2026:DHC:4990

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

Reserved on: 06th April, 2026
Pronounced on: 30th May, 2026

\+ CS(OS) 188/2024 & I.A. 31975/2024

SANTRA DEVI .....Plaintiff

Through: Mr. Vikas Kumar and Ms. Lakshita Bansal, Advocate
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versus

SANTOSH KAUSHIK & ORS. .....Defendants

Through: Mr. N.S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachana Dalal and Mr. Karan Mann, Advocates for D-1,2,4,6 & 7.
Mob: 7082348017
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

I.A. 31975/2024

1. The present suit has been filed seeking partition, declaration and permanent injunction in relation to the property, i.e., forming part of *Khasra nos. 936/1, 936/2,* and *941/1,* situated at *Village Siraspur, Delhi-110042*, owned by Late Sh. Brahm Dutt.

2. The present application has been filed under Order VII Rule 11

read with Section 151 of the Code of Civil Procedure, 1908 ("**CPC**"), by defendant nos. 1, 2, 4, 6 and 7, seeking rejection of plaint, on various grounds.

3. Before adverting to the matter at hand, this Court notes that *vide* order dated 28th October, 2024, the plaintiff had made the statement that they do not wish to file a reply to the present application. The relevant portion of order dated 28th October, 2024, is reproduced as under:

> *"xxx xxx xxx*
>
> *3. No reply to the captioned IA has been filed.*
>
> *4. **Learned counsel for plaintiff submits that the plaintiff does not wish to file reply to the captioned IA and they will straightaway argue the same.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

4. Accordingly, no reply has been filed by the plaintiff to the present application.

5. It is the case of the applicants/defendants that the suit is barred by provisions of the Delhi Land Reforms Act, 1954 ("**DLR Act**"), as the right in the property in question has accrued in favor of the male lineal descendants on the basis of the DLR Act, in the year 2002 upon the death of the erstwhile Bhumidhar, i.e., Late Sh. Brahm Dutt. Further, at the time of the death of Late Sh. Brahm Dutt the DLR Act was in force, and accordingly, as per Section 50 of the said Act, the succession has to happen only in favor of the male descendants, i.e., Sh. Ram Kumar and Sh. Raj Kumar, whose legal representatives are the defendants herein. Therefore, the plaintiff has no right in the suit property, and no suit will lie before the Civil Court concerning Bhumidhari rights.

6. It is also the case of the applicants/defendants that the present suit

is barred by limitation in terms of the Limitation Act, 1963 ("Limitation Act"), on the ground that Late Sh. Brahm Dutt had died in the year 2002, and the suit had to be filed within three years of the same. However, the present suit has been filed after passing of 22 years since the demise of Late Sh. Brahm Dutt, and therefore, the present suit is hopelessly barred by limitation.

7. The applicants/defendants have further contended that the plaintiff has made the claim that the suit properties are part of a Hindu Undivided Family ("**HUF**"), however, no proof has been placed by the plaintiff in this regard. Further, the suit property, i.e., agricultural land, has already been acquired, and an Award has already been passed, according to which, the amount has been shown in the names of legal heirs of late Sh. Ram Kumar and Sh. Raj Kumar. Therefore, no right exists in favor of the plaintiff in the suit property.

8. The applicants/defendants have further averred that the suit is liable to be rejected on the ground that the plaintiff has not paid the requisite *ad valorem* Court Fee, therefore, the suit cannot proceed unless the requisite Court Fee has been paid by the plaintiff.

9. *Per contra*, it is the case of the plaintiff that under Order VII Rule 11 of CPC, the Court is only to see the plaint, and if a cause of action is shown by reading of the plaint, the same cannot be rejected.

10. It is further the case of the plaintiff that she is a Class-I legal heir of Late Sh. Brahm Dutt, who had died intestate on 30th November, 2002. On account of the suit property being under an HUF, the plaintiff as a member of the said HUF is entitled to her share in the suit property.

11. The plaintiff has further averred that the contentions and

objections raised by the defendants are subject matter of trial, being disputed questions of facts and law. Therefore, the same cannot be dealt with in an application under Order VII Rule 11 of CPC.

12. This Court has heard learned counsels for the parties, and perused the plaint and the documents annexed therewith.

13. The main contention raised by the applicants/defendants is that the present suit has been filed without any cause of action, since the plaintiff has no right over the suit property, on account of operation of the DLR Act.

