

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

Date of decision: 15th March, 2011

+ **W.P.(C) No.1070/1986**

% **RAM NIWAS** **..... Petitioner**
Through: Mr. Subodh Markandaya, Sr. Adv.
with Mrs. Chitra Markandeya, Mr.
C.S. Parashar, Mr. Sachin Sharma &
Mrs. Noor Jahan, Advocates

Versus

**THE FINANCIAL COMMISSIONER, DELHI
& ORS.** **... Respondents**
Through: Mr. Jitendra N. Mahato, Adv. for
Ms. Zubeda Begum, Adv. for R-1 to
3.
Mr. Manmohan Gupta, Adv. for
LRs of R-4, 5 & 8.
Mr. Ravi Gupta, Sr. Adv. with Mr.
Rahul Gupta & Mr. Shekhar Dasi,
Advocates for R-6 & 7.

AND

+ **CONT.CAS(C) NO.336/1996**

% **SH. RAM NIWAS** **..... Petitioner**
Through: Mr. Subodh Markandaya, Sr. Adv.
with Mrs. Chitra Markandeya, Mr.
C.S. Parashar, Mr. Sachin Sharma &
Mrs. Noor Jahan, Advocates

Versus

SH. PITAMBER & ORS.

..... Respondents

Through: Mr. Jitendra N. Mahato, Adv. for
Ms. Zubeda Begum, Adv.
Mr. Manmohan Gupta, Adv. for R-2
to 6.
Mr. Ravi Gupta, Sr. Adv. with Mr.
Rahul Gupta & Mr. Shekhar Dasi,
Advocates for R-7 & 8.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns:-
 - (i) Order dated 3rd April, 1981 of the Revenue Assistant, Delhi dismissing the application under Section 11(1)(a) of the Delhi Land Reforms Act, 1954 of the deceased petitioner no.1 Sh. Dedh Raj @ Desh Raj. (during the pendency of the said application, the petitioner

no.2 herein Sh. Ram Niwas was allowed to be impleaded as applicant no.2.).

(ii) The order dated 20th September, 1983 of the Additional Collector, Delhi dismissing the first appeal under Section 185 of the Reforms Act of Sh. Dedh Raj and Sh. Ram Niwas against the order aforesaid of the Revenue Assistant.

(iii) Order dated 22nd November, 1984 of the Financial Commissioner dismissing the second appeal of Sh. Dedh Raj and Sh. Ram Niwas against the order aforesaid of the Additional Collector, Delhi.

2. The petitioners also seek the relief of declaration that they are the exclusive *Bhumidhars* of the land subject matter of the writ petition and to the exclusion of the respondent no.4 Smt. Misri Devi. Alternative relief of declaration that Smt. Misri Devi has only 1/3rd share in the said land instead of 1/2 as recorded in her name in the revenue records and that Sh. Dedh Raj and Sh. Ram Niwas have 2/3rd share therein, is also claimed.

3. Even though this writ petition was preferred after nearly two years of the order of the Financial Commissioner, vide *ex parte* order dated 28th May, 1986 Rule was issued and respondent no.4 Smt. Misri Devi restrained from transferring 1/6th of her undivided share in the land subject matter of the writ petition. The said interim order was confirmed on 18th September, 1986 after hearing the counsel for the respondent no.4 Smt. Misri Devi.

4. The factual matrix as now emerging from the records is as under:-

(i) Sh. Dedh Raj filed the application aforesaid under Section 11 of the Reforms Act pleading:-

(a) that land admeasuring 288 Bighas and 1 Biswas situated in the revenue estate of Village-Matiala, Najafgarh, Delhi belonged to his father Sh. Ram Saran;

(b) that on the demise of Sh. Ram Saran, the said land was inherited by the three sons of Sh. Ram Saran namely Sh. Dedh Raj, Sh. Sahaj Ram and Sh. Rati Ram;

(c) that upon the demise of Sh. Rati Ram in the year 1940 his 1/3rd share in the said land devolved on his widow i.e. respondent no.4 herein Smt. Misri Devi;

