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BABU RAM

v.

SANTOKH SINGH (DECEASED) THROUGH HIS LRS  
AND OTHERS

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(Civil Appeal No. 2553 of 2019)

MARCH 07, 2019

**[UDAY UMESH LALIT AND M. R. SHAH, JJ.]**

*Hindu Succession Act, 1956:*

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*s. 22 – Preferential right to acquire property in certain cases – Applicability of s. 22 to agricultural land – Held: Preferential right given to an heir of a Hindu u/s. 22 is applicable even if the property is an agricultural land – However, s. 22 is not applicable in cases of devolution of tenancy rights with respect to agricultural holdings.*

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**Dismissing the appeal, the Court**

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**HELD: 1.1 In the instant case it is nobody's case that the matter relating to succession to an interest in agricultural lands is in any way dealt with by any State legislation operating in the State of Himachal Pradesh or that such legislation must prevail in accordance with the principles under Article 254 of the Constitution. The field is occupied only by Section 22 of the Hindu Succession Act, 1956 insofar as State of Himachal Pradesh is concerned. The High Court was, therefore, absolutely right in holding that Section 22 of the Act would operate in respect of succession to agricultural lands in the State. [Para 16][942-C, D]**

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**1.2 Though, succession to an agricultural land is otherwise dealt with under Section 22 of the Act, the provisions of Section 4(2) of the Act, before its omission, had made it clear that the provisions of the Act would not apply in cases *inter alia* of devolution of tenancy rights in respect of agricultural holdings. Thus, the effect of Section 4(2) of the Act before its deletion was quite clear that, though the general field of succession including in respect of agricultural lands was dealt with under Section 22 of**

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the Act, insofar as devolution of tenancy rights with respect to agricultural holdings were concerned, the provisions of Section 22 would be inapplicable. The High Court was, therefore, absolutely right in its conclusion. However, with the deletion of Section 4(2) of the Act, now there is no exception to the applicability of Section 22 of the Act. [Para 17][942-F, H]

1.3 The “right in or over land, land tenures ....” are within the exclusive competence of the State legislatures under Entry 18 of List II of the Constitution. Pre-emption laws enacted by State legislatures are examples where preferential rights have been conferred upon certain categories and classes of holders in cases of certain transfers of agricultural lands. The preferential rights by s. 22 is considered with three illustrations. (a) Three persons, unrelated to each other, had jointly purchased an agricultural holding, whereafter one of them wished to dispose of his interest. The normal principle of pre-emption may apply in the matter and any of the other joint holders could pre-empt the sale in accordance with rights conferred in that behalf by appropriate State legislation. (b) If those three persons were real brothers or sisters and had jointly purchased an agricultural holding, investing their own funds, again like the above scenario, the right of pre-emption will have to be purely in accordance with the relevant provisions of the State legislation. (c) But, if, the very same three persons in illustration (b) had inherited an agricultural holding and one of them was desirous of disposing of his or her interest in the holding, the principles of Section 22 of the Act would step in. The source of title or interest of any of the heirs in the third illustration, is purely through the succession which is recognized in terms of the provisions of the Act. Since the right or interest itself is conferred by the provisions of the Act, the manner in which said right can be exercised has also been specified in the very same legislation. Therefore, the content of preferential right cannot be disassociated in the instant case from the principles of succession. They are both part of the same concept. [Para 18, 19][943-B-H]

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A        **1.4 When the Parliament thought of conferring the rights of succession in respect of various properties including agricultural holdings, it put a qualification on the right to transfer to an outsider and gave preferential rights to the other heirs with a designed object. Under the Shastrik Law, the interest of a coparcener would devolve by principles of survivorship to which an exception was made by virtue of Section 6 of the Act. If the conditions stipulated in Section 6 were satisfied, the devolution of such interest of the deceased would not go by survivorship but in accordance with the provisions of the Act. Since the right itself in certain cases was created for the first time by the provisions of the Act, it was thought fit to put a qualification so that the properties belonging to the family would be held within the family, to the extent possible and no outsider would easily be planted in the family properties. It is with this objective that a preferential right was conferred upon the remaining heirs, in case any of the heirs was desirous of transferring his interest in the property that he received by way of succession under the Act. [Para 20][944-A-D]**