14. In this regard, it is to be noted that the plaintiff in the plaint herself has admitted that the father of the parties, i.e., Late Sh. Brahm Dutt, was the owner/Co-Bhumidhar of large holdings of agricultural land, i.e., the suit property, situated in *Village Siraspur*, which he inherited from his father/grandfather. The averments made in the plaint in this regard are reproduced as under:

> *"xxx xxx xxx*
>
> 1. That the Plaintiff is law-abiding citizen having deep roots in the society and plaintiffs as well as defendants belongs to a respectable farmers family based at Delhi. The parties are lineal descendants of Late Sh. Bh. Bhram Dutt. Sh. Bhram Dutt owner/ Co- Bhumidar in Village Siraspur having large holding of agriculture land , which he himself inherited from his father/ grand father.
>
> 2. That Sh. Bhram Dutt was also the Karta of the HUF comprising of himself, his wife Smt. Meva Devi, Two sons namely Ram Kumar and Raj Kumar and two daughters namely Santra Devi and Anarkali. Sh. Bhram Dutt was was recorded Co-bhumidar in respect of land situated in village Siraspur Delhi and comprised of parts of Khasra Nos. 936/1, 936/2 and 941/1, In the above mentioned khasras the land holding of Late Sh. Udni was as under:-

S. NO	KHASRA NO.	LAND MEASURING
1.	936/1	1-6 bigha
2.	936/2	4- 14 bigha
3.	941/1	4.0 bigha

xxx xxx xxx"

15. Further, the plaintiff has also admitted in the plaint that the suit land situated in *Village Siraspur*, which forms the subject matter of the present suit, was governed by the provisions of the DLR Act till the year 2017. In the year 2017, the said Village was declared as urbanized, and the provisions of the DLR Act ceased to apply. Pleadings made in the plaint in this regard, are reproduced hereunder:

> *"xxx xxx xxx*
>
> 10. That in the meanwhile by orders / notification dated 16.05.2017 issued by Ministry of Urban Development , the Village Siraspur was declared urbanised village and the provisions of DLR Act ceased to apply to this village.
>
> *xxx xxx xxx"*

16. Reading of the aforesaid makes it apparent that the plaintiff has admitted that the land in question, which is the subject matter of the present suit, is an agricultural land, and that her late father was the owner/Co-Bhumidhar of the said agricultural land. Further, provisions of the DLR Act governed the suit land till the year 2017, until the Village in question where the suit land is situated, was declared as an urbanized village *vide* Notification dated 16th May, 2017.

17. This Court also notes the documents filed with the plaint by the plaintiff, i.e., Objections filed by the plaintiff before the Revenue Authority challenging mutation of the suit land, and the Order dated 18th May, 2023 passed in *Case No. 160/2022* by the Financial Commissioner. Reading of the aforesaid documents makes it evident that it has always been the case of the plaintiff that the land in question was an agricultural land, and Late Sh. Brahm Dutt was the Bhumidhar of the said land.

18. Reading of the plaint also shows that the father of the parties, i.e., Late Sh. Brahm Dutt died on 30th November, 2002, which is a fact that remains undisputed by both the parties.

19. On account of the aforesaid facts as established from the plaint, it is manifest that the provisions of the DLR Act were applicable at the time of death of the father of the parties in the year 2002. Thus, in view of the provisions of the DLR Act, upon the death of Late Sh. Brahm Dutt, the succession of the said land, being an agricultural land, was governed in terms of Section 50 of DLR Act. In this regard, Section 50 of the DLR Act, reads as under:

> *"xxx xxx xxx*
>
> ***50. General order of succession from males*** *- Subject to the provisions of section 48 and 52,* ***when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below****:*
>
> ***(a) male lineal descendants in the male line of the descent:***
>
> ***Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive****:*
>
> *Provided further that the son or sons of a predeceased on how low so ever shall inherit the share which would have devolved upon the deceased if he had been then alive:*
>
> *(b) widow;*
>
> *(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;*
>
> *(i) unmarried daughter;*
>
> *(j) brother, being the son of 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.

xxx xxx xxx"

(Emphasis Supplied)

20. From a reading of the aforesaid provision, it is evident that upon the death of a Bhumidhar, his interest in the holding shall devolve in order of succession as given in Section 50 of the DLR Act. Further, as per Clause (a) of Section 50 of DLR Act, it is stipulated that the agricultural land shall be inherited by the male lineal descendants in the male line of descent. Therefore, once the male lineal descendants are available, then the land will devolve only as per Clause (a) of the said Section.

21. In the present case, at the time of death of Late Sh. Brahm Dutt in the year 2002, he was survived by his two male lineal descendants, i.e., two sons, namely, Sh. Ram Kumar and Sh. Raj Kumar. Thus, the suit property was inherited by the said two sons of Late Sh. Brahm Dutt, i.e., the brothers of the plaintiff herein. Upon such inheritance, the said two sons of Late Sh. Brahm Dutt became the absolute Bhumidhars of the said land.

