

(1976) 05 AHC CK 0043
In the Allahabad High Court
Case No : Civil Misc. Writ No. 141 of 1972

Chhiddoo Singh

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 17-05-1976

Acts Referred:

Agra Tenancy Act, 1926 — Section 24
Hindu Succession Act, 1956 — Section 14
Hindu Widows Remarriage Act, 1856 — Section 2
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 18, 4(2), 48
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 172, 172(2), 174

Citation : (1976) AWC 809

Hon'ble Judges : M.N. Shukla, J

Bench : Single Bench

Advocate : Laji Sahai Srivastava, for the Appellant; H.S. Joshi, B.L. Yaedav and S.C., for the Respondent

Final Decision : Allowed

Judgement

M.N. Shukla, J.—This writ petition is directed against the orders dated 1-6-1970 and 21-9-1971 passed by the Settlement Officer, Consolidation and the Deputy Director of Consolidation respectively. The points which have arisen for decision are the nature of the legal rights which vested in Smt. Kesar Kunwar, who was her legal heir after her death and on whom these rights subsequently devolved.

2. The dispute relates to chak No. 38 recorded in the basic year in the name of Smt. Kesar Kunwar, widow of Sumer Singh of village Harsainpur in the district of Moradabad. The relevant Smt. Kesar Kunwar was in the first instance married to Badam Singh and Smt. Moorti Devi, Respondent No. 4, is the daughter of Smt. Kesar Kunwar by her union with Badam Singh. It is admitted that Badam Singh died when the Agra Tenancy Act, 1926 was in force and Smt. Kesar Kunwar remarried his real brother Sumer Singh also when the Agra Tenancy Act was in force. Sumer Singh too died during the pendency of the same Act and Smt.

so that on her death the succession would be governed by Section 174 of the U.P. Zamindari Abolition & Land Reforms Act. It is the decision on this cardinal point on which the findings on other subsidiary points raised in the case would eventually depend. I find that in the order of the Settlement Officer, Consolidation it has been mentioned that chak No. 38 was recorded in the basic year in the name of Smt. Kesar Kunwar as the widow of Badam Singh. The Settlement Officer, Consolidation has also adverted to other documentary evidence in the case such as the statement made by Smt. Kesar Kunwar in Suit No. 15 of 1953 in the court of Munsif, Moradabad where she had said that she was the widow of Sumer Singh and that Sumer Singh left 50 Bighas of land to be inherited by her after his death. The Settlement Officer, Consolidation adds that Smt. Kesar Kunwar was the wife of Badam Singh but she remarried Sumer Singh, brother of Badam Singh, after his death when the Agra Tenancy Act, 1926 was in force. The Deputy Director of Consolidation specifically observed in his order that it was admitted by the parties that Smt. Kesar Kunwar was the widow of Badam Singh and inherited the property from him after his death and thereafter she remarried his real brother, Sumer Singh. From these observations contained in the orders passed by the Consolidation authorities it can be safely inferred that Smt. Kesar Kunwar expressly claimed her rights as the widow of Badam Singh in the first instance. In my opinion the initial statement of the widow regarding the source of her rights was the most crucial point in the case and in the absence of anything to the contrary all her future legal rights would take shape only from the intrinsic right which devolved upon her on the death of her husband. It is also an admitted fact that Badam Singh had died when Agra Tenancy Act was in force and in fact Sumer Singh also died during the same period. Therefore, on Badam Singh's death Smt. Kesar Kunwar inherited the land as his heir and acquired a limited interest therein as the succession would be governed by Section 24 of the Agra Tenancy Act, 1926 according to which the property devolved on the death of an occupancy tenant in the absence of a male lineal descendant upon his widow "till her death or remarriage". Consequently when she remarried Sumer Singh, brother of Badam Singh, then her rights extinguished and Sumer Singh became the heir of his brother. Succession opened again when Sumer Singh died and on his death Smt. Kesar Kunwar became the occupancy tenant of the said land as a limited heir under the Hindu law.

