

(1979) 05 AHC CK 0036
In the Allahabad High Court
Case No : Writ Petition No. 3048 of 1973

Chandra Pal Singh

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 11-05-1979

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171,
172(2), 174, 229B

Citation : (1979) AWC 447 : (1981) RD 54 : (1979) RD 240

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : S.C. Agrawal, G.N. Verma and Krishna Murari Sinha, for the Appellant; H.S. Joshi and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—On facts found by the consolidation authorities the questions that need determination are whether presumption of legal marriage could be raised where two persons lived together as husband and wife for twenty eight years. And if it be so what would be the course of devolution on the death under Zamindari Abolition Act. Shall the property revert to the heirs of male tenant u/s 171, as the property having been inherited as widow the law does not require continuance of widowhood on the date of death or as a result of remarriage the widow lost her right and title and acquired fresh rights which devolved on her heirs u/s 174.

2. It is admitted that Chain Singh was occupancy tenant who died thirty years prior to the date of vesting leaving his widow Sukhia. After two years Sukhia, to use the expression of opposite party in her deposition, "Gopal Singh ke Sath Baith Gai" but she continued in possession of the property till her death in 1965. From the wedlock of Gopal and Sukhia was born Chandra Pal, Petitioner. After her death dispute arose between Petitioner and opposite party No. 4 Smt. Maina,

sister of Chain Singh for mutation. The order was against the Petitioner. He therefore filed a suit for declaration u/s 229-B of Z.A. Act which was dismissed in default. The Petitioner on enforcement of Consolidation filed his objection u/s 9-A of U.P. Consolidation of Holdings Act giving rise to this petition. It was rejected by all the consolidation authorities on the finding that Sukhia's marriage with Gopal was not legal and she continued in possession as widow of Chain Singh. The basis for finding that she was widow of Chain Singh was entry in Kutumb register showing Sukhia as widow of Chain Singh. The appellate authority held "there is no positive evidence about marriage of Smt. Sukhia. If Sri Chandra Pal was born with the union of Gopal, he is entitled to inherit only when he was born as a result of legal marriage. The widow's remarriage was legalised as far back as 1865 by Hindu Widow Remarriage Act. It was not and is not disputed that Sukhia and Gopal lived as husband and wife. In fact the opposite party admitted that the marriage was in Karaon form (form of marriage prevalent among others than twice" born). The appellate authority felt difficulty in accepting it, as legal marriage, because ceremonies were not proved. In Badri Prasad Vs. Dy. Director of Consolidation and Others, it was held:

A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this view, the contention of Sri Garg for the Petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserves no consideration. If man and woman who live as husband and wife in society are compelled to prove half a century later, by eye-witness evidence that they were validly married, few will succeed.

3. In view of this pronouncement legality of marriage has to be presumed particularly when opposite party admitted that Sukhia married in Karao form. The living together of a man and woman as husband and wife, and recognised, as such, by society gives rise to presumption that they were married unless proved otherwise. The presumption being in favour of Petitioner the burden to rebut it was on opposite party. The appellate authority therefore committed an error of law in holding that the marriage was not legal as there was no positive evidence. The entry in Kutumb register recording Sukhia as widow of Chain Singh was obviously incorrect. And in any case it did not rebut the presumption which arose under law. The finding that Sukhia continued to be widow of Chain Singh suffers from a manifest error of law.

4. The question then is the legal consequences of Sukhia's remarriage and her continuous possession over her former husband's property. According to the Learned Counsel for the Petitioner the effect of the remarriage was that the tenancy which Sukhia inherited from her husband stood extinguished and succession opened in favour of the heirs of the last male tenants. As there was

no heir u/s 35 of the Tenancy Act the tenancy stood extinguished u/s 45(a). The effect of extinction and her continuance in possession, thereafter, was contrary to provisions of law in force and she acquired rights of her own both under the Tenancy Act and under Zamindari Abolition Act. The tenancy which was thus acquired, according to the Learned Counsel for the Petitioner, was her own and she was an absolute owner at the time of her death in 1965. The succession therefore would be governed u/s 174. On the other hand the Learned Counsel for the opposite party relied on *Lurkhur v. Jhuri* 1972 AWR 315 which was followed in 1976 AWC 809 and 654. It was urged that once it was established that Srati Sukhia inherited as a widow, the succession on her death shall be governed u/s 172(2) and not u/s 174. As it does not require that the widow who inherited the interest in the holding of her husband should have died as a widow.