22. It is to be noted that even though the Hindu Succession Act, 1956 ("**HSA**") came into force in the year 1956, however, by virtue of Section 4(2) of the said Act, which now stands omitted, the law of devolution of tenancy rights with respect to agricultural holdings was saved. This meant that the rule of succession governing Bhumidhars was to be found

in Section 50 of the DLR Act and not in the HSA. Meaning thereby, succession under Section 50 of the DLR Act was protected by Section 4(2) of the HSA, which stipulated that nothing contained in the HSA would affect any provision of law for the time being in force, which provided 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 agricultural holdings.

23. In this regard, reference may be made to the judgment of the Division Bench of this Court in the case of ***Nathu Versus Hukam Singh, 1981 SCC OnLine Del 345***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> *12. **In "Ram Mehar v. Mst. Dakhan", I.L.R. (1972) II Delhi 922, a question arose before a Division Bench of this Court as to whether the rule of succession in the Act or the Rule of succession in the Hindu Succession Act, 1956 governed the parties. If the Hindu Succession Act applied, then the plaintiff and the defendant in that case had to succeed to their late father as co-heirs each entitled to an equal share. If the Act was to apply, then the succession had to be according to the provisions of Section 50 of the Act according to which an unmarried daughter succeeds to a Bhumidar only if there is no superior heir. The Division Bench examined the preamble of the Act, the object and reasons to ascertain the nature of the reform brought about by the Act and various provisions of the Act to come to the conclusion that the Act provides for the prevention of the fragmentation of agricultural holdings and also, at the same time, fixed ceilings on agricultural holdings and also dealt with the devolution of tenancy rights of such holdings. It was held that the only type of tenancy existing in agricultural land after the passing of the Act is denoted by the new tenure holdings, Bhumidars and Asamis though the rights of Bhumidars were somewhat different from tenants under the previous law but they did not become owners and, therefore, were held to be nothing more than tenants with certain additional rights. It was then held that the law of devolution of tenancy rights on the holdings was saved by Section 4(2) of the Hindu Succession Act and was not repealed by the provisions of the Hindu Succession Act. That***

<u>meant that the rule of succession governing Bhumidars was to be found in Section 50 of the Act and not in the Hindu Succession Act, 1956.</u>

13. A question also arose under the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short the U.P. Act) to the right of transfer of each members of the joint Hindu family of his interest in bhumidari land and as to whether the provisions of Hindu Law relating to restriction on transfer of co-parcenary land i.e. existence of legal necessity, applied. That was in "Ram Awalamb v. Jata Shankar", A.I.R. 1969 All. 526 (1). In an earlier case of Rana Sheo Ambar Singh v. Allahabad Bank Ltd.", AIR 1961 SC 1790 (2), their Lordships held that bhumidari right under the U.P. Act was a new right conferred upon an intermediatory and therefore, it could not be sold in execution of a mortgage decree passed against the intermediatory in respect of zamindari property in which bhumidari land was held as Sir land. It was ruled that the interest in land conferred upon Bhumidars was a new right and, therefore, the question whether or not prior to the conferment of such rights, the intermediatory or tenant had heritable or transferable right in land was hardly material. ***<u>Analysing the provisions of the U.P. Act and following the Supreme Court, a Full Bench of the Allahabad High Court held that the right of transfer of each member of the joint Hindu family of his interest in Bhumidari land was controlled only by Section 152 of U.P. Act and by no other restriction. The provisions of Hindu Law relating to restriction on transfer of co-parcenary land, e.g. existence of legal necessity, was held as not applicable. In our opinion there is no material difference between the bhumidari rights declared and granted under the Act and the bhumidari rights declared under the U.P. Act</u>***. *The only difference is that under the U.P. Act all rights, title and interest of all intermediatories in every estate and in all sub-soil in each State was specifically stated to vest in the State on acquisition and what was conferred by Section 18 of U.P. Act was a new right which the person on whom it had been conferred never had and that they held it subject to the provisions of U.P. Act. Whether the extinguishment of the proprietory right in the agricultural land by the owners was by the method of acquisition and vesting in the State as adopted in the U.P. Act or by the method of abolition of the ownership under the Act, effect is the same. It is the cessation of the interest of all intermediatories in the agricultural land. The bhumidari rights are then declared under the Act and are made subject to all the rights and liabilities conferred or imposed upon a bhumidari by or under the Act.*

*14. **<u>The result of the above discussion is that the right of transfer of interest by a Bhumidar of its bhumidari rights in the agricultural land is controlled only by the provisions of the Act. The provisions of the customary law relating to restrictions on transfer do not apply to the transfer of bhumidari rights</u>**. The appeal succeeds and is allowed. The impugned judgements and decrees are hereby set aside and the suit of the plaintiffs is dismissed leaving the parties to bear their own costs throughout.*
xxx xxx xxx"

(Emphasis Supplied)

24. The aforesaid judgment makes reference to the judgment in the case of ***Ram Mehar Versus Mst. Dakhan, 1972 SCC OnLine Del 64***, wherein, the Division Bench of this Court dealt with the issue regarding the applicability of the provisions of the DLR Act and succession to the Bhumidhari of Hindu Bhumidhars, i.e., whether the same shall be governed by the DLR Act or the HSA. The Division Bench in the said case clearly laid down that succession in such cases is governed by the provisions of the DLR Act and not the HSA.

