Court No. - 28 **Reserved**

AFR

Case :- WRIT - B No. - 64999 of 2014

Petitioner :- Archna

Respondent :- Dy. Director Of Consolidation, Amroha And 6 Others

Counsel for Petitioner :- Archna, Gyan Shankar Ojha, Manoj Srivastava

Counsel for Respondent :-C.S.C.,Mithilesh Kumar Mishra, Nitya Prakash Tiwari, A.S.G.I.

Hon'ble Ram Surat Ram (Maurya),J.

1. Heard Sri Gyan Shankar Ojha, for the petitioner and Sri Ganga Prasad Yadav, Additional Chief Standing Counsel, for respondents-1 to 3 and Sri Nitya Prakash Tiwari, for respondent-7 and Sri Ashok Mehta, Senior Advocate, Additional Solicitor General of India, assisted by Sri Harish Kumar Yadav, Standing Counsel for Union of India, for respondent-8.

2. The writ petition has been filed against the orders of Consolidation Officer dated 01.04.2013, Settlement Officer Consolation dated 14.03.2014 and Deputy Director of Consolidation dated 09.06.2014, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act) and for direction to the consolidation authorities to effect the partition of the share of the petitioner in the land in dispute as well as declaring the sale deed dated 14.11.2005, executed by Uttam Singh (respondent-4) in favour of Veer Singh (respondent-7), as void.

3. The dispute relates to basic consolidation year khatas 51, 100, 132, 175 and 300 of village Tarauli and khata 192 of village Nawabpura, pargana Hasanpur, district Amroha. These khatas consisted plots 2 (area 0.413 hectare), 24 (area 0.312 hectare), 73 (area 0.304 hectare), 77 (area 0.372 hectare), 82 (area 0.304 hectare), 130 (area 0.146 hectare), 168 (area 1.181 hectare), 212 (area 0.125 hectare), 217 (area 0.032 hectare), 229 (area 0.024 hectare), 319 (area 1.206 hectare), 334 (area 0.263 hectare), 421 (area 1.157

hectare) and 425 (area 1.154 hectare) (total 14 plots area 6.993 hectare). In basic consolidation records, name of Veer Singh (respondent-7) was recorded over the land in dispute, along with other co-sharers. The petitioner did not dispute shares of other co-sharers, during consolidation operation.

4. Archna (the petitioner) filed an objection under Section 9 (2) of the Act, on 08.12.2008, for deleting the name of Veer Singh from the land in dispute and recording her name along with Uttam Singh, Bhanu Pratap Singh and Shashi Bhushan Singh (respondents-4 to 6), claiming herself to be a co-parcener of 1/4 share in the land in dispute. The petitioner stated that the land in dispute was ancestral property, coming from the time of her grand father, Hardeo Singh. After the death of Hardeo Singh, it was inherited by his sons, Khajan Singh and Uttam Singh and their sons, who formed Joint Hindu Family governed by Mitakshara Hindu Law, of which Uttam Singh was *'Karta',* who acted as such up to 1989. Hindu Succession Act, 1956 was amended by Hindu Succession (Amendment) Act, 2005, w.e.f. 20.12.2004. By virtue of Section 6 of Hindu Succession Act, 1956 (as amended), the petitioner has become co-parcener along with her father and brothers (respondents-4 to 6). Under the law, Joint Hindu Family Property is a trust for the benefits of the members, living and to be born. However, Khajan Singh and Uttam Singh executed sale deeds dated 14.11.2005 in favour of Veer Singh and on its basis name of Veer Singh was mutated in the revenue record by order dated 19.12.2005. Uttam Singh had no right to execute the sale deed dated 14.11.2005 and it is void. Name of Veer Singh was recorded over the land in dispute on the basis of a void sale deed as such it was liable to be deleted. The case was contested by Veer Singh, who has stated that Khajan Singh and Uttam Singh were “bhumidhar with transferable right” of land in dispute, who executed sale deeds dated 14.11.2005 in favour of Veer Singh and others and on its basis names of Veer Singh and others were mutated in the revenue record by order dated 19.12.2005. The land in dispute was agricultural land and the provisions of Uttar Pradesh Zamindari Abolition and Land Reforms

Act, 1950 (hereinafter referred to as U.P. Act No. 1 of 1951) are applicable over it. The provisions of Hindu Succession Act, 1956 are not applicable to it. During life time of Uttam Singh, the petitioner has no right in the land in dispute and her objection was not maintainable.