(d) that thereafter Sh. Sahaj Ram died without leaving any widow or children and under the Hindu Succession Act, 1956, his 1/3rd share in the said land devolved on his brother Sh. Dedh Raj;

(e) however Smt. Misri Devi filed a suit for partition against Sh. Dedh Raj claiming 1/2 share in the said land on the basis of the entries in the Record of Rights/Annual Register and which suit was pending disposal;

(f) that on account of some misunderstanding, the *Bhumidhari* and Proprietary Rights in the revenue records were shown to the extent of 1/2 share in the entire holding in the name of Smt. Misri Devi, though he (Sh. Dedh Raj) was in cultivatory possession of the whole land and was in dark

about the error in the revenue record and which came to his notice only on the suit for partition being filed by Smt. Misri Devi;

(g) it was the plea of Sh. Dedh Raj that Smt. Misri Devi was entitled to only $1/3^{\text{rd}}$ share in the entire land and he had *Bhumidhari* rights over $2/3^{\text{rd}}$ share of the said land;

(h) accordingly, declaration was sought that Sh. Dedh Raj was the *Bhumidhar* of $2/3^{\text{rd}}$ share in the land aforesaid.

(ii) Smt. Misri Devi contested the said application by filing a reply pleading that the same was barred by time inasmuch as Sh. Sahaj Ram died much prior to the commencement of the Reforms Act, and on his death his share in the land was mutated in the names of Sh. Dedh Raj and Smt. Misri Devi in equal share and Sh. Dedh Raj had never challenged the said mutation sanctioned by the Revenue Authorities and was estopped from challenging the same by way of application under Section 11 of the Reforms Act; that Sh.

Dedh Raj and Smt. Misri Devi had sold part of the land to other persons and had shared the sale consideration in equal proportion; that Sh. Dedh Raj and Smt. Misri Devi were enjoying possession of the land; that Sh. Sahaj Ram had died much before coming into force of the Reforms Act and thus the question of applicability of Section 50 thereof did not arise and the share of Sh. Sahaj Ram in the land was rightly mutated in the name of Sh. Dedh Raj and Smt. Misri Devi.

(iii) During the pendency of the application under Section 11 before the Revenue Assistant, petitioner no.2 Sh. Ram Niwas being the son of Sh. Dedh Raj applied for impleadment and which was allowed.

(iv) The Revenue Assistant held that none of the parties had placed any documentary proof or led documentary evidence except oral evidence of partition between Sh. Dedh Raj and Sh. Ram Niwas. It was further held that mutation of 1/2 share in the land having been sanctioned in favour of Smt. Misri Devi and having

remained unchallenged, the application filed under Section 11 of the Reforms Act was time barred. It was also held that Smt. Misri Devi was entitled to inherit $1/3^{\text{rd}}$ share of her husband Sh. Rati Ram and $1/2$ out of $1/3^{\text{rd}}$ share of Sh. Sahaj Ram and was thus entitled to $1/2$ share in the entire land. The claim of Sh. Dedh Raj and Sh. Ram Niwas to $2/3$ share in the entire land was rejected.

(v) The Additional Collector while dismissing the appeal of Sh. Dedh Raj and Ram Niwas held that the mutation of $1/2$ share of land in the name of Smt. Misri Devi had to be challenged in the legal manner before the Court of competent jurisdiction and in the proceedings under Section 11, no benefit could be claimed by pleading illegality or factual inaccuracy in effecting the mutation when Smt. Misri Devi was admitted to be having $1/3^{\text{rd}}$ share in the land and the principle of possession of one is possession of all co-sharers applied. It was further held that in view of the non denial to the extent of $1/3^{\text{rd}}$ share, it could not be denied that 50% of the land

was *Khudkasht* of Smt. Misri Devi. The appeal was accordingly dismissed.