5. At the time of the hearing of the writ petition the correctness of the decision in *Lurkhur v. Jhuri* (supra) was doubted, and the entire petition was referred for decision by a larger Bench, as apart from the question of devolution the legality of marriage was an important question and no decision was brought to notice. But the Division Bench which heard the reference felt that so long the finding of the consolidation authority on marriage was not set aside the question of applicability of Section 172(2) or Section 174 of Zamindari Abolition Act was not of any consequence. It consequently referred the matter back for deciding the petition in accordance with law. At the time of hearing of the petition, after it was returned by the Division Bench, two Supreme Court decisions were brought to notice ; one, *Badri Prasad's* case which has already been referred while deciding the question of remarriage and the other *Ram Jiawan's* case which shall be referred while deciding the next question. In view of *Ram Jiawan's* case it is no more necessary to refer the case for consideration by larger Bench again.

6. Coming to the question whether the property in question devolved on Petitioner u/s 174 or on opposite party u/s 172(2)(b) it is necessary to quote Sub-section itself.

Section 172(2). Where a bhumidharwho has before the date of vesting inherited an interest in any holding as a widow, widow of a male lineal descendant in the male line of descent, mother, daughter, father's mother, son's daughter, sister or half sister being the daughter of the same father as the deceased... ..

(b) dies, abandons or surrenders and in the case of a widow, widow of a male lineal descendant in the male line of descent, mother, father's mother, marries such bhumidhar... .. on the date immediately before the said date held the holding otherwise than as an intermediary or tenant referred to in Clause (a), the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male tenant.

7. The basic conditions envisaged in this Sub-section for devolution are that the

widow should have inherited an interest in the holding prior to the date of vesting, that she should die, surrender, abandon or remarry and that she, should have held the holding on the date immediately preceding the date of vesting as intermediary or tenant of class specified therein. In *Ram Jivan Vs. Smt. Phoola (Dead) by Lrs. and Others*, , this subsection came up for interpretation before Supreme Court. It held :

It may be pertinent to note here that the Statute uses the word "the holding or part shall devolve", to denote that if it is found that a widow has inherited an interest in the holding that devolves and not the interest of the widow which ceased after her death.

8. It is thus clear that holding should remain the same. In U.P. Tenancy Act holding was defined as "a parcel or parcels of land held under one lease, engagement or grant... .. The question is whether holding regarding which the dispute arose was the same in which an interest was inherited as widow. This shall depend on the provisions of law regarding remarriage. Section 36 of U.P. Tenancy Act provided that if the widow remarried the holding devolved on heirs of last male tenant. In other words it contemplated civil death. But at time of Sukhia's remarriage there was no heir of the last male tenant as laid down in Section 35, the tenancy therefore extinguished u/s 45(a). If the tenancy stood extinguished the interest which the widow inherited in the holding automatically came to an end. It would be anomalous to suggest that in spite of extinction of tenancy, by operation of law as Sukhia continued in possession over the land it was the same holding and same interest which she had inherited. The land may remain the same but the holding and interest were different. By continuing in possession and paying rent she might have acquired tenancy by implied settlement, acquiescence or estoppel or by adverse possession u/s 180(2) of U.P. Tenancy Act, her possession being contrary to the provisions of law but in either case it was neither the same tenancy nor the same interest which was held by her husband. As it was fresh acquisition the land was held under new engagement. The holding was therefore not the same in which an interest was inherited as widow. Nor was she in possession on the date of vesting over the holding which she had inherited from her husband.