E        **1.5 The preferential right given to an heir of a Hindu under Section 22 of the Act is applicable even if the property in question is an agricultural land. The High Court was right in upholding the judgment and decree passed by the District Judge. [Para 21] [944-D-E]**

F        *Sm. Laxmi Debi v. Surendra Kumar Panda and Others*  
**AIR 1957 Orissa 1 : 22 (1956) CLT 466 – approved.**

G        *In the matter of the Hindu Women's Rights to Property Act, 1937 (1941) 3 FCR 12 : AIR 1941 FC 72; Roshan Lal v. Pritam Singh and others R.S.A. No. 258 of 2012 decided on 1.3.2008; Amar Singh and Ors. v. Baldev Singh and Ors. AIR 1960 Punjab 666(FB); Basavant Gouda v. Channabasawwa and Anr. AIR 1971 Mysore 151; Nidhi Swain and Ors. v. Khati Dibya and Ors. AIR 1974 Orissa 70; Venkatalakshamma & Ors. v. Lingamma & Anr. 1984 SCC OnLine Kar 141; Tukaram Genba Jadhav and Ors. v. Laxman Genba Jadhav and*

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*Anr. AIR 1994 Bombay 247 : (1994) 96 BLR 227 ; Bharat v. Anjanabai (2007) (6) Mh.LJ 706 ; Vaijanath and ors. v. Guramma and Anr. (1999) 1 SCC 292 : [1998] 3 Suppl. SCR 36 – referred to.*

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*Jaswant and ors. v. Smt. Basanti Devi 1970 PLJ 587 : 1970 Punjab Law Reporter Vol. 72 page No. 958 ; Smt. Prema Devi v. Joint Director of Consolidation (Head quarter) at Gorakhpur Camp and Ors. AIR 1970 Allahabad 238 ; Nahar Hirasingsh and Ors. v. Dukalhin and ors. AIR 1974 MP 141 ; Jeewanram v. Lichmadevi and Anr AIR 1981 Rajasthan 16 ; Balkaur Singh v. Gurmail Singh 2007 SCC OnLine P&H 1257; Subramaniya Gounder & Ors. v. Easwara Gounder 2010-5-L.W. 941 – disapproved.*

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#### Case Law Reference

(1941) 3 FCR 12	referred to	Para 5
AIR 1957 Orissa 1	approved	Para 11
AIR 1960 Punjab 666	referred to	Para 11
AIR 1971 Mysore 151	referred to	Para 11
AIR 1974 Orissa 70	referred to	Para 11
AIR 1994 Bombay 247	referred to	Para 11
(2007) (6) Mh.LJ 706	referred to	Para 11
AIR 1994 Bombay 247	referred to	Para 11
[1998] 3 Suppl. SCR 36	referred to	Para 13
1970 PLJ 587	disapproved	Para 21
AIR 1970 Allahabad 238	disapproved	Para 21
AIR 1974 MP 141	disapproved	Para 21
AIR 1981 Rajasthan 16	disapproved	Para 21
2010-5-L.W. 941	disapproved	Para 21

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A           CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2553  
of 2019.

From the Judgment and Order dated 07.05.2018 of the High Court  
of Himachal Pradesh at Shimla in RSA No. 457 of 2002.

B           Sanchar Anand, Apoorv Singhal, Devendra Singh, Advs. for the  
Appellant.

Ranjan Mukherjee, Ms. Jayatee Chatterjee, Ms. Aprajita  
Mukherjee, S. Bhowmick, Advs. for the Respondents.

C           The Judgment of the Court was delivered by

**UDAY UMESH LALIT, J.** 1. Leave granted.

2. This appeal arises out of final judgment and order dated  
07.05.2018 passed by the High Court<sup>1</sup> in Regular Second Appeal No.457  
of 2002 and raises questions regarding scope and applicability of Section  
D 22 of the Hindu Succession Act, 1956 (hereinafter referred to as the  
Act), and particularly, whether preferential right given to an heir of a  
Hindu under said Section 22 will be inapplicable if the property in question  
is an agricultural land.

