Uttarakhand High Court

Through: Shri C.S. Rawat And Shri ... vs Sri Animesh Singh on 24 September, 2022

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Appeal from Order No. 225 of 2021

Maj. (Retd.) Nidhi Singh . .....Appellant.

Through: Shri C.S. Rawat and Shri Yogesh Chandra Tiwari, learned counsel for the appellant.

-Versus-

Sri Animesh Singh
and others. .....Respondents.

Through: Shri Sanpreet Singh Ajmani, learned counsel for the respondents.

Dates of Hearing: 17.12.2021, 29.06.2022 & 01.07.2022
Date of Judgment : 24.09.2022

Shri Sanjaya Kumar Mishra, J.

1. Appellant - plaintiff, a retired Army Personnel, has taken exception to the order 13.09.2021 passed by learned Civil Judge (Senior Division), Haldwani, District Nainital, in Original Suit No. 08 of 2021, thereby dismissing her application for interim injunction under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code" for brevity). Appellant-plaintiff, respondents - defendant nos. 1 and 3 are brother and sisters and they are the only surviving legal heirs of late Shri Hukum Singh. Shri Hukum Singh purchased a property from its previous owner Shri Ram Nath Satthi bearing Khata No. 00693, plot no. 691 GMe measuring 0.1080 hectares, plot no. 692 A measuring 0.3490 hectares, plot no. 693 G measuring 0.1580 hectares, total 0.6150 hectares on execution of a registered deed of sale dated 11.01.1984. He was delivered possession thereof in the year 2009. Father of the appellant - plaintiff gifted a piece of land to the plaintiff - appellant measuring 3850 sq. ft. through a registered gift deed with respect to plot no. 0.691 GMe. It was a self- acquired property of father of the appellant - plaintiff. On 05.01.2017, father of the appellant - plaintiff, Shri Hukum Singh died intestate leaving behind plaintiff - appellant and defendant

- respondent nos. 1 and 3. However, the case of the appellant - plaintiff is that after the death of her father, defendant - respondent no. 1 by manipulating the records mutated his name exclusively with revenue records on 12.09.2017. Thereafter, he transferred the land in favour of his wife through gift deeds dated 03.11.2018 and 29.12.2018. When the aforesaid fact came to the knowledge of the plaintiff - appellant, she filed complaints before District Magistrate, Commissioner, Kumaon Mandal, Nainital and also before other appropriate forums.

By virtue of notification dated 05.03.2014, the Government of Uttarakhand had declared the area where the property is situated within the local limits of Haldwani - Kathgodam Municipality. It is further case of the plaintiff - appellant that by virtue of inclusion of the area within the local limits of Nagar Nigam, the provisions of the Uttarakhand Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the UZALR, Act" for brevity) shall not be applicable, on such land especially with relation to succession. It is further case of the plaintiff - appellant that Hindu Succession Act, 1956, amended in the year 2005, will be applicable in the matter and the plaintiff

- appellant has right over the property.

Learned counsel for the plaintiff - appellant would further submit that respondent no. 2, who happens to be the wife of respondent no. 1, has entered into a contract with another person, who has started raising construction over the said property for commercial use. It is also stated that respondent no. 2 entered into a contract with another person, in which contractor has agreed to build flats over the property, in question, for the purpose of selling them to different prospective buyers. Thus, on such pleadings, the plaintiff - appellant has prayed for the following reliefs:

> "A. That a decree of declaration may kindly be passed in favour of the plaintiff and against the defendant no. 1 and 2 by declaring gift deeds executed by the defendant no. 1 in favour of defendant no. 2 dated 03.11.2018 which is registered in Bhai No. 1, Zild No. 1661, pages 193 to 208, Karmank 8179, and gift deed dated 29.12.2018 which is registered in Bhai No. 1, Zild No. 1697, pages 191 to 208, Karmank 9135, are void up to the extent of plaintiff share.
>
> B. That a decree of declaration may kindly be passed in favour of the plaintiff and against the defendant no. 1 and 2 by declaring to the plaintiff as co-owner up to 1/3 share in the property detailed in para no. 2 of the plaint along with the defendants.
>
> C. That a decree of permanent prohibitory injunction may kindly be passed in favour of the plaintiff and against the defendant no. 1 and 2 by restraining to the defendant no. 1 and 2 from alienating, changing the nature of suit property and creating third party interest in the property detailed in para no. 2 of the plaint."

2. In addition to the filing of suit for the aforesaid reliefs, the plaintiff - appellant had also filed an application for temporary injunction. It is stated, at the bar, that in the first instance while issuing notice, learned Civil Judge (Senior Division), Haldwani had granted an order directing the parties to maintain status quo but later on, on the final hearing of the application, he has dismissed the application for temporary injunction. The defendants - respondents no. 1 and 2 have filed their written statement, inter alia, contending that the appellant - plaintiff is not entitled to have any share in the property of her father late Shri Hukum Singh, as succession of the property shall be guided by the provisions of Section 171 of the UZALR Act and as per such provisions, it is stated by learned counsel for the defendants

- respondents no. 1 and 2 that inheritance of the property by a married daughter of the Hindu male, who died intestate, leaving behind a son is not permissible.

3. It is also the case of the defendants - respondents no. 1 and 2 that late Shri Hukum Singh has already gifted a portion of the property purchased by him in favour of the plaintiff - appellant, therefore, she is not entitled for any other property by way of inheritance, which is situated in Haldwani.

4. Learned counsel for the defendants - respondents no. 1 and 2 would further submit that there was a family settlement between the parties. It is stated that the plaintiff - appellant had filed an affidavit before the SHO, Police Station Kathgodam to the effect that appellant - plaintiff will not claim any right over the property, in question. It is also stated by learned counsel for the defendants - respondents no. 1 and 2 that the appellant - plaintiff has not come to the Court with clean hands and she has suppressed the material facts. Therefore, relief for grant of temporary injunction should not be allowed.

5. It is apparent from the records that the learned Civil Judge (Senior Division), Haldwani while deciding the application has come to the conclusion that the land, in question, does not come within the municipal limits of Haldwani - Kathgodam Nagar Nigam, therefore, provisions of the UZALR Act will be applicable.

6. However, it is contended by the learned counsel for the plaintiff - appellant that the property comes within the jurisdiction of Haldwani - Kathgodam Municipality, as the developer has taken permission from the Municipal Authorities for raising constructions.

