

**(1967) 09 AHC CK 0002**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No's. 1043 and 1090 of 1963

Malkhan Singh

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

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**Date of Decision :** 18-09-1967

**Acts Referred:**

Hindu Succession Act, 1956 — Section 14

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172(2)(a)(ii)

**Citation :** (1967) 37 AWR 861

**Hon'ble Judges :** R.S. Pathak, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

R.S. Pathak, J.—Kundan was the sir-holder of the land in dispute. He died some years before the abolition of zamindari and upon his death his interest passed to his widow, Parmeshwari. Upon the enforcement of the UPZA and LR Act, Parmeshwari acquired the status of a bhurnidhar. She died in 1958 and then followed conflicting claims to the property. In proceedings u/s 9 of the UP Consolidation of Holdings Act, Malkhan Singh asserted that he was Kundan's father's father's son's son's son and was therefore entitled to the land. He also claimed title by adverse possession. Another claimant, Kewal, asserted that he was entitled to the land being the brother's son of Parmeshwari. The Consolidation Officer accepted the claim made by Kewal on the view that Parmeshwari enjoyed an absolute estate in the holding by virtue of Section 14 of the Hindu Succession Act and that Kewal was her heir. The application filed by Malkhan Singh was dismissed. Malkhan Singh filed an appeal but the Settlement Officer (Consolidation) endorsed the view taken by the Consolidation Officer. Upon second appeal, the Dy. Director remanded the case to the Settlement Officer. The Settlement Officer by his order of 8-8-1961 dismissed the appeal again. The case was then carried in second appeal to the Dy. Director. On 28-3-1962 the Deputy Director rejected the claim of Kewal as well as of Malkhan Singh and held that the land should be entered in the name of the Gram Samaj.

He directed that Malkhan Singh should be recorded as a trespasser for a period of one year. Kewal and Malkhan Singh applied in revision but the revision applications were dismissed by the Joint Director of Consolidation by his order dated 19-12-1962.

2. Malkhan Singh has Sled the instant petition for certiorari and Kewal has filed the connected Writ Petition No. 1090 of 1963.

3. The case on behalf of Malkhan Singh is that he is entitled to the hold-ins; as the nearest surviving heir of the last male intermediary, Kundan, because, according to him, Section 172(2)(a)(i) of the UPZA and LR Act is attracted.

4. The case on behalf of Kewal is that Parmeshwari, who enjoyed a life estate in the holding, became an absolute owner upon the enactment of the Hindu Succession Act, 1957, by reason of Section 14 of that Act and consequently the devolution of her interest was governed by Section 172(2)(a)(ii). As under that provision devolution takes place in accordance with the table mentioned in Section 174, Kewal was entitled to inherit to her, it is said, as her brother's son.

Section 172, Sub-section (2), reads:

Where a bhumidhar or sirdar who has before the date of vesting inherited an interest in any holding as a widow, widow of a male lineal descendant in the male line of descent, mother, daughter, father's mother, son's daughter, sister, or half sister being the daughter of the same father as the deceased--

(a) dies and such bhumidhar or sirdar was on the date immediately before the said date an intermediary of the land comprised in the holding, or held the holding as)a fixed-rate tenant, or an ex proprietary or occupancy tenant in Avadh, or as a tenant on special terms in Avadh and--

(i) she was in accordance with the personal law applicable to her entitled to a life estate only in the holding, the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male intermediary or tenant aforesaid; and if

(ii) she was in accordance with the personal law applicable to her entitled to the holding absolutely the holding shall devolve in accordance with the table mentioned in Section 174;

(b)... ..

5. There is no dispute that Parmeshwari was a bhumidhar. Admittedly, she inherited the interest in the holding before the date of vesting as the widow of the last male holder, Kundan. She was on the date immediately before the date of vesting an intermediary of the land comprised in the holding. She died in 1958. It is clear, therefore, that Clause (a) of Section 172(2) is attracted. The only question is whether Sub-clause (i) or Sub-clause (ii) governs the case.

6. The submission on behalf of Kewal is that Parmeshwari became entitled to an

absolute estate in the holding by virtue of Section 14 of the Hindu Succession Act and therefore Sub-clause (ii) applies. The argument is that the personal law applicable to her was the Hindu Succession Act and in accordance with that personal law the life-estate enjoyed by her was raised to an absolute estate. The contention is without substance. When the two Sub-clauses of Clause (a) of Section 172(2) speak of the personal law applicable to the female bhumidhar they refer to the personal law in accordance with which she was entitled either to a life-estate or an absolute estate in the holding, as the case may be. It is not possible to contemplate a bhumidhari holding under the UPZA and LR Act held in accordance with the personal law. The only provision, so far as I can gather, is Section 143(2) but that applies to a holding which either in whole or in part was used for a purpose not connected with agriculture, horticulture or animal husbandry and in respect of which a declaration u/s 143(1) has been granted. Upon the grant of such declaration, the provisions of Ch. VIII cease to apply to such bhumidhar. If no provision of Ch. VIII can apply, it is clear that Section 172 (which lies in Ch. VIII) does not relate to such land. Consequently, to determine what is intended by the reference to the personal law in Clause (a) of Section 172(2), it is necessary to look elsewhere.