25. Thus, it has authoritatively been laid down by the Division Bench of this Court in the aforesaid two judgments that as far as agricultural land is concerned, succession will be under the DLR Act. From the reading of the aforesaid judgments, it is clear that right of transfer of interest by a Bhumidhar of its Bhumidhari rights in the agricultural land, is governed only by the provisions of the DLR Act. The rights of Bhumidhars are personal rights, and the succession will be under the DLR Act only, in which the daughter has no right to succeed.

26. The aforesaid is the position with respect to the agricultural lands, wherein, succession had taken place under the DLR Act, before the amendment of the HSA in the year 2005.

27. Accordingly, succession in the suit property, admittedly being an

agricultural land, took place in the year 2002 after the death of the Late Sh. Brahm Dutt, in terms of the DLR Act.

28. There was a change in law in the year 2005, i.e., on 09th September, 2005, when the amendment in HSA was made. *Proviso* to Section 4(2) of the HSA, *vide* which the provisions of the HSA were not applicable to agricultural holdings, was omitted/withdrawn and provisions of HSA were made applicable to agricultural lands as well.

29. The effect of the aforesaid amendment with regard to agricultural land, *vis-à-vis* provisions of Section 50 of the DLR Act, was dealt with by a Division Bench of this Court in the case of ***Nirmala & Ors. Versus Government of NCT of Delhi & Ors., 2010 SCC OnLine Del 2232***, wherein it was held as under:

> *"xxx xxx xxx*
>
> *18. For persuasive values, the learned Counsel for the petitioners relied on a decision of a learned Single Judge of this Court in the case of* ***Smt. Mukesh v. Bharat Singh, 149 (2008) DLT 114****. In that case, it was held that:*
>
> > *"7.* ***Due to Sub-section (2) to Section 4 of the Hindu Succession Act, 1956 the rule of succession stipulated under the Hindu Succession Act, 1956 was subject to any law for the time being in force relating to agricultural holdings. Thus, if succession to an agricultural holding was stipulated in any local law applicable to an agricultural holding, provisions thereof would apply relating to devolution of interest in a holding. The effect of deletion of Sub-section (2) to Section 4 of the Hindu Succession Act, 1956 due to the promulgation of the Hindu Succession (Amendment) Act, 2005 is that with effect from the date when the Amending Act was promulgated succession would be as per the Hindu Succession Act, 1956****.*
> >
> > *8.* ***Prima facie, the Amending Act of 2005 cannot be read retrospectively as the Amending Act has not been given a retrospective operation. Meaning thereby, successions***

which had taken place prior to the promulgation of the Amendment Act of 2005 cannot be disturbed.

9. Section 3 of the Amending Act has substituted the existing Section 6 of the Hindu Succession Act. One gets a clue of the legislative intent when one looks at Sub-section (3) of Section 6, as amended. It stipulates that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 his interest in the property of a joint family governed by Mitakshara Law shall devolve by testamentary or intestate succession and not by survivorship. A daughter is given a share equal to that of a son.

10. ***In respect of the co-parcenery property the right of a daughter to receive a share equal to that of a son applies only if the death of male Hindu is after commencement of the Amendment Act, 2005****."*

19. ***In the above-mentioned case, the owner of the agricultural land holdings had expired on 10.6.1993 and thus it was on that date that succession to his property opened. As per the law then applicable, succession was in favour of the sons. Since the Amendment Act could not be read retrospectively, the appeal in the case of Mukesh v. Bharat Singh (supra) was dismissed****.*

20. The learned Counsel for the petitioners pointed out that the facts of the present case are different from that of Ram Mehar (supra) and Mukesh v. Bharat Singh (supra) inasmuch as the owner of the disputed agricultural land in the present case, Late Shri Inder Singh, died on 15.12.2006 i.e. after the Amendment Act had already come into force and after Section 4(2) had been omitted from the HSA. Thus, the protection to Section 50 of the DLR Act given by Section 4(2) of the HSA as applicable in the case of Ram Mehar (supra) did not exist any longer. Also, since, in the present case, the owner of the disputed agricultural land died in the year 2006, the amended provisions of the HSA would apply, which, in the case of Mukesh v. Bharat Singh (supra) were not applicable as the succession had opened on 10.6.1993, prior to the said amendment.

