



Deepa Agarwal

Sons vs. Daughters

Property Laws Against Women

Deepa Agarwal

I wanted to share this experience with the readers of **Manushi** because it opened up so many questions in my mind. Most of all it brought several unpleasant facts home. It showed me that even those of us who consider ourselves educated and comparatively liberated are very often unaware of our rights or the lack of them. We are shockingly ignorant of the processes of the law. Also how much the state supports anomalous laws which are in favour of males. And lawyers themselves are not too much help. They are reluctant to provide specific and relevant information. There is also the social angle. Women who demand their share in family property are considered greedy and selfish whereas the actions of men who deprive their sisters of their rights tend to be condoned and glossed over. It is as if they have not done anything wrong. Married women are in any case expected to depend on their husbands for financial support. It is as if their status as children of their parents is less than that of their brothers, the relationship weaker, the blood ties more dilute.

This experience concerns two pieces of property—one inherited by my father from my grandfather and the other inherited by my mother from her only brother who died unmarried. Each consists of a main house, out-

houses and a certain amount of land. Situated in the town of Almora in the Kumaon hills they are reasonably valuable but not extraordinarily so. We always lived in my father's house while my mother's house was given out on rent.

We are three brothers and three sisters. One sister passed away in 1976 leaving a son who is now grown up. My father married twice as his first wife passed away. One brother and two sisters were born from his first marriage and two brothers and I were born from the second. So I have one half brother and one living half sister and two real brothers. But I would like to mention that we have always been a close knit family. There was some conflict, though with my youngest brother during the last years of my mother's life. My half brother lives in Australia. My half sister and my other brother have settled in the U.S.A.

My father died in 1968. He did not leave a will. His house was transferred to my mother's name but my oldest brother who was still in the country then did not attempt to mutate the land. Probably because my father held it jointly with three of his brothers and it had never been properly partitioned. In 1989 my mother passed away. She

had made a will in 1983 leaving the house that she had inherited from her brother to her natural children (my two younger brothers and myself). She had been pressurised into selling two pieces of land from that property at throwaway prices by some local people who felt that they could take advantage of her. They even made her understand that she was selling a much smaller amount of land than the amount they showed as their own later. Since she was liable to be exploited further and found it hard to resist their pressure, one of my relatives suggested she make a will so she could confidently say I have given this land to my children and cannot sell it. The property was to be equally shared between her two sons and one daughter. When she died, being totally ignorant of legal procedure I did not execute the will as I should have. Rather naively I assumed that our rights in the house were safe and I did not need to do anything. My brother also offered to take care of legal matters since he was visiting our home town more frequently. However, when he failed to communicate with me and acted evasive I began to have misgivings. But I suppressed them thinking I was being unduly suspicious. Also, I had no experience of dealing with lawyers and having no proper income

of my own was a little hesitant to spend my husband's money on my own affairs. Again, since it was a small town where everyone knew each other, I was reluctant to make enquiries at the bank to find out what he had done about my mother's bank account, or whether the rent, a small amount since the house was under Rent Control, was being realised by him.

In December 1993 my sister and I went up to our home town on a routine visit as she had come from the States. A relative told us that he had heard that our youngest brother had entered our property in his own name. When we checked, we discovered that this was a fact. He had proclaimed himself sole heir to both my father's and my mother's property, thus defrauding all his brothers and sisters. It was a real shock, even though my brother and sister-in-law's attitude had not been very cordial the last time we visited. My brother who is in the army had been planning to take premature retirement and his wife had already moved into the house, though she was actually dividing her time between her own parental home and this one.

We decided to take legal action to assert our rights and were told that as married daughters we had no right to the land because it was Zamindari Abolition land, in other words agricultural. We found this hard to accept since it is well within municipal limits and has never been cultivated. But after consulting two or three lawyers

we were told that practically the whole town was built on land classified as agricultural. We would have rights to the house but not the land. On being sent a legal notice my brother replied through his lawyer that his brothers were foreign citizens but he would recognise their rights if the U.P. government did so. No mention was made of the existence of his sisters.

