

(1963) 07 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4361 of 1963

Maya Devi

APPELLANT

Vs

Joint Director of Consolidation, UP Lucknow At Agra and
others

RESPONDENT

Date of Decision : 15-07-1963

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172(2)(a)
(ii), 174

Citation : (1968) 38 AWR 655

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.S. Mathur, J.—This is a petition Under Article 226 of the Constitution by Smt. Maya Devi to challenge the orders of the Consolidation authorities whereby" her objection u/s 9 of the UP Consolidation of Holdings Act was dismissed.

2. The facts of the case are not in controversy. The plots, in dispute were the Sir of Rajjan Lal and his brothers and the descendants of Rajjan Lal's brothers are Respondents 9 to 13. Rajjan Lal died in 1947 leaving behind him three daughters, viz. Smt. Maya Devi, Smt. Sukh Devi and Smt. Bibbo Devi. Bibbo Devi died in 1957 and his son is Balmukund, Respondent No. 5. Sukh Devi died in 1960 leaving behind her three sons Prakash Chand, Suresh Chand and Ramesh Chand, Respondents 6 to 8. On the date of vesting the three daughters of Rajjan Lal and the descendants of the three brothers were recorded as co-Bhumidhars. On the death of Bibbo Devi and Sukh Devi the names of their sons were mutated. It was after the start of the consolidation operations that Maya Devi, the Petitioner and also Respondents 9 to 13 filed objections u/s 9 of the UP Consolidation of Holdings Act for expunging the names of Respondents 5 to 8 and to treat Smt. Maya Devi as having inherited the share of Smt. Bibbo Devi and Smt. Sukh Devi also. The objection was dismissed by the Consolidation

Officer, the Settlement Officer (Consolidation) and the Assistant Director of Consolidation. The Joint Director of Consolidation, in the revision, expressed the opinion that the holding recorded in the name of Smt. Bibbo Devi and Smt. Sukh Devi devolved on Smt. Maya Devi, but he felt handicapped in modifying the orders of the subordinate authorities for the reason that he had limited jurisdiction like that envisaged by Section 115, Code of Civil Procedure.

3. The point for consideration is a simple one, whether on the death of Smt. Bibbo Devi and Smt. Sukh Devi their interest in the holding was inherited by their sons or their share devolved on their surviving sister, Smt. Maya Devi.

4. Succession in the case of a woman holding an interest inherited as daughter is governed by Section 172 of the UP ZA and LR Act. The holding was inherited by Smt. Bibbo Devi and Smt. Sukh Devi before the date of vesting and hence Sub-section (2) of Section 172 shall be applicable. If the case is governed by Clause (i) of Section 172(2)(a) the holding shall devolve upon the nearest surviving heir of the last male intermediary, such heir being ascertained in accordance with the provisions of Section 171. But if Clause (ii) thereof is applicable the succession shall be governed by Section 174.

5. Clause (i) is applicable where in accordance with the personal law applicable to her she was entitled to a life estate only in the holding while Clause (ii) applies where under the personal law she was entitled to the holding absolutely.

6. This leads us to the consideration of the question what was the personal law applicable to Smt. Bibbo Devi and Smt. Sukh Devi at the time of their death?

7. Hindu Succession Act, 1956 came into force on 17-6-1956, before the death of both Smt. Bibbo Devi and Smt. Sukh Devi.

8. Section 2 of the above Act makes it clear that it applies to any person who is a Hindu by religion. The Act supersedes the text, rule or interpretation of Hindu Law, or any custom or usage as part of Hindu law, in force immediately before the commencement of this Act. Hence on the dates of their death both the daughters of Rajjan Lal were governed by the personal law as contained in the Hindu Succession Act and not by the law, custom or usage in force before the commencement of the Hindu Succession Act.

9. Section 14 of the Hindu Succession Act, 1956, gave absolute rights as full owner to a female Hindu irrespective of whether the property was acquired before or after the commencement of the Act. There are only a few exceptions detailed in Sub-section (2) of Section 14, but none of the exceptions apply to the instant case. Hence, by virtue of Section 14 of the Hindu Succession Act, 1956, the personal law applicable to both the daughters of Rajjan Lal before their death, they held the property absolutely and not as a limited owners.

10. Sub-section (2) of Section 4 of the Hindu Succession Act cannot and does not override the other provisions of this Act. As is evident from the wording of the sub-section, it was incorporated merely to remove doubts and not to supersede

the other provisions of this Act, nor to override or repeal other laws then in force. Section 4(2) declared, for the removal of doubts, that nothing contained in the Act shall be deemed to affect the provisions of the law for the time being in force providing for the devolution of tenancy rights in respect of agricultural holding. What the sub-section lays down is that the Hindu Succession Act shall not govern the devolution of tenancy rights in respect of agricultural holding, but the legislature can always lay down that the devolution of tenancy rights shall be dependant upon the personal law, i.e., the provisions of the Hindu Succession Act. The legislature can also lay down that in certain circumstances there would be one kind of succession and in different circumstances the holding shall devolve on different persons.

11. On reading Sections 4 and 14 of the Hindu Succession Act along with Section 172 of the UPZA and LR Act it must be held that under the personal law both the daughters of Rajjan Lal became absolute owners of the properties which they had inherited as daughters, even though prior to the commencement of the Hindu Succession Act they merely had a life interest; and that this status of the daughters shall determine how on their death their interest in the holding shall be inherited. Considering that they became absolute owners under the personal law, Clause (ii) of Section 172(2)(a) of the UPZA and LR Act shall apply and the holding shall devolve in accordance with the table mentioned in Section 174 of the UPZA and LR Act. The sons and not the sister, were thus entitled to succeed to the holding of both Smt. Bibbo Devi and Smt. Sukh Devi and the names of the sons could not be expunged. Respondents 2 to 4 thus took a correct view of the law and rightly dismissed the objection.

12. The writ petition has no force and it is hereby dismissed with costs. The interim injunction order is vacated.