xxx xxx xxx

28. It is in the light of these arguments, that the questions posed in paragraph 10 above need to be answered. ***We may straightaway say that the answers to the questions are that the rule of succession contained in Section 50 of the DLR Act has been repealed by virtue of the omission of Section 4(2) of HSA in***

> ***2005 and that, as a result, the rule of succession would be the one prescribed under the HSA (as amended)***. *Consequently, the petitioners, being female, have the right to succeed to the disputed agricultural land inasmuch as succession opened out, in this case, on 15.12.2006 on the death of Late Inder Singh.*
>
> *xxx xxx xxx*
>
> *35.* ***For the aforesaid reasons, we hold that the provisions of the HSA would, after the amendment of 2005, have overriding effect over the provisions of Section 50 of the DLR Act and the latter provisions would have to yield to the provisions of the HSA, in case of any inconsistency. The rule of succession provided in the HSA would apply as opposed to the rule prescribed under the DLR Act***. *The petitioners are, therefore, entitled to succeed to the disputed agricultural land in terms of the HSA. The respondent Nos. 1 and 2 are directed to mutate the disputed agricultural land, to the extent of Late Shri Inder Singh's share, in favour of the petitioners and respondent Nos. 3, 4 and 5 as per the HSA.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

30. Reading of the aforesaid judgment clearly brings forth the following:

i. The provisions of HSA after the amendment of 2005, would have overriding effect over the provisions of Section 50 of DLR Act, and the provisions of DLR Act would have to yield to the provisions of HSA, in case of any inconsistency.

ii. The rule of succession as provided in the HSA would apply to even agricultural lands, as opposed to the rule prescribed under the DLR Act.

iii. Amendment to the HSA in the year 2005, i.e., 09th September, 2005, is applicable only to the succession in agricultural land, which opens after 09th September, 2005.

iv. The Amending Act of 2005 of HSA cannot be read retrospectively. Meaning thereby, succession which had taken place prior to the promulgation of the Amendment Act of 2005 of HSA, cannot be disturbed.

31. Reference may also be made to the judgment of the Supreme Court in the case of ***Har Naraini Devi and Another Versus Union of India and Others, 2022 SCC OnLine SC 1265***, wherein, it is categorically held that an agricultural property, prior to amendment in the HSA in the year 2005, would devolve in accordance with the law in existence on that date, i.e., the DLR Act. Further, it was also held that the amendment in the HSA in the year 2005 has prospective application, and was not to apply retrospectively, as no such legislative intention regarding retrospective application was reflected from the Amending Act of 2005. Thus, it was held that the amendment of the year 2005 in the HSA, would have effect only in respect of successions which opened on or after 09th September, 2005, i.e., when the amendment in the HSA came into operation. Further, if the succession to the agricultural land opened prior to 09th September, 2005, the rights of the descendants would be crystallized in terms of Section 50 of the DLR Act. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***25. Till 2005, to be specific 9-9-2005, when the Hindu Succession (Amendment) Act of 2005 was enacted, the aforesaid provision remained on the statute. It is not in dispute that the property in question is agricultural property, and therefore, in 1997 at the time when Mukhtiyar Singh died, the devolution of interest (inheritance) would be determinable on the said date, in accordance with the law existing at that time. In 1997 Section 4(2) of the 1956 Act, was very much on the statute, its subsequent deletion would not have any impact on the rights of inheritance, which had already accrued and crystallised, prior to the amendment. Therefore, on facts deletion of Section 4(2) of the 1956 Act would not help the appellants.***

*26. **It is well settled that all amendments are deemed to apply prospectively unless expressly specified to apply retrospectively or intended to have been done so by the legislature**. Reference may be had to the following decisions : [L.R. Bros. Indo Flora Ltd. v. CCE [L.R. Bros. Indo Flora Ltd. v. CCE, (2021) 19 SCC 576, para 27] ; Hitendra Vishnu Thakur v. State of Maharashtra [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, para 26 : 1994 SCC (Cri) 1087] ; Union of India v. Zora Singh [Union of India v. Zora Singh, (1992) 1 SCC 673, para 12]]. **In the present case there is no such intention reflecting from the amending Act**.*