(vi) The Financial Commissioner while dismissing the second appeal of Sh. Dedh Raj and Sh. Ram Niwas also held that in the absence of any challenge to the mutation, and Smt. Misri Devi admittedly being a co-sharer, no relief could be granted. It was further held that under Section 11, the declaration of *Bhumidhari* rights is allowable on the basis of *Khudkasht* land and there was nothing to show that Sh. Dedh Raj and Sh. Ram Niwas only could be treated to be *Khudkasht* holders of the entire land when Smt. Misri Devi was admittedly a co-sharer with 1/3rd share. It was also observed that both Revenue Assistant and Additional Collector had come to a concurrent finding of the possession of one being the possession of others.

5. Smt. Misri Devi died during the pendency of the present writ petition on 22nd December, 1986. Vide order dated 5th December, 1988 the proceedings in the present case were adjourned sine die owing to the

alleged Will of Smt. Misri Devi being subject matter of consideration before the Revenue Authorities.

6. Sh. Dedh Raj also died during the pendency of this writ petition. The petitioner no.2 Sh. Ram Niwas was brought on record as the legal heir of Sh. Dedh Raj as sole petitioner. However thereafter the other legal heirs of Sh. Dedh Raj also applied for substitution in his place and which was contested by Sh. Ram Niwas. On 9th March, 1993 it was ordered that the said applications of other legal heirs for substitution in place of Sh. Dedh Raj and for recall of the earlier order substituting Sh. Ram Niwas only in place of Sh. Dedh Raj will be decided at the time of final hearing and the other heirs shall be allowed to intervene at the time of final hearing. Need is not felt now to decide the said question, inasmuch as the same is not relevant for the purposes of the present controversy inasmuch as if the writ petition is to succeed, whatsoever share in the land is held of Sh. Dedh Raj would devolve on whichever of his legal heirs are found entitled, in separate appropriate proceedings.

7. In this writ petition, Sh. Dedh Raj and Sh. Ram Niwas changed their stand. They claimed that after the death of Sh. Rati Ram, Smt. Misri Devi left the Village-Matiala, and the matrimonial home in or about 1940-41 and went away to reside in her parental home and severed all connections with her matrimonial home and abandoned the land. It was thus claimed that Smt. Misri Devi was not entitled to even $1/3^{\text{rd}}$ share in the land, as was the stand till then in the proceedings before the Revenue Courts. In my view, besides the fact that no such plea can be taken for the first time in these proceedings, the stand now taken is contradictory to the stand till then of Sh. Dedh Raj that mutation in favour of Smt. Misri Devi of $1/3^{\text{rd}}$ share of her husband Sh. Rati Ram and $1/2$ share out of $1/3^{\text{rd}}$ share of Sh. Sahaj Ram was a result of misunderstanding. If Smt. Misri Devi had abandoned the land and gone away, obviously mutation would have been got done by Sh. Dedh Raj only. The very fact that Sh. Dedh Raj got mutation done in the name of Smt. Misri Devi, first of $1/3^{\text{rd}}$ share of her husband Sh. Rati Ram and thereafter of $1/2$ out of $1/3^{\text{rd}}$ share of Sh. Sahaj Ram shows that there was no misunderstanding. Now it is being alleged, that though Smt. Misri Devi had abandoned the land as far back as in the

year 1940-41 but it was Sh. Dedh Raj who contacted her in the year 1971-72 for the purposes of disposal of the land since her name appeared in the records and which made Smt. Misri Devi greedy.

8. From time to time the legal heirs of Sh. Dedh Raj have died and applications filed for substitution of their legal heirs.

9. Smt. Misri Devi as aforesaid died on 22nd December, 1986. Her brother Sh. Pitamber Singh filed an application for substitution in her place pleading that Smt. Misri Devi had bequeathed her land in his favour vide a Registered Will. Though Smt. Misri Devi had died as aforesaid in 1986 and application of her brother Sh. Pitamber Singh for substitution was pending but neither was any substitution made in favour of Sh. Pitamber Singh nor restraint order against Smt. Misri Devi extended to Sh. Pitamber Singh till 10th December, 1996. However before that Sh. Pitamber Singh had informed this Court that he had already transferred the land inherited by him from Smt. Misri Devi to Sh. Devi Ram Gupta, Sh. Rameshwar Dayal, Sh. Satapal Rathi and Sh. Ram Kumar and the said persons were vide order dated 25th August, 1998 impleaded as respondents no.5 to 8 and

restrained from transferring 1/6 share of the land which had been transferred by Sh. Pitamber Singh in their favour.