E           3. The facts leading to the filing of this appeal, in brief, are as  
under:

(a) Two brothers, namely, Santokh Singh<sup>2</sup> and Nathu Ram<sup>3</sup>, sons  
of Lajpat S/o Rupa inherited, among others, certain  
agricultural lands after the death of their father. According  
F to Santokh Singh an arrangement was arrived at, in terms  
of which the brothers were to be in separate enjoyment of  
certain specified pieces of land. Since Nathu Ram was not  
interested in continuing with said arrangement he gave a  
legal notice to Santokh Singh and later executed a registered  
sale deed on 19.08.1991 in respect of his interest in the  
G lands in favour of one Babu Ram<sup>4</sup> S/o Kanshi Ram.

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<sup>1</sup>High Court of Himachal Pradesh at Shimla

<sup>2</sup>Original Plaintiff

<sup>3</sup>Original Defendant No. 1

H           <sup>4</sup>Original Defendant No. 2

- (b) Soon thereafter, Civil Suit No.194 of 1991 was filed by Santokh Singh in the Court of Senior Sub-Judge, Hamirpur praying for permanent prohibitory injunction and declaration. It was *inter alia* submitted that as a co-sharer, the Plaintiff had a preferential right to acquire the land which was sought to be transferred by Defendant No.1 in favour of Defendant No.2. The suit was contested and the trial court by its judgment and order dated 04.05.1994 dismissed said suit. A B
- (c) The Plaintiff, being aggrieved filed Civil Appeal No.86 of 1994 in the Court of District Judge, Hamirpur, which appeal was partly allowed. The Appellate Court placed reliance on the decisions reported in AIR 2000 Madras 516 and AIR 1988 Orissa 285 and held that the Plaintiff had a preferential right under Section 22 of the Act to acquire the suit land measuring 19 kanals half of the entire land entered in Khata No.25 min, Khatoni No.29 min, Khasra No.1119 measuring 38 kanals 1 marla situated in Tika Badehra, Tappa Badohag, Tehsil Nadaun, District Hamirpur, (H.P.) on payment of sale consideration amounting to Rs.60,000/-. It also held the transfer of suit land by Defendant No.1 in favour of Defendant No.2 to be illegal, null and void and hit by the provisions of Section 22 of the Act. It directed Defendant No.2 to transfer the suit land in the name of the Plaintiff on receipt of sale consideration amounting to Rs.60,000/- within three months. C D E
- (d) Defendant No.2, being aggrieved, carried the matter further by filing Regular Second Appeal No.457 of 2002 in the High Court, which *inter alia* framed following substantial question of law: F
- “1. Whether Section 22 of the Hindu Succession Act excludes interest in agricultural land of an intestate and the preferential right over “immovable property” as envisaged in the said provision is confined only to business and such immovable property which does not include the agricultural land?” G

A (e) Relying principally on the decision of the Division Bench of the High Court in RSA No.258 of 2012 (**Roshan Lal vs. Pritam Singh and others**<sup>5</sup>), the High Court dismissed said Second Appeal, which decision is presently under challenge by Defendant No.2-Appellant.

B 4. The challenge before this Court is confined to the applicability of Section 22 of the Act to agricultural lands and the factual facets of the matter are not in dispute. We have heard Mr. Sanchar Anand, learned Advocate for the Appellant and Mr. Ranjan Mukherjee, learned Advocate for heirs of Respondent No.1 – Plaintiff. With the assistance of the  
C learned Counsel we have considered all the relevant decisions on the point.

5. On a reference made under Section 213 of the Government of India Act, 1935 (hereinafter referred to as ‘1935 Act’), the following questions were considered by the Federal Court “*In the matter of the*  
D *Hindu Women’s Rights to Property Act, 1937*”<sup>6</sup> :-

“(1) Does either the Hindu Women’s Rights to Property Act, 1937 (Central Act, 18 of 1937), which was passed by the Legislative Assembly on 4<sup>th</sup> February, 1937, and by the Council of State on 6<sup>th</sup> April 1937, and which received the Governor-General’s  
E assent on 14<sup>th</sup> April 1937, or the Hindu Women’s Rights to Property (Amendment) Act, 1938 (Central Act, 11 of 1938), which was passed in all its stages after 1<sup>st</sup> April 1937, operate to regulate (a) succession to agricultural land? (b) devolution by survivorship of property other than agricultural land?

F (2) Is the subject of devolution by survivorship of property other than agricultural land included in any of the entries in the three Legislative Lists in Sch. 7, Government of India Act, 1935?”