5. The Consolidation Officer heard the preliminary objection, raised by respondent-7, regarding maintainability of the objection of the petitioner, who after hearing the parties, by order dated 01.04.2013 held that the provisions of Civil Procedure Code, 1908 were not applicable to the proceeding under the Act. Except the land for which declaration under Section 143 of U.P. Act No. 1 of 1951 has been made, provisions of Hindu Succession Act, 1956 will not apply to the agricultural land. Uttam Singh, father of the petitioner was still alive as such no question of inheritance of his bhumidhari holding arose. Otherwise also, the petitioner, being a married daughter was not an heir under Section 171 of U.P. Act No. 1 of 1951, as Uttam Singh was having two sons. The objection of the petitioner was not maintainable. On these findings, objection of the petitioner was dismissed and land in dispute was divided amongst the recorded tenure holders. The petitioner filed an appeal (registered as Appeal No. 20/312) from the aforesaid order. Settlement Officer Consolidation, by order dated 14.03.2014 affirmed the findings of Consolidation Officer and dismissed the appeal. The petitioner filed a revision (registered as Revision No. 544) against the aforesaid orders. Deputy Director of Consolidation, by order dated 09.06.2014 dismissed the revision. Hence this writ petition has been filed.

6. The counsel for the petitioner submitted that the land in dispute was ancestral property, coming from the time of her grand father Hardeo Singh. After death of Hardeo Singh, it was inherited by his sons Khajan Singh and Uttam Singh, who along with their sons, formed a Joint Hindu Family governed by Mitakshara Hindu Law. Uttam Singh acted as *'Karta'* of Joint Hindu Family up to 1989. Hindu Succession Act, 1956 was amended by Hindu Succession (Amendment) Act, 2005, w.e.f. 20.12.2004. By virtue of

Section 6 of Hindu Succession Act, 1956 (as amended), the petitioner has become a co-parcener along with her father and brothers (respondents-4 to 6), before execution of the sale deed dated 14.11.2005. By Amending Act, 2005, Section 4 (2) was deleted and Section 6 (1) (c) created same liability on the daughter as of the son w.e.f. 20.12.2004, as such, the provisions of Hindu Succession Act, 1956 will apply to agricultural land also. "Succession" is a subject falling in Entry-5 of List-III-Concurrent List of Seventh Schedule of the Constitution. Parliament as well as State Legislature both derive their power to make law relating to "succession" from Entry -5 of List-III-Concurrent List of Seventh Schedule of the Constitution. Parliament has power to make law under Article 246 (2) in respect of subjects mentioned in List-III-Concurrent List. In case of inconsistency between law made by State Legislature i.e. Section 171 of U.P. Act No. 1 of 1951 and law made by Parliament i.e. Hindu Succession Act, 1956 (as amended), the provisions of Hindu Succession Act, 1956 (as amended) will prevail under Article 254. Union of India participated in World Conference on Human Rights in Vienna, on 25.06.1993, and made a declaration to eradicate all form of discrimination against women up to the year 2000. In pursuance of above declaration, Law Commission of India made a detailed survey for awarding property right to women and reform under Hindu Law. During survey, it was noticed that 70% of total population of women in the country were actively involved in agricultural work, as against it, involvement of men was found 40% of total population. On the basis of aforesaid survey, Law Commission recommended to delete Section 4 (2) of Hindu Succession Act, 1956, so that the provisions of Hindu Succession Act, 1956 will apply to agricultural land also as actual contribution of the women in cultivation of agricultural land was found more than the men, as such it was thought proper to give equal right of inheritance to women in agricultural land also. In any case, Hindu Succession (Amendment) Act, 2005 was enacted to fulfill the declaration made before United Nations Organization as well as Article 51 (c) as such it will have overriding effect under Article 253 of the Constitution, which enables the

