



2026:AHC:39815

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 168 of 2026

Smt. Usha

.....Appellant(s)

Versus

Shri Kalua Ram And 12 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Anuj Srivastava, Devaang Savla
Counsel for Respondent(s)	:	Narendra Kumar Chaturvedi, Arvind Kumar Yadav

A.F.R.

Court No. - 38

HON'BLE SANDEEP JAIN, J.

Order on Civil Misc.Substitution Application No.4 of 2026:-

1. Heard learned counsel for the appellants and learned counsel for the respondent Nos.1 & 7.
2. The substitution application has been filed in time for incorporating the fact that the defendant No.1 Kalua Ram has died on 06.01.2026 leaving behind his heirs who are already impleaded as party to the suit.
3. Learned counsel for the respondents submits that he has no objection to the above substitution application.
4. An affidavit has been filed in support of the substitution application, which is uncontroverted.
5. The substitution application is allowed.
6. Accordingly, in the memo of appeal after the name of defendant-respondent No.1 it be recorded that he has died during the pendency of appeal.

Order on appeal:-

1. The instant appeal has been filed by the plaintiffs under Section 96 C.P.C. against the impugned judgment and decree dated 07.10.2025, passed by the Court of Additional District Judge, court no.7, Agra, in Original Suit No. 21 of 2021 (Smt. Usha vs. Kalua Ram and others), whereby the plaintiffs' suit seeking the relief of partition claiming her 1/8th share in the disputed property, permanent prohibitory injunction for restraining the defendants from interfering in her peaceful possession of the disputed property, for decree of mesne profit at the rate of Rs.2,50,000/- per month alongwith cost of legal notice has been rejected.

Plaint Case

2. Factual matrix is that the the plaintiff filed the O.S. No.21 of 2021 with the averments that her grandfather Ninua Ram was the recorded owner in possession of the disputed Khasra No.206 and 207 before the consolidation of holdings proceedings as per revenue records of Mauza Basai Mustqil, Chungi Andar, Tehsil and District Agra and after the commencement of the consolidation proceedings, the aforesaid khasra numbers were changed as Khasra No.2006 (min) area 0.2420 hectare and Khasra No.2007 (Min) area 0.2820 hectare situated at Mauza Basai Mustqil, Chungi Bahar, Tehsil and District Agra in Fasli year 1422 to 1427. It was further averred that Ninua Ram died leaving behind the defendants and plaintiff as co-owners of the above disputed property, which was declared as non agricultural vide order dated 30.05.2007 passed by the SDM, Sadar, Agra in Suit No.150 of 2006-07 (Kalua Vs. State of U.P). under Section 143 of U.P.Z.A. & L.R. Act.

3. It was further averred that the plaintiff and the defendants each have jointly 1/8th share in the above property on which a private Sabji Mandi is running, which was situated at Fatehabad Road, near Shanti Manglik Hospital, Agra and the rental income from the Sabji Mandi was about Rs.8 lacs per month, which was collected and kept by defendant No.1 Kalua Ram as co-owner and trustee on behalf of the plaintiff and defendants. It was further averred that when the plaintiff demanded her 1/8th share in the property alongwith Rs.1 lac per month from the rental income from the property, then it was refused by the defendants.

4. In view of the above backdrop, the plaintiff filed the suit claiming the following reliefs:-

(i) that by decree of partition of the property given at the foot of the plaint, holding the plaintiff has 1/8th share and possession be delivered to her of her lot prepared by meters and bounds by the court Amin.

(ii) that by decree of permanent prohibitory injunction against the defendants, in favour of the plaintiff restraining the defendants and their agents, associates, servants, etc. in any manner from interfering in the title and peaceful joint possession of 1/8th share in the suit property of the plaintiff over the property in suit, or the defendants be also restrained to transfer by will or any other instrument or alienate the property in suit to any other person, be passed in favour of plaintiff against the defendants.

(iii) that a decree of mesne profit of Rs.2.5 lac per month be passed against the defendants in favour of the plaintiff.

