

**(2011) 03 AHC CK 0426**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 14366 of 2011

Smt. Farjulli and Others

APPELLANT

Vs

Deputy Director of Consolidation  
and Another

RESPONDENT

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**Date of Decision:** March 10, 2011

**Acts Referred:**

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12, 48, 49
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 171, 174

**Citation:** (2011) 4 ADJ 663 : (2012) 4 AWC 5284

**Hon'ble Judges:** A.P. Sahi, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

A.P. Sahi, J.

The challenge raised in this petition is to the order of the Deputy Director of Consolidation dated 22.11.2010. This dispute relates to succession of agricultural plots of Khata Nos. 263, 297 & 298 between the Petitioner No. 1 alongwith other Petitioners and Respondent No. 2. In order to understand the controversy, it is necessary to indicate that the dispute centres around the parentage of the Respondent No. 2. It is undisputed that the land in dispute was the holding of one Ramzan. The Petitioner No. 1 is also undisputedly the married daughter of Late Ramzan whose first wife was Imtiyazi. Ramzan had no other issue other than the Petitioner No. 1. After the death of his first wife, Ramzan was survived by his daughter who is already married. It appears that Ramzan entered into a second marriage with one Smt. Khajani. Smt. Khajani was herself a widow, and from her earlier husband Furzulla, she had two sons Jafru - Respondent No. 2 and Samiuddin. Ramzan during his life time executed sale-deeds in respect of his property in favour of these 2 persons and 1/3rd of his share was sold by him to his own second wife Smt. Khajani.

2. Ramzan died long back and the names of Smt. Khajani, Samiuddin and Respondent No. 2 Jafru were accordingly mutated on the basis of the sale-deed executed in their favour that was done during the life time of Ramzan itself. The sale-deed was executed on 2.3.1959.

3. From the aforesaid facts, it appears that Petitioner No. 1 according to her own case is not the daughter of Smt. Khajani and claims herself to be her step daughter.

4. During the first round of consolidation itself, the name of Late Ramzan was expunged and the names of Smt. Khajani, Zafru and Samiuddin were recorded. No objection appears to have been filed to the aforesaid recording of names of Respondent No. 2 - Jafru, Samiuddin and Smt. Khajani in the Khata in question against the share of Ramzan.

5. With the advent of the second round of consolidation proceedings, the Petitioner No. 1 appears to have filed an application u/s 12 of the U.P. Consolidation of Holdings Act for mutating her name as Khajani had died in the meantime. The Respondent No. 2 - Zafru also moved an application alongwith the heirs of Samiuddin for recording their names in place of Smt. Khajani.

6. The objection of Petitioner No. 1 and Respondent No. 2 and the heirs of Samiuddin was contested and the Consolidation Officer vide order dated 4.12.2009 allowed the objection of petition No. 1 declaring that she is the legal heir of Smt. Khajani entitled to succeed to her holding as the Respondent No. 2 had failed to prove that he was the son of Ramzan. The Consolidation Officer also recorded that the Respondent No. 2 has failed to prove that he is the son of Smt. Khajani and has not been able to establish his actual parentage. The Consolidation Officer further concluded that Smt. Khajani died issueless, and had her husband been alive, he would have succeeded to the property. He further held that since the Petitioner No. 1 is the daughter of Late Ramzan from his first wife, therefore, she is entitled to succeed to the land in dispute.

7. Aggrieved the contesting Respondent filed an Appeal and the order of the Consolidation Officer was affirmed by the Settlement Officer Consolidation. The Respondent went up in revision before the Deputy Director of Consolidation under the provisions of Section 48 of the U.P. Consolidation of Holdings Act, 1953. The revisional authority came to the conclusion that succession would be governed in this case under the provisions of Section 174 of the U.P. Z.A. & L.R. Act and not by Section 171 thereof. The revisional Court further found that Petitioner No. 1 is not an heir as defined under the aforesaid provision as she is the marriel step married daughter who is not entitled to succeed to the holding. On the issue relating to the parentage/father's name of Respondent No. 2 about which the authorities below had held that no substantial proof was available, the Deputy Director of Consolidation relying on the registered sale-deed of 2.3.1959 came to the conclusion that the parentage of Respondent No. 2 or his brother cannot be now disputed as

they in their own right had sale-deeds in their favour executed by Ramzan. The parentage mentioned therein could not be questioned as the said parentage had never been disputed for the past half a century and after the closure of the consolidation operations in the first round. The Deputy Director of Consolidation, therefore, came to the conclusion that the bar of Section 49 of the U.P. Consolidation of Holdings Act would operate and therefore such an issue could not have been adjudicated in the second round of consolidation proceeding.