7. While considering the application for grant of temporary injunction under Order XXXIX Rule 1 and 2 read with Section 151 of the Code, the Court has to consider following three principles:

> i. Whether there is a prima facie case in favour of the plaintiff?
>
> ii. Whether balance of convenience lies in favour of the plaintiff for issuing order of temporary injunction?
>
> iii. Whether plaintiff shall suffer irreparable loss which cannot be compensated by way of any amount of costs or monetary award, if injunction is not granted?"

8. It is also a trite law that in order to effectively decide the issue of title of the suit property, the Court shall preserve the nature and character of the property, so that it will not create any hindrance in proper adjudication of the suit. In such cases, the Court should direct to maintain the status quo ante.

9. Now, coming to the first consideration, thus, to decide whether there is any prima facie case in favour of the appellant - plaintiff or not, this Court is of the opinion that the observations made by the learned Civil Judge (Senior Division), Haldwani are erroneous, as it is demonstrated from the

records that the land, in question, is within the local limits of Nagar Nigam of Haldwani-

Kathgodam and now, the question that remains to be decided at this stage is whether property shall be devolved upon all the three legal heirs viz. son and daughters of late Shri Hukum Singh or only upon respondent no. 1 being the son of late Shri Hukum Singh, who shall inherit the property in its entirety as per Section 171 of the UZALR Act. Section 171 of the UZALR provides for general order of succession. Sub-Section (2) is relevant for the purpose of this case, which was amended vide Uttarakhand Act No. 14 of 2021 w.e.f. 01.05.2021. Earlier, it was substituted by Uttarakhand Act No. 25 of 2005 dated 28.10.2005. Thus, in between 28.10.2005 and 01.05.2021, the Act at sub Section (2) of Section (7) reads as follows:

> "(2) The following relatives of the male bhumidhar or asami are heirs subject to the provisions of sub-section (1), namely:-
>
> (a) widow and the male lineal descendant per strips:
>
> Provided that the widow and the son of a pre- deceased son how low-so-ever per strips shall inherit the share which would have devolved upon the predeceased son had he been alive;
>
> (b) mother and father;
>
> (c) unmarried daughter;
>
> (d) married daughter;
>
> (e) brother and unmarried sister being respectively the son and the daughter of the same father as the deceased; and son of a predeceased brother, the predeceased brother having been the son of the same father as the deceased;
>
> (f) son's daughter;
>
> (g) father's mother and father's father;
>
> (h) daughter's son;
>
> (i) married sister;
>
> (j) half sister, having been the daughter of the same father as the deceased;
>
> (k) sister's son;
>
> (l) half sister's son, the half sister having been the daughter of the same father as the deceased;

(m) brother's son's son;

(n) mother's mother's son;
(o) father's father's son's son."

10. Thus, it is clear that from the aforesaid provision that when widow and male lineal descendant survives by the deceased male Hindu having property right over landed property, then they shall inherit per strips over other legal heirs but it is further provided that the widow and the son of a pre-deceased son shall also be entitled to property. The next, in line of heir, is mother and father followed by unmarried daughter and followed by married daughter. It is not disputed, at this stage, that the plaintiff - appellant is a married daughter. The question arises whether she is entitled to inherit the property of her father or not.

11. The Hindu Succession Act, 1956 was amended in the year 2005 vide the Hindu Succession (Amendment Act) No. 39 of 2005 with effect from 09.09.2005. After the amendments, it reads as follows:

"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 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."

12. Section 8 of the Hindu Succession Act, 1956 reads as under:

> "Section 8. General rules of succession in the case of males--The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter--
>
> a. firstly, upon the heirs, being the relatives specified in class I of the Schedule;
>
> b. secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
>
> c. thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and d. lastly, if there is no agnate, then upon the cognates of the deceased.

13. Thus, under Section 6, as amended, a daughter irrespective of her marital status, would be a coparcener in the Hindu Coparcenery and is entitled to have a share equal to that of a son in the ancestral / coparcener property. Section 8 of the Hindu Succession Act, 1956 recognizes a daughter with respect to any self acquired property or a separate property of a male Hindu died intestate, she is included irrespective of her marital status in Class I heir. Thus, both sections 6 and 8, with respect to coparcenery property and separate property of Hindu male dying intestate, a daughter is entitled to succeed having a share equal to a son.

14. Thus, it is clear from the plain reading of Section 171 of the UZALR Act and Section 6 and 8 of the Hindu Succession Act, 2005 that there is a conflict between the two. Whereas the UZALR Act excludes married daughter and unmarried daughter from inheriting the property in the presence of male lineal descendant i.e. son, the Hindu Succession (Amendment) Act 2005 recognizes the right of daughter whether married and unmarried to be equal to that of son. Thus, if the Hindu Succession Act is made applicable to the case, then property shall also be inherited by the appellant - plaintiff whereas if the UZALR Act is made applicable then plaintiff - appellant shall not be entitled to have any share in the property, as she is not preferred heir over the son.

15. Section 129 of the UZALR Act describes the classes of tenure holders. The Act recognizes following tenure holders: (i) Bhumidhar with transferable rights (ii) Bhumidhar with non transferable rights (iii) Asami and (iv) Government lessee.

16. Section 130 of the UZALR Act provides for bhumidhar with transferable rights. The said Section has been amended several times. There was an amendment by virtue of Uttarakhand Amendment No. 10 of 2016 dated 06.04.2016 by which clause (d) is added. Clause (e) is added vide Act No. 04 of 2014 and Clauses

(f) and (g) are added vide Act No. 10 of 2016. However, for better appreciation the said provisions, the entire Section is quoted below:

> "130. Bhumidhar with transferable rights - Every person belonging to any of the following classes, not being a person referred to in Section 131, shall be called a

bhumidhar with transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely-

(a) every person who was a bhumidhar immediately before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977;

(b) every person who, immediately before the said date, was sirdar referred to in Clause (a) or Clause (c) of Section 131, as it stood immediately before the said date;

(c) every person who in any other manner acquires on or after the said date the rights of such a bhumidhar under or in accordance with the provisions of this Act.