The observations of the Federal Court relevant for the present  
G purposes were:-

“.....After 1<sup>st</sup> April 1937, the Central Legislature was precluded from dealing with the subjects enumerated in List II of Sch. 7, Constitution Act, so far as the Governors’ Provinces were

<sup>5</sup>R.S.A. No. 258 of 2012 decided on 1.3.2018

H <sup>6</sup>(1941) 3 FCR 12 = AIR 1941 FC 72

concerned. Laws with respect to the “devolution of agricultural land” could be enacted only by the Provincial Legislatures (entry No.21 of List II), and “wills, intestacy and succession, save as regards agricultural land” appeared as entry No.7 of List III, the Concurrent List. Act 18, read with the amending Act of 1938, endeavored to improve the position of Hindu widows in two classes of cases (a) where by the operation of the principle of survivorship the widow is excluded from enjoyment of the share of her husband in property which he held jointly with other coparceners; and (b) where, even apart from the rule of survivorship, the widow is excluded from claiming any share in her husband’s estate by reason of the existence of sons, grandsons or great-grandsons of the deceased who under the law take in preference to the widow. Provision is also made for securing a share to a widow even in cases where her husband had pre-deceased the last male owner (S.3 (1), first proviso). The Act purports to deal in quite general terms with the “property” or “separate property” of a Hindu dying intestate, or his “interest in joint family property”; it does not distinguish between agricultural land and other property and is therefore not limited in terms to the latter.”

... ..

The questions were answered by the Federal Court as under:-

“.....(1) The Hindu Women’s Rights to Property Act, 1937, and the Hindu Women’s Rights to Property (Amendment) Act, 1938, (a) do not operate to regulate succession to agricultural land in the Governors’ Provinces; and (b) do operate to regulate devolution by survivorship of property other than agricultural land.

(2) The subject of devolution by survivorship of property other than agricultural land is included in entry No.7 of List 3, the Concurrent List.”

6. The relevant entries in 1935 Act which were considered by the Federal Court underwent significant changes when the Constitution of India was adopted. The following Tabular Chart would show the distinction between the concerned entries:-



A	Seventh Schedule	Government of India Act 1935	Constitution of India
	LIST I	54. Taxes on income other than agricultural income.	82. Taxes on income other than agricultural income.
B		55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies;	86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
		56-A. Estate duty in respect of property other than agricultural land.	87. Estate duty in respect of property other than agricultural land.
		56. Duties in respect of succession to property other than agricultural land.	88. Duties in respect of succession to property other than agricultural land.
C	LIST II	20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle-trespass.	14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
		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; Courts of Wards; encumbered and attached estates; treasure trove.	18. Land, that is to say, right 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.
D		27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.	30. Money-lending and money-lenders; relief of agricultural indebtedness.
		41. Taxes on agricultural income.	46. Taxes on agricultural income.
E		43. Duties in respect of succession to agricultural land.	47. Duties in respect of succession to agricultural land.
		43-A. Estate duty in respect of agricultural land.	48. Estate duty in respect of agricultural land.
F	LIST III	6. Marriage and divorce; infants and minors; adoption.	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.
		7. Wills, intestacy, and succession, save as regards agricultural land.	
G		8. Transfer of property other than agriculture land; registration of deeds and documents.	6. Transfer of property other than agricultural land; registration of deeds and documents.
			7. Contracts including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
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7. The Act came into force on 17<sup>th</sup> June, 1956. Section 22 has remained unchanged since the enactment. While considering the effect of Section 22, Section 4(2) may also be required to be looked into. However, Section 4(2), as originally enacted has since then been omitted by the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). Before such omission, Section 4 as originally enacted was as under:-

**“4. Over-riding effect of Act.** – (1) 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 insofar 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 provision 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.”