Parliament to make law in respect to subjects of List-II-State List. Section 171 of U.P. Act No. 1 of 1951 makes a gender discrimination between descendants of a tenure holder, in respect of inheritance and is void under Article 13 as it abridges the right of equality of daughter in respect of inheritance in agricultural land and contravenes Articles 14 and 15 of Constitution of India. Under the law, Joint Hindu Family Property is a trust for the benefits of the members, living and to be born. Uttam Singh had no right to execute the sale deed dated 14.11.2005 in favour of Veer Singh of Joint Hindu Family property as such it is void. Name of Veer Singh was recorded over the land in dispute, on the basis of void sale deed dated 14.11.2005, and was liable to be deleted. The petitioner was a co-parcener of the disputed land as such her objection was maintainable under the Act. Orders of consolidation authorities are illegal and liable to be set aside. He also relied upon various case laws, which will be quoted at the relevant place.

7. I have considered the arguments of the counsel for the parties and examined the record. Admittedly, the land in dispute was agricultural holdings of the category “bhumidhar with transferable right” on 20.12.2004 i.e. date of enforcement of Hindu Succession (Amendment) Act, 2005, under Section 6 whereof, the petitioner is deriving her right in it. The consolidation authorities have held that provisions of Hindu Succession Act, 1956 (as amended in 2005) are not applicable to the agricultural holdings as such the petitioner has no right over the land in dispute during life time of her father and her objection was not maintainable. The question arises as to whether U.P. Act No. 1 of 1951 or Hindu Succession Act, 1956 (as amended in 2005) is to be applied for deciding right of the petitioner? In the light of the arguments of the parties, following questions arise for determination:-

(i) Authority of State Legislature and the Parliament to make law in respect of rights in or over land and land tenure.

(ii) Is there overlapping between subjects mentioned in Entry-18 of List-II-State List and Entry-5 of List-III-Concurrent List ? In case of

overlapping, which law will prevail?

(iii) Whether Hindu Succession (Amendment) Act, 2005 was enacted under Article 253 of the Constitution and has an overriding effect?

Point-I-Authority of State Legislature and the Parliament to make law in respect of right in or over the land and land tenure.

8. Part XI, Chapter-I of the Constitution deals with legislative relations — Distribution of Legislative Powers. By Article 245 the territorial operation of legislative power of the Parliament and the State Legislatures is delimited, and Article 246 distributes legislative power subject-wise between the Parliament and the State Legislatures. Articles 247, 249, 250, 252 and 253 enact some of the exceptions to the rule contained in Article 246. Relevant articles are quoted below:-

> **246. Subject-matter of laws made by Parliament and by the Legislatures of States.**—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

254. Inconsistency between laws made by Parliament and laws made by

the Legislatures of States.—

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

9. Before coming into force of Constitution of India, field of legislation of Federal Government and State Government were governed by the provisions of Government of India Act, 1935. Seventh Schedule, List-II-Provincial Legislative List contained subjects for Provincial Legislature and List-III-Concurrent Legislative List contained subjects for both Federal and Provincial Legislature. Relevant entries are quoted below:-

Seventh Schedule- List II — Provincial Legislative List

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer,

alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Court of Wards; encumbered and attached estates; treasure trove.

Seventh Schedule - List III — Concurrent Legislative List

7. Wills, intestacy and succession, save as regards agricultural land.

10. These entries have been slightly modified in the Constitution. Relevant entries of Constitution of India are quoted below:-

Seventh Schedule -List II — State List

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Seventh Schedule- List III — Concurrent List

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

11. Entry-7 of List III —Concurrent Legislative List of Government of India Act, 1935 used phrase “save as regards agricultural land”, from which, it is clear that rights in or over land, and land tenures was within exclusive domain of State Legislature under Government of India Act, 1935. In Constitution, Entry-5 of List III —Concurrent List, uses phrase “all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law”. From which, it has been again clarified that rights in or over land, and land tenures was within exclusive domain of State Legislature under Entry-18 of List-II-State List. Thus State Legislature alone has jurisdiction to make law in respect of rights in or over land, and land tenures, under which U.P. Act No. 1 of 1951 was enacted. The words “right in” is a comprehensive phrase and

includes right of inheritance and devolution of interest.