(d) refugees who came to India before the year, 1971 from the eastern Pakistan, (existing Bangladesh) and who were alloted land under the Rehabilitation scheme of the Government of India, prior from 1980 on lease by the district rehabilitation office, Bareilly under the Government Grant Act, 1895 for agriculture within the territorial jurisdiction of temporary District Nainital (existing District Udham Singh Nagar) within the Rehabilitation scheme of the Government of India and who is such original lease or their legal heirs and with consent of original lease or possession in land without any consent by following procedure:-

(1) Such original lease or their legal heirs who have deposited the premium as above to be calculated at part of circle rate as prevailing on 09-11-2000 shall be declared the Bhumidhari transferable rights without fee.

(2) Such original lease or their legal heirs who have not deposited the premium till date as able to be calculated at part of circle rate as prevailing on 09- 11-2000 shall be declared transferable Bhumidhari rights after deposition of aforesaid premium.

(3) Such persons in possession of land who have come into possession of the land with the consent of the original lease or his legal heirs and who have not deposited any premium till date, if they deposit premium calculated at part of the circle rate as prevailing on 01-09-2005 shall be granted Bhumidhari transferable rights after deposition of aforesaid premium.

(4) Such persons who are in possession of the land without the consent of the original lease or their legal heirs shall be granted Bhumidhari transferable rights if they deposit a premium part of the circle rate as prevailing on 01-09-2010.

(5) That the aforesaid premium can be deposited in two six months installment.

Explanation: All such persons who fall within the category of legal heirs/successors under the provisions of Uttar Pardesh Zamindari Abolition and Land Reforms Act, 1950 (as adopted in Uttarakhand) as contained in Section 171 to 175 shall be deemed

as legal heirs.

(e) To the as per prescribe procedure by the Government such land of category 4 within the area of the State of Uttarakhand, where the persons were occupied as unauthorised from the date of 30.06.1983 or before the date and presently are occupied in that land also as per procedure prescribed by the Government.

(f) Such persons whom allotted the land of category three within the state and in which the eligible and legal lessee is also a holder of such land in present time the state Government shall declare transferable right holders as per prescribed procedure in such restrictions as imposed by the state government by order.

(g) The lessee and unauthorized occupants of Nagar Panchyat area Lal Kanua, district Nainital shall be declared the land holders of transferable rights according to procedure prescribed by the Government."

17. Thus, a bhumidhar having transferable right has been described as every person belonging to any of the classes enumerated thereunder, not being a person referred to in Section 131, which is not applicable to this case, who was a bhumidhar having transferable rights, immediately before the commencement of the U.P. Land Laws (Amendment) Act, 1977; every person, who immediately before the said date, was sirdar referred to clause (a) or Clause (c) of Section 131 as it stood immediately before the said date or any person, who in any other manner, acquires on or after the said date the rights of such a bhumidhar under or in accordance with the provisions of the Act.

18. Thus, it is apparent that a bhumidhar having transferable rights is a special class of person, whose right over the property has been recognized by the UZALR Act. But the condition that has to be satisfied is that he must have acquired the property rights as a bhumidhar in accordance with the provisions of the UZALR Act.

19. It is not disputed at this stage that the property was not vested with late Shri Hukum Singh rather he purchased it from another person. Such other person was a bhumidhar. Therefore, this Court is of the opinion that the property that has been purchased by a person from another person, who was a bhumidhar having transferable right, will simply be an owner of the property and order of succession, as enshrined in Section 171 of the UZALR Act, will not be applicable to him. He will be guided by general law of inheritance, as enshrined under the Hindu Succession (Amendment) Act, 2005.

20. The Division Bench of Orissa High Court in Writ Petition (C) No. 28966 of 2011 (Urbashi Sahoo Vs. State of Orissa and another), vide judgment dated 11.08.2021, in which the undersigned was a member, has dwelt upon the discrimination that is meted out to married daughters. We take into consideration the concurring judgment authored by Ms. Savitri Ratho, J in the aforesaid case. We consider it appropriate to quote the entire observations made by Justice Savitri Ratho while concurring with views of the undersigned.

> "15. It would be apposite to refer to the Convention on the Elimination of All Forms of Discrimination against Women (in short "CEDAW"), adopted in 1979 by the UN General Assembly, which is often described as an international bill of rights for women (emphasis supplied). Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. (emphasis supplied) The Convention defines discrimination against women as: "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."
>
> The Preamble of CEDAW reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country;

hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;

to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Government of India was an active participant to CEDAW , ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 with reservation on Articles 5(e), 16(1), 16(2) and 29.

The principle of "gender equality" is enshrined in the Indian Constitution and in its Preamble and Fundamental Rights. It also finds mention in the Fundamental duties as well as directive Principles. Our Constitution grants equality to women, ensures their equality before the law, and prohibits discrimination against any citizen on the basis of religion, race, caste, sex or place of birth. So it is expected that the Government should make endeavour to eliminate obstacles, prohibit all gender-based discriminations which is also mandated by Articles 14 and 15 of the Constitution of India. It should also take all steps possible to modify law and its policies in order to do away with gender-based discrimination in the existing laws and regulations. Unfortunately, everyday, we come across instances of discrimination on the basis of gender in all fields including legislation. This is only one such instance. Almost half a century back, Justice V.R Krishna Iyer in the case of C. B. Muthamma vs Union Of India & Ors reported in 1979 SCC (4) 260, where the petitioner a lady I.F.S officer had challenged two draconian provisions in the service rules; one - which required a woman

member of the service to obtain permission in writing of the Government before marriage and the woman member may be required to resign any time after marriage if the Government is satisfied that her family and domestic commitments will hamper her duties as a member of the service and the second - that no married woman shall be entitled as of right to be appointed to the service. She had also stated that she was not being given promotion and had been superseded by male officers because of discrimination against women in the service. The petition was ultimately dismissed as during pendency of the writ petition, the petitioner was promoted, one of the offensive provisions was deleted and another was in the process of being deleted; and the government had agreed to review the seniority of the petitioner. But not before Justice V Krishna Iyer in his inimitable style and without mincing any words had observed as follows:

> "... 6. At the first blush this rule is in defiance of Article 16 , iIf a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thraldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and Law in Action. And if the Executive as the surrogate of Parliament, makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of die-hard allergy to gender parity is inevitable. 7. We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern...".