10. Several pending applications in the writ petition came up before this Court on 23rd September, 2010 when the status of the proceedings owing whereto the proceedings in this writ petition were adjourned *sine die* was enquired. It was informed that not only the proceedings with respect to the alleged Will of Smt. Misri Devi before the Revenue courts but a suit was also pending in this Court with respect to the Will of Smt. Misri Devi. This Court was of the opinion that since this writ petition concerns the share of Smt. Misri Devi in the land, the pendency of the proceedings with respect to the Will of Smt. Misri Devi would not come in the way of the disposal of the writ petition inasmuch as whatsoever was found to be the share of Smt. Misri Devi would devolve on whosoever was found to be her heir. Accordingly, the order adjourning the proceedings *sine die* was recalled and the writ petition listed for hearing. The senior counsel for the petitioners, the senior counsel for the respondents no.6 & 7 and the counsels for the other respondents have been heard.

11. The senior counsel for the petitioners (and which includes petitioner no.2 Sh. Ram Niwas as well as the other legal heirs of Sh. Dedh Raj) has contended:-

(a) That the Schedule I to the Reforms Act does not provide any period of limitation for filing of application under Section 11 of the Act.

(b) That the question is whether Smt. Misri Devi had abandoned the land or not.

(c) That Section 5(ii) of the Hindu Succession Act makes an exception with respect to land/tenancy laws.

(d) Smt. Misri Devi could not have inherited any share of Sh. Sahaj Ram who died in or about the year 1960 owing to Section 50 of the Reforms Act.

(e) That a question of title having arisen in the proceedings under Section 11, the Revenue Assistant ought to have under Section 186

of the Reforms Act referred the same to a Civil Court for adjudication.

(f) That even if this petition were to fail, the share of Smt. Misri Devi cannot go to her brother inasmuch as Section 48(2) of the Reforms Act bars a Will and the said share of Smt. Misri Devi would under Section 51 of the Reforms Act again fall on Sh. Ram Niwas.

(g) That mutation entries are only for the purposes of collection of land revenue and do not confer any title. Reliance in this regard is placed on *Suraj Bhan Vs. Financial Commissioner V* (2007) SLT 215.

(h) I may record that there exists on record a synopsis of submissions of petitioner with copies of several other judgments but to which no reference was made during the hearing and as such need is not felt to deal with the same.

12. The senior counsel for the respondents no.6 & 7 being two of the purchaser from Sh. Pitamber Singh, brother of Smt. Misri Devi has contended:-

(a) That the case of abandonment has been set up in the present petition for the first time.

(b) That in the application under Section 11, 1/3rd share of Smt. Misri Devi in the land was admitted.

(c) That the application under Section 11 filed in 1973 was highly belated inasmuch as 1/3rd share in the land was mutated in favour of Smt. Misri Devi on demise of her husband Sh. Rati Ram on 23rd August, 1941 and her share in the land was increased to 1/2 vide mutation dated 22nd July, 1961 on the demise of Sh. Sahaj Ram (the senior counsel for the petitioners does not controvert the said dates).

(d) That Sh. Dedh Raj and Smt. Misri Devi had in the year 1971 sold a part of the land by claiming to be equal owners thereof and shared the sale proceeds equally (this is also not controverted).

(e) Attention is invited to the provisions of the Delhi Land Revenue Act, 1954, to Section 20 providing for the maintenance of a Record of Rights; Section 22 providing for reporting of succession or transfer of land and to sub-section (5) thereof which prohibits a Revenue Court from entertaining a suit or application by a person without reporting succession/transfer in his favour; Section 30 providing for presumption of correctness of the entries in the revenue record until the contrary is proved; Section 64 providing for appeal against orders of such mutation; Section 67 providing limitation of 30 days from the date of mutation from preferring an appeal thereagainst.

