree has now attained finality.

5.11 Further on 02.07.2012, the Plaintiff also filed a suit before the Court of Sub-Divisional Magistrate [hereinafter referred to as 'SDM']/Revenue Assistant [hereinafter referred to as 'RA'] under Section 55 of the Delhi Land Reforms Act, 1954 [hereinafter referred to as 'DLR Act'], being Suit No. 329/RA/N/2012, seeking partition of the Suit Land. The Plaintiff subsequently filed an amended Plaint in this suit under Section 42 read with 45 of the DLR Act being Case no. 537 of 2012 seeking declaration of the sale/transfer of the Suit Land as null and void and for declaring the Plaintiff to be entitled to 1/3rd share in the Suit Land. On 28.03.2017 the Defendant No.2 filed an application under Order VII Rule 11 of the CPC, which was allowed by SDM on 04.12.2019 resulting in dismissal of the suit.

5.12 Claiming that the Suit Land had been urbanised by the Government of India *vide* Notification S.O. 1456 (E) dated 07.09.2006, the Plaintiff filed the present suit on 14.08.2020, being CS (OS) 236/2020 praying for a Decree of Declaration that the sale of ancestral land in favour of Defendants Nos.1 to 3 is null and void, and the Plaintiff is co-sharer to the extent of 1/3rd share in the Suit Land. The Plaintiff also prayed for Cancellation of the Sale Deeds executed by her brothers and for Permanent Injunction, physical possession and *mesne* profits.

6. The Defendant Nos.1 and 2 vide I.A. 12065/2020 and I.A. 1647/2021 filed an application under Order VII Rule 11 of the CPC, seeking rejection of plaint briefly on the following grounds:

6.1 The Suit Land was mutated in favour of the brothers of the Plaintiff *vide* order dated 29.06.1994. The Plaintiff never challenged the said mutation under DLR Act, and it has attained finality. It was also asserted that Section 83 of DLR Act bars the jurisdiction of the civil court with regard to the matter covered under DLR Act.

6.2 Under Section 50 of the DLR Act, female legal heirs of a deceased male Bhumidhar are excluded from inheriting Bhumidhari rights. While relying on the judgement of the Supreme Court in ***Har Naraini Devi v. Union of India***[1]**,** the Defendants averred that the bhumidhari rights devolved exclusively upon the male descendants, namely Defendant No.4.

6.3 The Defendants submitted that application of Section 6 of the Hindu Succession Act, 1956 [hereinafter referred to as 'HSA'] requires the existence of Joint Hindu Family/coparcenary property, which in the present case never existed or existed during the life time of the Plaintiff's father, and therefore, the Plaintiff has no right in the Suit Land as alleged.

6.4 Further, the Defendant Nos.1 and 2 submit that as per the Plaintiff's own admission, they came to know of the sale deeds on 03.03.2011, rendering the present suit with regard to the declaration of

[1] 2022 SCC OnLine SC 1265

the Sale Deed as null and void being barred by limitation as provided under Sections 58 and 59 of Limitation Act.

6.5 Additionally, the Defendant Nos.1 and 2 submit that the suit of the Plaintiff is barred by Order II Rule 2 of the CPC, besides Section 115 of IEA. Thus, the Hon'ble Court lacks jurisdiction to entertain, try and dispose of the present suit in view of Section 185 and Section 83 of the DLR Act.

6.6 Lastly, the Defendant Nos.1 and 2 stated that the suit is without any cause of action and is apparently grossly undervalued besides being barred by the provision of law.

7. The LSJ allowed the application under Order VII Rule 11 of the CPC holding that the Plaint does not disclose a cause of action and is *ex facie* barred by law. The LSJ observed that the Plaintiff's father died in 1993, when Section 4(2) of the HSA was still in force. Therefore, the devolution of interest in respect of the Suit Land would be determinable in accordance with the law prevailing at the time of death of the father of the Plaintiff. Therefore, the rule of succession in terms of Section 50 of the DLR Act, would prevail in the present case and the brothers of the Plaintiff would acquire intersect in the Bhumidhari Rights of their father. Thus, the subsequent deletion of Section 4(2) of HSA, according to the LSJ, would not alter this position.

