

(1984) 07 AHC CK 0018
In the Allahabad High Court
Case No : Reference No. 388 LR 83-84

Jaildar Singh

APPELLANT

Vs

Sagar Singh

RESPONDENT

Date of Decision : 18-07-1984

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168A

Citation : (1984) 07 AHC CK 0018

Hon'ble Judges : I.A.S.Member, J and P.C.Saxena, J

Final Decision : Dismissed

Judgement

1. This is a reference made by the learned Additional Commissioner, Meerut Division, Meerut, u/s 218 of the U. P. Land Revenue Act, in a mutation case.

2. The facts are briefly that the revisionist, Jaildar Singh, filed a mutation application in respect of 1 bigha 13 1/3 biswas portion of plot no. 887 on the basis of a sale deed dated 15582 executed by Budh Prakash and Ram Phool. To this, an objection was filed by Sagar Singh, who was cotenant alongwith the vendors, that the sale was hit by Sec. 168A of the U. P. ZA & LR Act as well as Sec. 5 (c) of the Consolidation of Holdings Act. The trial court rejected the application for mutation but in appeal the SubDivisional Officer held that while the sale was not barred under Sec. 5 (c) it was barred by Sec. 168A of the U. P. ZA & LR Act.

3. A revision against this order has been recommended for acceptance by the learned Additional Commissioner, Meerut who has expressed his opinion that the vendee is the tenant of plot no. 886 which is a plot adjoining to plot no. 887. Since plot no. 887 had not been partitioned, therefore, each cosharer should be deemed to be the proprietor of each and every part of this plot.

4. I have gone through the file and heard arguments on both sides.

5. Sec. 168A of the U.P.Z.A. & LR Act bars the transfers of any fragment except

in cases where the transfer is in favour of a tenureholder who has a plot contiguous to the fragment.

6. A perusal of the sale deed shows that in the present instance a fragment has been sold. The vendors have themselves stated in the sale deed that they are the owners of ? share in plot No. 887 which is of area 4 bighas3 biswas18 biswansis. Out of this they have sold 1 bigha 131/3, biswas of land. This sale of a fragment would have been valid if the fragment had been contiguous to plot no. 886. It has also been admitted that there had been no partition between the cosharers by metes and bounds. The obvious legal implication would be that the vendors have sold land of which the remaining cosharers are still coproprietors. The matter can also be viewed in an alternative light. In order to remove the bar of Sec. 168A it will have to be presumed that the area sold lies contiguous to the adjoining plot of the vendee and also that the area sold belongs exclusively to the vendors. There having been no partition of the entire holding between the cosharers, such a view cannot be taken.

7. The sale deed is, therefore, void under Sec. 168A (2). No mutation can be ordered on its basis.

8. The reference is accordingly discharged. Mutation is refused as the sale is hit by Sec. 168A of the U. P. ZA & LR Act.

(Mutation refused)