(f) Attention is also invited to the order dated 22nd July, 1961 of mutation on the demise of Sh. Sahaj Ram recording that the same was done at the instance of Sh. Dedh Raj.

(g) It is contended that Sh. Dedh Raj could not be permitted to change his stand after thirteen years.

(h) Section 4(2) of the Hindu Succession Act has been deleted vide Amendment of the year 2005 and thus Section 50 of the Reforms Act stands eclipsed.

(i) Reliance is placed on *Nirmala Vs. Govt. of NCT of Delhi* 170 (2010) DLT 577 (DB) and on *Mangtu Vs. Financial Commissioner* (2007) 97 DRJ 570.

(j) That a proceeding under Section 11 of the Reforms Act is only for declaration of *Bhumidhari* rights and not for declaration of share, share in the land could only be determined in a proceeding for partition under Section 55 of the Act. It is thus contended that the proceedings under Section 11 seeking declaration of share were in any case misconceived.

(k) Reliance is placed on *Rolex Sa Vs. Alex Jewellery Pvt. Ltd.* MANU/DE/0796/2009, *Gajendra Kumar Vs. Union of India* 110 (2004) DLT 591 (DB) and on *Chander Vs. Union of India* 2005 VII AD (Delhi) 125 to contend that the mutation even if alleged to be

void was required to be quashed and for the proposition that even a statutory right could be waived.

13. The senior counsel for the petitioners in rejoinder has contended that the amendment to the Hindu Succession Act with effect from 9th September, 2005 would be of no avail since Smt. Misri Devi died long prior thereto on 22nd December, 1986 and the Will allegedly left by her is of 18th November, 1971. It is contended that the said amendment is prospective and not retrospective. Reliance in this regard is placed on *Smt. Mukesh Vs. Bharat Singh* 149 (2008) DLT 114. Reliance is also placed on *Hatti Vs. Sunder Singh* AIR 1971 SC 2320 to contend that since in case of proprietors, upon the coming into force of Reforms Act, only the *Khudkasht* rights survive, Section 11 application was competent.

14. I had during the hearing enquired from the counsels the fate of the suit for partition preferred by Smt. Misri Devi and which was pending on the date when the application under Section 11 was made. It is informed that the said suit was dismissed in default on 25th September, 1980.

15. The Legislature has not provided for any further remedy against the order of the Financial Commissioner in second appeal and which under the Act has been made final. This Court is only exercising the powers of judicial review and thus the interference if any by his Court has to be within the parameters of judicial review and not as if exercising appellate powers. Merely because a wrong view has been taken, would not entitle this Court to interfere. It is only in the cases of perversity being shown or it being shown that the order of the Financial Commissioner is contrary to the settled law, that this Court would exercise jurisdiction and interfere. The only other ground for interference is when the findings returned are shown to be not based upon any material whatsoever. This Court can refuse to interfere for other reasons also.

16. The first and foremost aspect which stares one in the face is of the delay of about two years in preferring the writ petition. The explanation given therefor is that the advocate who had conducted the proceedings on behalf of the petitioners before the Financial Commissioner had got some papers signed from the petitioners for filing the writ petition in this Court;

however the said advocate died and the petitioners remained under impression that the writ petition had been filed. The said explanation does not inspire confidence. Considering the nature of the proceedings, where the rights in favour of Smt. Misri Devi as borne out from the revenue records were sought to challenged, mere filing of the writ petition was not enough; unless Smt. Misri Devi was restrained from dealing with the land, she could have on the basis of mutation entries in her name transferred the same to some other person/s. There was no reason for the petitioners to be merely satisfied by signing the papers for filing the writ petition and the petitioners ought to have been in touch with their advocate to find out as to whether Smt. Misri Devi had been so restrained or not.

17. However, since this writ petition has remained pending in this Court for long, even though for the reasons attributable to the petitioners themselves, I now refrain from dismissing the writ petition on this ground alone.