(iv) that the cost of legal notice of Rs.11,000/- and the suit be also awarded to the plaintiff against the defendants.

Written statement of the defendants

5. The defendant No.1 Kalua Ram filed his written statement before the trial court in which he denied the plaint averments. It was averred that the disputed property was the exclusive Bhumidhari land of the defendant in which no right, title and interest vested in the plaintiff and other defendants. It was further averred that after the death of Ninua Ram the defendant No.1 became the sole owner of the disputed property. It was further averred that the defendant was running Sabji Mandi on the disputed property which exclusively belongs to him, as such, the plaintiff or other defendants have got no right over the income, which was being generated from that business. It was specifically averred that the plaintiff has got no right to claim partition in respect of the suit property, since she has no right therein.

6. It was further averred that the plaintiff was not even in existence when U.P.Z.A. & L.R. Act came into force, as such, she cannot be said to be the co-owner of the disputed property. It was further averred that it was not an ancestral property of the plaintiff. The plaintiff's suit was barred under Section 34,38 and 41 of the Specific Relief Act and the plaint was liable to be rejected under Order 7 Rule 11 (d) CPC.

7. The defendant Nos.2 to 4 and 6 to 13 also submitted their written statement before the trial court in which they denied the plaint averments and averred that the plaintiff wants to usurp the suit property, who was having no right, title, interest and possession in it. It was further averred that the disputed property was the exclusive Bhumidhari land of the defendant No.1 wherein, the plaintiff and other defendants have got no right, title or interest and possession of any kind. It was further averred that the defendant No.1 was the sole owner of the disputed property who was running his private Sabji Mandi over the disputed land and he was the sole owner of the income generated from the above property. It was specifically averred that the plaintiff as well as the defendant Nos.2 to 13 have got no right title or possession over any part of the suit property because the disputed property was exclusively owned and possessed by the defendant No.1 which was not an ancestral property of the plaintiff.

8. The defendant No.5 also filed her written statement, which reiterated the averments earlier made by the other defendants before the trial court.

Issues framed and the evidence adduced

9. On the basis of pleadings of the parties, the trial court framed the following issues:-

- (i) Whether the plaintiff is entitled to receive 1/8th share of the disputed property?
- (ii) Whether the plaintiff is entitled to a permanent injunction against the defendants, prohibiting the defendants and their employees from interfering with the plaintiff's peaceful possession and from transferring the disputed property through a sale deed, Will, or other agreement?
- (iii) Whether the plaintiff is entitled to receive Rs.2,50,000/- per month during intermediate period?

- (iv) Whether the suit is undervalued?
- (v) Whether the Court fee paid by the plaintiff is insufficient?
- (vi) Whether the Court has jurisdiction to hear the suit?
- (vii) Whether the plaintiff is entitled to get other reliefs?

10. The plaintiff Smt. Usha examined herself as PW-1, her husband Bhim Singh as PW-2 and Hemant Kumar, Court Amin, as PW-3 whereas, the defendant No.1 Kalua Ram has examined himself as DW-1.

11. In documentary evidence, khasra, khatauni of the disputed land, declaration under Section 143 of U.P.Z.A. & L.R. Act, legal notices etc. were filed by the parties.

Reasoning of the trial court

12. The trial court after considering the evidence on record concluded that Ninua Ram, the grandfather of the plaintiff was the owner of the khasra No.2006 (M) area 0.2420 hectare and khasra No.2007 (M) area 0.2820 hectare, who died in the year 1998 and since the property was agricultural which was governed by the provision of U.P.Z.A. & L.R. Act 1950, as such, his son Kalua Ram became Bhumidhar of the disputed land in accordance with Section 171 of the Act, 1950. It was further concluded that the provision of Hindu Succession Act, 1956 were not applicable and Section 6 of that Act only became applicable from 09.09.2005 and prior to that the plaintiff could not have enforced her right in the disputed property. It was further concluded that the disputed property was declared Abadi and a declaration under Section 143 of the U.P.Z.A. & L.R. Act was made in the year 2007, as such, after that the provision of Hindu Succession Act became applicable on the disputed property.