In the case of Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1, the provisions of section 30 of the Punjab Excise Act 1914, prohibiting employment of males below the age of 25 years and women on the premises where liquor is sold, were under challenge . Some of the observations of the Hon'ble Apex Court are very pertinent . They are extracted below:

"... 7. The Act is a pre-constitutional legislation. Although it is saved in terms of Article 372 of the Constitution, challenge to its validity on the touchstone of Articles 14, 15 and 19 of the Constitution of India, is permissible in law. While embarking on the questions raised, it may be pertinent to know that a statute although could have been held to be a valid piece of legislation keeping in view the societal condition of those times, but with the changes occurring therein both in the domestic as also international arena, such a law can also be declared invalid."....

"21. When the original Act was enacted, the concept of equality between two sexes was unknown. The makers of the Constitution intended to apply equality amongst men and women in all spheres of life. In framing Articles 14 and 15 of the Constitution, the constitutional goal in that behalf was sought to be achieved. Although the same would not mean that under no circumstance,

classification, inter alia, on the ground of sex would be wholly impermissible but it is trite that when the validity of a legislation is tested on the anvil of equality clauses contained in Articles 14 and 15, the burden therefoer would be on the State. While considering validity of a legislation of this nature, the Court was to take notice of the other provisions of the Constitution including those contained in Part IV-A of the Constitution."

"25..... Right to be considered for employment subject to just exceptions is recognized by Article 16 of the Constitution. Right of employment itself may not be a fundamental right but in terms of both Articles 14 and 16 of the Constitution of India, each person similarly situated has a fundamental right to be considered therefor. When a discrimination is sought to be made on the purported ground of classification, such classification must be founded on a rational criteria. The criteria which in absence of any constitutional provision and, it will bear repetition to state, having regard to the societal conditions as they prevailed in early 20th century, may not be a rational criteria in the 21st century. In the early 20th century, the hospitality sector was not open to women in general. In the last 60 years, women in India have gained entry in all spheres of public life.

They have also been representing people at grass root democracy. They are now employed as drivers of heavy transport vehicles, conductors of service carriage, pilots et. al. Women can be seen to be occupying Class IV posts to the post of a Chief Executive Officer of a Multinational Company. They are now widely accepted both in police as also army services."

.....

In the case of A. Satyanarayana v. S.

Purushotham, (2008) 5 SCC 416, the Hon'ble Supreme Court has observed as under:

"34. A statutory rule, it is trite law, must be made in consonance with constitutional scheme. A rule must not be arbitrary. It must be reasonable, be it substantive or a subordinate legislation. The Legislature, it is presumed, would be a reasonable one.

Indisputably, the subordinate legislation may reflect the experience of the rulemaker, but the same must be capable of being taken to a logical conclusion."....

The Hon'ble Supreme Court recently, in the case of Secretary, Ministry of Defence v. Babita Puniya reported in 2020 SCC OnLine SC 200 while dealing with appointment of women in short service commissions in the Army has observed as follows: -

"67. The policy decision of the Union Government is a recognition of the right of women officers to equality of opportunity. One facet of that right is the principle of non discrimination on the ground of sex which is embodied in Article 15(1) of the Constitution. The second facet of the right is equality of opportunity for all citizens in matters of public employment under Article 16 (1)....."

E. Stereotypes and women in the Armed Forces

53. Seventy years after the birth of a post-colonial independent state, there is still a need for change in attitudes and mindsets to recognize the commitment to the values of the Constitution....."

16. But Odisha is not the only state whose Rules reek of gender discrimination such discrimination against a married daughter in the matter of compassionate appointment . In many other states of our country, similar discrimination is writ large in the Rules framed for compassionate appointment, for which different High Courts have examined the provisions and there are a catena of decisions pronounced by various High courts which have decried such discrimination and have held that any action/clause of the policy/ Rules/ Regulation which deprive a married daughter from being considered for compassionate appointment runs contrary to Articles 14, 15, 16 and also Article - 39(a) of the Constitution.

17. While in some cases the offensive clause/provision have been struck down, in others it has been read down to save the provision from being declared unconstitutional, so that a married daughter is included within the definition of Family of family member members and/or held entitled to be considered for compassionate appointment and/or directed to be given appointment.

Some High Courts have ruled that if the daughter was unmarried and dependent on the deceased Government servant at the time of his/her death and the only child, she has a right to be considered for appointment. A few High Court have held that keeping in view the object of the scheme/rules, irrespective of the number of dependent children of the deceased employee at the time of his death, a married daughter has the right to be considered for employment.

In the case of Udham Singh Nagar District Cooperative Bank Ltd. & another Vs Anjula Singh and Others: Special Appeal No.187 of 2017 reported in AIR 2019 Utr 69, the following questions had been referred to the Full Bench of the Uttarakhand high Court:

"(i) Whether any of the members, referred to in the definition of a "family" in Rule 2(c) of the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (for short "the 1974 Rules") and in the note below Regulation 104 of the U.P. Co- operative Committee Employees Service Regulations, 1975 (for short "the 1975 Regulations") would be entitled for compassionate appointment even if they were not dependent on the Government servant at the time of his death?

(ii) Whether non-inclusion of a "married daughter" in the definition of "family", under Rule 2(c) of the 1974 Rules, and in the note below Regulation 104 of the 1975 Regulations, is discriminatory, and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India?"

After referring to a number of decisions, the reference was answered as follows:

"...66. We answer the reference holding that: i. Question No.1 should be answered in the affirmative. It is only a dependent member of the family, of the Government servant who died in harness, who is entitled to be considered for appointment, on compassionate grounds, both under the 1974 Rules and the 1975 Regulations.

ii. Question No.2 should also be answered in the affirmative. Non- inclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India.

iii. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a "married daughter" shall also be held to fall within the inclusive definition of the "family" of the deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations."

A Full Bench of the Madhya Pradesh High Court in the case of Meenakshi Dubey vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. and others reported in AIR 2020 MP 60 : SCC Online MP 383 had been called upon to decide the following issue:

"Whether in the matter of compassionate appointment covered by Policy framed by the State Government wherein, certain class of dependent which includes unmarried daughter a widowed daughter and a divorced daughter and in case of a deceased Govt. servant who only has daughter, such married daughter who was wholly dependent on Govt. servant subject to she giving her undertaking of bearing responsibility of other dependents of the deceased Govt. servant, Clause 2.2 and 2.4 can be said to be violative of Article 14, 15, 25 and 51A

(e) of the Constitution."