7. So far as bhumidhari holdings under the UPZA and LR Act are concerned, there is the well-settled proposition that the rights of a female bhumidhar are governed by that Act and that the transfer by her of a holding, inherited from a male bhumidhar, will be valid and effective even beyond her life time. That is the majority view in *Ramji Dixit v. Bhrigunath* 1964 AWR 75. Desai, C.J., indeed, pointed out in that case:

An agricultural tenant has no religion and no personal law except as expressly provided in the Zamindari Abolition and Land Reforms Act. It applies to Hindus, Muslims, Christians etc. regardless of their religion and therefore, regardless of their personal law except as regards succession in certain cases. It contains its own provisions regarding inheritance and transfers; and when it has left certain matters to be governed by the personal law it has done so by an express provision. Personal law has never been applied *proprio vigore* to question of inheritance and transfer of tenancy rights as it has been applied to inheritance and transfer of proprietary rights.

It is an incidence of Hindu Law that a widow inheriting property from her husband acquires only a life interest. There is no justification whatsoever for imposing this principle of Hindu Law on bhumidhars professing a religion other than Hinduism.

It happens that under Hindu Law a Hindu widow acquires only a life interest by inheritance and on her death succession reopens to the last male-holder, but life interest is not a *sine qua non* of succession reopening to the previous holder. There is nothing repugnant between a person's having only a life interest and the interest being inherited by a person directly related not to her but to some other person. Succession is not so connected with life tenancy that it can to said

that one line of succession is wholly repugnant to life tenancy. Any line of succession can exist with life tenancy; succession opens on death and after death the question whether the deceased had life tenancy or absolute property becomes wholly irrelevant. Succession is to whatever property is left by the deceased and there is absolutely no difficulty in making it inheritable by any person. Consequently life tenancy cannot be inferred merely because the law lays down a particular line of succession similar to that prevailing in respect of Hindu widows, particularly when the law does not distinguish between Hindu tenants and others.

And following upon it is the opinion expressed in *Mahendra Singh v. Attar Singh* 1967 AWR 73:

We are of the opinion that the bhumidhari rights are special rights created by Act I of 1951 and these new rights are solely to be governed by the provisions of the Act. The notions of Hindu law or Mohammadan Law which would be applicable to other property not governed by any special law cannot be imported into the rights created by this Act.

8. It appears, therefore, that the reference in Section 172(2)(a) to the personal law applicable to a female bhumidhar must point to a period anterior to the enforcement of the UPZA and LR Act. Now, there is no dispute that under the U.P. Tenancy Act, 1939 a widow inheriting a sir holding from her husband was governed by the personal law in regard to the nature of the estate enjoyed in it by her. There is no escape, I think, from the conclusion that for the purpose of considering whether Sub-clause (i) or Sub-clause (ii) will apply, it is necessary to examine what was the nature of the estate enjoyed by the widow prior to the date of vesting. The relevant date is the date immediately preceding the date of vesting and that is apparent if the parent provision in Clause (a) is read with its sub clauses. Read with Sub-clause (i) what it says is that if the female bhumidhar was, on the date immediately preceding the date of vesting, (1) an intermediary of the land comprised in the holding and (2) entitled, in accordance with the personal law applicable to her, to a life estate only in the holding, the holding will devolve on the heir determined in accordance with Section 171. So likewise must Clause (a) be read with Sub-clause (ii).

9. In this view of the matter, it is not open to Kewal to appeal to the provision of Section 14 of the Hindu Succession Act, which was enacted in 1957. That provision is irrelevant when what has to be considered is whether Parmeshwari enjoyed, in accordance with the personal law applicable to her a life estate or an absolute estate in the holding on the date immediately preceding the date of vesting. It is not disputed that on that date she enjoyed a life-estate in the holding. Accordingly, it is Sub-clause (i) which is attracted. Since Sub-clause (ii) does not apply, the claim of Kewal, which rests on the line of devolution set out in Section 174, must fail.

10. As regards Malkhan Singh, his claim is made as Kundan's father's father's

son's son's son. u/s 171, to which we must turn by reason of Sub-clause (i) of Section 172(2)(a), the remotest heir is the father's father's son's son. On that ground, therefore, Malkhan Singh cannot succeed. The alternative ground that he has prescribed title by adverse possession is also without strength in view of the finding of the Dy. Director that he has been in possession as a trespasser for one year only. I am not satisfied that the finding is vitiated by any manifest illegality. The claim asserted by Malkhan Singh must also fail.

11. As neither Malkhan Singh nor Kewal has established any right to the holding in dispute, both petitions must be dismissed.

12. The instant petition is dismissed with costs to the Gram Samaj. The remaining Respondents shall bear their own costs.