18. I am of the opinion that the relief which was claimed in the application under Section 11 of the Reforms Act i.e. of declaration that the

share in the land of Sh. Dedh Raj was $\frac{2}{3}$ and of Smt. Misri Devi $\frac{1}{3}^{\text{rd}}$, could not be granted under Section 11 of the Act and the application under Section 11 claiming the said relief was misconceived. The shares could have been determined only in a proceeding for partition under Sections 55 to 61 of the Reforms Act. Rule 37 of the Delhi Land Reforms Rules, 1954 expressly provides that before making partition, the Court shall determine separately the share of the plaintiff and each of the other co-tenure holders. Not finding any provision in the Reforms Act enabling declaration of shares, I have wondered whether right to seek such declaration can be read in Section 11. However, I am unable to so read Section 11. Moreover, it is not as if the relationship between Sh. Dedh Raj and Smt. Misri Devi at the time of filing of application under Section 11 was cordial, for Sh. Dedh Raj to merely want a declaration of respective shares in the land without wanting partition. When the application under Section 11 was filed, Smt. Misri Devi had already filed a suit for partition against Sh. Dedh Raj. The battle lines were thus drawn. Sh. Dedh Raj was required to defend the said suit for partition wherein Smt. Misri Devi had claimed $\frac{1}{2}$ share by contending that her share was $\frac{1}{3}^{\text{rd}}$ and not as $\frac{1}{2}$, as he pleaded in

application under Section 11. Even if Smt. Misri Devi had not wanted to pursue the suit for partition, Sh. Dedh Raj could have continued the same. By no stretch of imagination can it be said that under Section 11 declaration with respect to respective shares could be claimed. Section 11 envisages declaration upon coming into force of the Act of rights in existence since prior to the coming into force of the Act and the enquiry under Section 11 is to be limited to that aspect only and cannot stretch to the determination of respective shares in the land. The Legislature while providing for a proceeding for partition and which necessarily entails determination of shares, has provided that to such suit for partition Gaon Sabha concerned shall be made a party. The said right of Gaon Sabha to be heard in a proceeding for partition and which as aforesaid entails determination of shares, cannot be defeated by seeking such determination in a proceeding under Section 11 of the Act. Sub-Sections 3 & 4 of Section 11 while providing for the orders to be made on applications under Section 11 nowhere provide for the said order to also record the respective shares. Rather, Section 11 requires the Deputy Commissioner to himself make the declaration thereunder, even without requiring an application and persons

in whose favour such declaration is made become liable to pay to the government land revenue with effect from the said declaration. In the present case, admittedly, Sh. Dedh Raj as well as Smt. Misri Devi were already recorded as *Bhumidhars* with respect to the said land since after coming into force of the Reforms Act and there was no need for such declaration in 1973 when the application under Section 11 was filed.

19. A Division Bench of this Court in *Narinder Singh Vs. Khaliqur-Rehman* AIR 1974 Del 184 held the process of declaration of *Bhumidhari* rights under Section 11 of the Reforms Act to be a non-judicial proceeding and to be done on the basis of revenue entries for a particular year which are to be presumed to be correct. It was further held that the Legislature did not intend the declaration of *Bhumidhari* rights to wait for prolonged proceedings for determination of legal rights in any judicial proceedings; the process of declaration has therefore been made expeditious and non-judicial but ultimately subject to judicial review.

20. A Full Bench of the Punjab and Haryana High Court in *Dr. Kidar Nath Sharma Vs. Rattiram Mangli* AIR 1966 P&H 321 in para 3 of the

judgment makes reference to a judgment dated 13th March, 1963 of the Division Bench of that Court in Second Appeal No.46-D/1961 titled ***Ramjilal Vs. Lekhi*** (which appears to be unreported) also laying down that the task of determining what individuals were entitled to the benefit of the general declaration of the *Bhumidhari* rights in accordance with the entries in the revenue records was enormous and would take years if these were to be a contest in every case and thus, the record of *Bhumidhari* rights was to be made on the basis of revenue records and the persons who wished to contest the certificates granted of *Bhumidhari* have ample opportunity to do so under Rule 8(4) of the Reforms Rules.