It held as follows:

"....17 We are not oblivious of the settled legal position that compassionate appointment is an exception to general rule. As per the policy of compassionate appointment, State has already decided to consider claims of the married daughters (Clause 2.4) for compassionate appointment but such consideration was confined to such daughters who have no brothers. After the death of government servant, it is open to the spouse to decide and opt whether his/her son or daughter is best suited for compassionate appointment and take responsibilities towards family which were being discharged by the deceased government servant earlier."

18. xxx xxx xxx

19. xxx xxx xxx

20. "..... In view of catena of judgments referred hereinabove, it can be safely concluded that Clause 2.2 to the extent it deprives married woman from right of consideration for compassionate appointment violates equality clause and cannot be countenanced. By introducing Clause 2.4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2.2, as noticed, gives

option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of "unmarried" is affixed for the daughter. This condition is without there being any justification and; therefore, arbitrary and discriminatory in nature.

21. Looking from any angle, it is crystal clear that clause 2.2 which deprives the married daughter from right of consideration cannot sustain judicial scrutiny. Thus, for different reasons, we are inclined to hold that Indore Bench has rightly interfered with Clause 2.2 of the said policy in the case of Smt. Meenakshi (Supra).

22. In nutshell, broadly, we are in agreement with the conclusion drawn by Indore Bench in Smt. Meenakshi (Supra) and deem it proper to answer the reference as under:

"Clause 2.2 of the policy dated 29.09.2014 is violative of Articles 14, 15, 16 and 39(a) of the Constitution of India to the extent it deprives the married daughter from right of consideration for compassionate appointment. We find no reason to declare Clause 2.4 of the policy as ultra vires. To this extent, we overrule the judgment of Indore Bench in the case of Meenakshi (Supra)"

23. The issue is answered accordingly."

A Division bench of the Himachal High Court in the case of Mamata Devi vs State of HP : 2020 SCC OnLine HP 2125 : 2021 Lab IC 1, has directed the State to give compassionate employment to the petitioner who was the married daughter if she otherwise fulfilled the eligibility criteria, holding as follows:

"... 22. Moreover, in the instant case there is no male member in the family, since the father of the petitioner, who died in harness, left behind his widow and two daughters only, the petitioner, being the elder daughter. The aim and object of the policy for compassionate appointment is to provide financial assistance to the family of the deceased employee. In the absence of any male child in the family, the State cannot shut its eyes and act arbitrarily towards the family, which may also be facing financial constraints after the death of their sole bread earner.

23. As held above, the object of compassionate appointment is not only social welfare, but also to support the family of the deceased government servant, so, the State, being a welfare State, should extend its hands to lift a family from penury and not to turn its back to married daughters, rather pushing them to penury. In case the State deprives compassionate appointment to a married daughter, who, after the death of the deceased employee, has to look after surviving family members, only for the reason that she is married, then the whole object of the policy is vitiated.

24. After incisive deliberations, it emerges that core purpose of compassionate appointment is to save a family from financial vacuum, created after the death of deceased employee. This financial vacuum could be filled up by providing compassionate appointment to the petitioner, who is to look after the survivors of her deceased father and she cannot be deprived compassionate appointment merely on the ground that she is a married daughter, more particularly when there is no male child

in the family and the petitioner is having 'No Objection Certificates' from her mother and younger sister, the only members in the family.

25. In the instant case, in case the petitioner is not given compassionate appointment, who has to take care of her widowed mother and sister, if she is otherwise eligible and she fulfils the apt criteria, the whole family will be pushed to impoverishment, vitiating the real aim of the compassionate employment policy...."

In a recent decision, the Madhya Pradesh High Court in the case of State of M.P vs Jyoti Sharma: 2021 SCC online M.P., has found fault with the provision making a married daughter eligible for compassionate appointment only when she is an only child. Referring to the CEDAW and the observations of the Hon'ble Supreme Court in the case of Babita Puniya (supra), it has held as follows:

"...By introducing Clause 2.4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2.2, as noticed, gives option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of "unmarried" is affixed for the daughter. This condition is without there being any justification and; therefore, arbitrary and discriminatory in nature."..... ...."In view of catena of judgments referred hereinabove, it can be safely concluded that Clause 2.2 to the extent it deprives married woman from right of consideration for compassionate appointment violates equality clause and cannot be countenanced. By introducing Clause 2.4, the Government partially recognised the right of consideration of married daughter but such consideration was confined to such daughters who have no brothers. Clause 2.2, as noticed, gives option to the living spouse of deceased government servant to nominate son or unmarried daughter. There is no condition imposed while considering a son relating to marital status. Adjective/condition of "unmarried" is affixed for the daughter. This condition is without there being any justification and; therefore, arbitrary and discriminatory in nature.".....

The Madhya Pradesh High Court in the case of Bhawna Chourasia vs. State of M.P reported in 2019 (2) MPLJ 707 has held as follows :

"... 15. This is a matter of common knowledge that in present days there are sizable number of families having single child. In many families, there are no male child. The daughter takes care of parents even after her marriage. The parents rely on their daughters heavily. Cases are not unknown where sons have failed to discharge their obligation of taking care of parents and it is taken care of and obligation is sincerely discharged by married daughters. Thus, it will be travesty of justice if married daughters are deprived from right of consideration for compassionate appointment."

The Chhatisgarh High Court in the case of Sarojini Bhoi vs. State of Chattisgarh and others: WP(S) No.296 of 2014 decided on 30.11.2015 has held that the impugned policy of Government prohibiting consideration of married daughter from compassionate appointment to be violative of Article 14 of the Constitution the criteria to grant compassionate appointment should be dependency rather than

marriage. A daughter even after marriage remains daughter of her father and she could not be treated as not belonging to her father's family. Institution of marriage was basic civil right of man and woman and marriage by itself was not a disqualification. Paragraphs 16, 28 and 29 of the judgment are extracted below:

"...16. Thus, marriage is an institution/sacred union not only legally permissible but also basic civil right of the man and woman and one of the most important inevitable consequences of marriage is the reciprocal support and the marriage is an institution has great legal significance and right to marry is necessary concomitant of right to life guaranteed under Article 21 of the Constitution of India as right to life includes right to lead a healthy life. .....

28. Thus, from the aforesaid analysis, it emanates that institution of marriage is an important and basic civil right of man and woman and marriage by itself is not a disqualification and impugned policy of the State Government barring and prohibiting the consideration of the married daughter from seeking compassionate appointment merely on the ground of marriage is plainly arbitrary and violative of constitutional guarantee envisaged in Article 14, 15 and 16(2) of the Constitution of India being unconstitutional.