8. Pursuant to it, the LSJ also observed that specific pleadings regarding the existence and /or creation of a Hindu Undivided Family [hereinafter referred to as 'HUF'] are required in the plaint. However, as there are no such averments in the Plaint that Late Sh. Ram Gopal

inherited the property from his paternal ancestors prior to 1956, the Suit Land cannot be treated as a HUF property. Consequently, the LSJ held that no cause of action existed concerning coparcenary rights and the Plaintiff was not entitled to the benefit of the judgement passed in ***Vineeta Sharma v. Rakesh Sharma***[2]**.**

CONTENTION OF THE PARTIES

9. Learned Counsel for the Appellant/Plaintiff, while controverting the findings of the LSJ, has advanced the following submissions.

9.1 The LSJ failed to consider that the deceased Plaintiff's father died intestate on 07.03.1993 and no physical partition had taken place during his lifetime. Thus, all the legal heirs/legal representatives of Late Ram Gopal including deceased Plaintiff, being Class-I Legal heirs have equal rights, interest, and claim over all the properties of Late Ram Gopal.

9.2 The Plaintiff contended that the LSJ has erred in holding that the Suit Land was ancestral and that the deceased Plaintiff was claiming her rights in it only as a coparcenary under Section 6 of the HSA Amendment Act, 2005. Moreover, it was never the defence of the Defendants that the Suit Land was not an ancestral/joint HUF property. Therefore, the LSJ erroneously concluded that no pleadings existed regarding the existence of coparcenary property in the Plaint.

9.3 It was further contended that the LSJ has incorrectly held that no cause of action had been established by the deceased Plaintiff in

[2] (2020) 9 SCC 1

her favour, despite material on record showing that the Plaintiff's father inherited the Suit Land from his paternal ancestors. This foundational fact itself gave rise to the Plaintiff's cause of action, which ought to have been examined in trial.

9.4 The LSJ has failed to consider that mutation entries in revenue records neither creates nor extinguishes any rights; they are merely for fiscal purpose for collection of land revenue. Such entries do not determine title nor authorise the holders to sell ancestral property. Furthermore, the LSJ overlooked that the DLR Act does not apply to the ancestral Suit Land which was urbanised vide Notification S.O. 1456(E) dated 07.09.2006 issued by the Ministry of Urban Development. Thus, the mutation dated 29.06.2994, which excluded the Plaintiff's share is, null and void.

9.5 The Plaintiff contended that after the omission of Section 4(2) of the HSA, the rule of succession under Section 50 of the DLR Act stands eclipsed. Consequently, after 09.09.2005, rule of succession provided under the HSA (as amended) is solely applicable to Hindus in respect of all properties, including agricultural land. Therefore, the Plaintiffs have become coparceners of the Suit Land having acquired rights equal to the sons of Late Sh. Ram Gopal, rendering the sales in favour of Defendant Nos. 1, 2 and 3 illegal.

9.6 The Plaintiff further averred that since no partition has ever taken place in respect of the suit land, the judgement in ***Vineeta Sharma*** (*supra*) applies**,** entitling the Plaintiff to her share.

10. *Per contra,* the learned counsel of the Respondents/Defendants has advanced the following contentions:

10.1 The Defendants contended that under the DLR Act, a daughter is not entitled to succeed to the Bhumidhari rights of a deceased Bhumidhar. Therefore, Mitakshara Hindu Law relating to ancestral/coparcenary property as well as the provisions of HSA, are not applicable. Thus, the present suit is barred in terms of Section 50 of DLR Act.

10.2 It was argued that succession in respect of Bhumidhari rights of Late Sh. Ram Gopal stood settled and crystallized on 07.03.1993 and the same cannot be unsettled on account of subsequent change of law including the 2005 amendment to the HSA. Accordingly, the present suit is barred under Schedule 1 of Section 185 of the DLR Act and thus, the provisions of special law i.e. DLR Act prevails over the general law i.e. HSA.

10.3 The Defendants further contended that upon the death of Sh. Ram Gopal on 07.03.1993, the Bhumidhari rights in the Suit Land, as per Section 50 of the DLR Act devolved exclusively upon his male descendants, namely, Defendant No.4 and Late Sh. Priyavarat Mann, to the exclusion of the Plaintiff and her mother. Thus, the Suit Land was duly mutated in their favour on 29.06.1994. Since the Plaintiff never challenged this mutation, it has attained finality.