21. Rule 8(4) of the Reforms Rules requires anyone challenging the correctness of entries in the forms of declaration to, except where it refers to a clerical omission or error, file a regular suit within two months of such issuance of certificate of *Bhumidhari*.

22. Another Division Bench of this Court in ***Gaon Sabha Vs. Jage Ram*** 1973 Rajdhani Law Reporter 597 held that the person who wants to challenge the correctness of the entries in the land revenue forms has first

to apply to the Revenue Assistant under Rule 8(4) of the Reforms Rules and the Revenue Assistant may then require him to file a regular suit in a Civil Court.

23. The application, orders whereon are impugned in this writ petition itself being misconceived, the writ petition is liable to be dismissed on this ground alone. However, propriety demands that the other grounds urged be also dealt with and considered.

24. The common thread running through the order of the Revenue Assistant, Additional Collector and the Financial Commissioner is of the application under Section 11 being not maintainable for the reason of mutation and mutation having not been challenged. I am unable to find any illegality requiring interference in the said reasoning. I am also unable to accept the arguments of the senior counsel for the petitioners that mutation is irrelevant and does not confer any title. The Reforms Act was enacted for modification of the then prevailing *Zamindari* system and so as to create a uniform body of peasant proprietors. The Act created only one class of tenure holders i.e. *Bhumidhars* and one class of sub tenure holders

i.e. *Asamis*. Under Section 7, upon coming into force of the Act, rights in non-agricultural land i.e. waste land, pasture land or land for common utilities vested in the Gaon Sabha. The proprietary rights in agricultural land were saved by converting the same into *Bhumidhari* rights. Simultaneously, with the enactment of the Reforms Act, the Revenue Act was also enacted and which provided for maintenance of records. Thus the rights which survived after coming into force of the said two Acts were only the rights in terms of the said Acts and the rights existing in the land prior to the said two enactments were extinguished. It thus cannot be said that the records maintained under the said two Acts are not records of title inasmuch as after coming into force of the said Laws, it is only the rights under the said Laws which are recognized. The Record of Rights under Sections 20 & 22 is required to record changes that take place and any transaction that may affect any of the rights or interest in the land recorded. The procedure and manner of making the said records and the settlement of disputes as to entries therein is all provided in the Revenue Act. The petitioners therefore cannot be heard to contend that the recording of the share of Smt. Misri Devi in the land first as 1/3rd share on the demise of her

husband and then as 1/2 share on the demise of Sh. Sahaj Ram is of no consequences. Section 22(5) of the Revenue Act is significant in this regard. It prohibits a Revenue Court from entertaining a suit or application “not merely under the Revenue Act” by a person until such person had made a report as required to be made as successor for transfer under the Revenue Act. In the present case, the order dated 22nd July, 1961 of mutation in the Record of Rights clearly records that the report therefor was made by Sh. Dedh Raj himself. Sh. Dedh Raj having himself reported the succession on demise of Sh. Sahaj Ram and on the basis whereof in the records of right, the land was entered in the names of Sh. Dedh Raj and Smt. Misri Devi in the shares of 1/2 each, was certainly not entitled to in the application under Section 11 take a contrary stand.

25. Insofar as reliance by the petitioner on the judgment of the Apex Court in *Suraj Bhan* (supra) is concerned, the Supreme Court did not interfere with the orders of the Revenue Court and High Court insofar as approving mutation applied for in accordance with the law. However, since the challenge to the Will on the basis of which the mutation was done

was pending in the Civil Court, the observations relied upon came to be made. What was held was that mere entry of name in the Record of Rights does not confer title.