29. As a fallout and consequence of aforesaid discussion, writ petition is allowed and consequently Clause 3(1)(c) of policy relating to compassionate appointment dated 10/06/2003 and Clause 5(c) of policy dated 14/06/2013 being violative and discriminatory to the extent of excluding married daughter for consideration from compassionate appointment are hereby declared void and inoperative and consequently the impugned order (Annexure-P/3) rejecting the petitioner's case for compassionate appointment is quashed. The respondents/State is directed to reconsider the claim of petitioner for being appointed on compassionate ground afresh in accordance with law keeping in view that her father died on 06/01/2011 and her application was rejected on 28/09/2011, preferably within a period of forty five days from the receipt of certified copy of order. No order as to cost(s)."

A Division Bench of the Chattisgarh High Court in the case of Bailadila Berozgar Sangh vs. National Mineral Corporation Ltd. has held as follows:

"....It is not disputed that the Corporation is an instrumentality of the State and comes within the definition of the State under Article 12 of the Constitution and that the equality provisions in Articles 14 and 16 of the Constitution apply to employment under the Corporation. Therefore, a woman citizen cannot be made ineligible for any employment under the Corporation on the ground of sex only but could be excluded from a particular employment under the Corporation if there are other compelling grounds for doing so."

A larger Bench of the Calcutta High Court in the case of State of W.B. and others vs. Purnima Das and others (2018 Lab IC 1522) had been called upon to decide the question:

"Whether the policy decision of the State Government to exclude from the zone of compassionate appointment a daughter of an employee, dying- in-harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is

solely dependent on the earnings of such employee, is constitutionally valid ?" Clause 2 (2) provided "For the purpose of appointment on compassionate ground a dependent of a government employee shall mean wife/husband/son/unmarried daughter of the employee who is/was solely dependent on the government employee"

It interalia held that -

".....We are inclined to hold that for the purpose of a scheme for compassionate appointment every such member of the family of the Government employee who is dependent on the earnings of such employee for his/her survival must be considered to belong to 'a class'. Exclusion of any member of a family on the ground that he/she is not so dependent would be justified, but certainly not on the grounds of gender or marital status. If so permitted, a married daughter would stand deprived of the benefit that a married son would be entitled under the scheme. A married son and a married daughter may appear to constitute different classes but when a claim for compassionate appointment is involved, they have to be treated equally and at par if it is demonstrated that both depended on the earnings of their deceased father/mother (Government employee) for their survival. It is, therefore, difficult for us to sustain the classification as reasonable."

It answered the reference in the following words:

"111. Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of 'dependent' and ineligible to even apply, is not constitutionally valid.

112. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective 'unmarried' before 'daughter', is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earnings of her father/mother (Government employee) on the date of his/her death and agree to look after the other family members of the deceased, if the claim is to be considered further."

The Karnataka High Court in (R. Jayamma V.Karnataka Electricity Board reported in ILR 1992 Kar 3416 has held as follows:

"10. This discrimination, in refusing compassionate appointment on the only ground that the woman is married is violative of Constitutional Guarantees. It is out of keeping with the trend of times when men and women compete on equal terms in all areas. The Electricity Board would do well to revise its guidelines and remove such anachronisms."

The Madras High Court in R. Govindammal V.

The Principal Secretary, Social Welfare and Nutritious Meal Programme Department & others reported in 2015 (3) LW 756):

"14. Therefore, I am of the view that G.O.Ms. No. 560 dated 3- 8-1977 depriving compassionate appointment to married daughters, while married sons are provided compassionate appointment, is unconstitutional. In fact, the State can make law providing certain benefits exclusively for women and children as per Article 15(3) of the Constitution. But the State cannot discriminate women in the matter of compassionate appointment, on the ground of marriage."

In Krishnaveni vs. Kadamparai Electricity Generation Block, Coimbator District reported in 2013 (8) MLJ 684 in R. Govindammal, the Madras High Court has inter alia observed that if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also.

The Bombay High Court in Sou. Swara Sachin Kulkrni v. Superintending Engineer, Pune Irrigation Project Circle, 2013 SCC OnLine Bom 1549 opined as under:

"3..... Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage."

It was further held as under:

"3..... We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State."

A larger bench of the Tripura High court in the case of Debashri Chakraborty vs. State of Tripura and others 2020 (1) GLT 198, has taken note of various judgments of the High Courts including the judgment of Allahabad High Court in Vimla Shrivastava and others vs. State of UP (supra) and judgment of Karnataka High Court in Manjula Vs. State of Karnataka, 2005 (104) FLR 271 and answered the question referred to it, as follows:

"ii. Question No.2 should also be answered in the affirmative. Noninclusion of "a married daughter" in the definition of a "family", under Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the Government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India. iii. We, however, read down the definition of "family", in Rule 2(c) of the 1974 Rules and the note below Regulation 104 of the 1975 Regulations, to save it from being held unconstitutional. As a result a "married daughter" shall also be held to fall within the inclusive definition of the "family" of the

deceased Government servant, for the purpose of being provided compassionate appointment under the 1974 Rules and the 1975 Regulations." (Emphasis supplied).

18. In the light of aforesaid decisions , constitutional principles, exclusion of a married daughter from consideration compassionate appointment while at the same time including a married son as one of the dependents eligible for compassionate appointment, is based solely on gender discrimination and there is no other constitutionally permissible basis . Exclusion of a married daughter is not based on any rationale having reasonable nexus with the object sought to be achieved. Such unreasonable exclusion is therefore violative of Article 14 and 16 of the Constitution of India which prohibits discrimination only on the ground of sex.

19. In the case of Charadhar Das (supra), which had been filed by the parents of the deceased Government Servant, this Court had directed the Government to consider the case of their unemployed son in law for compassionate as Rule 16 (1) authorised the appropriate authority to relax the Rules to such extent as it may consider necessary for dealing with a case in a just and equitable manner. But as discussed earlier there is no pari materia provision in the 2000 Rules.

In Smt Ketaki Manjari Sahu vs State of Orissa 1998 (II) OLR 452, this Court in similar facts referring to Rule 16 of the 1990 Rules had directed the State Government to consider the case of the married daughter on compassionate ground and without making it a precedent. Unfortunately as has happened in the present case, when it is left to the discretions of the authorities, more often than not, they do not exercise it to do render justice. In spite of the tribunal directing the Government to consider the case of the petitioner as a special case under Rule - 16 of the 1990 Rules in accordance with the decision in the case of Chakradhar Das (supra), till date, the petitioner has not been reinstated.

