

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal Decree/TA/2836/2005/Dholpur**

Shri Inder Singh son of Shri Nekta alias Nekram Rajput resident of Gadhi Karilpur, Tehsil Raja Khera, presently resident of D-1019, Gali No.23, Bhajanpura, Delhi-53.

...Appellant

Versus

1. Shri Munna Lal
2. Shri Nahar Singh  
-sons of Shri Indra Singh, Rajput resident of Gadhi Karilpur, Tehsil Raja Khera, presently resident of D-1047, Gali No.23, Bhajanpura, Delhi-53.
3. Shri Kunwar Sen alias Rajendra son of Shri Indra Singh Rajput resident of Gadhi Karilpur, Tehsil Raja Khera, presently resident of D-1047, Gali No.23, Bhajanpura, Delhi-53.
4. Smt. Usha daughter of Shri Inder Singh wife of Shri Bhav Singh resident of Gadhi Karilpur, Tehsil Raja Khera, presently resident of D-828, Gali No.20, Bhajanpura, Delhi-53.
5. Ms. Shivdhara daughter of Inder Singh resident of Gadhi Karilpur, Tehsil Raja Khera, presently resident of D-1047, Gali No.23, Bhajanpura, Delhi-53.
6. The State of Rajasthan

...Respondents

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**D.B.**

**Shri Bajrang Lal Sharma, Member  
Shri Chain Singh Panwar, Member**

**Present:-**

1. Shri O.L.Dave, Counsel for the appellant
2. Shri Khadag Singh, Counsel for the respondents No.1 to 3.
3. Shri Gaurav Dave Counsel for Respondent No.4 & 5.

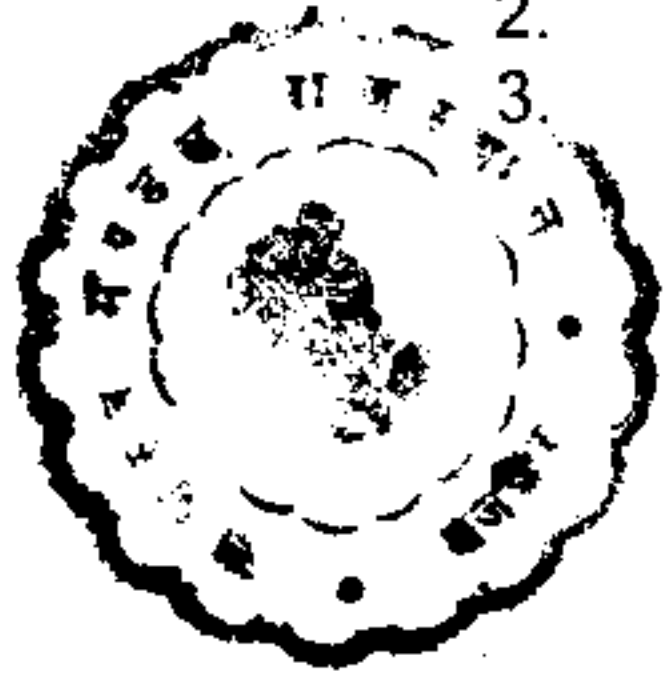
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**JUDGMENT**

**Dated 17-1-2012**

This second appeal has been preferred by the appellant under Section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred as the Act) being aggrieved by the judgment and decree passed by Settlement officer-cum-Revenue Appellate Authority, Bharatpur on 17.5.2011 in appeal no.199/2004.

2. The brief facts of the case are that respondent No.1 and 2 filed a suit against their father (Appellant) and one brother under Section 88, 89, 53 &



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188 of the Act in the court of Assistant Collector, Raja Kheda (Dholpur). The suit was decreed by the trial court. The appellant filed an appeal before the Revenue Appellate Authority, Bharatpur assailing the judgment of the trial court which was dismissed on 17.5.2005. Being dissatisfied by the judgment & decree passed by the first appellate court, this second appeal has been preferred before this court.

3. Heard the learned counsels of the parties.

4. The learned counsel for the appellants contended that the judgments and decrees of both the lower courts are against the basic principles of law & contrary to the evidence available on record. He argued that there is no evidence to prove that the disputed land is ancestral property and the respondent/plaintiffs had any right on the disputed land in the lifetime of their father. He also submitted that appellant Inder Singh has three sons and four daughters. Therefore, in any case, the disputed land cannot be partitioned without impleading his daughters as party in the case. He urged the court that Hindu Succession Act has been amended in September, 2005 and the amendment empowers the daughters to get their share in ancestral property. He submitted that Shri Inder Singh is still alive and the decree was passed by the trial courts on 9.9.04 but the decree was assailed in appeal and it is pending in this court even today. Therefore, the matter may be remanded to the trial court for deciding the matter in light of the amended provisions of the Hindu Succession Act.

5. The learned counsel for the respondents submitted that the judgment and decree passed by the courts below are based on the evidence available on file and in conformity of the provisions of Hindu Succession Act & Rajasthan Tenancy Act. He contended that a suit of partition can be brought only against the co-tenants. And in this case, the daughters of Shri Inder Singh are not recorded as the co-tenant therefore, they can not have any interest in this suit. He also submitted that the partition of the disputed land was decided prior to the amendment of Hindu Succession Act. Therefore, the amended provisions do not apply in this case and in this appeal the daughters are not the appellants, therefore, the appeal filed by Shri Inder Singh is devoid of any merit and deserves to be dismissed. He submitted that the concurrent finding of the lower courts

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cannot be interfered on the grounds and contention raised by the appellants.