Section 22 of the Act is as under:-

**“22. Preferential right to acquire property in certain cases**

– (1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

A (3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

B *Explanation.*- In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

C 8. The first case wherein scope of Section 22 was considered, was ***Sm. Laxmi Debi v. Surendra Kumar Panda and Others***<sup>7</sup> by the High Court of Orissa. The submission that Section 22 of the Act would not cover succession in respect of agricultural lands was rejected. The contention on the strength of judgment of the Federal Court<sup>6</sup> was also negated as under:-

D “14. Mr. Jena further contended that the Act, even if applies retrospectively, will not apply to agricultural lands, and for this he relies upon the Federal Court decision reported in Hindu Women’s Rights to Property Act, 1937, In the matter of AIR 1941 PC 72 (K). That was a case which came up for decision by the Federal Court on a reference made by His Excellency the Governor-General of India.

E Gwyer C. J., who delivered the judgment of the Court held that the Hindu Women’s Rights to Property Act of 1937, and the Hindu Women’s Rights to Property (Amendment) Act of 1938, do not operate to regulate succession to agricultural land in the Governors’ Provinces; and do operate to regulate devolution by survivorship of property to other than agricultural lands.

F This decision, in view of the changed position in law, no longer holds good. The Federal Court decision was based upon the law of legislative competency as it then stood, by the Government of India Act, 1935. In Schedule 7, Government of India Act, 1935, this subject appears in the Concurrent Legislative List (List 3) as item No. 7. Item 7 was in the following terms:

G “Wills, Intestacy and Succession, save as regards agricultural lands.”

H <sup>7</sup>AIR 1957 Orissa 1 = 22 (1956) CLT 466

Now under the present Constitution of India the same subject has been dealt with in the Concurrent List (List 3) in Schedule 7 as item No. 5. Item No. 5 runs as follows: A

“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.” B

It is clear that the Parliament had omitted the phrase “save as regards agricultural land” from item No. 5 of the Concurrent List in order to have a uniform personal law for Hindus throughout India, and accordingly, it necessitated the enlargement of Entry No. 5. We have no doubt, therefore, that in view of the change in law, the Act will apply to agricultural lands also, and the decision in AIR 1941 FC 72 (K) would no longer hold good.” C

9. Before Full Bench of Punjab High Court in *Amar Singh and Ors. vs. Baldev Singh and Ors.*<sup>8</sup> challenge was raised in the context of rights of a Hindu female under Section 14 of the Act. It was held *inter alia* that Section 14 of the Act was “within the legislative field spanned in Entry 5 of List III, the concurrent List”. However, a Division Bench of the same High Court in *Jaswant and ors. vs. Smt. Basanti Devi*<sup>9</sup> took a different view while considering effect of Section 22 as regards agricultural lands. The discussion in that behalf was as under:- D E

“8. Mr. Roop Chand, the Learned Counsel for the Respondent, stressed that the words ‘immovable property’ used in Section 22 will include agricultural lands. Undoubtedly, they do. But one cannot lose sight of the fact that when the Central Legislature used these words it did so knowing fully well that it had no power to legislate regarding agricultural lands excepting for the purposes of devolution. Section 22 does not provide for devolution of agricultural lands. It merely gives a sort of right of pre-emption. In fact, as already pointed out, entry No. 6 in List III, clearly takes out agricultural lands from the ambit of the concurrent list. Agricultural land is specifically dealt with in entry No. 18 of List II. The only exception being in the case of devolution. Therefore, it must be held that Section 22 does not embrace agricultural lands. F G

<sup>8</sup>AIR 1960 Punjab 666

<sup>9</sup>1970 PLI 587 = 1970 Punjab Law Reporter Vol. 72 page no. 958

A 9. The last argument of Mr. Roop Chand, the Learned Counsel  
for the Respondent, was that Section 22 is ultra vires the  
Constitution as the Central Legislature had no right to pass such a  
law regarding agricultural lands. This argument cannot be accepted  
because it cannot be presumed that the Legislature was passing  
B law regarding matters which it had no power to pass particularly  
when with regard to immovable property other than agricultural  
land, it has the power to enact such a law. This view finds support  
from the decision of the Federal Court in *re Hindu Women's Rights  
to Property Act* AIR 1941 FC 72, wherein in a similar situation  
their Lordships of the Federal Court refused to strike down the  
C provisions of the Hindu Women's Rights to Property Act, 1937,  
on the precise arguments."