10.4 Moreover, the Defendants stated that the Suit Land was sold to the Defendant No.2 in the year 2007 by the Plaintiff's brother, based on the rights that devolved upon them in 1993.

10.5 Furthermore, the Defendants argued that for section 6 of the HSA, to apply, the existence of Mitakshara Joint Hindu

Family/coparcenary property is a *sine qua non*. However, no pleadings exist in the plaint asserting the existence of such coparcenary property.

FINDING AND ANALYSIS

11. Heard the learned counsel for the parties at length and with their able assistance, perused the paperbook along with the documents filed.

12. The enabling powers of the Court to reject a plaint, while exercising powers under Order VII Rule 11 of the CPC, is circumscribed by the grounds enlisted under Clauses (a) to (f). Order VII Rule 11 of the CPC reads as under:

> *"**11. Rejection of plaint.**— The plaint shall be rejected in the following cases:—*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *[(e) where it is not filed in duplicate;]*
>
> *[(f) where the plaintiff fails to comply with the provisions of rule 9:]*
>
> *[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"*

13. The Defendants have sought rejection of the Plaint on the ground that the Plaint filed by the Plaintiff does not disclose a cause of action. However, paragraph no.50 of the Plaint shows that the Plaintiff has asserted the following cause of action:

> "*That the cause of action for filing the suit first arose in favour of the Plaintiff in 1993 when the father of the Plaintiff dies intestate and the Suit property was fraudulently mutated by Defendant No.4 and Late Sh. Priyavarat Mann, the brothers of the Plaintiff in their names in collusion and connivance with the Defendant No.1 and the Revenue Officials, soon after her father's death, without her knowledge and consent. The cause of action further arose on 16.11.1995 when the suit land was fraudulently, illegally and clandestinely sold by the brothers of the Plaintiff without her knowledge and consent to Defendant No.3. The cause of action also arose in September 2006 when the suit land was urbanized and the Defendants deliberately did not bring the said fact to the knowledge of the Plaintiff to further their own illegal motives. The Cause of action further arose on 11.07.2007 when the brothers of the Plaintiff further illegally and fraudulently sold the remaining portions of the undivided ancestral suit land belonging to the Plaintiff's late father to the Defendant Nos. 1 and 2. The cause of action further arose on 23.07.2010 when the wife of Late SH Ram Gopal and the mother of the Plaintiff died intestate leaving behind the Plaintiff, Defendant No.4 and Late Sh. Priyavarat Mann as her legal heirs. The cause of action also arose when the Plaintiff made numerous requests to the Defendants for partition of the suit land, which were ignored by them. The cause of action further arose on 03.03.2011 when the Plaintiff suspecting foul play inspected the revenue records and found that the suit land had already been mutated in her brother names, behind her back. The cause of action further arose when it came to the Plaintiff's knowledge that the suit land had already been sold off to the Defendant Nos, 1, 2 and 3 in separate portions without obtaining a No Objection Certificate from her in the capacity of being a co-sharer and therefore being entitled to one-third share in the suit property. The cause of action further arose when the Defendant No.1 distorted and manipulated facts and filed a frivolous Criminal Writ Petition before this Hon'ble Court against the Plaintiff falsely alleging that the latter had kidnapped the Defendant No.4, which petition was subsequently dismissed. The cause of action also arose on all dates when the Defendants who were all along aware of the fact that the suit land had been urbanized way back in September 2006 and was therefore not governed by the provisions of the DLR Act did not deliberately and fraudulently disclose the said fact to any of the Hon'ble Court during the pendency of the various disputes/litigations and continued to take false and frivolous pleas*

based on the same. The cause of action also arose when the suit of the Plaintiff was wrongly and illegally dismissed by the Court of the Ld. SDM/RA. The cause of action further arose when it came to the knowledge of the Plaintiff in March 2020 that the Suit Land had been urbanized way back in September 2006 vide Notification being S.O. 1456 (E) dated 07.09.2006 of the Ministry of Urban Development. The cause of action is still subsisting and continuing in favour of the Plaintiff and against the Defendants."

14. Clause (a) of Order VII Rule 11 of the CPC empowers the Court to reject a plaint for failure to disclose a cause of action. A plaint cannot be rejected on the ground that the Plaintiff ultimately lacks cause of action, because the existence of a cause of action for filing of the suit is a matter for proof at trial after the Plaintiff is afforded an opportunity to lead evidence. At this stage, only the averments made in the plaint are required to be examined.