13. In view of this, the trial court held that since the provisions of Hindu Succession Act were not applicable prior to 09.09.2005 as such, the plaintiff had no share in the disputed property. The trial court specifically recorded that Kalua Ram was the absolute owner of the disputed property in which the plaintiff has got no right during his lifetime and in view of this, it was held that the plaintiff has got no right to claim partition in the disputed property. On this basis, the suit was dismissed, aggrieved against which, the plaintiff has filed the instant appeal.

Submissions of the Learned Counsel

14. Learned counsel for the plaintiff-appellant submitted that the disputed property was the property of HUF and being the coparcener, in accordance with Section 6 of the Hindu Succession Act, the plaintiff was entitled to assert her right as coparcener from 09.09.2005 but the trial court has held otherwise. It was further submitted that since the plaintiff was a coparcener with Kalua Ram in the disputed property, the plaintiff could have filed the suit for partition for declaring her share and also for dividing it by meters and bounds. It was further submitted that the plaintiff also

claimed for the relief of permanent injunction for restraining the defendants from alienating the disputed property which has been erroneously rejected by the trial court. With these submissions, it was prayed that the appeal be admitted for hearing.

15. Per contra, learned counsel for the defendants-respondents submitted that plaintiff's grandfather Ninua Ram was the absolute owner of the disputed property, whose name was recorded as Bhumidhar in the Khatauni in accordance with the provision of U.P.Z.A.&L.R. Act and after his death in the year 1998, the name of his son Kalua Ram was recorded as Bhumidhar in accordance with Section 171 of the Act. It was further submitted that at no point of time, the disputed property was the coparcenary property, in which the plaintiff has got no right and as such, the plaintiff's suit was rightly rejected. It was further submitted that since Kalua Ram has died on 06.01.2026 during the pendency of the appeal and the plaintiff, being the legal heir of Kalua Ram and more particularly since the disputed property has been declared as Abadi, under the provisions of U.P. Z.A.&L.R. Act, 1950, as such, the plaintiff has become owner of 1/7th part of the disputed property, to which she is entitled to claim partition in accordance with law. He further submitted that the trial court has not erred in dismissing the plaintiff's suit. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed at the admission stage itself.

16. I have heard the learned counsel for the parties, perused the impugned judgment and documents submitted with the appeal.

17. A Division Bench of this Court in the case of **Smt. Anjali Kaul and Anr. vs Narendra Krishna Zutshi and others 2013 SCC OnLine All 13843** held as under:-

"19. A Full Bench decision of this Court in the case of Ramji Dixit v. Bhiruganath, AIR 1965 All 1 is worth quoting:

"An agricultural tenant has no religion and no personal law except as expressly provided in the Zamindari Abolition and Land Reforms Act. It applies to Hindus, Muslim, Christians etc. regardless of their religion and, therefore, regardless of their personal law except as regards succession in certain cases. It contains its own provisions regarding inheritance and transfers; and when it has left certain matters to be governed by the personal law it has done so by an express provision. Personal law has never been applied proprio vigore to questions of inheritance and transfer of tenancy rights as it has been applied to inheritance and transfer of proprietary rights."

20. This view was also adopted by this Court in another Full Bench decision of Ram Awalamb v. Jata Shankar, AIR 1969 All 526.

21. In the case of Madhuri Devi v. Board of Revenue, U.P. Lucknow, 2011 (29) LCD 2655 : (2012 (1) ALJ 94), this Court has held that "tenancy in this province is governed by the provision of U.P.Z.A. & L.R. Act and the succession is also governed by the provisions of the said Act and is not governed by the principles of Hindu Law or any personal law."