10. The High Court of Judicature at Allahabad, in *Smt. Prema  
Devi vs. Joint Director of Consolidation (Head quarter) at Gorakhpur  
Camp and Ors.*<sup>10</sup> held:-

D "5... ...we are of the opinion that the Hindu Succession Act,  
1956, cannot be made applicable to agricultural plots. This Act  
was passed by the Central Legislature in 1956 and the only entry  
under which the Central Legislature had the jurisdiction to pass  
the Act, was entry No. 5 in the third list of the Seventh Schedule  
E of the Constitution. This entry is as follows:— "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."  
This entry obviously relates only to personal law and laws passed  
F under this entry do not apply to any particular property. They  
merely determine the personal law. In List 2, Entry No. 18 is as  
follows:— "Land, that is to say, right 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  
G and agricultural loans; colonization." This entry which is in the  
exclusive jurisdiction of the State Legislature is in the widest term.  
All laws relating to land and land tenures are therefore, within the  
exclusive jurisdiction of the State Legislature. Even personal law  
can become applicable to land tenures if so provided in the State  
Law, but it cannot override State legislation".

H <sup>10</sup>AIR 1970 Allahabad 238

11. The decisions rendered by various High Courts show the divergent views in the matter. Some High Courts have held that the provisions of Section 22 of the Act would apply to agricultural lands and in the process have followed the reasoning that weighed with the Orissa High Court in *Laxmi Debi*<sup>7</sup>. On the other hand, some High Courts have held to the contrary and have followed the decisions of the Punjab High Court in *Jaswant*<sup>8</sup> and of the Allahabad High Court in *Prema Devi*<sup>10</sup>. It is the latter line of cases which is relied upon by the learned counsel for the appellant in support of his submissions. It must also be stated that wherever there was question of succession to tenancy rights in respect of agricultural holdings, reference was made by some of the High Courts viz. the High Court of Bombay in *Tukaram Genba Jadhav and Ors. vs. Laxman Genba Jadhav and Anr.*<sup>11</sup> to the effect of the then existing provision under Section 4(2) of the Act. We are not going into the reasoning that weighed with various High Courts in every case, but suffice it to say that the following chart may indicate how the question was answered by some of the High Courts.

S.No.	The provisions of the Act and Section 22 thereof applied to agricultural lands	The Act was held to be inapplicable to agricultural lands.
1.	Sm. Laxmi Debi vs. Surendra Kumar Panda and Ors. (AIR 1957 Orissa 1)	Jaswant and ors. vs. Smt. Basanti Devi (1970 Punjab Law Reporter Vol. 72 page No. 958)
2.	Amar Singh and Ors. vs. Baldev Singh and Ors. (AIR 1960 Punj 666 (FB) )	Prema Devi vs. Joint Director of Consolidation (Head quarter) at Gorakhpur Camp and Ors. (AIR 1970 Allahabad 238)
3.	Basavant Gouda vs. Channabasawwa and Anr. (AIR 1971 Mysore 151)	Nahar Hirasingh and Ors. vs. Dukalhin and ors. (AIR 1974 MP 141)
4.	Nidhi Swain and Ors. vs. Khati Dibya and Ors. (AIR 1974 Orissa 70)	Jeewanram vs. Lichmadevi and Anr (AIR 1981 Rajasthan 16)
5.	Venkatalakshamma & Ors. Vs. Lingamma & Anr. (1984 SCC OnLine Kar 141)	Balkaur Singh vs. Gurmail Singh (2007 SCC OnLine P&H 1257)
6.	Tukaram Genba Jadhav and Ors. vs. Laxman Genba Jadhav and Anr. (AIR 1994 Bombay 247)	Subramaniya Gounder & Ors. vs. Easwara Gounder (2010-5-L.W. 941)
7.	Bharat vs. Anjanabai (2007 (6) Mh. LJ 706)	

<sup>11</sup>AIR 1994 Bombay 247 = (1994) 96 Bombay Law Reporter 227

A 12. As regards the High Court of Himachal Pradesh, from which the present matter arises, the Division Bench of the High Court in ***Roshan Lal (deceased) through his LRs. vs. Pritam Singh and ors.***<sup>5</sup> had considered all relevant decisions on the point and concluded that the provisions of Section 22 of the Act would apply in relation to succession to agricultural lands. The conclusion arrived at in the leading judgment with which the other learned Judge concurred, was:-

B “56. Thus, “succession” falls within the scope of entry No. 5 of List-III and in case a narrow and pedantic or myopic view of interpretation is adopted by accepting succession to an agricultural land, bringing it within the scope of “rights in and over land”, impliedly no meaning would be attached to entry No.5 as each and every word of the list must be given effect to. If there is no local law on the subject, then the special law will prevail which in the instant case is the Succession Act. The scope, object and purpose of codifying Hindu Law is different. It is to achieve the Constitutional mandate. There is no provincial law dealing with the subject. As such, the Central Act must prevail.”

