

(1973) 01 AHC CK 0021

Allahabad High Court

Case No: Special Appeal No's. 323 and 324 of 1966

Uma Shanker and Another

APPELLANT

Vs

The Deputy Director of
Consolidation and Others

RESPONDENT

Date of Decision: Jan. 2, 1973

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 171, 172, 173, 174, 175

Citation: AIR 1973 All 407

Hon'ble Judges: Satish Chandra, J; P.N. Bakshi, J

Bench: Division Bench

Advocate: Radhey Shyam and R.S. Misra, for the Appellant; G.P. Bhargava, A.N. Bhargava, V.D. Ojha, S.D. Pandey, A.P. Pandey and Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

1. One Ram Bali held the plots in dispute as his sir and khudkasht. He died, leaving a son Lal Man and a widow Smt. Tirathraii. On his death, his son Lal Man succeeded to the iplpts, Lal Man died in 1943 leaving a widow Smt, Dharampatti and a daughter Smt. Urmila. Smt. Urmila had two sons Uma Shanker and Rama Shanker, who are the appellants before us. Smt. Dharampatti died before the date of vesting (30th June. 1952). Smt. Urmila (Lal Man's daughter) died in 1961. It appears that Smt. Tirathraii the widow of Ram Bali also died in 1967. Before her death, she had transferred a major portion of the land in dispute in favour of Vidya Dhar and her own daughters, who are the respondents.

2. During consolidation proceedings, the appellants claimed to have succeeded to the holding as the daughter's son of Lal Man. This claim was contested by Smt. Tirathraji the mother of Lal Man. The claim of the appellants was repelled by the Deputy Director of Consolidation, who held that Smt, Tirathraii was a preferential

heir to Lal Man than the appellants who were daughter's sons. The appellants instituted a writ petition, but the same failed. Hence the present appeal. The question before us is whether on the death of Lal Man's daughter Smt. Urmila, the property, which had by then become a bhumidhari holding, would devolve on Lal Man's mother. Smt. Tirathraji, or on the daughter's sons (the appellants).

3. Section 171 of the U.P. Zamindari Abolition and Land Reforms Act lays down the order of succession in the case of a woman holding an interest inherited as a widow, mother, daughter. etc. Under Sub-section (1), the heir of such a female bhumidhar has to be found out in accordance with Section 171 or 174, depending upon the status of the deceased being either a limited or an absolute owner, in accordance with her personal law. In *Munna Singh v. Deputy Director of Consolidation* (1969 All LJ 764), a Division Bench of this Court held that the relevant date for determining the capacity of the bhumidhar as a life estate holder or as an absolute owner is the date immediately preceding the date of vesting. The same view was taken by another Division Bench in *Smt. Tilari v. Deputy Director of Consolidation*. (1971 RD 232) (All). Thus the decisive factor is the status of the female bhumidhar on the date immediately preceding the date of vesting. On that day, under Hindu Law. Smt. Urmila held the plots as a limited owner because she had inherited the holding as a daughter in 1943. Therefore, in accordance with Sub-clause (i) of Section 172 (2) (a), the nearest surviving heir u/s 171 will be the preferential heir. Under Clause (b) of Section 171, a widowed mother is a preferential heir to a daughter's son, who comes under Clause (h). The Deputy Director was justified in holding that Smt. Tirathraji was the preferential heir when Smt. Urmila died in 1961. The appellants had no valid claim to the plots.

4. For the appellants, it was argued that Smt. Urmila had prior to her death become an absolute owner of the holding, u/s 14 of the Hindu Succession Act, 1956. Section 4(2) of that Act provides:--

"For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceiling or for the devolution of tenancy rights in respect of such holdings."

5. The Hindu Succession Act does not define the term "tenancy rights". It must hence be deemed to have been used in its ordinary meaning. In the Shorter Oxford Dictionary 3rd Edition, Vol. II. page 2147 the term "tenancy" has been defined to mean--

"A holding or possession of lands or tenements, by any title of ownership... the duration of a tenure that which is held by a tenant. A tenement."

The word "tenant" has been defined to mean--

"One who holds or possesses lands or tenements or any kind of title With qualifications indicating the species of tenure, the relation between landlord and tenant, etc."

On page 2151 the word "tenure" has been defined to mean--

"The action or fact of holding a tenement The condition of service, etc.. under which a tenement is held of the superior; the title by which the property is held; the relations, rights and duties of the tenant to the landlord."

The New International Dictionary, Vol. IV. Page 2354 defines the word "tenancy" to mean--

"a holding of an estate or a mode of holding an estate: the temporary possession of something that belongs to another."

On page 2357, the term "tenure" has been defined as--

"the act or right of holding property the manner of holding property: the title and conditions by which property is held."

It is thus clear that the terms "tenancy" and "tenure" are clearly interchangeable words. They connote the same significance.

Section 129 of the Zamindari Abolition Act provides:

"129. Classes of tenure. There shall be for the purposes of this Act. the following classes of tenure-holders; that is to say,

(1) bhumidhar.

(2) Sirdar, and

(3) asami."

6. Section 18 of the Zamindari Abolition Act, inter alia, provides that all lands in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary who shall subject to the provisions of this Act, be entitled to take or retain possession as a bhumidhar thereof. Section 130 of the Act provides- that a bhumidhar shall have all the rights and be subject to all the liabilities conferred or imposed upon bhumidhar by or under this Act. u/s 142, a bhumidhar has, subject to the provisions of the Act, the right to be in exclusive possession of land in respect of which he is a bhumidhar and to use it for any purposes whatsoever. u/s 152, the interest of a bhumidhar is transferable subject to the limits engrafted by subsequent sections. Section 161 authorises a bhumidhar to exchange his land with any other bhumidhar or sirdar or with the Gaon Sabha or the local authority. u/s 169, a male bhumidhar is entitled to bequeath his holding by will. Section 176 entitles a bhumidhar to sue for the division

of his holding.

7. Sections 171 to 175 lay down the order of devolution in the case of a bhumidhar,

8. In view of these various provisions, an agricultural holding held by a bhumidhar as a settlement of the land with him by the State Government is held subject to the conditions and limitations provided in the Zamindari Abolition Act. Section 129 creates the tenure of bhumidhari. A bhumidhar is a tenure-holder under the Act. In our opinion, the rights of a bhumidhar are tenancy rights in respect of the agricultural holding, and so in view of Section 4 (2) of the Act, the provisions of the Hindu Succession Act, 1956, shall not be deemed to affect the provisions of the Zamindari Abolition Act in respect of the devolution of tenancy rights of bhumidhari holdings.

9. The Zamindari Abolition Act (extinguished proprietary rights in agricultural holdings. Those rights vested in the State free from all encumbrances. After having abolished the proprietary rights in land, the Zamindari Abolition Act created the three kinds of tenures mentioned in Section 129. In view of this history of the Zamindari Abolition Act, it could hardly be disputed that the tenures created under it were not of proprietary interest but of tenancy rights in respect of agricultural holdings. In this view also the provisions of the Zamindari Abolition Act in regard to the devolution of tenancy rights would apply to the exclusion, inter alia of Section 14 of the Hindu Succession Act, 1956.

10. In the result, the appeals fail and are accordingly dismissed with costs.