
(1979) 01 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 863 of 1978

Gaya Prasad

APPELLANT

Vs

Prescribed Authority, Kalpi and others

RESPONDENT

Date of Decision : 01-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)

Citation : (1979) 01 AHC CK 0030

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

M. P. Mehrotra, J.

This petition arises out of the proceedings under the U. P. Imposition of ceiling on Land Holdings Act, 1960.

The facts, in brief are thus. The petitioner was issued notice under Section 10 (2) of the Act and objections were filed. They were decided by the Prescribed Authority, a true copy of whose order dated 30th June, 1976 is Annexure I to the petition. Thereafter an appeal was filed by the petitioner and the same was decided by the Civil Judge, Jalaun Camp at Orai and a certified copy of the judgment has been annexed and marked as Annexure 2. Now the petitioner has come up in the instant petition and in support thereof I have heard the learned counsel Sri Rajesh Ji Verma for the petitioner and in opposition, the Standing counsel has made submissions. Only one point has been pressed before me and that relates to Khata No. 12 in village Churkhi. The said land was claimed to be ancestral Sir and Khud Kasht and it was also contended that the three sons of the petitioner were in existence on the date of vesting and as such the petitioner and his three sons had 1/4th share each in the land of the said Khata. The said contention was not accepted by the authorities below and in my opinion on an inadequate ground. It seems that the petitioner had executed gift deeds in favour of his sons and subsequently he also executed a sale deed on 691971.

The recital in these documents was that the petitioner was the sole and exclusive owner of the properties. In my opinion merely because of these recitals the real nature of the land could not be changed. The appellate Court has itself observed that the extract of Khatauni for 1334 Fasli established that the land was recorded as Sir and Khudkasht. It has to be seen that the recording in the name of the petitioner in that Fasli year will not prove that the land was ancestral in his hands. It had to be further found that the land of the said Khata had come in the hands of the petitioner from his ancestors or that it was otherwise proved to be joint family property in which the sons acquired rights by their births.

In the circumstances, I allow this petition and quash the judgment of the appellate Court and the order of the Prescribed Authority to the extent that they deal with the land of the said Khata No. 12 of the village Churkhi. The said controversy is remanded to him Prescribed Authority for a fresh disposal. In the circumstances I think it will be in the interest of justice that a fresh opportunity should be given to the parties to adduce additional evidence on the said controversy, whether the plots of the said Khata could be said to be joint family property in which the two sons of the petitioner, who were in existence on the date of vesting, could be said to have acquired vested rights by their births so that the share of the petitioner would be only. It is made clear that no other controversy shall be allowed to be raised before the Prescribed Authority and in particular, I should like to make clear that the findings recorded by the appellate Court that two sons were in existence on the date of vesting and that the third son was born on 111954, would remain intact and would not be disturbed. Other findings also recorded by the appellate Court shall be treated as final and they shall not be registered or questioned hereafter. The ceiling area and surplus lands shall be determined by the Prescribed Authority on the basis of the fresh adjudication in respect of the said controversy. In the circumstances of the case, there will be no order as to costs.