*27. **By virtue of Section 6 of the General Clauses Act, the repeal of an enactment would not affect the previous operation of such an enactment**. In Shree Bhagwati Steel Rolling Mills v. CCE [Shree Bhagwati Steel Rolling Mills v. CCE, (2016) 3 SCC 643, para 12], this Court has held that repeal is to be treated similarly as an omission and Section 6 of the General Clauses Act would apply equally to an omission as it would apply to a repeal. **On account of Sections 6(b) and 6(c) of the General Clauses Act, the omission of Section 4(2) of the 1956 Act cannot affect the previous operation of the said Section 4(2)**. Paras 12 and 13 of the aforesaid report are reproduced below : (SCC pp. 654-55)*

> *"12. From this it is clear that when Section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted, Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury's Laws of England in Fibre Boards [Fibre Boards (P) Ltd. v. CIT, (2015) 10 SCC 333] judgment, that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. This is made further clear by Legal Thesaurus (Deluxe Edition) by William C. Burton, 1979 Edition. The expression "delete" is defined by the Thesaurus as follows:*
>
> *'Delete.—Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with, drop, edit out, effect, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of, leave out, modify by excisions, obliterate, omit, remove, rub out, rule out, scratch out, strike*

off, take out, weed, wipe out.'

Likewise the expression "omit" is also defined by this Thesaurus as follows:

'Omit.—Abstain from inserting, bypass, cast aside, count out, cut out, delete, discard, dodge, drop, exclude, fail to do, fail to include, fail to insert, fail to mention, leave out, leave undone, let go, let pass, let slip, miss, neglect, omittere, pass over, praetermittere, skip, slight, transire.'

And the expression "repeal" is defined as follows:

'Repeal.—Abolish, abrogare, abrogate, annul, avoid, cancel, countermand, declare null and void, delete, eliminate, formally withdraw, invalidate, make void, negate, nullify, obliterate, officially withdraw, override, overrule, quash, recall, render invalid, rescind, rescindere, retract, reverse, revoke, set aside, vacate, void, withdraw.'

13. On a conjoint reading of the three expressions "delete", "omit", and "repeal", it becomes clear that "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its ken an omission as well. ***This being the case, we do not find any substance in the argument that a "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro****. If the expression "delete" would amount to a "repeal", which the appellant's counsel does not deny, it is clear that a conjoint reading of Halsbury's Laws of England and Legal Thesaurus cited hereinabove both lead to the same result, namely, that an "omission" being tantamount to a "deletion" is a form of repeal."*

(emphasis in original and supplied)

28. The deletion of Section 4(2) took place with effect from 9-9-2005. Therefore, the effect of the deletion can only be in respect of successions which opened on or after 9-9-2005. This is because under Sections 6(b) and 6(c) of the General Clauses Act repeal cannot affect the previous operation of any enactment so repealed and cannot affect the previous operation of any enactment so repealed and cannot affect any right which may have been acquired or accrued. In the present case, it is to be held that succession has opened prior to 9-9-2005, the rights of the descendants in terms of Section 50 became crystallised on account of the said Section read with Section 4(2) of the 1956 Act. Therefore, the deletion of Section 4(2) cannot have

<u>retrospective effect</u>.
xxx xxx xxx"

(Emphasis Supplied)

32. Thus, it is clear that after the amendment in the HSA on 09th September, 2005, the provisions of HSA would be applicable even in case of agricultural lands. Meaning thereby, if any succession opens on 09th September, 2005 or afterwards, the same shall be governed only by the provisions of HSA, and not by the provisions of DLR Act.

33. However, in the present case, the succession had already opened on 30th November, 2002, when Late Sh. Brahm Dutt died. The governing provision at that point in time for law of succession for an agricultural land was the DLR Act. Hence, in the present case, succession had already taken place on 30th November, 2002, and as per Section 50 of the DLR Act, bhumidhari rights came to be possessed only by his two sons, namely, Sh. Ram Kumar and Sh. Raj Kumar, being the only two male lineal descendants. There is no averment in the present case that partition of the suit land had not taken place. Thus, in the present facts and circumstances, the suit would be barred by law.

34. However, this Court notes that the plaintiff has made averments in the plaint with regard to the suit land being part of an HUF, and her father, i.e., Late Sh. Brahm Dutt, being the Karta of the said HUF. In this regard, the plaintiff has averred in the plaint, in the following manner:

"xxx xxx xxx

*2. **<u>That Sh. Bhram Dutt was also the Karta of the HUF comprising of himself, his wife Smt. Meva Devi, Two sons namely Ram Kumar and Raj Kumar and two daughters namely Santra Devi and Anarkali.</u>** Sh. Bhram Dutt was recorded Co-bhumidar in respect of land situated in village Siraspur Delhi and comprised of parts of Khasra Nos. 936/1, 936/2 and 941/1 ……..*

