

**(2025) 07 AHC CK 0811**  
**In the Allahabad High Court**  
**Case No : Writ Petition B No. 2525 Of 2024**

Jitendra

APPELLANT

Vs

State Of U.P. And 4 Others

RESPONDENT

**Date of Decision :** 25-07-2025

**Acts Referred:**

Income Tax Act, 1961 — Section 260A??1961

**Citation :** (2025) 07 AHC CK 0811

**Hon'ble Judges :** Shekhar B. Saraf, J;Praveen Kumar Giri, J

**Bench :** Single Bench

**Advocate :** R.S.Agarwal, Mayank Jain, Ashok Kumar, Gaurav Mahajan

**Final Decision :** Disposed Of

## Judgement

Chandra Kumar Rai, J

1. Heard Mr. R.C. Singh, learned Senior Counsel assisted by Mr. Kamlesh Sharma, learned counsel for the petitioner, Mr. Dharendra Singh/ Mr. J.P. Singh, learned counsels for the private respondents and Mr. P.S. Chauhan, learned Standing Counsel for the State respondents in both the petitions.

2. Brief facts of the case are that dispute relates to chak No. 151 situated in Village Luduhi, Pargana-Ghosi, District Mau. The family pedigree of the parties is mentioned in paragraph No.6 of Writ B No. 2525 of 2024. The family pedigree demonstrate that one Charittar had four sons (Bindeshwar, Nageshwar, Muneshwar and Dhaneshwar) and one daughter (Shyam Dulari). The pedigree further demonstrate that Bindeshwar and Dhaneshwar died issueless. Nageshwar had died leaving behind his widow Pyari Devi and from the wedlock of Nageshwar and Pyari Devi, two daughters (Sharda and Sheela) were born. Sharda is private respondents in both the writ petitions. Muneshwar had died leaving behind his son Jitendra who is petitioner in both the writ petitions and Shyam Dulari died leaving behind her daughter (Shanti). During consolidation proceeding in the Village in question, C.H. Form 23 was distributed in the name of Shanti Devi

(daughter of Shyam Dulari) in respect to chak No. 151. Subsequently the C.H. Form 45 was prepared and new plot No. 302 area 1 acre 86 kari was carved out in the name of Shanti Devi. Shanti Devi had expired accordingly application under Section 12 of U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act was filed by petitioner claiming right on the basis of the provisions contained under Section 171 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act. The aforementioned proceeding under Section 12 of the U.P.C.H. Act was initiated before issuance of notification under Section 52 of the U.P.C.H. Act. The Assistant Consolidation Officer passed an order dated 23.2.1983 to record the name of petitioner/ Jitendra in the place of Shanti Devi. Against the order dated 23.2.1983 passed by Assistant Consolidation Officer, one Nageshwar, son of Charittar filed a revision under Section 48 of the U.P.C.H. Act along with the prayer for condonation of delay. The aforementioned revision was heard and allowed by Deputy Director of Consolidation vide order dated 30.9.2014 after condoning the delay in filing the revision and remitted the matter back before the Consolidation Officer setting aside the order dated 23.2.1983 passed by Assistant Consolidation Officer for fresh decision of the proceeding/ application under Section 12 of the U.P.C.H. Act. In pursuance of the remand order passed by Deputy Director of Consolidation, the matter was proceeded before the Consolidation Officer and an issue was framed to the effect as who is the legal heir of Smt. Shanti Devi (daughter of Shyam Dulari). Consolidation Officer passed an ex-parte order on 18.5.2016 accordingly petitioner filed a restoration application which was dismissed by Consolidation Officer vide order dated 26.12.2018. Against the orders dated 18.5.2016 and 26.12.2018 passed by Consolidation Officer, appeal was preferred by petitioner/ Jitendra before the Settlement Officer of Consolidation. The aforementioned appeal was heard and allowed by Settlement Officer of Consolidation vide order dated 7.12.2019 setting aside the orders dated 18.5.2016/ 26.12.2018 and directed to record the name of petitioner/ Jitendra and Sharda Devi (daughter of Nageshwar) over chak No. 151 after expunging the name of Shanti Devi (daughter of Shyam Dulari). Against the appellate order dated 7.12.2019, two revisions were filed by petitioner/ Jitendra under Section 48 of the U.P.C.H. Act which were numbered as revision No. 180 of 2024 and 209 of 2024. One revision was filed against the order of Consolidation Officer and another revision was filed against the order of Settlement Officer of Consolidation. Both the aforementioned revisions were consolidated and heard together. Deputy Director of Consolidation vide order dated 22.5.2024 dismissed both the revision and maintained the order of Settlement Officer of Consolidation dated 07.12.2019. Hence Writ B No. 2525 of 2024 has been filed by petitioner/ Jitendra for the following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari to call for record of the case and quash the order dated 22.5.2024 passed by the Deputy Director of Consolidation under Section 48 (1) of the U.P.C.H. Act, 1953 in case No. 0464 of 2020, computerized case No. 20205415500000464, revision No. 180 of 2024

and revision No. 209 of 2024, computerized case No. 2020531551000016, the order dated 7.12.2019 passed by Settlement Officer of Consolidation and the orders dated 26.12.2018 passed by the Consolidation Officer (Final Record), Mau in case No. 426 rejecting the restoration application filed by the petitioner against the ex-parte orders dated 18.5.2016 and the order dated 18.5.2016 passed under Section 12 of the U.P.C.H. Act.