15. It is a settled principle of law that succession never remains in abeyance for even a split second. The mutation carried out in favour of the two sons in 1994 neither creates title nor extinguishes rights of other heirs. It is undisputed that Late Sh. Ram Gopal died intestate on 07.03.1993. It is for the Defendants to prove that any partition or fragmentation of the Suit Land took place during his lifetime, and individual bhumidari rights demarcated or separately recorded in favour of the heirs. Accordingly, the finding of the LSJ that the Plaintiff had no right or claim, owing to mutation, is untenable.

16. The Plaintiff has specifically pleaded that by virtue of the Notification S.O.l456 (E) dated 07.09.2006 issued by the Government of India, the entire property stood urbanised. The Plaintiff also claimed that the Suit Land is ancestral property.

17. With regards to the applicability of the Section 50 of the DLR Act, it becomes doubtful that the said Act will apply after the property had been urbanised. In substance, Section 50 the DLR Act governs the inheritance of the agricultural land of Bhumidars and the judgment passed by the Supreme Court in ***Har Naraini Devi*** (*supra*) was rendered in the context of undisputed agricultural land and constitutional validity of Section 50 (a) of the DLR Act was challenged. In contrast, in the present case, the Plaintiff asserts that the suit property stood urbanised by statutory notification issued in 2006. Furthermore, prior to 2005, Section 4(2) of the HSA exempted agricultural land from the purview of the HSA, thereby permitting special laws like DLR Act to prevail. It is for the Defendants to prove by leading cogent evidence that entitlement of the Plaintiff stands defeated only with the sanction of an earlier mutation.

18. The LSJ has further erred in treating mutation as determinative of title because the mutation entries under revenue law are only for fiscal purpose and updating the record and are not documents of title. Therefore, the 1994 mutation, carried out in the revenue regime under the pre-urbanisation framework, cannot govern the succession or rights in the property post-urbanisation.

19. Further, in paragraph no.1 of the plaint, the Plaintiff has clearly asserted that the Suit Land is ancestral property. Under Order VI Rule 2 of the CPC, the Plaintiff is required to assert concise relevant facts and the evidence is not required to be incorporated in the plaint. The explanation as to how the property is ancestral would fall within the domain of evidence, which will be taken into consideration while

deciding the suit. Thus, the rejection of the plaint on the ground that the plaint lacks elaborate averments regarding the existence or creation of HUF is contrary to Order VI Rule 2 of the CPC and to the record.

20. The Courts have consistently held that substance prevails over form, and pleadings must be read holistically. The Plaintiff asserts that the property descended from ancestors, devolved jointly and remained unpartitioned. Thus, the conclusion drawn by the LSJ that there was no pleading on coparcenary is wholly unsustainable.

21. Additionally, with regard to the contention that the present suit is barred under Order II Rule 2 of the CPC, it is well-settled that this issue, requiring comparison of pleadings in two suits, is generally not adjudicated at the stage of Order VII Rule 11. This is because Order VII Rule 11 of the CPC requires examination only of the Plaint, whereas Order II Rule 2 necessitates a factual inquiry into the earlier suit as well. Hence, this objection cannot form the basis of rejection at the threshold.

22. Similarly, the question of limitation may be decided under Order VII Rule 11 of the CPC, only where the suit is filed beyond the prescribed period of limitation and such issue is apparent on the face of the Plaint. In the present case, the plaint sets out multiple facts, which if proved, may bring the suit within limitation. Hence, the issue of limitation in present case is a mixed question of fact and law both. Thus, at this stage, the point of limitation cannot be decided without framing issues or permitting the parties to lead evidence.

23. Insofar as the judgements relied upon by the learned counsel for the Defendants, namely ***Hatti V. Sunder Singh***[3]***,*** is distinguishable because the Supreme Court was examining different facts and situation. There was no notification urbanising the suit land. Similar is the position in ***Ram Mehar v. Smt Dekhan***[4] and ***Nathu v. Hukam Singh & Ors***[5].

24. Learned counsel for the Plaintiff has also placed reliance on ***Nirmala & Ors. V. GNCTD & Ors***.[6], wherein the Division Bench has held that, in view of the deletion of sub-section (2) of Section 4 of the HSA, the rule of succession provided under the HSA would prevail over the rule of succession contained in Section 50 of the DLR Act.