12. Supreme Court in **State of W.B. v. Kesoram Industries Ltd., AIR 2005 SC 1646** has held that the legislative field between Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, called the "Union List". Subject to the said power of Parliament, the legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the "Concurrent List". Subject to the abovesaid two, the legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the "State List". Under Article 248 the exclusive power of Parliament to make laws extends to any matter not enumerated in the Concurrent List or State List. This is, what is called the residuary power, vested in Parliament. The principles summarised, as are relevant for this case, are quoted below:-

(1) The various entries in the three lists are not "powers" of legislation but "fields" of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246.

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislation occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest-possible

interpretation. The allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere *simplex enumeratio* of broad categories. *A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters*.

(*4*) Where the legislative competence of the legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(*5*) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the legislature which enacted it, an incidental encroaching in the field assigned to another legislature is to be ignored. While reading the three lists, List I has priority over Lists III and II and List III has priority over List II. However, still, *the predominance of the Union List would not prevent the State Legislature from dealing with any matter within*

List II though it may incidentally affect any item in List I.

13. In view of the aforesaid principles the words "right in or over the land and land tenure" have to be given widest-possible interpretation and include "right of inheritance" also. Arguments of the counsel for the petitioner that the word "succession", under Entry-5 of List III Concurrent List covers subject inheritance of "rights in or over land and land tenure" also, is not liable to be accepted. Entry-5 of List III — Concurrent List, uses phrase "all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law". Thus applicability of personal law of succession is limited in respect of which judicial proceeding were pending immediately before the commencement of this Constitution. There is nothing on record to show that right of the parties over the land in dispute was subject to personal law or any judicial proceeding was pending on 26.01.1950, in respect of it. It covers the matter of Section 14 of Hindu Succession Act, 1956 as held by Punjab and Haryana High Court in **Amar Singh Vs. Baldev Singh, AIR, 1960 P&H 686 (F.B.)** that Section 14 of Hindu Succession Act, 1956, which enlarged the widow's interest in agricultural land is within the domain of Entry-5 of List III – Concurrent List. Contrary view taken by Orrisa High Court in **Laxmi Devi Vs. Surendra Kumar Panda, AIR, 1957 Orrisa 1 (D.B.)** and Karnataka High Court in **Basavant Gondi Vs. Smt. Channabasawwa, AIR, 1971 Kant. 151 (D.B.)** is not liable to be accepted.

14. The object of enactment of U.P. Act No. 1 of 1951 as declared by its long title is to provide for abolition of Zamindari system involving intermediaries between the tiller of the soil and the State, for acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition. In order to secure the purpose of land reform, various provisions have been made to ensure that soil must go to the actual tiller. Section 9 and Section 123 confer absolute right to the actual occupier of the land of abadi etc. while tenurial right of (i) bhumidhar

with transferable right, (ii) bhumidhar with non-transferable right (iii) asami and (iv) government lessee have been conferred under other provisions. The object that soil must go to the actual tiller has been applied in cases of inheritance and devolution of interest also. Under some contingency widow and daughter are given right of inheritance but on their remarriage/ marriage, they are divested under Section 172 of the Act. From the time immemorial, society in our country is patriarchal society, where daughter/ woman has to go to the house of her husband on marriage, where she forms a new family. Law makers were conscious with the situation of marriage of daughter/woman and patriarchal system of the society. It was kept in mind while enacting Section 171 and Section 172 of U.P. Act No. 1 of 1951 that after marriage it would not be practicable for a woman to cultivate land at two places as such after marriage/remarriage, women are divested. U.P. Act No. 1 of 1951 is preserved under Ninth Schedule of the Constitution at Serial No. 11 and is protected under Article 31-A of the Constitution as such its validity cannot be challenged on the ground of Article 13 of the Constitution. Constitutional validity of this Act has been upheld time to time by Constitutional Benches of Supreme Court, in **State of U.P. Vs. Raja Brahma Shah, AIR 1967 SC 661 and S.P. Watel Vs. State of U.P., AIR 1973 SC 1293.**

