

(1967) 11 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4542 of 1966

Kalawati

APPELLANT

Vs

Consolidation Officer and others

RESPONDENT

Date of Decision : 13-11-1967

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 33

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154

Citation : (1968) 38 AWR 139

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; S.N. Kacker, Sri Dhar and Standing Counsel for Respondents, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—During consolidation proceedings the Petitioner claimed a 1/4th share as against Respondent Nos. 4, 5 and 6 who were her sons. The holding in dispute belonged to the Petitioner's husband, Mithoo Singh, who died in 1954.

2. The Duputy Director has rejected the claim of the Petitioner on the ground that after coming into operation of the ZA and LR Act, no person can become a co-tenureholder by estoppel or acquiescence. Under the law of succession, sons were preferable heirs to a widow. The Petitioner being a widow of Mithoo Singh hence acquired no interest in the two khatas in dispute.

3. This view of the Deputy Director does not appear to be sound in its entirety. The position under the Tenancy Act was well settled. A person could become a co-tenant by estoppel or acquiescence. The reason was that transfer of a tenancy holding was prohibited. Letting was permitted with the consent of the landlord u/s 33 of the UP Tenancy Act, 1939. Interpreting those provisions, decided cases held that it was not exhaustive and a person could become a co-tenant by acquiescence or estoppel. Under the ZA and LR Act, transfer of a sirdari holding

was prohibited, vide Section 153. The interest of a sirdar on his executing a transfer becomes extinguished u/s 190(cc). Thus there was an absolute prohibition against transfers. There was no exception like Section 33 of the Tenancy Act. Hence a sirdar could not transfer or permit another to be a co-sharer in the sirdari holding directly. He could not do it indirectly by acquiescence or estoppel.

4. But, in relation to bhumidhari holding the position is different. u/s 154 a bhumidhari holding is transferable, subject to the restrictions mentioned in subsequent sections. The interest of a bhumidhar being transferable, there was no need for any exception like Section 33 of the Tenancy Act. Creation of a co-tenancy by estoppel or acquiescence was one of the modes in which the law recognised a transfer of a share in the holdings. Thus a person could be engrafted as a co-tenureholder in a bhumidhari holding by either an express transfer or by implication, i.e. by acquiescence, estoppel etc.

5. Two khatas, namely, Nos. 189 and 215 were in dispute in the present case. The counter-affidavit clearly states that khata No. 189 was bhumidhari while khata No. 215 was sirdari tenancy of Mithoo Singh. The Deputy Director's view that the Petitioner could not become co-tenureholder on the principle of acquiescence and estoppel in respect of the bhumidhari khata No. 189 was erroneous.

6. Khata No. 215 was originally sirdari. That was not transferable. But, on 11-7-1961, Respondents 4, 5 and 6 admittedly became bhumidhars by obtaining a bhumidhari sanad. Their title as bhumidhars is not disputed by any one. After the Respondents became bhumidhars, they could validly engraft a co-tenant in khata No. 215 also on the same principle.

7. The Petitioner had relied upon several pieces of evidence to prove that she had become a co-tenant by estoppel or acquiescence. The evidence related also to the period after the acquisition of bhumidhari. The bhumidhari sanad itself mentioned the Petitioner. On the same date the Respondents along with the Petitioner executed a transfer of some of the plots covered by the bhumidhari sanad. Thereafter a suit u/s 176 was instituted by the Respondents and the Petitioner in which it was found that the Petitioner was a co tenant. The Deputy Director was right that the finding in that suit would not operate as res judicata between the present parties, because they were co-Plaintiffs in that suit and there was no controversy between them as to their interest inter se, but non the less it would be relevant for determining the question whether the Petitioner acquired interest by estoppel or acquiescence.

8. The Deputy Director repelled the claim of the Petitioner on this view of law. He did not record a finding whether the Petitioner did acquire a share on the ground of estoppel or acquiescence on facts. The case therefore has to go back.

9. The petition succeeds and is allowed. The impugned order of the Deputy Director is set aside and the matter is remitted to him for deciding the revisions

filed by the parties in accordance with the law and in the light of the observations made above. In view of the divided success, the parties would bear their own costs.