21. Thus, it is clear that not only Articles 14 and 15 of the Constitution of India provide for equality, equal opportunity and also equal protection of law to the women, but also in the Convention On Elimination Of All Forms Of Discrimination Against Women adopted by the United Nations General Assembly in 1979, which is also ratified by the Indian Parliament, their rights are protected. It speaks against any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

22. The principles of law enunciated by Justice Savitri Ratho in the judgment referred to above, in clear terms, provide that daughters are also equal to sons, that has been recognized by Indian Parliament by making amendment to the Hindu Succession Act, 1956, in 2005. It is also seen that the Indian Government as well as Parliament has taken a progressive view with regard to the rights of daughters. The Hindu Widow's Remarriage Act was promulgated in the year 1856, then Hindu Law of Inheritance was passed in 1929 where three female heirs, son's daughter, daughter's daughter and sister, were conferred a right over the inherited property. In the Hindu Women's Right to Property Act, 1937, for the first time, the rights of the widowed Hindu women were recognized by the Central Assembly by this Act. Then, by the passing of the Hindu Succession (Amendment) Act,

2005, the Parliament recogniged the absolute right of a daughter over the self-acquired property of her father. However, by virtue of the Hindu Succession (Amendment) Act, 2005, the Hindu daughters are kept in the same pedestal as that of a son. They were given rights of a coparcener equal to those of the sons. Thus, the progressive law has been made by Parliament of India recognizing the rights of the women, guided by the Hindu Law of Succession.

23. The Learned counsel for the respondents no. 1 and 2 - defendants would rely upon the reported judgment in the case of Ramji Dixit and Another Vs. Bhrigunath and Others AIR 1965 (Allahabad) Page 01 wherein the Full Bench of the Allahabad High Court has held that bhumidhari rights apply to all persons owning bhumidhari rights regardless of how they acquired them or from whom they inherited them. As per views expressed by Hon'ble Chief Justice Shri M. C. Desai, as His Lordship then was, the Legislature has made no distinction between the nature of bhumidhari rights inherited by a son from his father and the nature of those inherited by a Hindu widow from her husband and of those inherited by a Muslim widow from her husband. Consequently, the Full Bench has held that the interest of a bhumidhar inherited by a widow from the husband is as much transferable as that inherited by a son from his father. A reading of the judgment reveals that the Allahabad High Court has taken a progressive view of the matter and has interpreted rights in favour of a widow. Moreover, the fact of the said case is different from the facts of this case, and it cannot be said at this stage that property cannot be inherited by a daughter.

24. The second case law that has been relied upon by the counsel for the respondents no. 1 and 2 - defendants is Prabhandha Samiti, TJP Arya Kanya Inter College, Etawah V. State of U.P. 1976 AIR Allahabad Page 488. In the case vires of Section 16A (6), 16B and 16C of the U.P. Intermediate Education Act was challenged. This case has nothing to do with the present case, as the facts of that case are entirely different from those of the present case. The case relied upon by the learned counsel for the respondents no. 1 and 2 - defendants, appears to be incorrect.

25. We have carefully examined the nominal index of AIR 1976. As per the party name (Mahendra Singh Vs. State of Uttar Pradesh), supplied by learned counsel for the respondents no. 1 and 2 - defendants, there is only one case reported in AIR 1976, of Mahindra Singh, at page 59. This matter relates to election of U.P. Cooperative Societies Act, especially Section 29 (4) thereof, regarding interpretation of election for the Committee of Management, so the facts of this case are also on a different issue.

26. In the case of Vineeta Sharma Vs. Rakesh Sharma and others (2020) 9 SCC 1, the Hon'ble Supreme Court, after taking into consideration a plethora of judgments, has held that the Amendment Act, 2005, is applicable to any daughter with effect from the date of amendment i.e., 09.09.2005, irrespective of the fact whether she was born before the said amendment or not. Section 6 of the Hindu Succession Act confers status of coparcener on daughter born before or after the amendment in the same manner as son with the same rights and liabilities. The rights under the substituted Section 6 can be claimed by the daughter born prior to the amendment with effect from the date of amendment. Thus, it is clear that the special law, which guides succession among Hindus, provides for succession of a daughter in the property of her father irrespective of her marital status.

27. This Court is inclined to hold UZALR to be a general law relating to the abolition of zamindari and land reforms. As far as inheritance of the property is concerned, it is applicable to all the citizens of the then State of Uttar Pradesh and, therefore, it has to be treated as a general law, whereas the Hindu Succession Act is applicable only to the Hindus, and therefore, it is a special law. It is a well settled principle that special law takes precedence over the general law. Therefore, the special law of land shall entitle the plaintiff appellant to inherit the property of her late father Shri Hukum Singh.

28. Another aspect of this case raised by Shri Sanpreet Singh Ajmani, learned counsel for the respondents no. 1 and 2 - defendants, is that the Court cannot take a view that the provisions of Section 171 of the UZALR is contrary to the provisions of Section 6 of the Hindu Succession (Amendment) Act, 2005, in view of the fact that UZALR has been included in the Ninth Schedule of the Constitution of India. However, a reference to the Ninth Schedule of the Constitution of India reveals that though UZALR has been included therein, UZALR (Amendment) Act of 2005, which is referred to above, has not been included therein, and therefore, the constitutional validity of such provision can be agitated in an appropriate writ application.

29. Since this Court is of the opinion that the order of succession provided under Section 171 of the UZALR Act is regressive in nature, the Court should not countenance it and should take a progressive approach, sensitive towards recognition of the rights of a female Hindu.

30. In that view of the matter, this Court is of the opinion that, prima facie, the plaintiff appellant does have an interest over the property of her late father Hukum Singh. Accordingly, this issue is decided in favour of the appellant.

31. In the case of Dalpat Kumar Vs. Prahlad Singh, (1992) 1 SCC 719, the Hon'ble Supreme Court, while deciding an appeal arising out of application for grant or refusal of injunction, has held that the Court, while granting or refusing injunction, must exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused, and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending suit, status quo of the subject matter should be maintained, and an injunction should be issued.