8. In the alternative the Deputy Director of Consolidation further discussed the line of succession and the applicability of Section 174 of the U.P.Z.A. & L.R. Act, 1950 and then came to the conclusion that the Settlement Officer Consolidation as well as the Consolidation Officer had manifestly erred by wrongly applying the law and by drawing incorrect assumptions on facts. The Deputy Director of Consolidation, accordingly, rejected the claim of Petitioner No. 1 and directed that the name of Respondent No. 2 and the heirs of his brother Samiuddin be recorded as Bhumidhars after expunging the name of Smt. Khajani.

9. It is relevant to mention that Petitioner Nos. 2 to 5 are the purchasers of the land from Petitioner No. 1 the deed whereof appears to have been executed during the pendency of the revision. They were made parties to the proceedings before the Deputy Director of Consolidation. Accordingly, they claim themselves to have stepped into the shoes of Petitioner No. 1 by virtue of the sale-deeds.

10. I have heard Sri S.N. Singh for the Petitioner, Sri Santosh Srivastava for Respondent No. 2 and learned Standing Counsel for Respondent No. 1.

11. From the facts that have been detailed by the Deputy Director of Consolidation, it is evident that the dispute relates to the holding of Smt. Khajani. The Petitioner No. 1 contends that it was the property of her father Sri Ramzan whose second wife Smt. Khajani died issueless in the sense that she had no other issue from Ramzan and, therefore, she is the rightful heir as held by the Consolidation Officer and Settlement Officer Consolidation. The very premise of the said claim appears to be founded on an incorrect assumption of succession against the facts on record. The Petitioner has been unable to dispute the fact that the sale-deed was executed on 2.3.1959 by Late Ramzan after he had entered into a marriage with Smt. Khajani.

12. It appears that Ramzan had apprehended about dispute that may arise in future and, therefore, he executed a sale-deed of his share in favour of Smt. Khajani, Respondent No. 2 and Samiuddin. This sale-deed was never contested by Petitioner No. 1 nor any objection was raised. The first round of Consolidation as referred to in the impugned order was concluded and during the said proceedings itself the Assistant Consolidation Officer vide order dated 2.9.1959 in Case No. 73 had recorded the names of Smt. Khajani and the other purchasers. This, therefore, establishes that the holding was not succeeded to by Smt. Khajani as the widow of Late Ramzan. It became her self-acquired property through a sale-deed and which

remained intact through out her life without any objection on the part of the Petitioner No. 1. The Consolidation Officer and the Settlement Officer Consolidation, therefore, committed an error by overlooking the aforesaid aspect of the matter.

13. Once this conclusion is drawn then the next issue is as to how the succession would be governed under the provisions of the U.P.Z.A. & L.R. Act. The Petitioner is the married daughter of Late Ramzan. It is not the succession from Ramzan which is now involved in this matter. It is the claim of the legal heirs of Smt. Khajani which has now to be considered, as she died as a female Bhumidhar intestate, u/s 174 of the U.P. Z.A. & L.R. Act. The provisions of Section 171 as claimed by the Petitioner No. 1 are neither attracted nor even otherwise the Petitioner No. 1 can claim any right on the basis thereof. u/s 174, the first heir is of category (a) which includes a son. Then a daughter is in category (d). There is no categorisation for a step daughter or a daughter from the previous wife of the deceased husband. The Petitioner No. 1, therefore, does not fall within any of the class of heirs as contained in Section 174 and, therefore, she cannot succeed as an heir of Smt. Khajani.

14. So far as the claim of Respondent No. 2 is concerned, the Deputy Director of Consolidation is right in assuming that even if there is some doubt about the parentage of Respondent No. 2, the fact remains that the witnesses had indicated that the Respondent No. 2 - Zafu and Samiuddin were the sons of Smt. Khajani from her first husband Fardulla and hence they were the sons of Smt. Khajani. The Deputy Director of consolidation has not committed any error in rejecting the claim of the Petitioners. The statement of the witness of Petitioner No. 1 Suba son of Rab Dayal also supports the same.

15. Accordingly, I do not find any merit in the writ petition. The writ petition is hereby dismissed.