
(1972) 04 AHC CK 0007
In the Allahabad High Court
Case No : Sp. A. No. 301 of 1964

Hanuman Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-1972

Acts Referred:

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

Citation : (1972) 42 AWR 406

Hon'ble Judges : T.S. Misra, J; Satish Chandra, J

Bench : Division Bench

Advocate : V.K.S. Chaudhary, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, J.—This appeal arises out of proceedings under the U.P. Imposition of Ceiling on Land-holdings Act.

2. The Appellant was a tenure-holder having 168-70 acres of land in several villages of district Hamirpur. He contended that his family consisted of at least eight members. This plea was repelled by the Prescribed Authority, who held that the Appellant's family consisted of six members. That finding was affirmed on appeal. A learned Single judge dismissed the Appellant's writ petition on the ground that the finding was one of fact.

3. Section 3(c) of the Act defines a family to mean "as consisting of the holder of a holding and any or all of his following relations not being tenure-holders in their own separate right." One such relation is the son and the son's son as long they are unseparated from the holder, thus, the son or son's son can be a member of the tenure-holder's family in the eye of law provided he is unseparated on the holder and further if he is not tenure-holder in his own separate right. The Explanation appended to Clause (c) says that for purposes of this cause a son or son's son shall be deemed be separate where land is

recorded separately in his name. Thus, the Explanation raises a presumption in favour of separateness if some land is recorded separately in the name of the son or the son's son. But, the Explanation, in our opinion, only entitles the raising of a presumption of fact. Such a presumption is, in law, always rebuttable. The tenure-holder can prove that the separate record of some land in the name of his son or son's son was illegal, fictitious or otherwise wrong. If this is established, the presumption is rebutted. In that event cannot be said that merely because the son is separately recorded over some and he would still be taken as a separated member of the family or that he must be held to be a tenure-holder in his own separate right.

4. The court is liable to adjudicate whenever a tenure-holder wishes to challenge the presumption. In the present case, the tenure-holder led oral as well as documentary evidence to show that the entry in the name of his three sons was illegal or wrong; Neither the Prescribed Authority nor the court on appeal applied its mind to that material or record to make a finding as to its effect. They were, in our opinion, in error in simply relying upon the entry in the revenue records and from it, raising as if it were a presumption of law that the sons must be taken as tenure-holders in their separate rights.

5. In our opinion, the finding, though on a question of fact, was vitiated by manifest error of law.

6. The appeal succeeds and is allowed. The judgment of the learned Single Judge as well as of the appellate authority and the Prescribed Authority are set aside. The matter is sent back to the Prescribed Authority for decision afresh in the light of the observations made above and in accordance with law.