(ii) Issue a writ, order or direction in the nature of mandamus restraining the respondent authorities not to dispossess the petitioner from plot No. 302."

3 This Court on 6.8.2024 directed the learned counsel for the private respondents to file counter affidavit accordingly pleadings are exchanged between the parties.

4. Writ B No. 318 of 2025 has been filed by petitioner/ Jitendra for the following relief:-

"Issue a writ, order or direction in the nature of certiorari quashing the entire proceeding of case No. 7 of 2024, computerized case No. 20195151020179 (Sharda Devi Vs. State and others) under Rule 109-A (1) of U.P.C.H. Act pending before Consolidation Officer Sadar-II Mau District Mau/ respondent no.3."

5. Learned Senior Counsel for the petitioner submitted that consolidation authorities have not decided the dispute regarding succession of Shanti Devi in proper manner, as such, the impugned orders passed by consolidation authorities cannot be sustained in the eye of law. He further submitted that in view of the provisions contained under Section 171 of the U.P.Z.A. and L.R. Act, petitioner/ Jitendra (son of Charittar) will succeed Shanti Devi but the consolidation authorities have illegally held that petitioner as well as private respondents both will succeed as provided under Section 175 of the U.P.Z.A. and L.R. Act. He submitted that impugned orders passed by consolidation authorities should be set aside and direction be issued for recording the name of petitioner/ Jitendra only as successor of deceased Shanti Devi (daughter of Shyam Dulari). He further submitted that in view of the aforementioned fact, the proceeding initiated by private respondents under Rule 109 (A) of the U.P. Consolidation of Holdings Rule, 1954 hereinafter referred to as U.P.C.H. Rules for giving effect, the orders have been passed by consolidation authorities under Section 12 of the U.P.C.H. Act should be quashed.

6. On the other hand, learned counsel for private respondents submitted that consolidation authorities have rightly considered the provisions contained under Sections 171 to 175 of the U.P.Z.A. and L.R. Act and directed that according to the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act, petitioner/ Jitendra as well as private respondent- Sharda Devi (daughter of Nageshwar) will be entitled to be recorded in place of deceased Shanti Devi in respect to chak No. 151. He further submitted that chak no. 151 was recorded in the name of four sons of Charittar as well as Shyam Dulari (daughter of Charittar) and after death of Shanti Devi, petitioner/ Jitendra had fraudulently got

his name recorded under Section 12 of the U.P.C.H. Act but after remand order passed in revision, consolidation authorities have rightly ordered to record the name of petitioner/ Jitendra as well as private respondent (Sharda Devi) in view of the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act which requires no interference in exercise of jurisdiction under Article 226 of the Constitution of India. He further submitted that one revision filed by one Savita Devi was dismissed as withdrawn. He submitted that no interference is required in the matter and writ petition filed by petitioner should be dismissed. He submitted that there is no illegality in the initiation of proceeding by private respondent under Rule 109-A of U.P.C.H. Rules on the basis of final orders passed in the proceeding under Section 12 of the U.P.C.H. Act. He further submitted that no interim order was operating in the Writ B No. 2525 of 2024 filed by petitioner. He submitted that Writ B No. 318 of 2025 filed by petitioner is also liable to be dismissed. He further placed reliance upon the following judgement of this Court in support of his argument:- (I) 1998 R.D. 328 Mool Chand Vs. Kedar and Others (ii) 1973 R.D. 308 Dharam Das Vs. Bishun Narain

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that Consolidation Officer vide order dated 18.5.2016 in the proceeding under Section 12 of the U.P.C.H. Act directed to record the name of private respondent (Sharda Devi, daughter of Nageshwar) in place of deceased Shanti Devi (daughter of Shyam Dulari) in respect to chak No. 151 but in appeal under Section 11 (1) of the U.P.C.H. Act filed by petitioner, the order of Consolidation Officer were set aside and the name of petitioner/ Jitendra as well as private respondent (Sharda Devi) were ordered to be recorded in place of Shanti Devi. There is also no dispute about the fact that revisions filed by petitioner/ Jitendra against the order of Settlement Officer of Consolidation were dismissed.

9. In order to appreciate the controversy involved in the matter, the perusal of the family pedigree of the parties will be relevant. The family pedigree as mentioned in the grounds of revision filed by petitioner/ Jitendra is as under:-

10. In the counter affidavit, private respondent has mentioned the family pedigree which is slightly different, as such, the perusal of the same will be relevant which is as under:-

11. The dispute in the present matter is regarding the succession of Shanti Devi (daughter of Shyam Dulari). It is also material to mention that Shanti Devi remained recorded till her death along with the sons of Charittar and there was objection by anybody for expunging the name of Shanti Devi. The dispute has arisen after the death of Shanti Devi.