15. A Full Bench of this Court in **Ram Awalamb Vs. Jata Shankar, AIR 1969 All 526 (FB)** held that

> **[vide para 29]** In our opinion the contention of the learned counsel cannot be accepted for the following reasons:-
>
> (a) The scheme of the Act seems to be to make one law for persons of all castes and creeds and for that reason there is no mention of Hindu joint family anywhere in the Act except in Chapter III (Assessment and Compensation) where for purposes of calculation of compensation only father and his male lineal descendants are to be treated as one unit while the other members of the family are to be treated as separate units.
>
> (b) The notions of Hindu law, or for that matter any personal law, could

not be applied to bhumidhari rights, because:

(i) these are new rights conferred under the Act, and

(ii) the special provisions of the Act relation to status of a bhumidhar, transfer by him of his interests in bhumidhar land, and devolution of his interests after; his death are governed by the provisions of this special Act.

(c) It can be safely inferred from Section 175 of the Act that where there are more than one bhumidhar in any holding all the co-bhumidhars shall be tenants in common and not joint tenants. That provision of law is applicable to the members of a joint Hindu family having interest in bhumidhari rights. The interest of each person in bhumidhari land passes according to the order of succession given in Sections 171 to 174 of the Act and not by survivorship. The principle of survivorship amongst co-widows and co-bhumidhars can apply only when there is failure of heirs as mentioned in Sections 171 to 174, (see Dulli V.s Imarti Devi, 196G All LJ (Rev).29).

(d) The notions of Hindu law will not apply to bhumidhari land because both the main incidents of a joint family property, to wit(i) devolution by survivorship, and (ii) male issue of a coparcener acquiring an interest by birth (vide Mulla's Hindu Law 13th Ed. Para 221) are negatived by the provisions of the Act.

[vide Para -44] Our conclusions can, therefore, be briefly summarized as follows :-

(1) Where members of a joint Hindu Family hold bhumidhari rights in any holding, they hold the same as tenants in common and not as joint tenants. The notions of Hindu Law cannot be invoked to determine that status.

(2) Where in certain class of tenancies, such as permanent tenure holders, the interest of a tenant was both heritable and transferable in a

limited sense and such a tenancy could, prior to the enforcement of the Act, be described as joint family property or coparcenary property, the position changed after Act I of 1951 came into force. Thereafter the interest of each bhumidhar being heritable only according to the order of succession provided in the Act and transferable without any restriction other than mentioned in the Act itself, must be deemed to be a separate unit.

(3) Each member of a joint Hindu family must be considered to be a separate unit for the exercise of the right of transfer and also for the purposes of devolution of bhumidhar interest of the deceased member.

(4) The right of transfer of each member of the joint Hindu family of his interest in bhumidhari land is controlled only by Section 152 of the Act and by no other restriction. The provisions of Hindu law relating to restriction on transfer of coparcenary land, e.g., existence of legal necessity, do not apply.

In **Parshanti v. Dy. Director of Consolidation, AIR 1999 SC 1567,** it has been held that a Hindu widow, who after the death of her husband remarries another person, cannot lay a claim to the property of her son through the first marriage in agricultural land in the general law under the Hindu Succession Act, 1956 as the provisions of Section 171(*b*) of the U.P. Act No. 1 of 1951,being a special Act, are applicable.

Point-II-Is there overlapping between subjects mentioned in Entry-18 of List-II-State List and Entry-5 of List-III-Concurrent List ? In case of overlapping, which law will prevail?

16. As held above, subject “rights in or over land, and land tenures” is mentioned in Entry-18 of List-II-State List which includes right of inheritance and there is no overlapping of the subjects between Entry-18 of List-II-State List and Entry-5 of List-III-Concurrent List. Under Article 246 (3) of the Constitution, State Legislature alone has jurisdiction to make law in respect of

rights in or over land, and land tenures including right of inheritance. Subject "succession" mentioned in Entry-5 of List III-Concurrent List has a limited application as provided under Section 14 of Hindu Succession Act, 1956. Even if it is treated that subject "succession" is falling under Entry-5 of List-III-Concurrent List, assent of President of India has been obtained in respect of U.P. Act No. 1 of 1951 as such in case of repugnancy also, U.P. Act No. 1 of 1951 will prevail over Hindu Succession Act, 1956 under Article 254 (2) of the Constitution. Supreme Court in **Rajiv Sarin v. State of Uttarakhand, AIR 2011 SC 3081** has held that the assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it."