> *3. That Sh. Bhram Dutt died intestate on 30/11/2002 leaving behind the following legal heirs namely Smt Meva Devi his wife, two sons namely Sh. Ram Kumar and Sh. Raj Kumar, and two daughters namely Ms. Santra Devi and Ms. Anarkali.* ***Sh. Bhram Dutt was also karta of the HUF comprised of himself and the above mentioned his other family members including the plaintiff. It is further submitted since Sh. Bhram Dutt died intestate without executing any will, therefore all his properties devolved in equal shares upon all his above mentioned legal heirs namely.*** *Smt. Meva Devi, Sh. Raj Kumar, Sh. Ram Kumar, Ms. Santra Devi and Ms. Anarkali. It is further submitted that after few days death of Bhram Dutt, his wife Smt. Meva Devi also expired.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

35. Thus, a question arises before this Court, whether by merely adding an averment that there was an HUF, without there being any particulars in that regard, the same would be considered as an HUF property. In this regard, reference is made to the judgment of this Court in the case of ***Sh. Surender Kumar Versus Sh. Dhani Ram and Others, 2016 SCC OnLine Del 333***, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***9. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order VI Rule 4 CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives.*** *Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but* ***after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) there is no such presumption that inheritance of ancestral property creates an HUF, and therefore, in***

such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that it must be specifically stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties.

10. A reference to the plaint in the present case shows that it is claimed that ownership of properties by late Sh. Jage Ram in his name was as joint Hindu family properties. Such a bald averment in itself cannot create an HUF unless it was pleaded that late Sh. Jage Ram inherited the properties from his paternal ancestors prior to 1956 or that late Sh. Jage Ram created an HUF by throwing his own properties into a common hotchpotch. These essential averments are completely missing in the plaint and therefore making a casual statement of existence of an HUF does not mean the necessary factual cause of action, as required in law, is pleaded in the plaint of existence of an HUF and of its properties.

xxx xxx xxx

12. *This Court is flooded with litigations where only self-serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence.* ***It is a sine qua non that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.***

xxx xxx xxx"

(Emphasis Supplied)

36. In this regard, reference is also made to the judgement of the Division Bench of this Court in the case of ***Kuldeep Mansukhani Versus Indira Jhangiani, 2023 SCC OnLine Del 6101***, wherein, an appeal was filed challenging the judgement of the Single Judge dismissing the suit, on the grounds of lack of cause of action. While upholding the judgement of the Single Judge, the Division Bench held as follows:

> *"xxx xxx xxx*
>
> ***8. Learned Single Judge came to an unequivocal finding that though it had been pleaded that the suit property was an HUF property, no declaration to that effect had been sought. No documentary evidence by way of prima facie evidence had been placed on record to show as to how and at what point of time the suit property was purchased out of the ancestral funds.***
>
> ***9. It is relevant to note here that Supreme Court in the case of Yudhishter v. Ashok Kumar, (1987) 1 SCC 204 has held in categorical terms that a property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 is inherited in his individual capacity and he does not take it as karta of his own undivided family. Therefore, after enactment of the Hindu Succession Act, 1956, there cannot be any presumption that the suit property was an HUF property or that the appellant had any share in the same on that account. In the absence of any evidence to establish that the suit property was an HUF property, the contention on behalf of appellant in this regard was rightly rejected by the learned Single Judge.***
>
> *xxx xxx xxx*
>
> ***13.** Thus, this Court is of the considered opinion that the suit of the appellant/plaintiff was rightly rejected by the learned Single Judge on the ground that it lacked cause of action.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

37. In the present case also, except a bare pleading that Late Sh. Brahm Dutt, i.e., the father of the parties, was the Karta of the HUF of the family members, including the plaintiff, there is no specific averment that the father of the plaintiff inherited the land prior to 1956. Only a bald

assertion that the property is part of an HUF has been made. Thus, it cannot be said that the suit land was an HUF property. Further, there is no pleading that the HUF was created after 1956 by the father of the plaintiff by throwing the suit land into a common hotchpotch.

38. Thus, it is apparent that the plaintiff has made only bald averments with regard to the existence of an HUF, and Late Sh. Brahm Dutt being the Karta of the same. It is noted that no documents have been placed on record to indicate if there ever existed an HUF, or that the property is part of an HUF. The plaint is bereft of any details with regard to there being an HUF, and the suit land being part of that HUF.

39. It is well established that the plaintiff is required to plead the material facts that establish the cause of action in their favor. Reference in this regard is made to the judgement passed by the Supreme Court in the case of ***Popat and Kotecha Property Versus State Bank of India Staff Association, (2005) 7 SCC 510***, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***22 [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./92/2005 dated 22-9-2005.].*** *There is distinction between "material facts" and "particulars".* ***<u>The words "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad.</u>*** *The distinction which has been made between "material facts" and "particulars" was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. [(1936) 1 KB 697: (1936) 1 All ER 287 (CA)]*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

40. Thus, it is apparent that for a plaint to disclose a cause of action, material facts have to be pleaded by a party. In the present case, only by

plain reading of the plaint and the documents attached with the plaint, and assuming all aspects to be correct, clearly, the aspect of HUF being pleaded by the plaintiff is bereft of any material facts that are required to assume a cause of action in favour of the plaintiff in that regard.