32. Thus, applying this principle to the present case, it is seen that if injunction is refused, then the defendant shall proceed with the construction of flats, which will be sold to different persons and they shall take possession thereof and start living therein, and thereby, it will cause substantial damage to the appellant- plaintiff and it will be almost impossible to implead all these persons, who would be allotted flats and any subsequent owner thereof. The considerable effort and time that will be required to be expanded in such cases would cause a lot of hardships to the plaintiff.

33. It is also our experience that if the nature of the property is allowed to be changed in a substantial way and thereby interest of several other persons is inducted into it, then a long-drawn process of litigation will ensue, which may lead to failure of justice simply because of the delay that would be caused. On the contrary, if the nature of the subject matter is maintained and status quo,

as on today, is maintained, then the effective relief could granted to the appellant - plaintiff, on ultimate analysis after weighing the evidence lead by the parties, and it will not cause any injury to the defendants. The only damage that can be caused to the defendant is perhaps loss of the revenue, which can always be compensated at the stage of the final disposal of the suit.

34. However, on the contrary, if the construction is allowed to continue, leading to creation of interest of some third parties, then it will definitely be impossible for the Court to do effective justice to the parties. Moreover, injunction can be granted against a co-owner, if it is alleged that co-owner - dependent is changing the nature of the property permanently. On the basis of the principle of equity, this Court is of the opinion that balance of convenience lies in favour the appellant - plaintiff by granting injunction, then refusing to grant injunction.

35. The same principle applies to the question of irreparable loss. The Court must be satisfied that non interference by the Court would result in irreparable injury to the party seeking relief, and that there is no other remedy available to the party except one to grant injunction, and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, as has been held by the Hon'ble Supreme Court in the case of Dalpat Kumar (supra), does not mean that there must be no physical possibility of repairing the injury, but means only that there must be a material one, namely one that cannot be adequately compensated by way of damages. In this case, a daughter is asserting her right over the property left by her father. Not only the pecuniary aspect is attached to it but also an emotional quotient is attached to such application. A daughter will definitely feel good about inheriting the property of her father, especially, when the Indian Parliament has made a progressive legislation recognising the rights of a daughter. Moreover, if the defendant is allowed to change the very basic nature of the property and thereby create interest of a number of other persons, who are not related to the appellant - plaintiff or defendants, then no amount of damages can repair such injury.

36. In that view of the matter, this Court is of the opinion that injury that will be caused to the plaintiff-appellant will be of the genre of "irreparable injury", and therefore, this Court comes to the conclusion that all the ingredients in this case are fulfilled.

37. The learned counsel for the respondents - defendants has submitted that the appellant - plaintiff has come to the Court by suppressing certain facts like family settlement before the police, which was settled after filing of a complaint by the appellant - plaintiff.

38. In our considered opinion, the appellant - plaintiff has already made certain pleadings in her application that she had made several representations before several authorities but it had yielded no result, and therefore, she filed a suit for temporary injunction. In that view of the matter, we are of the opinion that it cannot be said that appellant-plaintiff has come to the Court by suppressing material facts. In fact, appellant - plaintiff has disputed the execution of any family settlement. Moreover, the alleged relinquishment of her right has not been executed through any registered document. Moreover, Annexures No. 2 and 3 to the Misc. Application filed by the respondents - defendants are affidavits. It is a well settled principle of law that an affidavit cannot take the place of family settlement. Family settlement has to be made with respect to an earlier agreement between

the co-sharers. Moreover, this affidavit appears to have been filed before the SHO, Police Station -Kathgodam in a criminal case. By execution of an affidavit, a right cannot be extinguished, and nor can a right be created. Hence, this Court is of the opinion that there is no serious suppression of fact which should have any adverse effect on the case of the appellant.

39. It is stated by the learned counsel for the respondents - defendants that, in the meantime, about 24 persons have been allotted with the flats, and unless they are heard, an injunction should not be passed. However, we have carefully perused the application filed by the respondents - defendants on 01.12.2021. The details of such persons or even the Bank, which has already granted advance to the respondents - defendants, have not been described, so it must not be within the knowledge of the appellant - plaintiff about the description of persons, who might claim some interest in the property in question. It is a well settled principle of law that only for a non-joinder of party, the civil proceedings should not be dismissed. In fact, there are several judgments of various High Courts which state that in case the defendant takes a plea of non- joinder of party and that, in their absence, a case cannot be decided effectively, or that those persons should be heard before passing of an order, then the law requires that defendant to describe the persons who have an interest over the property, so that plaintiff had an opportunity to make them party to the civil proceedings. Dismissing an application, on the question of non joinder of necessary party, is resorted to only when the defendant reveals before the court by filing proper documents or by making specific averments in the written statement about names of the parties and their description, who should be impleaded and be heard before any order is passed.

40. We do not find any such description of the parties by respondents - defendants in the documents filed before us. Defendant - respondent no. 1 has also filed his written statement before learned Civil Judge (Senior Division), Haldwani. There also the defendant - respondent no. 1 has not taken any such specific plea that certain persons are to be heard before any order is passed, and at this stage, the defendants cannot take a plea that the bank, which is not named in the written statement, or any persons who have been allegedly allotted with flats / apartments, are necessary to be heard before the order of injunction is passed. The written statement filed by the defendants - respondents is singularly lacking in specific plea in this regard. This Court is of the opinion that the contention raised by the learned counsel for the respondents with regard to opportunity of hearing to the parties who might have applied for allotment of the Apartments does not hold any water. Hence, this Court is not inclined to give much importance to such argument.

41. In that view of the matter, this Court is of the opinion that appellant - plaintiff has prima facie case in her favour, which requires careful consideration. A balance of convenience lies in her favour for issuing injunction, then refusing the same. It is, thirdly, held that the appellant - plaintiff shall suffer irreparable injury, if injunction is not granted and such injury cannot be compensated by any amount of costs or damages.

42. In that view of the matter, this Court is also of the view that the nature and character of subject matter have to be preserved for the effective adjudication of the issues to the suit. In that view of the matter, the appeal is allowed. The order dated 13.09.2021 passed by Civil Judge, (Senior Division), Haldwani is set aside. Respodents - defendants are hereby injuncted from raising further

constructions over the suit property. There shall be no order as to costs. Trial court records be sent back forthwith.

(Sanjaya Kumar Mishra, J.) (Grant urgent certified copy of this judgment, as per Rules) SKS