
(1977) 04 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 478 of 1979

Chimman Lal Shah

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-04-1977

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5

Citation : (1979) AWC 483

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

Bench : Single Bench

Advocate : K.N. Misra, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The only controversy that arose for consideration was whether the authorities constituted under the provisions of U.P. Imposition of Ceiling on Land Holdings Act were justified in rejecting the partition decree dated 2-4-1970. It is stated that this decree was given effect to in revenue records prior to 24-1-1971. Both, the prescribed authority and the District Judge, have rejected Petitioner's claim only because it was a decree between Petitioner and his sons and there was nothing to show that the sons were co-tenants. Whether the view taken by the District Judge or the prescribed authority is, correct or not needs no comment as the effectiveness of the decree for determining ceiling area has to be examined in the light of provisions contained in Section 5 and its subsections. Sub-section (7) deals with partition decrees passed after 24-1-1971. As the partition decree was passed prior to this date the Sub-section did not apply. Nor did the provisos apply as the suit for partition or proceeding was not pending on 24-1-1971. The learned State counsel argued that Petitioners case was covered by Explanation I and II to Sub-section (1) of the Act. It may be so but those explanations apply on certain facts. For instance for applicability of Expl. I there has to be evidence that the land was held by the Petitioner in his own right. Similarly, before any assistance can be derived from Explanation II it has to be

established that the land was in actual cultivatory possession of the Petitioner and that name of his sons was mutated after 24-1-1971. As there is no such finding nor have the authorities examined the case from this point of view it would be expedient to direct the District Judge to examine this aspect in the light of observations made above.

2. The learned State counsel argued that Expl. II contained a rule of presumption and the District Judge having found that sons were not co-tenants it shall be presumed that the land was held by the Petitioner although ostensibly it was in his sons name. The statutory presumption could be raised if the requirements mentioned in the Explanation were proved. In absence of any finding on these aspects no presumption can be raised.

3. In the result, this petition succeeds and is allowed in part. The order passed by the District Judge is quashed. He is directed to decide the appeal afresh on the question whether partition decree was liable to be ignored. The Petitioner shall be entitled to its costs.