41. It is settled law that under Order VII Rule 11 of CPC, it is to be seen, whether the plaint discloses any cause of action, and whether, there is any cause of action in favour of the plaintiff. In the present case, even when the plaint is read as a whole, apart from the mere averment of existence of an HUF, there is nothing which indicates that the HUF actually existed, or the suit land was part of an HUF. Thus, the plaint itself does not provide for a cause of action.

42. It is noted that a party by merely stating that an HUF is existing, without providing any material facts towards the same, would clearly tantamount to a party attempting to create an illusory cause of action in view to circumvent the provisions of Order VII Rule 11 of CPC, by way of clever drafting. In this regard, reference is made to the case of ***I.T.C. Limited Versus Debts Recovery Appellate Tribunal and Others, (1998) 2 SCC 70***, wherein the Supreme Court categorically held that a plaint which is cleverly drafted to show an illusory cause of action is not permitted in law, and a clear right to sue should be shown in the plaint. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***16. <u>The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint.</u>*** *(See T.*

Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)

xxx xxx xxx"

(Emphasis Supplied)

43. In this regard, reference is also made to the judgement of the Supreme Court in the case of ***T. Arivandandam Versus T.V. Satyapal and Another, (1977) 4 SCC 467***, wherein it was held as follows:

"xxx xxx xxx

5. *We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints.* ***The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.*** *The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:*

"It is dangerous to be too good."

xxx xxx xxx"

(Emphasis Supplied)

44. Tested on the aforesaid anvil, it is clear that there is no cause of action established by the plaintiff on the basis of a bald assertion of existence of an HUF. The plea of HUF has been taken by the plaintiff for the first time before this Court in the present suit which was filed on 19th February, 2024, and in the Legal Notice dated 14th February, 2024, sent

immediately prior to the filing of the present suit. Such plea was never asserted by the plaintiff at the time of filing objections before the Revenue Authority when she claimed release of compensation for the acquired land, forming part of the suit land, by Delhi Metro Rail Corporation ("**DMRC**").

45. Reliance by the plaintiff on the judgment in the case of ***Vineeta Sharma Versus Rakesh Sharma and Others, (2020) 9 SCC 1***, is totally misplaced. The said judgment dealt with the rights of female co-parceners. In the present case, though the plaintiff has stated that Late Sh. Brahm Dutt was Karta of HUF, however, there is no detailed assertion as to when and how the property became an HUF property. It is well settled that prior to the HSA coming into force in the year 1956, there was a presumption as to existence of an HUF and its properties. But after passing of the HSA in the year 1956, there is no such presumption that inheritance of ancestral properties creates an HUF. Thus, specific averments and pleadings are to be made regarding existence and creation of an HUF and its properties, the date on which the HUF was created, whether it was created after 1956, and in the event the HUF was created after 1956, when was the property claimed to be an HUF property and put in the common hotchpotch.

46. Further, this Court also notes that the plaintiff has placed on record the *Khatauni* in relation to the agricultural suit land, which records all details regarding the status and transfer of the said property, including, the acquisition of the suit land by DMRC. However, the *Khatauni* nowhere records the aspect of existence of any HUF. Therefore, the bare pleading of the suit land being an HUF property has to be rejected.

47. In view of the aforesaid, the judgment relied upon by the plaintiff in the case of ***Vineeta Sharma (Supra)*** is not applicable to the facts and circumstances of the present case. The said case was not concerning agricultural land, but pertained to coparcenary rights of females in Joint Hindu Family, in terms of Section 6 of the HSA, as amended in the year 2005. However, in the present case, since the suit land is not an HUF property, Section 6 of the HSA, as amended in the year 2005, is not applicable.

48. This Court notes that the fact that the suit land was subsequently acquired by DMRC in the year 2016 or that the Village in which the suit land is situated was urbanized in the year 2017, would have no effect and would not confer any rights in favor of the plaintiff. A settled position in law on the basis of law operating at the material time, cannot be unsettled by subsequent events.

49. Accordingly, the present application is allowed, and the plaint is rejected under the provisions of Order VII Rule 11 of CPC.

50. In view of the aforesaid, the present suit, along with the pending application, stands disposed of.

MINI PUSHKARNA
(JUDGE)

MAY 30, 2026
SK