
(2013) 11 AHC CK 0122
In the Allahabad High Court
Case No : Writ B No. 57408 of 2013

Chandan Devi

APPELLANT

Vs

Additional Collector/Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 1 ADJ 152 : (2014) 1 ALJ 279 : (2014) 1 AWC 45 : (2014) 122 RD 119

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; Rishi Kesri Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri. R.K. Pandey, for the petitioner and Sri. Rishi Kesh Tripathi, for the respondents. The writ petition has been filed against the orders of Consolidation Officer dated 17.11.2003 and Deputy Director of Consolidation, dated 31.08.2013, passed in title proceeding, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute between the parties relates to the land of basic consolidation year khata 196 of village Mataundh, pargana and district Banda, which was recorded in the names of Gorwa (now represented by respondents-3 to 5). The petitioner filed an objection (registered as Case No. 266/427/181/266/2002-03) u/s 9 of the Act, claiming co-tenancy of 1/2 share, in the land in dispute. It has been stated by the petitioner that the land in dispute was the ancestral property coming from the time of Bhaiya Lal in the family. After death of Bhaiya Lal, it was jointly inherited by his two sons Gorwa and Maiyadeen. The petitioner is the daughter of Maiyadeen, who died in his early age, leaving behind him, his widow Smt. Ram Dulari and the petitioner, who was unmarried minor daughter. Smt. Ram Dulari also died shortly thereafter, in the year 1956. Taking advantage of the minority of the petitioner, Gorwa got his name recorded as an heir of

Maiyadeen, on the basis of PA-11, by the order of Supervisor Kanoongo, in the year 1961 although the petitioner being unmarried daughter inherited the share of Maiyadeen. The petitioner through out remained in joint possession over the land in dispute. The petitioner filed a suit u/s 229B of U.P. Act No. 1 of 1951, for declaring her as co-sharer of 1/2 share, in the disputed land, in the year 1984, which was abated under the Act.

3. Gorwa contested the objection of the petitioner and denied the petitioner being daughter of Maiyadeen in his counter objection. However, in the statement, it was admitted that the petitioner was daughter of Maiyadeen, but it was stated that on marriage, the petitioner was divested u/s 172 of U.P. Act No. 1 of 1951 and Gorwa being the real brother of Maiyadeen inherited his share in the land in dispute. The Case was tried by the Consolidation Officer (respondent-2). Apart from documentary evidence, the petitioner examined herself as PW-1, Baldu as PW-2 and Mijaji as PW-3. Gorwa examined himself as DW-1. It is alleged that some compromise was filed on 20.11.2001 before the Consolidation Officer, but the parties denied filing of the compromise. The Consolidation Officer, therefore heard arguments on merit and by order dated 17.11.2003 held that the petitioner could not give any evidence to show that at the time of death of Maiyadeen and Smt. Ram Dulari, she was unmarried. In any case, at present she is admittedly married and wife of Ram Gulam as such in view of provisions of Section 172 of U.P. Act No. 1 of 1951, she was divested her interest in the land in dispute. Gorwa being real brother of Maiyadeen inherited his share also in the land in dispute. On these findings Consolidation Officer, by order dated 17.11.2003, dismissed the objection of the petitioner, rejecting the compromise.

4. The petitioner filed an appeal (registered as Appeal No. 48) from the aforesaid order. The appeal was heard by Assistant Settlement Officer Consolidation, Banda, who by order dated 25.03.2004 held that in the khatauni 1360-61 F, names of Gorwa and Maiyadeen were recorded and in khatauni 1369-1971 F, names of Gorwa and Smt. Ram Dulari widow of Maiyadeen were recorded. It is proved from Pariwar Register and statement of the witnesses that the petitioner was daughter of Maiyadeen and Smt. Ram Dulari and was unmarried at the time of their death, whose marriage was performed by Gorwa. The Consolidation Officer did not consider the evidence on record and has not recorded any finding on the issues framed by him and has illegally dismissed the objection of the petitioner. On these findings, the appeal was allowed by order dated 25.03.2004 and the matter was remanded to Consolidation Officer for fresh decision.

5. Respondents-3 to 5 filed a revision (registered as Revision No. 1 of 2008-09). The petitioner also filed a revision (registered as Revision No. 2 of 2008-09), from the aforesaid order. Both the revisions were consolidated and heard by Deputy Director of Consolidation, who by order dated 31.08.2013, held that as according to her own admission, Smt. Chandan Devi is at present married wife of Ram Gulam as such in view of provisions of Section 172 of U.P. Act No. 1 of 1951, she was divested her interest in the land in dispute as Maiyadeen and Smt.

Ram Dulari did not execute any will in her favour. Gorwa being real brother of Maiyadeen inherited his share also in the land in dispute. On these findings Deputy Director of Consolidation, by order dated 31.08.2013 allowed the revision of respondent-3 to 5 and dismissed the revision of the petitioner and set aside the order of Assistant Settlement Officer Consolidation and restored the order of Consolidation Officer. Hence this writ petition has been filed.