29. *In the case Amar Singh v. Assistant Director of Consolidation, (1988) 4 SCC 143 (AIR-1988 SC 2020), Vijay Pal Singh v. Deputy Director of Consolidation, (1995) 5 SCC 212 : (AIR 1996 SC 146) & Audhar v. Chandrapati, (2003) 11 SCC 458 : (AIR 2003 SC 4389) Apex Court has held that personal law will not be applicable to the land governed by tenancy law.*

30. *We are in respectful agreement with this view and the view expressed by this court in "Smt Prema Devi v. Joint Director of Consolidation (AIR 1970 All 238) and hold that the words "interest in any immovable property of an intestate" do not include agricultural land of an intestate.*

31. *It needs hardly be said that U.P.Z.A. & L.R. Act is a special Act where provisions of Hindu Succession Act are not applicable inasmuch as rights of the parties are governed by U.P.Z.A. & L.R. Act. The U.P.Z.A. & L.R. Act is a self contained Code."*

18. From the documents submitted with the appeal, it is undisputed that Ninua Ram was the absolute owner of the the disputed property of Khasra No.206 and 207 before the consolidation of holdings proceedings which became Khasra No.2006 (M) area 0.2420 hectare and khasra No.2007 (M) area 0.2820 hectare after the consolidation proceedings and after his death in the year 1998, his son/defendant no.1 Kalua Ram became Bhumidhar/recorded tenure holder of the disputed property, in accordance with Section 171 of the U.P. Z.A.&L.R. Act,1950. It is well settled that the provision of Hindu Succession Act are not applicable on U.P.Z.A.&L.R. Act as well as U.P. Revenue Code 2006, as such, on the basis of Hindu Succession Act no right can be asserted in any manner whatsoever till the property remains agricultural in the revenue records.

19. In the instant case, it is not disputed that the status of the disputed property was changed from agricultural to Abadi and a declaration under Section 143 was made on 30.05.2007 by the competent authority, as such, after that date the property lost its character of agricultural land and become Abadi land, regarding which the provision of Hindu Succession Act become applicable.

20. Section 6 of The Hindu Succession Act,1956, as amended by Act 39 of 2005, w.e.f. 09.09.2005 reads as under:-

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 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 by 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 survivorship, 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, of 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 affect—

(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.

21. The Apex Court in the case of **Vineeta Sharma vs Rakesh Sharma and others (2020) 9 SCC 1 (By 3 Judges)**, while considering the amended Section 6 of the Hindu Succession Act, held as under:-

"137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

22. It is apparent that as per Section 6 of the Hindu Succession Act, which was interpreted by the Apex Court in the case of **Vineeta Sharma** (supra) the female coparcener could have asserted her right only from 09.09.2005 and not prior to that date. It is further apparent that on 09.09.2005 the property was still agricultural as such, even on that date the provision of Hindu Succession Act were not applicable on the disputed property which only became applicable when the disputed property was declared Abadi on 30.05.2007.

23. It is further apparent that since Kalua Ram was the absolute owner of the property as such till the property remained agricultural the succession was bound to be effected in terms of Section 171 of the U.P.Z.A. & L.R. Act.

24. It is apparent that Kalua Ram has died during the pendency of the appeal on 06.01.2026 and after his death, since property has become non-agricultural, all his heirs are entitled to inherit the property in accordance with Section 8 of the Hindu Succession Act, if there is no Will regarding the disputed property. In view of this, the plaintiff can claim her share in accordance with law only after the death of Kalua Ram, and not prior to it. It is apparent that when the suit was filed by the plaintiff, Kalua Ram was alive as such, during the lifetime of Kalua Ram, the plaintiff could not have asserted her ownership in the disputed property, in any manner whatsoever.

25. In view of the above, there is no perversity in the judgment of the trial court in rejecting the plaintiff's suit, which does not warrant any interference by this Court in exercise of its appellate jurisdiction.

26. This appeal is meritless and is liable to be dismissed at the admission stage.

27. **Accordingly, the instant appeal is dismissed at the admission stage.** The impugned judgment and decree dated 07.10.2025 is affirmed.

February 23, 2026
Himanshu

(Sandeep Jain,J.)