6. We have given serious consideration to the contentions raised by the learned counsels of the rival parties and carefully perused the record.

7. This is an admitted fact that the disputed land is entered in name of Shri Inder Singh son of Shri Nekram. The revenue record available on file explicitly manifests that the disputed land was earlier belonged to Shri Nekram Rajput who is father of the appellant. In this way the disputed land is unequivocally an ancestral tenancy of the family. The trial court framed the following issues in this case:

(i) Whether the disputed land is undivided property of the Joint Hindu Family.

-Plaintiff

(ii) Whether the plaintiffs have no relation with Shri Nek Ram and the plaintiffs have no right in the disputed land. The respondent (No.1) is the only tenant in possession.

-Defendant

(iii) Whether the affidavit filed with the suit is not properly attested, therefore the suit cannot be treated as properly instituted?

-Defendant

(iv) Whether the disputed land is co-parcenary property of Joint Hindu family and the plaintiffs have got the legal right to get the partition?

-Plaintiff

(v) Whether the plaintiffs have the right to get the tenancy rights declared and revenue record entries corrected?

-Plaintiff

(vi) Whether the plaintiffs are entitled for partition of the disputed land.

-Plaintiff

(vii) Relief.

8. On the above issues the trial court has given the issue wise findings. The trial court has explicitly inferred that the disputed land is ancestral land and it belonged to Shri Nek Ram and after his death the land was mutated


in name of Inder Singh (appellant). This is also undisputed that the respondents are his sons.

9. We have carefully perused the judgments & decrees passed by both the lower courts. As far <sup>as in</sup> the concurrent findings on the framed issues are concerned, they are supported by the evidence and settled principles of law. But in this case, a new fact has emerged that Shri Inder Singh has three sons and four daughters. Admittedly his daughters were not impleaded as party in this suit for partition of agriculture holding in dispute. This is also undisputed that Hindu succession Act has been amended on 09.09.2005 and has provided share of daughters in the ancestral property. The amendment reads as under:-

**"6. Devolution of interest in coparcenary property.-**

(1) On and from the commencement of the Hindu Succession Act, (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall.-

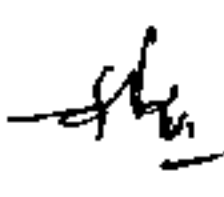
- (a) by birth become a coparcener in her own right; the same manner as the son here;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004."

10. The above amended provision of the Act does provide entitlement to daughters in the ancestral land. Here in this case, the disputed land is ancestral, therefore, the daughters of the appellant have the direct interest in the land in question which is being partitioned by this suit.



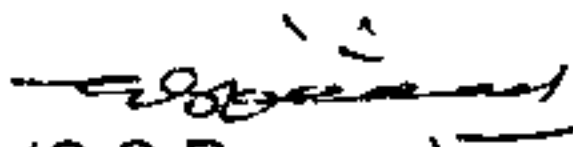
  
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11. We are aware that this particular suit was decreed on 9.9.2004 by the trial court and it is still pending in this court. This is our considered view that the partition of the disputed land has not obtained finality so far and it is continuously in litigation, therefore it is fully covered by the 2005 amendment of the Hindu Succession Act. In the circumstances, discussed above, we are of the considered view that all the daughters of Shri Inder Singh should be made party in this suit of partition pertaining to the disputed land. In opinion of this court, on this sole ground the case deserves new trial.

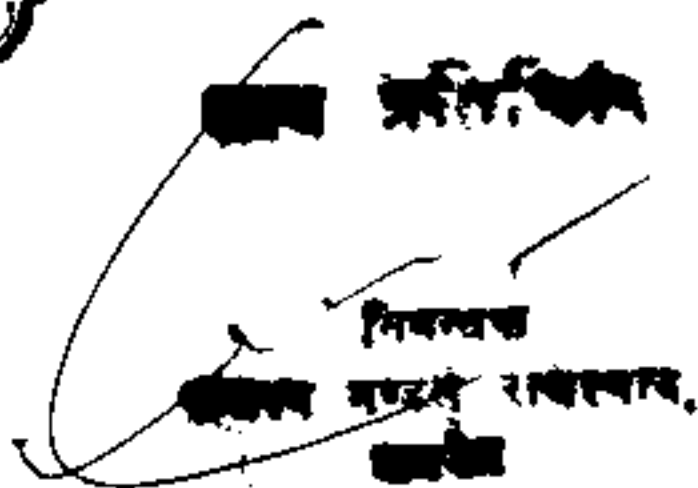
12. Therefore, in the larger interest of justice we quash the judgments & decrees passed by both the lower courts and remand the matter to the Assistant Collector, Rajakheda (Dholpur) for impleading daughters of Shree Inder Singh as necessary parties and after giving them fair opportunity of hearing, decide the suit afresh on merits.

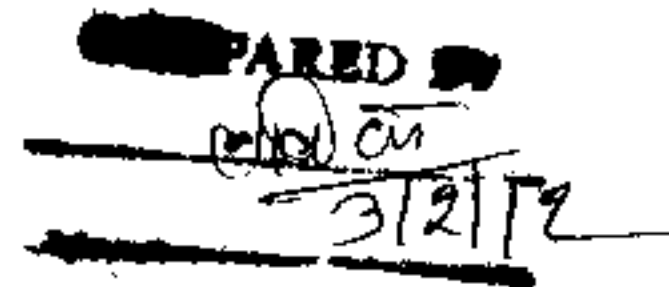
13. Pronounced in the open court.

  
(C.S. Panwar)  
Member

hse 17.01.2012  
(Bajrang Lal Sharma)  
Member



  
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