

Date of hearing: 1.1.1990.

ORDHK

The petitioners having lost their case before the Board of Revenue went to the High Court in Writ Petition No.1712 of 1985, on which the High Court gave a decision on 9-5-1987. The main point for which the petitioners had been fighting was a request for partition of their joint Khata with the respondents. This request was not accepted by the Consolidation authorities or by the Board of Revenue.

The High Court directed that, since there were widows and minors among the petitioners, the case should be re-examined keeping in view the relationship of the parties and particularly whether there has been any usurpation of the interest of their minors and widows.

2. The Board of Revenue on remand by the High Court referred the matter to the Additional Commissioner (Consolidation) to give a report according to the directions of the High Court.

4. The Additional Commissioner (Consolidation) reported that the petitioners were entitled to 378 kanals 19 marlas whereas they actually possess 321 kanals 8 marlas their short-fall being 57 kanals 11 marlas. As against this, the respondents own 252 kanals 12 marlas, and possess 310 kanals 3 marlas, the excess being 57 kanals 11 marlas.

5. The following arguments and points have to be borne in mind to decide this case:-

- (i) The instructions of the Board Department do not make partition other words consolidation of holdings partition of joint khata.
- (ii) However, in certain cases partition of joint khata may be carried out on the request of certain parties. The latest instructions of the Board of Revenue do give option to widows and minors to have their share in a joint khata partitioned to safeguard their interest in other words, when there is evidence or reasonable fear that their interests are not being safeguarded in a joint khata, they may press for partition.
- (iii) The direction of the High Court clearly relates to the safeguarding of the interest of the widows and minors, and does not relate to the other petitioners who do not fall in this category.
- (iv) The present position is that other adult members of the family are looking after 321 kanals 8 marlas of land which is jointly in possession of the petitioners on behalf of the widows and minors as well as themselves. If the entire share of the petitioners including adults is partitioned, the widows and minors will continue to be looked after by their adult relations. It is not reasonable to suppose that a parcel of land can be looked after on behalf of the widows and minors by adults only if the adults have joint ownership in that parcel, and not if that parcel of land is owned exclusively by the widows and minors. Thus separating the shares of widows and minors alone would not alter the position from the point of view of supervision etc. of this parcel of the land by their adult near and dear.
- (v) The best way to safeguard the interest of the widows and minor brothers in our society is not to make them joint owners with their elder brothers and adult sons, which arrangement is very often fraught with usurpative consequences, but to earmark and separate their shares so that those shares are clearly identifiable for the purposes of cultivation and rent, and then let it be managed by the widows/minors through their paid agents or by their adult kith and kin.
- (vi) The shortfall is only 57 kanals as against possession over 378 kanals; thus if this shortfall is spread over all the petitioners, it would amount to only a few kanals in each case. The report of the Additional Commissioner (Cons) makes a mountain out of mole hill as the shortfall is not considerable.
- (vii) The fact of a joint khata historically usually entails that possessions cannot, in fact usually are not, exactly in accordance with ownerships. In fact it would be a rare joint khata where possession and ownerships are identical. Therefore if a party wishes to stake his claim only on the ground that his ownership is more than his possession, regardless of the fact that he is being deprived of his due share in the produce of the land, he will have to run the gauntlet of the Land Revenue Act and prove his point in a partition suit. As the instructions of the Board of Revenue stand, he cannot take advantage of the Consolidation proceedings to circumvent the provisions relating to partition in the Land Revenue Act.
- (viii) It is clear in the present case that adults have been trying to ride over the backs of the minors and widows to get round the provisions of the Land Revenue Act. The Consolidation proceedings cannot be used to increase their possession in the joint khata by 57 kanals 11 marlas by adding to their already possessed 378 kanals 19 marlas.

I, therefore, decide that, if the widows and minors would like it, their shares in the joint Khata may be partitioned and they be given land in separate wandas. However the present decision cannot force them to adopt this course of action, if they are happy in the present arrangement.

(MBC)

Orders accordingly.