Point-III-Whether Hindu Succession (Amendment) Act, 2005 was enacted in exercise of powers under Article 253 of the Constitution and has an overriding effect?

17. The counsel for the petitioner argued that Union of India participated in World Conference on Human Rights in Vienna, on 25.06.1993, and made a declaration to eradicate all form of discrimination against women up to the year 2000. In pursuance of above declaration, Law Commission of India made a detailed survey for awarding property right to women and reform under Hindu Law. During survey, it was noticed that 70% of total population of women in the country are actively doing agricultural work, as against it, involvement of men was found 40% of total population. On the basis of aforesaid survey, Law Commission recommended to delete Section 4 (2) of Hindu Succession Act, 1956, so that the provisions of Hindu Succession Act, 1956 will apply to agricultural land also as actual contribution of the women

in cultivation of agricultural land was found more than the men as such it was thought proper to give equal right of inheritance to women for agricultural land also. In any case, Hindu Succession (Amendment) Act, 2005 was enacted to fulfill the declaration made before United Nations Organization as well as Article 51 (c) as such it will have overriding effect under Article 253 of the Constitution.

18. The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power: thereby power is conferred upon the Parliament which it may not otherwise possess. Article 253 of Constitution is quoted below:-

> **253. Legislation for giving effect to international agreements.—** Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

19. The question arises as to whether Hindu Succession (Amendment) Act, 2005 was enacted in exercise of powers under Article 253? In order to appreciate aforesaid arguments, aims and object as given by Parliament for enactment of Hindu Succession (Amendment) Act, 2005 is quoted below:-

Hindu Succession (Amendment) Act 2005

[No. 39 of 2005]

[September 5, 2005]

An Act further to amend the Hindu Succession Act, 1956

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.- The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindus Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applied, inter alia to persons governed by Aliyasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in the ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the State of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenay property. The Kerala

Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act . 1975.

3. It is proposed to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.

4. The above proposals are based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".

5. The Bill seeks to achieve the above objects.

20. Thus aim and object, as given by Parliament for enactment of Amending Act, 2005, was to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. The aim and object as suggested by Law Commission in 174th Report for applying the Act to agricultural land also has not been adopted by Parliament as such it is not possible to hold that Amending Act, 2005 was enacted to apply Hindu Succession Act, 1956 over agricultural land also or it was enacted in pursuance of declaration made before United Nations Organization as well as Article 51 (c). Thus it is clear that Amending Act, 2005 intended to provide the right to Hindu daughters equal with the son in Mitakshara coparcenary property. It does not intend to provide such right to the daughters/women of other religion living in the country. There is nothing in the Act 2005 to prove that it was enacted in pursuance of declaration made before United Nations Organisation. As such Article 253 of the Constitution has no application.

21. Supreme Court in **Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, AIR 1984 SC 667,** held that there can be no question that nations must march with the international community and the municipal law must respect rules of international law even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, *unless they are in conflict with an Act of Parliament.* Comity of nations or no, municipal law must prevail in case of conflict. National courts cannot say yes if Parliament has said no to a principle of international law. National courts will endorse international law but not if it conflicts with national law. National courts being organs of the national State and not organs of international law must perforce apply national law if international law conflicts with it. But the courts are under an obligation within legitimate limits, to so interpret the municipal statute as to avoid confrontation with the comity of nations or the well established principles of international law. But if conflict is inevitable, the latter must yield.