The view taken by the Division Bench was followed by the High Court in the present matter.

E 13. In the aforesaid background, we are called upon to decide the applicability of Section 22 of the Act in respect of agricultural lands. Before we consider the issues in question, we must refer to the decision of this Court in ***Vaijanath and ors. vs. Guramma and anr.***<sup>12</sup>. In that case matters pertaining to intestacy and succession relating to joint family property including agricultural land, were dealt with by a State law which had received the assent of the President. Following observations of this Court, are relevant for the present purposes:-

G “8. There is no exclusion of agricultural lands from Entry 5 which covers Wills, intestacy and succession as also joint family and partition. Although Entry 6 of the Concurrent List refers to transfer of property other than agricultural land, agriculture as well as land including transfer and alienation of agricultural land are placed under Entries 14 and 18 of the State List. Therefore, it is quite apparent that the Legislature of the State of Hyderabad was competent to enact a Legislation which dealt with intestacy and succession relating to Joint Family Property including agricultural land. The language of the Hindu Women’s Rights to Property

H <sup>12</sup>(1999) 1 SCC 292

Act, 1937 as enacted in the State of Hyderabad is as general as the Original Act. The words ‘property’ as well as ‘interest in Joint Family Property’ are wide enough to cover agricultural lands also. Therefore, on an interpretation of the Hindu Women’s Right to Property Act, 1937 as enacted by the State of Hyderabad, the Act covers agricultural lands. As the Federal Court has noted in the above judgment, the Hindu Women’s Right to Property Act is a remedial Act seeking to mitigate hardships of a widow regarding inheritance under the Hindu Law prior to the enactment of the 1937 Act; and it ought to receive a beneficial interpretation. The beneficial interpretation in the present context would clearly cover agricultural lands under the word ‘property’. This Act also received the assent of the President under Article 254(2) and, therefore, it will prevail.”

14. When the Federal Court was called upon to consider the matter, Entry 21 of List II of 1935 Act had *inter alia* dealt with “transfer, alienation and devolution of agricultural land”. It was in the exclusive domain of the provincial legislatures. The idea that the provincial legislatures were alone entitled to deal with matters relating to “transfer, alienation and devolution of agricultural land” was again made clear in Entry 7 of List III by expression “...succession, save as regards agricultural land” which dealt with concurrent powers. The provincial legislature had thus exclusive competence with regard to transfer, alienation and devolution of agricultural land. In the circumstances, the Federal Court had answered the first question that the provisions of Hindu Women’s Rights to Property Act, 1937 and Hindu Women’s Property (Amendment) Act, 1938 would not regulate succession to agricultural lands in the provinces.

15. But the situation underwent considerable change after the Constitution of India was adopted.

(i) The subjects “Transfer, alienation of agricultural land” are retained in the State List in the form of Entry 18 but the subject “devolution” was taken out.

(ii) As against earlier Entry 7 of List III where the subject, “succession” came with express qualification, “...save as regards agricultural land”, that qualification is now conspicuously absent in comparable Entry 5 in the present List III. The expression in Entry 5 today is “...intestacy and succession”.



- A The changes indicated above as against what was earlier available in Entry 21 of List II and Entry 7 of List III make the position very clear. The present Entry 5 of List III shows “succession” in its fullest sense to be a topic in the Concurrent List. The concept of succession will take within its fold testamentary as well as intestate succession. The idea is, therefore, clear that when it comes to
- B “transfer, alienation of agricultural land” which are transfers *inter vivos*, the competence under Entry 18 of List II is with the State legislatures but when it comes to “intestacy and succession” which are essentially transfers by operation of law as per law applicable to the person upon whose death the succession is to open, both
- C the Union as well as State legislatures are competent to deal with the topic. Consequently, going by the principles of Article 254 of the Constitution of India the matter will have to be dealt with.