25. In addition, the learned counsel for the Plaintiff has placed reliance upon the decision of the Supreme Court in ***Vineeta Sharma*** (*supra*), which conclusively settles the principles governing succession and devolution of interests among coparceners. It unequivocally affirms that the provisions contained in substituted Section 6 of the HSA confers status of coparcener on the daughter, born before or after the amendment, in the same manner as son, with same rights and liabilities and since the rights in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09.09.2005. The amendment, being retrospective in operation, confers benefits based on antecedent events.

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[3] AIR 1971 SC 2320
[4] 1973 Rajdhani Law Reporter 279 (DB)
[5] AIR 1983 Delhi 216
[6] 2010 SCC Online Del 2232

26. Additionally, conclusion drawn by the LSJ in the present case that it is squarely governed by the dicta in ***Har Narini Devi*** (supra) and that succession must necessarily be determined under Section 50 of the DLR Act, proceeds on an erroneous conflation of devolution of interest with crystallisation of rights by partition, which is legally impermissible.

27. In the present case, there was no physical partition prior to the year 2005. The present claims have been raised post-2005, at a time when Section 4(2) of the HSA had already been omitted by virtue of the Amendment Act 2005, which earlier saved the operation of Section 50 of the DLR Act. In the absence of Section 4(2) of the HSA, the rule of succession may be governed by the HSA and not the DLR Act.

28. Furthermore, the reliance placed by the Defendants on ***Surinder Kumar v. Dhani Ram***[7]; ***Ansh Kapoor v. K.B. Kapur***[8] and ***Suraj Munjal v. Chandan Munjal***[9] is misplaced and clearly distinguishable. These decisions turned on their own facts, where the plaint contained only bald and vague assertions of an HUF and, in fact, disclosed circumstances indicating self-acquisition of the property, thereby failing to disclose any cause of action. In the present case, however, the plaint contains a categorical averment that the property of Late Sh. Ram Gopal is coparcenary in nature and that the Plaintiff, being a coparcener, is entitled to a share therein. Whether the property is truly ancestral or self-acquired is a mixed question of law and fact requiring

[7] 2016 SCC Online Del 333
[8] 2021 SCC Online Del 510
[9] (2019) 257 DLT 597 (DB)

evidence and cannot be adjudicated at the stage of Order VII Rule 11 of the CPC. At this threshold stage, the court is bound to proceed solely on the averments contained in the Plaint and cannot conduct a mini trial. These judgements, therefore, cannot be read as laying down any universal rule mandating detailed pleading regarding the creation of HUF.

29. Taken as a whole, the rejection of the Plaint under Order VII Rule 11 of the CPC is wholly unsustainable, as the Plaintiff has clearly disclosed a substantive and triable cause of action, asserting her rights as an undivided Class-I heir and coparcener in property that remained unpartitioned, urbanised in 2006, and no longer governed exclusively by the DLR Act after the omission of Section 4(2) of the HSA.

30. In light of the aforesaid statutory provisions and the observation of this Court upon the judgements relied upon by the learned counsel for the parties, the arguments of learned counsel for the parties, this Court finds that the LSJ failed to appreciate that mutation entries do not confer title, that issues concerning ancestral property and coparcenary are matters of evidence, and that objections pertaining to limitation, Order II Rule 2 of the CPC or Section 50 of the DLR Act require factual determination and cannot be adjudicated at the threshold. Once the Plaintiff's prima facie status as a coparcener is recognised, the unilateral alienations by the brothers cannot bind her share absent proof of legal necessity. The plaint therefore, raises bona fide issues warranting a full trial, and none of these matters can be determined without permitting the parties to lead their evidence.

CONCLUSION

31. In light of the above findings, it is concluded that LSJ has erred in passing the Impugned Order. Keeping in view the aforesaid circumstances, this Court is inclined to allow the present appeal.

32. Hence, the present Appeal is allowed. The suit is restored to its original number. The parties through their counsel are directed to appear before the LSJ (Roster Bench) on 13.01.2026.

33. Needless to observe that this order shall not be construed as final expression of the parties before the LSJ.

34. The present Appeal, along with all the pending applications, stands closed.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.

DECMBER 20, 2025
jai/ra