22. The argument of the counsel for the petitioner that by deleting Section 4 (2) of Hindu Succession Act, 1956, the provisions of this Act have become applicable to agricultural land also. Hindu Succession Act, 1956 was enacted to amend and codify the law relating to intestate succession among Hindus. Sections 4 and 6 are quoted below:-

Prior to amendment by Act 39 of 2005, Section 4 read as:-

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

(*a*) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(*b*) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

After amendment by Act 39 of 2005, Section 6 read as:-

6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (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 in the same manner as the son;

(*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 of a coparcener:

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.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survisorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(*a*) the daughter is allotted the same share as is allotted to a son;

(*b*) the share of the pre-deceased son or a pre-deceased daughter, as they

would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(*c*) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great grandson for the recovery of any debt due from his father, grandfather or great grandfather solely on the ground of the pious obligation under the Hindu law, or such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall effect—

(*a*) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(*b*) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (*a*), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

23. Thus combined reading of the preamble, Section 4 and Section 6 of the Hindu Succession Act, 1956 it is clear that the Act was applied on Joint Hindu Mitakshara property only and not on agricultural land. As held above, agricultural land is in exclusive domain of State Legislature and Parliament

has no power to enact any law in this respect. Section 4 (2) was only by way of clarification. On its basis, it cannot be said that after its deletion, Hindu Succession Act, 1956 suo moto applies to agricultural land. Under Section 6, (as amended) daughters are given right under Hindu Mitakshara Coparcenary Property alone.

24. The counsel for the petitioner relied upon the judgment of Supreme Court in **Bajaya Vs. Gopikabai, AIR 1978, S.C. 793,** in which relying upon Section 151 of M.P. Land Revenue Code, 1954, it has been held that under this Section itself personal law has been applied in the matter of devolution of interest of a deceased tenure holder. **Dipo Vs. Wassan Singh, AIR 1983 SC 846,** in which it has been held that at the time of inheritance of ancestral property, if a person did not have a son, son's son or son's son's son, it was his absolute property. **Madhu Kishwar Vs. State of Bihar, AIR 1996 SC 1864**, custom amongst tribal in State of Bihar, governing the land relating to succession was held to have no effect in view of Section 4 of Hindu Succession Act, 1956. In this case, there was no issue relating to overriding effect of Hindu Succession Act, 1956 on land law of the State or legislative competence for enactment of land law. As such the case, is distinguishable. **Ms. Savita Samvedi Vs. Union of India, (1996) 2 SCC 380**, in which it has been held that married daughter can also be given compassionate appointment. **Vishakha Vs. State of Rajsthan, AIR 1997 SC 3011**, wherein validity of law relating to prevention of sexual harassment of women at working place has been upheld and has been held that working women have fundamental right under Article 14, 15 and 21 of the Constitution. **Sheela Devi Vs. Lal Chand, (2006) 8 SCC 581**, in which devolution of co-parcenary property after coming into force of Hindu Succession Act, 1956 was dealt with. **Ganduri Koteshwaramma Chakiri Yanadi, (2011) 9 SCC 788**, in which preliminary decree passed prior to Amending Act, 2005 in the suit for partition of co-parcenary property has been modified according to the Amended Act, 2005. These cases have no application.

25. The counsel for the petitioner also relied upon the judgments of Delhi High Court in **Smt. Mukesh and others Vs. Sri Bharat Singh, (2008) 149 DLT 114** and **Karnataka High Court in Pushpalatha Vs. S.V. Padma, AIR 2010 Kar 124**, in which provision of Hindu Succession Act, 1956 (as amended in 2005) has been applied in agricultural land also. For the reasons given above, I respectfully disagree with the view taken in the above cases. The counsel for the petitioner submitted that due to Section 4 (2) of Hindu Succession Act, 1956, this Court in **Jata Shankar Vs. Ram Awalamb, AIR 1969, All 526 (F.B.), Uma Shankar Vs. D.D.C. And others, AIR 1979, All 407 (D.B.), Writ Petition No. 4226 of 1967, Mohd. Sohrab Khan Vs. D.D.C. And others** decided on 02.12.1969 and **Writ Petition No. 6177 of 2009, Ram Kumar Vs. A.D.J. And others** decided on 23.8.2012, it has been held that the provisions of Hindu Succession Act, 1956 has no application on agricultural land. Now Section 4 (2) has been deleted. As held above Section 4(2) of Hindu Succession Act, 1956 was nothing to do with the applicability of the Act. As such the argument of the counsel for the petitioner will not be improved.

26. In view of the aforesaid discussions, there is no merit in the writ petition and it is **dismissed.**

Order Date :- 27.3.2015
Rahul/-