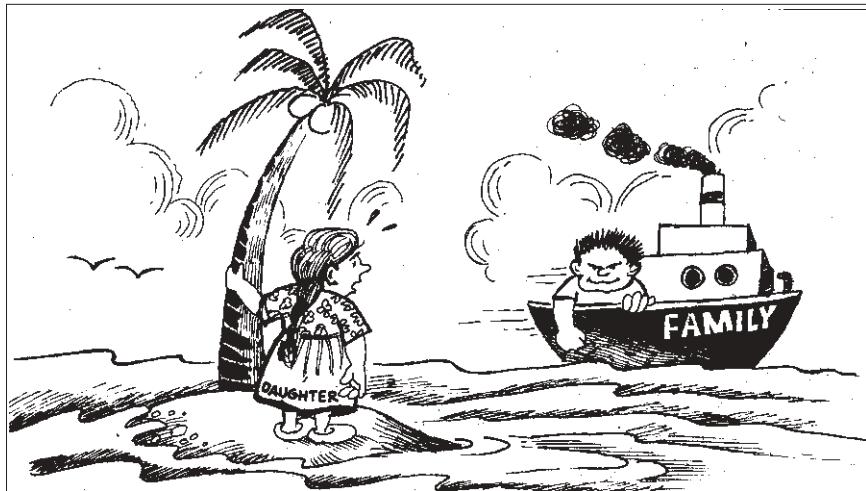
At this stage my nephew, my late sister's son who had just acquired a law degree, suggested that we move to get the area declared residential. Even though we are Christians, the provisions of the Zamindari Abolition Act are such that no personal laws of inheritance can be enforced and he felt

that something we had always taken for granted was not ours by reason of our gender, the attitude of the court officials and lawyers has been baffling. The first lawyer we consulted (after recommendations) was openly exploitative. He pocketed an advance of Rs. 1000, directed us to pay Rs. 1200 to his juniors and sent just one or two notices which did not help to further our case. The second person took it on with great enthusiasm but later said he could not handle it. It is possible he was influenced but I have no way of being sure. The third one, a highly experienced and senior lawyer who had known my parents well suggests we content ourselves with the house and with getting our two

brothers' rights recognised. When we asked if he could tell us where we could get a copy of the K u m a o n Z a m i n d a r i Abolition Act, he said it would be impossible to get hold of it. I got the impression that he felt that as women we

would find it impossible to understand the fine points of the law and we should leave things entirely to him. All along he stressed that the rights of our other two brothers, who had also been cheated, could be restored and we should concentrate on that. He even discouraged me from using my mother's will to claim my rights, saying that it may not stand up in court.

My contention is that as children of our parents our rights to their property should be recognised along with our brothers. Denying women their



this was the only way to restore our rights. But the lawyer we consulted was not in favour of this course of action and said that the court would never agree to it. Ironically I have subsequently come to know that someone is constructing a shop on my mother's land which lies on the main road. Doesn't that make it into a commercial area?

Apart from the emotional trauma we suffered—our brother's betrayal, his disowning us as sisters (to me his action implies that) then discovering

rights to ancestral property means making them dependent on their husbands with nothing to fall back on if and when they need financial support. Fragmentation of land holdings is one of the arguments used to withhold women's rights to agricultural property. But if our parents had six sons the land would have been fragmented in any case, even if it had been cultivable land and large enough in area to be economically viable. Again, sons are granted all these privileges because it is expected that they take care of their parents in their old age. In actual fact my mother spent most of her time with me because my brother who has now usurped her property didn't want to keep her. This had caused a lot of family conflict in the last years of her life.

At the same time I feel I should have made it a point to know more about my own status. We are so used to being guided by men and relying on their judgement that we lose out not only when it comes to our own family but to people like the lawyers we consulted.

Unfortunately most women are like that, hesitant to insist on information about their rights. They are afraid of being considered greedy and grasping. In fact, most voluntarily relinquish their rights to their parents' property even when they are clearly entitled to it. The good will of their brothers and other family members becomes more important than their economic security. Perhaps it is our family structure that makes us feel

marooned without the support of our relatives, when a good deal of the time this support is only conditional and very often calculated. Thus social pressure, emotional insecurity and sheer ignorance all reinforce women's dependence on their husbands. The feminine character is expected to be self sacrificing and self denying and women don't feel comfortable about demanding their natural and legal rights.

Right now I'm trying to work out a course of action that will help to restore our rights. It's not merely trying to gain ownership of a piece of property. It is recognition of the fact that I am also a child of my parents with the right to come and live in my childhood home on my own terms and not as someone's unwanted guest. □

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