12. The perusal of finding of fact recorded by Settlement Officer of Consolidation allowing the appeal of petitioner for recording the name of petitioner/ Jitendra along with respondent no.5/ Sharda Devi in the place of deceased Shanti Devi

(daughter of Shyam Dulari) will be relevant which is as under:-

13. The finding of fact recorded by appellate Court as quoted above fully demonstrate that in the basic year khatauni, Shanti Devi was recorded along with co-tenure holders of the khata in dispute and appellate Court has rightly appreciated the provisions of Sections 171 to 175 of U.P.Z.A. and L.R. Act in holding that provision of Section 175 of U.P.Z.A. and L.R. Act will be applicable in the instant matter.

14. In order to adjudicate the controversy involved in the present matter, the ratio of law laid down by Hon'ble Apex Court in the case reported in AIR (2000) SC 745 Moolchand Vs. Kedar (deceased) by LRS and Others will be relevant. Paragraph Nos. 12 to 16 of the judgement rendered in Moolchand (Supra) will be relevant for perusal which is as under:-

"12. However, in the present case, Section 172 (2) squarely applies as female Bhumidhar died after coming into force of the aforesaid U.P.Z.A. Act.

13. Thus in this background the question is, whether Section 172(2)(a)(ii) or 172(2)(a)(i) is applicable. The distinction between the two clauses are that under (i) inheritance would be governed by Section 171, if under the personal law she was entitled to a life estate. If on the other hand, under the personal law if she was entitled to hold such estate absolutely, then inheritance would be governed by the Table under Section 174. The Legislature clearly spells out its intent. So to find the channel of inheritance, one has to go to the personal law applicable to her and then to steer to the provisions to find whether she would have held the property as limited or absolute owner before applying sub-clause (i) or (ii). So, first it has to be examined, what would have been her right to such estate under her personal law. This right has not to be seen either under Tenancy Law, U.P.Z.A. Act or any other statutory or other law but has to be seen only under her Personal Law. The legal position, so far as personal law viz. Hindu Law, of a female inheriting property from a male is what we have quoted above from Mullas Hindu Law. As already stated any female including the daughter, as in the present case, when she inherits the property from male gets only life estate in as much as the case is not governed by the Bombay School. In view of this legal position, Section 172(2)(a)(i) would apply, and not sub -clause (ii). May be, after coming into force of the Hindu Succession Act of 1956, within the ambit of Section 14, limited estate of Hindu female is converted into absolute estate. In such cases, inheritance would be governed by the Table under Section 174 in view of Section 172(2)(a)(ii). But in the present case she died before the aforesaid Act of 1956.

14. It may look paradoxical that female Bhumidar having absolute right to transfer, but for the purposes of inheritance, one has to traverse to her personal law to find, whether she would have held this property as limited or absolute owner, and if she had limited right then in spite of her absolute right under U.P.Z.A. Act, it had to follow different course to be governed by Section 172 (2)

(a)(i). But this is what legislature intends. That is why law of inheritance varies for different properties under different statute for the same person.

15. In view of our aforesaid finding, that Smt. Kaushalya Devi held the land inherited from her father, under the personal law as limited estate, after her death such bhumidhari land would be governed by clause (i) of Section 172(2)(a) of U.P.Z.A. Act. Thus for inheritance Section 171 would apply under which husband is not a heir. In view of this the appellant claim cannot succeed. The courts below rightly held that the property would go to the concerned respondents by survivorship by virtue of Section 175 as they were co-tenure holder.

16. So, we do not find any merit in this appeal. Accordingly, it is dismissed. Costs on the parties.”

15. In the aforementioned judgement of Hon'ble Apex Court, it has been held that the inheritance will be governed by Section 175 of U.P.Z.A. and L.R. Act.

16. In the present matter also, the Settlement Officer of Consolidation has rightly held that in view of the provisions contained under Section 175 of the U.P.Z.A. and L.R. Act, petitioner/ Jitendra as well as private respondent (Sharda Devi) will be entitled to be recorded in the place of deceased Shanti Devi on the basis of principle of survivorship as provided under Section 175 of the U.P.Z.A. and L.R. Act.

17. It is also material to mention that Consolidation Officer has directed to record the name of private respondent (Sharda Devi) only in place of Shanti Devi but in appeal filed by petitioner/ Jitendra which was allowed and petitioner as well as private respondents both were ordered to be recorded on the basis of principle of survivorship, as such, there was no occasion to challenge the appellate order in revision as petitioner and private respondents both were ordered to be recorded in place of deceased Shanti Devi.

18. Considering the entire facts and circumstances of the case, no interference is required against the impugned orders dated 22.5.2024 and 7.12.2019 passed by the consolidation authorities in the proceeding under Section 12 of the U.P.C.H. Act. The Writ B No. 2525 of 2024 filed by petitioner/ Jitendra against the orders dated 22. 5.2024 and 7.12.2019 passed by consolidation authorities in the proceeding under Section 12 of the U.P.C.H. Act is dismissed and Writ B No. 318 of 2025 filed by petitioner/ Jitendra for quashing the proceeding of Rule 109-A of U.P.C.H. Rules is also dismissed.

19. No order as to costs.