6. On Sumer Singh's death a serious dispute arose between his widow Smt. Kesar Kunwar and Chhiddoo Singh, one of his collaterals. After the abolition of Zamindari Chhiddoo Singh (Petitioner) actually filed Suit No. 15 of 1953 against Smt. Kesar Kunwar and others for a declaration that the Plaintiff was the rightful heir of Sumer Singh and entitled to the property after the death of Smt. Kesar Kunwar. The suit was contested by the Defendant but a decree for declaration was passed as prayed by the Plaintiff. In that suit it was admitted by Smt. Kesar Kunwar that she was the widow of Sumer Singh. The learned Munsif who decided the suit observed in his judgment that Smt. Kesar Kunwar had got a Hindu

widow's interest only over the property in suit. He further held that the Plaintiff was the son's son of Sumer Singh's father's father and was, therefore, an heir u/s 171 of the U.P. Zamindari Abolition & Land Reforms Act and entitled to the possession of the property, provided the widow of Sumer Singh died prior to the Plaintiff.

7. The same dispute appears to have been revived before the Consolidation authorities after the death of Smt. Kesar Kunwar, chak No. 38 was recorded in the name of Smt. Kesar Kunwar, widow of Badam Singh in the basic year. Chhiddoo Singh applied for mutation of his name as the nearest surviving collateral of Sumer Singh and the heir to the last male tenant. Smt. Moorti Devi, Respondent No. 4, daughter of Smt, Kesar Kunwar by Badam Singh also applied for mutation of her name and Chhiddoo Singh contested the case on the ground that after the death M Badam Singh, Smt. Kesar Kunwar remarried Sumer Singh and the land in dispute was inherited by her on the death of Sumer Singh and Smt. Moorti Devi had no right of inheritance in the property. The specific issue framed before the Consolidation Officer was as to who is the legal heir of Smt. Kesar Kunwar deceased. That issue was decided in favour of Chhiddoo Singh, his objections were allowed and the finding recorded by the Consolidation Officer was that Chhiddoo Singh was the legal heir of the deceased Smt. Kesar Kunwar. That order was, however, reversed in appeal and the revision was decided partly in favour of the present Petitioner and partly against him.

8. In my opinion the case was correctly decided by the Consolidation Officer and the orders passed by the Settlement Officer, Consolidation and the Deputy Director of Consolidation were erroneous. The Settlement Officer, Consolidation was greatly influenced by the long standing entries in favour of Smt. Kesar Kunwar as the widow of Badam Singh in the Khasra and Khewats for the period 1347 Fasli to 1359 Fasli. According to him the Respondent in appeal had not offered any convincing explanation as to why he had not taken any steps to get the entries corrected during this long period of about thirty years. It is significant that the Deputy Director of Consolidation set aside that finding and held that after the death of Badam Singh, Smt. Kesar Kunwar lost her rights and Sumer Singh whom she remarried alone became the heir of his brother and, therefore, the later entries showing Smt. Kesar Kunwar as the widow of Badam Singh were manifestly wrong and at variance with true facts and could not confer any legal rights on Smt. Kesar Kunwar during the life time of Sumer Singh. Having come, to that conclusion the Deputy Director of Consolidation curiously enough still ordered the name of Smt. Moorti Devi, daughter of Smt. Kesar Kunwar by Badam Singh, to be recorded over a large number of plots in dispute on the basis that in the later years entries Smt. Kesar Kunwar continued to be recorded as the widow of Badam Singh. Therefore, that part of the order of the Deputy Director of Consolidation in which the Petitioner's rights were not accepted and Smt. Moorti Devi's name was ordered to be recorded was patently inconsistent and illegal and must be set aside.

9. As I have already observed, the question whether Section 171 or Section 174 of the U.P. Zamindari Abolition & Land Reforms Act would govern succession in the present case would ultimately depend on whether Smt. Kesar Kunwar had only a limited interest in the property or she acquired independent tenancy rights. The law is fairly settled that if a widow enters into possession of the tenancy land of her husband and she claims to have inherited the property as a widow, then she would have only a limited interest and on her death the property would go back to the reversionary heirs and collaterals of the last male owner-- See Mst. Kirpal Kaur Vs. Bachan Singh and Others, . I had occasion to deal with the matter in Jagannath v. Deputy Director of Consolidation, CMW No. 1303 of 1972 dt. 11-5-1976 : (1976 AWC 654), The law on the subject was summed up by me in these words:

The nature of the rights which a Hindu widow would acquire with respect to a property over which she enters into possession otherwise than as an heir of her husband would depend on a number of factors:

(a) Where she claims the property as the heir of her husband expressly or impliedly, if there is evidence to prove that she based her claim as an heir of her husband she would only be entitled to a widow's estate and liable to make the property of her husband good to her estate.