6. The counsel for the petitioner submitted that from the evidence on record it is proved that the petitioner was unmarried at the time of the death of her father and mother. Assistant Settlement Officer Consolidation has recorded a categorical finding of fact in this respect. In view of the provisions of Section 171 of U.P. Act No. 1 of 1951, the petitioner, being unmarried daughter of Maiyadeen and Smt. Ram Dulari at the time of their death, was preferential heir u/s 171 of U.P. Act No. 1 of 1951 and inherited share of Maiyadeen. Gorwa was not the heir of Maiyadeen but taking advantage of the minority of the petitioner, Gorwa got his name recorded as an heir of Maiyadeen, on the basis of PA-11, by the order of Supervisor Kanoongo, in the year 1961. The petitioner through out remained in joint possession over the land in dispute. The petitioner also filed a suit u/s 229B of U.P. Act No. 1 of 1951, for declaring herself as co-sharer of 1/2 share, in the disputed land, in the year 1984, which was abated under the Act. The petitioner did not base her title on the basis of any will, Deputy Director of Consolidation has illegally made remark in this respect. Title and possession of the petitioner has been established from the evidence on record but objection of the petitioner has been illegally dismissed without considering the evidence on record. The counsel for the petitioner placed reliance on the judgment of this Court in Maya Devi v. DDC and others, 1969 RD 19, in which, it has been held that a daughter, who inherited the property prior to coming into force of Hindu Succession Act, 1956, became absolute owner u/s 14 of the Hindu Succession Act, 1956. Judgment of Supreme Court in AIR 1990 46 (SC) , in which it has been held that interest of a lady inherited as widow, would not divest on remarriage and judgment of this Court in Raghav Ram v. Board of Revenue and others. 2010 All. C.J. 53 : (2010 (5) ALJ (NOC) 667 (All) in which, it has been held that right inherited as a widow is not divested on remarriage u/s 172 of the Act. Judgment of this Court in Hari Ram v. Ram Asrey, 2007 All. C.J. 104, in which it has been held that after amendment of Section 171 by U.P. Act No. 37 of 1985, a married daughter is also an heir.

7. I have considered the arguments of the parties and examined the record. A perusal of order of respondent-1 shows that he has admitted the case of the petitioner that she inherited the share of her father, after death of her mother in the year 1956 but held that as subsequently the petitioner was married as such her interest in the land in dispute was devolved upon Gorwa, who was real brother of Maiyadeen in view of the provision of Section 172 of U.P. Act No. 1 of 1951. Relevant portion of Section 172 is quoted below:

Section 172:- Succession in the case of a woman holding an interest inherited as

a widow, mother, daughter etc.- (1) When a bhumidhar, sirdar or asami has after date of vesting, inherited the interest in any holding-

(a), or

(b) as a daughter, son's daughter, sister or half sister, being the daughter of same father as the deceased marries, dies abandons or surrenders such holding or part thereof,

the holding or part shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171 of the last male bhumidhar, sirdar or asami.

8. Provisions of Section 172 of U.P. Act No. 1 of 1951, came up for consideration before this Court in Chhiddoo Singh Vs. Deputy Director of Consolidation and Others, and Jagarnath and Others Vs. Deputy Director of Consolidation, U.P. Camp at Gorakhpur and Others, , in which it has been held that if a lady inherit and tenancy right as a widow, mother or daughter, then succession opened u/s 172, on her re-marriage/marriage, death, abandon and surrender and her interest would devolve upon the heirs of last male tenure holder u/s 171 of the Act. Supreme Court in Mool Chand Vs. Kedar (Deceased) By Lrs. and Others, , held that Smt Kaushalya Devi being the daughter of Musai, after his death inherited his property and after the coming into force of the U.P. Z.A. Act, became a bhumidhar. When she died the devolution would be governed by clause (a) of Section 172(2). This clause (a) is further split into two sub-clauses, sub-clause (i), under which, if under the personal law she had only a life estate then her property would devolve upon the nearest surviving heir in accordance with the provisions of Section 171. On the other hand if it falls under sub-clause (ii) then if under the personal law she held property absolutely, the devolution would be governed by the table mentioned in Section 174.

9. Section 14 of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Section 4(2) of the Hindu Succession Act, 1956, provides that 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 ceilings or for the devolution of tenancy rights in respect of such holdings. This Court in Smt. Prema Devi Vs. Joint Director of Consolidation (Head quarter) at Gorakhpur Camp and Others, , Uma Shanker and Another Vs. The Deputy Director of Consolidation and Others, , Rudra Pratap and Another Vs. Board of Revenue, U.P. and Others, and Palak Dhari and Another Vs. Deputy Director of Consolidation, Varanasi and Others, held that provisions of Section 14 of Hindu Succession Act, 1956 will not apply to the tenancy holdings.

10. Thus in Maya Devi's case (supra), provisions of Section 4(2) of the Hindu Succession Act, 1956, and in AIR 1990 46 (SC) provisions of Section 172 of U.P.

Act No. 1 of 1951 was not noticed, while Ragho Ram's (2010 (5) ALJ (NOC) 667 (All) case is based upon Gajodhar Devi's case. Judgment of this Court in Jagarnath and Others Vs. Deputy Director of Consolidation, U.P. Camp at Gorakhpur and Others, and judgment of Supreme Court in Mool Chand Vs. Kedar (Deceased) By Lrs. and Others, specifically dealt with the provisions of Section 172 of U.P. Act No. 1 of 1951. Thus, I respectfully follow the cases of Chhiddoo Singh, etc. From the evidence on record it is proved that name of Maiyadeen was recorded in khatauni 1360-61 F, which shows that Maiyadeen died after coming in to force of U.P. Act No. 1 of 1951. According to the petitioner, Smt. Ram Dulari died in 1956. According to her statement, her marriage would have been performed in the year 1966-67. Thus in view of the provisions of Section 172, her interest in the land in dispute, which was inherited by her as a daughter would devolved upon Gorwa, who was real brother of Maiyadeen and his heir u/s 171(f) of U.P. Act No. 1 of 1951 on her marriage. The petitioner was divested long before her filing of the suit u/s 229B of U.P. Act No. 1 of 1951 or objection under the Act. In view of the aforesaid discussion, there is no illegality in the impugned order. The writ petition has no merit and is dismissed.