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**(1989) 10 AHC CK 0032**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 1086 of 1976**

Digvijai Prasad

APPELLANT

Vs

State of U.P.and another

RESPONDENT

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**Date of Decision :** 04-10-1989

**Acts Referred:**

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(7)

**Citation :** (1989) 10 AHC CK 0032

**Hon'ble Judges :** B.L.Loomba, J

**Final Decision :** Dismissed

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## Judgement

B.L. Looma, J.—I have heard learned counsel for the petitioner and the learned Standing Counsel. In proceedings under U. P. Imposition of Ceiling on Land Holdings Act, 48. 16 Acres irrigated land was declared as surplus and notice under section 10 (2) of the Act was served on the tenure holder. He filed objections on 9.9.74. It was also pleaded that one acre of land of village Saidpur and two acres of land of village Arthapur was Usar and not fit for cultivation. Another plea raised was that the entire land of village Saidpur is unirrigated while it has been wrongly shown as irrigated and 0.6 acre land of village Loha Khera is also wrongly shown as irrigated while it is infact a grove.

2 In paragraph 6 of the objection filed by the petitioner it was stated that relationship of husband and wife between him and Smt. Nanhi Devi came to an end about 10 years earlier and that she was living in village Saidpur while the petitioner was living in village Arthapur. Smt. Nanhi Devi was said to be getting her own cultivation done and as such the land which was transferred to Smt Nanhi Devi has been wrongly shown to be part of the petitioner's Khata.

3. Learned Prescribed Authority rejected the claim of the petitioner in respect of the land which was given in partition to his son Naimish Ballabh on the ground that he was a minor at the relevant time and was a member of the petitioner's family. This finding was upheld by the appellate court. Learned petitioner's counsel concedes this point that the minor ,son was a member of the petitioner's

family and, as such, the land which was shown to have been given to the minor son was rightly included in the khata of the petitioner. On the next important question as to whether there was separation between the petitioner and his wife the finding of the learned Prescribed Authority was against the petitioner on the ground that there was absence of proof of divorce or judicial separation between the two and the mere fact that his wife was living separately was not enough for the purposes of the Act to exclude the land which was transferred by the petitioner in favour of his own wife. As would appear from the judgment of the learned Prescribed Authority dated 31.10.75, the evidence on the point led by the petitioner was in the form of oral statements of the petitioner himself and his wife. Both of them have stated that the relations between the two had become strained for sometime past and there was Chhuraoti (customary separation) held at village Sitapur. Hanuman Prasad, the then Pradhan of the Gaon Sabha of village Sarsaiee, was also examined to testify about the Chhuraoti. The parents of Smt. Nanhi Devi were residents of village Cursanda, district Hardoi. Smt. Nanhi Devi was stated to be living at village Saidpur and have her own cultivation. A copy of the Khttauni extract was also filed, according to which the residence of Smt. Nanhi Devi was shown to be village Saidpur. Smt. Nanhi Devi had stated that Chhuraoti ceremony was held in presence of villagers and since then the petitioner did not come to her in village Saidpur. In the absence of any evidence from the side of the State the learned Prescribed Authority accepted the evidence led by the petitioner and recorded that Smt. Nanhi Devi was living separately. However, there was no positive finding that there was customary Chhuraoti between the two and the separation of the tie claimed by the petitioner was not held to be divorce or judicial separation and on that basis the plea raised by the petitioner was rejected. The learned appellate court also agreed with the Prescribed Authority. The terra family is defined in section 3(7) of the Act in the following terms:

?(7) Family in relation to a tenureholder means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters other than married daughters).?

4 Learned counsel for the petitioner argues that for purposes of Section 3(7) of the Act, separation between husband and wife brought about by custom prevailing in the community would be a judicial separation and that the petitioner and his wife had separated under a custom permissible in his community. In support of his submission learned counsel for the petitioner has placed reliance on a decision of this court in Smt. Gangotri Devi Vs. State of U.P. and others (1982 ALJ 108). That case related to the lady who was forsaken by her husband due to disease of Leukoderma and incapability to beget children. She resigned to her fate which evoked the sympathy of her auntinlaw who executed a will in her favour in respect of her share. After the death of the auntinlaw the land devolved on her. The husband had, meanwhile married another lady and had four children from her. He tried to grab the property and she had to file a civil suit for permanent injunction which was decided in terms of compromise. What she