9. The Learned Counsel for opposite party relied on *Ram Jiawan's* case and urged that facts in that case were similar to the case and as the Supreme Court negated the claim of widow's heir u/s 174 and accepted those of heirs of male tenant the same result should follow in this case. In *Ram Jiawan's* case the dispute was between Phoola, daughter of Smt. Menda who had inherited interest in the holding as widow prior to the date of vesting and Ram Jiawan's father who claimed on death of Menda as heir of last male tenant. It was held that although Menda became statutory tenant under Oudh Rent Act and hereditary tenant under U.P. Tenancy Act yet these changes in her interest did not clothe her with better rights under law nor did it bring about any change in the interest which continued to be the same. At page 851 the Supreme Court

observed:

In the instant case since Menda continued to retain occupation of the land on the death of her husband, she did so only as the heir of her husband and not otherwise for if that be not so then she could not have been entitled to retain occupation.

10. As seen earlier the continued occupation of Sukhia was otherwise. She might have inherited the interest of her husband ; beginning her occupation might have been as heir of husband but that ceased with remarriage.

11. The other case relied was *Lurkhur v. Jhuri* 1972 AWR 315. In this case the widow inherited Fixed Rate Tenancy which was governed by personal law. As she remarried, dispute arose, on her death, between her sons from second husband and heirs of last male tenant. It was held by the Division Bench that as the widow inherited the property from her husband prior to the date of vesting and she was limited owner, provisions of Section 172(2) were fully applicable. On the question of adverse possession the Bench observed, "To start with, Smt. Mahadiya came in possession as a widow of Ghura and she had only a widow's estate. Sometime thereafter she remarried but her possession continued. It is true that after remarriage she was not entitled to remain in possession but she did continue But such continuous possession did not clothe Smt. Mahadeyia with a higher right than that of a widow's estate."

12. The Division Bench relied on Privy Council decision in *Smt. Lajwanti v. Safa Chand* AIR 1924 PC 121 and AIR 1933 92 (Oudh) . The other decisions cited were *Dharam Bharati v. Bali Dei* AIR 1964 Orissa 25 , *Goswami Shri Maganlalji Gordhanlalji Maharaj Vs. Goswami Shri Purshottamlalji Wagheshalalji Maharaj*, and *Umrao Singh and Another Vs. Pirthi and Others*, . All these decisions have, as a matter of fact, followed Privy Council's decision in *Lajwanti's* case where the dispute was between daughter of the widow and collaterals of last male tenant. The claim of daughters that the widow acquired an absolute title was negated on the well recognised principle in Hindu widow of limited owner. It was held ;

The Hindu widow, as often pointed out is not a life renter but has a widow's estate-that is to say, a widow's estate in her deceased husband's estate. If possession as widow she possesses adversely to anyone as to certain parcels she does not acquire the parcels as stridhan but she makes them good to her husband's estate.

13. In *Mst. Parbati* the property involved was house. The widow who inherited the house from her husband remarried and the question that arose was whether her possession on her remarriage conferred on her absolute or limited estate. It was held that:

The mere fact of remarriage in the absence of any assertion of absolute ownership a change in the manner of her possession could not enlarge her estate.

14. The ratio of these decisions is that if a widow on remarriage continues in possession of her husband's property she continues in the same status unless she asserts her absolute title. In cases governed under Tenancy Act the status comes to an end by operation of law. The continuance in possession after extinction is contrary to the provisions of law. It was not necessary to claim absolute rights. What could have been claimed in personal law by assertion was automatic under Tenancy Law. The Privy Council or the Oudh Court did not doubt that possession after remarriage is adverse but the plea of absolute title was not accepted because these cases were governed by personal law where in absence of any assertion the widow shall be deemed to continue and enlarge her widow's estate only. The position was different under Tenancy Law. There was no question of widow's estate as Chain Singh was an occupancy tenant. The adverse possession did not enlarge widow's estate. It conferred fresh rights on her u/s 180(2). She became a tenant in her own right.

15. In the result this petition succeeds and is allowed. The order passed by all the three consolidation authorities are quashed. The Deputy Director is directed to decide the revision afresh in the light of the observations made above and in accordance with law. The parties shall bear their own costs.