(b) Where the widow asserts that she takes the property as an absolute owner and completes her possession for the statutory period, she would acquire full rights by adverse possession and shall not be a limited owner.

(c) Where she asserts nothing, there also she would acquire full rights unless it is established by the Respondents that she had entered into possession as an heir or that she had taken possession of the property as a result of an arrangement with the collaterals or other claimants opposing her title.

(d) Her subsequent conduct revealed in such things, as for instance, the recitals made in the documents of transfer would be consistent with her assertion as an absolute owner and would entitle her to full rights as such,

Since in the instant case it is abundantly proved that Smt. Kesar Kunwar had throughout claimed the property as the widow of Badam Singh in the first instance and later as the widow of Sumer Singh, her possession could not be taken as adverse to the collaterals and she was bound to make the property good to the estate of the reversioner. The bed-rock of the entire case law on the subject is the leading case of the Privy Council in Sham Koer v. Dah Koer ILR Cal 664 . The very fact that in the present case the widow remarried another person would not alter the situation at all. If in the first instance she acquired only a limited interest as the widow of her first husband, her second marriage with another person would not clothe her with higher rights. A widow cannot augment her legal rights merely by performing matrimonial hat-tricks. She would on the death of her second husband inherit the property as his widow unless she asserts adverse possession and proves it by evidence of possession for the prescribed

period. There is no such evidence in the present case at all nor was any such assertion made by Smt. Kesar Kunwar after the death of Sumer Singh. There cannot be two opinions about the fact that she lost all her rights after her remarriage with Sumer Singh and during the life time of Sumer Singh she could not claim any rights but it was surely upon Sumer Singh's death that she could assert her independent rights and claim adverse possession but she did nothing of the sort. When a widow initially enters into possession as a limited owner, the character of her subsequent possession after remarriage cannot change in the absence of evidence of a change of her animus. In such a case it is for the widow to show that she had asserted her absolute rights and was possessing adversely as an absolute owner in order to prescribe for absolute ownership. Very cogent evidence is necessary to show that she afterwards asserted a title as absolute owner. In *Dharmu Bharati and Others Vs. Buli Dei and Others*, even rent receipts showing her as wife of the second husband were not by themselves held sufficient to make out a case of assertion of her rights as full owner as these entries were considered to be not in any manner inconsistent with the rights of a limited owner. In my opinion that case is on all fours with the present one. Smt. Kesar Kunwar did not change her animus or declare her adverse possession at any stage and the mere fact that she was rather for a long time entered as the widow of Badam Singh would not be sufficient evidence of a change of her animus. To the same effect was the earlier division Bench decision of the Orissa High Court in *Dulhabh Seth and Another Vs. Bharat Seth and Others*, . The ratio of that case was:

It is no doubt true that the rule of Hindu law which lays down that a widow on her remarriage, forfeits her interest in her husband's estate applies only to widow as such and is not applicable to a widow who succeeds as mother. Even otherwise, u/s 2 of the Hindu Widows' Remarriage Act, the widow would forfeit her right as mother. But as she entered into possession as limited owner the character of her subsequent possession after remarriage would not be changed in the absence of evidence of a change of her animus.

10. Thus, the position which emerges is that Smt. Kesar Kunwar inherited the property as a widow and consequently succession to that property would be governed by Section 172(2) and not Section 171 of the U.P. Zamindari Abolition & Land Reforms Act. In a division Bench decision of this Court in *Lurkhur v. Jhuri* 1972 AWR 315 it was held that what Section 172(2) of the U.P. Zamindari Abolition & Land Reforms Act contemplated was that the widow should have inherited as a widow, and not that she would have died as a widow. If she inherited as a widow of her husband before the date of vesting and had only a life estate under the personal law applicable to her, the requirements of Section 172(2) were fully satisfied. Where the husband died long before the date of vesting and his widow inherited his fixed rate tenancy as the widow's estate and the widow remarried, then after her death subsequent to the date of vesting the succession would be governed by the provisions of Section 172(2) of the U.P. Zamindari Abolition & Land Reforms Act. "She might be the wife of her second

husband but so far as her former husband was concerned she would still be his widow. There is therefore, no escape from the conclusion that after the death of the widow, it is Section 171 and not Section 174 of the U.P. Zamindari Abolition & Land Reforms Act which will govern the succession."