could protect from her husband became subject matter of proceedings under the U. P. Imposition of Ceiling on land Holdings Act. The Prescribed Authority issued notice to the husband of the lady. She filed objection claiming her separation from her husband long before and pleaded that her land could not be included in the holding of her husband. Prescribed Authority allowed the objection of the lady but the appellate court in the context of the definition of section 3(7) of the Act held that in the absence of judicial separation her land could not be saved and was to be treated as part of the holding of her husband. In the writ petition filed by the lady against the judgment of the appellate court the question which fell for consideration was, can the expression judicially separated, therefore, be understood in the technical sense as used in section 10 of the Hindu Marriage Act or in wider sense descriptive of a state of affairs between husband and wife. The learned Single Judge who decided the matter formed the view that separation between husband and wife may take place in numerous ways, for instance desertion by the husband of the wife, or cruelty to her which may force her to live separately from him. But it is not every separation which is recognised by the Ceiling Act. It should be judicial, meaning thereby that it should arise from process of law, contrasted with administrative, ministerial or executive (emphasis supplied). It was observed further that in broader or liberal sense it should be understood as separation which is recognised by any court of law not necessarily a decree of judicial separation: for instance separation may be recognised by custom which may have the approval of a law Court. It may be recognised even by a Nyaya Panchayat. It was held that it cannot be said that such recognition does not amount to judicial separation because no decree had been passed. A wife or husband may file a suit for declaration of property on the basis that they had separated and if the claim is accepted and the suit is decreed there is no reason to hold that such a recognition does not amount to judicial separation. A decree fraudulently obtained was excluded. With reference to the facts of that case it was pointed out that in a suit for injunction filed by the lady she was held entitled to the land in dispute on the basis that she had separated from her husband. This position was accordingly accepted as separation recognised by a court of law. The parting words in that decision are important being : ?If they were separate which was given recognition by a court of law then the land which was recorded in the name of the petitioner could not be included in the holding of opposite party.?

5. The decision in Gangotri Devi's case was on the special facts of that case and in any case it was nowhere laid down as a proposition of law that a mere claim of separation without its having been accepted by a court of law can amount to judicial separation within the meaning of section 3(7) of the Act. On the other hand what was clearly held was that separation recognised by custom if accepted in a court of law would be sufficient for the purpose of there being a judicial separation within the meaning of section 3(7) of the Act.

6. In the present case no plea was raised by the petitioner in his objection about the existence of custom of separation in their community. There was no such

plea that the petitioner and his wife separated on the basis of such custom. Even this had not been alleged that any formal separation had been arrived at between the two. It was only in the oral evidence that a plea appears to have been raised that ceremony of Chhurauti had taken place between the two. Copies of the statements of the witnesses have not been filed by the petitioner in this writ petition and in its absence it is difficult to appreciate the quality of the evidence led on the point. Even assuming that evidence as to the ceremony of Chhurauti was led it would not be of any consequence, when considered in the context of the fact that no such plea had been raised in the objection filed by the petitioner. The plea of formal Chhurauti in the facts of the present case appear to have been raised as an afterthought. In any case, assuming that the petitioner and her husband have been living separately and Smt. Nanhi Devi is looking after cultivation of village Saidpur that hardly is sufficient to lead to the conclusion that there was any separation between the two in the eye of law. The decision relied upon by the petitioner's learned counsel on the facts of the case is not applicable and extends no help to the petitioner. What appears in the present case is that the petitioner executed a sale deed in favour of his wife only to escape and avoid the provisions of this law. Copy of the sale deed has not been filed by the petitioner. It is only the contents of the sale deed which would have shown as to what was the necessity for the petitioner to have transferred his land in favour of his wife Smt. Nanhi Devi. Even the date of the sale deed has not been mentioned in the writ petition. Only thing stated is that the sale deed was executed in the year 1970. This further shows that the transaction was arrived at only to avoid and escape the impending declaration of surplus land. On the basis of the material on record, the learned Prescribed Authority rightly came to the conclusion that there was no proof of judicial separation between the petitioner and his wife. This finding was upheld by the appellate court. Nothing has been made out to show that this finding is not based on the material on record or is illegal on the ground that the same was recorded without correctly appreciating the facts or the legal position. The challenge accordingly fails.

7. On the question about a part of the land being unirrigated and on the point of choice, the matter was left open by the appellate court and the Case was remanded for consideration and decision afresh under the judgment and order of the appellate court dated 13376. The present petition was filed against the order of remand and the proceedings before the Prescribed Authority are lying stayed since April, 1976.

8. For the reasons above, the writ petition lacks merit and is liable to be dismissed. It is accordingly dismissed with costs. The Prescribed Authority will proceed with the matter in accordance with law and in keeping with the directions of the appellate court as contained in the judgment and order dated 13.3.76. This shall be done with utmost expedition. A copy of this judgment be sent by the office of this court to the Prescribed Authority. Petitioner will appear before the Prescribed authority on October 26. 1989.