



2025:DHC:5550-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**Date of decision: 08.07.2025**

+ RFA(OS) 38/2025 & CM APPL. 38964/2025

NAFE SINGH & ORS. ....Appellants

Through: Ms. Suman Chaudhary, Adv.

versus

ROSHNI DEVI ....Respondent

Through: Mr. N.S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachana Dalal & Mr. Karan Mann, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**NAVIN CHAWLA, J. (Oral)**

1. This appeal has been filed by the appellants, challenging the Impugned Judgment dated 28.05.2025 passed by the learned Single Judge of this Court in CS (OS) No.79/2023, titled **Smt. Roshani Devi v. Nafe Singh & Ors.**, whereby a preliminary decree of partition was passed, holding that the respondent is entitled to a 1/6<sup>th</sup> share in the suit property, which is as under;

*"...."8. The total land which belongs to the Plaintiff and the Defendants is measuring 56 Bigha 12 Biswa situated in revenue estate of village Dindarpur South West Delhi and is comprised of following Khasra Numbers: -*

*277(00-02), 278(04-14), 280(04-14), 281(04-16), 334(00-17), 375/1 (03-00), 376(04-16), 388(00-04), 389/1(03-00), 390(04-16), 391 (04-16), 392/1(03-00), 904/2(05-02),*



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905/212(02-17), 383 min. (02-16), 386 min.  
(04-06), 387 min. (02-16) Total Holding: 56  
Bigha 12 Biswas" ....”

2. The learned Single Judge has also appointed a Local Commissioner to visit the suit property and suggest whether partition by metes and bounds is possible or to suggest other options for actual partition.
3. The learned counsel for the appellants submits that the revenue record filed by the respondent along with her suit itself shows that the mutation of the property had been carried out in the year 2005 in the name of the appellant no.3. She submits that without challenging this mutation entry, the respondent could not have sought a decree of partition.
4. She further submits that in terms of Section 50 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the, ‘DLR Act’), only male descendants are entitled to inherit agricultural land by way of succession. Therefore, for the share of late Sh. Raj Kumar, the mutation was rightly carried out solely in the name of the appellant no.3, his son.
5. She submits that a belated challenge to the mutation is not maintainable, and in support of this submission, she places reliance on the Judgment of this Court in *Jai Pal v. Randhir Singh*, 2012 SCC OnLine Del 1082, and of the Jammu & Kashmir High Court in *Ghulam Ahmed Shaikh v. State of J&K & Ors.*, in OWP No.1078/2017.
6. On the other hand, the learned counsel for the respondent, who



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appears on advance notice of this appeal, submits that the appellants had not filed their written statement in the suit. The suit was, therefore, rightly decreed based on the evidence led by the respondent.

7. He further submits that, as far as the reliance on Section 50 of the DLR Act is concerned, a Division Bench of this Court in *Nirmala & Ors. v. Government of NCT of Delhi & Ors.*, 2010 SCC OnLine Del 2232, has held that due to Section 6 of the Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as the, 'HSA'), Section 50 of the DLR Act is no longer applicable to Hindus, and will be governed by the HSA. Therefore, as the wife of the deceased Sh. Raj Kumar, who had died intestate, the respondent is entitled to a share in the agricultural land left behind by him.

8. He further submits that there was no requirement to challenge the mutation entries, inasmuch as mutation does not confer any title upon the person in whose favour it is effected. He submits that the mutation itself reflects that the appellant no.3 had inherited the land as a legal heir of the late Sh. Raj Kumar. He would therefore, hold the suit land for the benefit of the other legal heirs of Late Sh. Raj Kumar as well. In support of this submission, he places reliance on the Judgment of the Supreme Court in *Jitendra Singh v. State of M.P.*, 2021 SCC OnLine SC 802.

9. We have considered the submissions made by the learned counsels for the parties.

10. At the outset, we would note that the appellants did not file their written statement before the learned Single Judge. The fact that Sh. Raj Kumar had inherited the suit land through Sh. Fateh Singh as a co-



sharer along with his two brothers, that is, the appellant nos. 1 and 2, remains undisputed.

11. Sh. Raj Kumar passed away on 09.09.2005. It is claimed by the respondent that he died intestate, which also remains undisputed.

12. In terms of Section 6 of the HSA, the respondent would, therefore, have an equal right of inheritance in the share of her late husband, along with the appellant no. 3.

13. This Court, in *Nirmala* (supra), after examining the effect of Section 6 of the HSA on Section 50 of the DLR Act, has held as under:

*“35. ...we hold that the provisions of the HSA would, after the amendment of 2005, have over-riding effect over the provisions of Section 50 of the DLR Act and the latter provisions would have to yield to the provisions of the HSA, in case of any inconsistency. The rule of succession provided in the HSA would apply as opposed to the rule prescribed under the DLR Act. The petitioners are, therefore, entitled to succeed to the disputed agricultural land in terms of the HSA....”*

14. As far as the plea of the appellants that the mutation entry was not challenged by the respondent and, therefore, she was not entitled to the relief of partition, the same cannot be accepted. A mutation entry in the revenue records neither creates nor extinguishes title to the property, nor does it have any presumptive value on title.

15. In the present case, as noted hereinabove, the title of Sh. Raj Kumar has not been disputed and has remained uncontested, and so has the fact of the respondent being the wife of Sh. Raj Kumar. It