16. In the present case it is nobody’s case that the matter relating to succession to an interest in agricultural lands is in any way dealt with
- D by any State legislation operating in the State of Himachal Pradesh or that such legislation must prevail in accordance with the principles under Article 254 of the Constitution of India. The field is occupied only by Section 22 of the Act insofar as State of Himachal Pradesh is concerned. The High Court was, therefore, absolutely right in holding that Section 22 of the Act would operate in respect of succession to agricultural
- E lands in the State.

17. Though, succession to an agricultural land is otherwise dealt with under Section 22 of the Act, the provisions of Section 4(2) of the Act, before its omission, had made it clear that the provisions of the Act would not apply in cases *inter alia* of devolution of tenancy rights in
- F respect of agricultural holdings. Thus, the effect of Section 4(2) of the Act before its deletion was quite clear that, though the general field of succession including in respect of agricultural lands was dealt with under Section 22 of the Act, insofar as devolution of tenancy rights with respect to agricultural holdings were concerned, the provisions of Section 22
- G would be inapplicable. The High Court of Bombay was, therefore, absolutely right in its conclusion. However, with the deletion of Section 4(2) of the Act, now there is no exception to the applicability of Section 22 of the Act. But we are not called upon to consider that facet of the matter.

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18. We now turn to the next stage of discussion. Even if it be accepted that the provisions of Section 22 would apply in respect of succession to agricultural lands, the question still remains whether the preferential right could be enjoyed by one or more of the heirs. Would that part also be within the competence of the Parliament ? The “right in or over land, land tenures .....” are within the exclusive competence of the State legislatures under Entry 18 of List II of the Constitution. Pre-emption laws enacted by State legislatures are examples where preferential rights have been conferred upon certain categories and classes of holders in cases of certain transfers of agricultural lands. Whether conferring a preferential right by Section 22 would be consistent with the basic idea and principles is the question.

19. We may consider the matter with following three illustrations:-

- a) Three persons, unrelated to each other, had jointly purchased an agricultural holding, whereafter one of them wished to dispose of his interest. The normal principle of pre-emption may apply in the matter and any of the other joint holders could pre-empt the sale in accordance with rights conferred in that behalf by appropriate State legislation.
- b) If those three persons were real brothers or sisters and had jointly purchased an agricultural holding, investing their own funds, again like the above scenario, the right of pre-emption will have to be purely in accordance with the relevant provisions of the State legislation.
- c) But, if, the very same three persons in illustration (b) had inherited an agricultural holding and one of them was desirous of disposing of his or her interest in the holding, the principles of Section 22 of the Act would step in.

The reason is clear. The source of title or interest of any of the heirs in the third illustration, is purely through the succession which is recognized in terms of the provisions of the Act. Since the right or interest itself is conferred by the provisions of the Act, the manner in which said right can be exercised has also been specified in the very same legislation.

Therefore, the content of preferential right cannot be disassociated in the present case from the principles of succession. They are both part of the same concept.

A 20. When the Parliament thought of conferring the rights of succession in respect of various properties including agricultural holdings, it put a qualification on the right to transfer to an outsider and gave preferential rights to the other heirs with a designed object. Under the Shastrik Law, the interest of a coparcener would devolve by principles of survivorship to which an exception was made by virtue of Section 6 of the Act. If the conditions stipulated in Section 6 were satisfied, the devolution of such interest of the deceased would not go by survivorship but in accordance with the provisions of the Act. Since the right itself in certain cases was created for the first time by the provisions of the Act, it was thought fit to put a qualification so that the properties belonging to the family would be held within the family, to the extent possible and no outsider would easily be planted in the family properties. In our view, it is with this objective that a preferential right was conferred upon the remaining heirs, in case any of the heirs was desirous of transferring his interest in the property that he received by way of succession under the Act.

D 21. We, therefore, conclude that the preferential right given to an heir of a Hindu under Section 22 of the Act is applicable even if the property in question is an agricultural land. The High Court was right in affirming the judgment and decree passed by the Court of District Judge, Hamirpur in Civil Appeal No.86 of 1994. In the end, we must also declare that various decisions of the High Courts, some of which are referred to above, which have held contrary to what we have concluded, stand overruled.

E 22. The appeal is dismissed without any order as to costs.