11. The learned Counsel for the Respondents drew my attention to Section 14 of the Hindu Succession Act under which any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be her as full owner thereof and not as a limited owner. Reliance was also placed on the decision of the Supreme Court in *Ramji Dixit v. Bhirgunath* 1968 AWR 748 that a female who inherited the holding before the enforcement of the U.P. Zamindari Abolition & Land Reforms Act of the last male holder and became a Bhumidhar u/s 18 was competent to transfer such holding and the transfer would be valid not only for her life time but effective beyond her life time as well. In other words, her interest in so far as her right to alienate was concerned was absolute and not mere life interest. *Ramji Dixit's* case, however, dealt with the nature of Bhumidhari rights conferred by the U.P. Zamindari Abolition & Land Reforms Act and the capacity of a Bhumidhar to alienate Bhumidhari rights. It is not an authority for the proposition that the life interest of a female heir is converted into an absolute interest. The argument advanced on behalf of the Respondents in this connection is entirely misconceived. Secondly, it must be borne in mind that the Hindu Succession Act was passed solely to define the personal law of succession applicable to Hindus. It was not meant to govern rights in agricultural tenancy. Sub-section (2) of Section 4 provides that nothing in the Act shall be deemed to affect the provisions of any law for the time being in force providing for the devolution of tenancy rights in respect of such holdings. Thus, it is quite clear that the contesting Respondent cannot invoke the benefit of Section 14 of the Hindu Succession Act which has absolutely no bearing on her rights and status with regard to tenancy land. The decisive factor is the status of a female Bhumidhar on the date immediately preceding the date of vesting. In the instant case Badara Singh died while the Agra Tenancy Act was in force and under the Hindu Law his widow Smt. Kesar Kunwar held the plots as a limited owner in accordance with Section 24 of the Agra Tenancy Act. She retained the same status after the death of her second husband Sumer Singh which also happened during the pendency of the Agra Tenancy Act. Thus, long before the date of vesting she inherited an interest in the holding as a widow of the last male owner, and under Sub-section (1) of Section 172(2)(a) the surviving heir Chhiddoo Singh of the last male tenant (Sumer Singh) u/s 171 of the U.P. Zamindari Abolition & Land Reforms Act at the time when the present dispute arose before the Consolidation authorities, would be the preferential heir. Consequently Chhiddoo Singh, Petitioner, being the son's son of Sumer Singh's father's father is the preferential heir in the general order of succession u/s 171(r) of the U.P. Zamindari Abolition & Land Reforms Act. The Petitioner's contention is also in, conformity with the view expressed as long ago as 1954 in the decision of Suit No. 15 of 1953 filed by Chhiddoo Singh against Smt, Kesar

Kunwar and others. In fact, the Petitioner relied on that decision as res judicata but res judicata apart, the inferences which I have drawn after applying the relevant law to the facts of this case is also otherwise consistent with the decision given in the earlier suit.

12. In this view of the matter Chhiddoo Singh's mutation application should have been allowed with respect to the entire property as held by the Consolidation Officer, and Smt. Moorti Devi Respondent No. 4 was not entitled to mutation of her name as the daughter of Smt, Kesar Kunwar and Badam Singh. The Consolidation Officer correctly decided the case and the contrary orders passed by the Settlement Officer, Consolidation and the Deputy Director of Consolidation partly dismissing the revision and directing mutation of Smt. Moorti Devi's name over part of the property were vitiated by errors of law apparent on the face of record. They were based on a manifestly erroneous view of law.

13. In the result this writ petition is allowed with costs and the impugned orders passed by the Settlement Officer, Consolidation and the Deputy Director of Consolidation in so far as they are adverse to the Petitioner are set aside.