26. There can be no doubt about the said proposition. A person who otherwise has no right, merely by having his name entered cannot defeat the rights of the rightful claimant. However, the present is a case where Sh. Dedh Raj himself got the name of Smt. Misri Devi substituted in the records first in place of her husband and thereafter got her share enlarged on the demise of Sh. Sahaj Ram and the said records were allowed to stand for long. Sh. Dedh Raj did not take any steps as required to be taken for having the said records corrected. It is in this context that Sh. Dedh Raj was held disentitled to claim the relief under Section 11. The Supreme Court in *Vishwa Vijay Bharati Vs. Fakhrul Hassan* 1976 (3) SCC 642 held that entries in the revenue record ought generally to be accepted at their face value and Courts should not embark upon an appellate enquiry into their correctness unless it is shown to be made fraudulently and surreptitiously. No such fraud was established in the present case. The Allahabad

High Court also in *Jagdeo Vs. Deputy Director of Consolidation* MANU/UP/1079/2006 held that revenue entries in respect of agricultural lands have great value since a meticulous procedure has been prescribed for recording, correcting and maintaining the same and that they cannot be equated with entries for purposes of house tax etc. under Municipalities Act in respect of buildings. It was further held that the purchaser of agricultural land and others dealing therewith check the right of vendor from the revenue records only.

27. No error can also be found in the observations of the Revenue Court of the proceedings being belated. The Revenue Act as aforesaid provides the procedure for impugning a wrong entry if any made in the said record of rights. Sh. Dedh Raj even if aggrieved from such mutation, was required to have the same corrected. Without applying for correction of the same, he could not be heard to contend to the contrary. The Legislature has bestowed the presumption of correctness to the said entries and Sh. Dedh Raj was required to first have the said record corrected and which

was the proper fora for adjudicating the dispute raised by him and as aforesaid, the application under Section 11 was misconceived.

28. In cannot be thus said that there is any perversity in the orders impugned in this writ petition.

29. Before parting with the subject, reference may also be made to ***Bhagwan Singh Vs. Financial Commissioner*** ILR (2008) 2 Delhi 762. In that case also, application under Section 11 of the Reforms Act was filed which was rejected by the Revenue Assistant on the ground of the revenue entries not showing the possession of the applicants or their predecessor and the said order was upheld by the Additional Collector and the Financial Commissioner. This Court held that challenge to the revenue entries, in that case after 26 years, was not maintainable and dismissed the writ petition.

30. As far as the arguments with respect to the effect of the demise of Smt. Misri Devi and as to who will inherit her 1/2 share in the land are concerned, the same are not required to be adjudicated in these

proceedings. This Court as aforesaid is only exercising the power of judicial review with respect to the orders impugned in this writ petition and which orders have not dealt with the said aspect and were infact not required to deal with the said aspect. This court in this writ petition cannot for the first time without any proper pleadings, adjudicate the said aspect. Moreover, the disputes in this regard are stated to be already pending before the Revenue Court as well as before the Original Side of this Court. Need is not felt to deal with the arguments which were raised.

31. Contempt Case No.336/1996 was filed with respect to the Sale Deed executed by Sh. Pitamber Singh in favour of respondents no.5 to 8 on 22nd July, 1996. It is averred that in view of the order dated 28th May, 1986 (supra) in the writ petition restraining Smt. Misri Devi from selling the property, every person claiming under the said Smt. Misri Devi was so restrained and Sh. Pitamber Singh has therefore violated the orders of this Court.

32. I am unable to agree. As aforesaid, though Smt. Misri Devi died on 22nd December, 1986 and Sh. Pitamber Singh immediately thereafter

applied for substitution in her place in the writ petition but the petitioners did not seek extension of the restraint order against Smt. Misri Devi to against Sh. Pitamber Singh. Rather, the proceedings in the writ petition were got adjourned *sine die* pending the disputes before the Revenue Courts. It is only on 10th December, 1996 that the order against Smt. Misri Devi was extended to Sh. Pitamber Singh and before which date Sh. Pitamber Singh had already executed the Sale Deed. No case for contempt is therefore made out. The senior counsel for the petitioners has also fairly not urged any submissions with respect thereto.

33. The writ petition as well as the contempt petition are therefore dismissed with no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 15, 2011

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