
(2009) 11 AHC CK 0116
In the Allahabad High Court

Mst. Asarfa and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Hindu Succession Act, 1956 — Section 14

Citation : (2009) 11 AHC CK 0116

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against judgment and order dated 14.01.1974 passed by D.D.C. Deoria in revision No. 164 Ramayan and Ors. v. Mst. Asarfa. Through the said judgment and order, judgment and order passed by Appellate Court S.O.C. was reversed and judgment and order passed by Consolidation Officer was confirmed. Consolidation Officer through order dated 24.03.1972 had rejected the claim of the petitioner. However, S.O.C. in appeal Nos. 1964 and 1965 had accepted the claim of the petitioner by allowing her appeal on 10.10.1972.

3. Agricultural plots in dispute along with other agricultural plots admittedly belonged to Sri Ambika who died in 1944. Petitioner was widow of Rajendra who was grand son of Ambika. Both Rajendra and Rajendra's father Singhasan had died in quick succession in January 1937 i.e. during life time of their grand father and father. Contesting respondents asserted that in the year 1945-46 a compromise took place in between them and the petitioner and widow of Singhasan i.e. mother in law of the petitioner. The said compromise is alleged to have been entered into during mutation proceedings filed in the year 1945 i.e. immediately after the death of original tenure holder Ambika. Copy of the order passed on the alleged compromise is Annexure 4 to the writ petition (Ramayan

respondent No. 3 is son of Baleshwar. Sri Singhasan father-in-law of the petitioner, Baleswar and Vishwanath original respondent No. 4 were real brothers. The pedigree is given below:

Ambika

Singhasan Baleshwar Vishwanath

Rajendra Ramayan

= Asarfa(petitioner) (Respondent No. 3)

4. In Annexure 4 order dated 03.09.1946 it is mentioned that Viswanath, Baleshwar and petitioner had agreed that some plots should be given to the petitioner in lieu of maintenance as detailed in the compromise dated 04.01.1945. Through the said order the compromise was given effect to.

5. C.O. and D.D.C. held that as property was given for maintenance hence by virtue of Section 11 of U.P.Z.A.L.R. Act. the petitioner became only an Asami. However, S.O.C. held that she became Bhoomidhar as compromise was denied by her.

6. Even if it is held that the compromise was infact entered into, it will not make any difference on the rights of the petitioner. C.O. and D.D.C. did not specifically refer to Section 11 of U.P.Z.A.L.R. Act. However, their finding that petitioner became Asami is based upon Section 11 of U.P.Z.A.L.R. Act which is quoted below:

Notwithstanding anything contained in Section 10, where sir or Khudkasht has been allotted by the sir or khudkasht holder thereof to a person in lieu of maintenance allowance, such person shall be deemed to be the asami thereof entitled to hold the land for so long as the right of maintenance allowance subsists.

7. Supreme Court in Ram Avtar v. Ram Dhani AIR 1977 S.C. 107 has considered this question and has held that if agricultural land in U.P. is given to widow in compromise, Section 11 of the Act is not attracted and in such a situation by virtue of Section 18 of the Act widow becomes Bhoomidhar. Paras 1 and 7 of the said judgment are quoted below:

1. One Sehti, the husband of Smt. Phoola died in a state of jointness in the year 1911. The said Smt. Phoola continued to be member of the joint family along with other brothers of her husband. A dispute arose in the family and a compromise was entered into on February 8,1932 in which it was agreed that Smt. Phoola who was the widow in the family should be given some lands for maintenance. Her name was also mutated in revenue records.

8. The High Court has rightly rejected the stand of the appellants that as Smt. Phoola got the lands by way of maintenance it will be covered by Section 11 of the Act and after vesting she will be deemed to be the asami and not Bhomidhar.

It appears Section 11 shall be applicable where the holder of sir or khudkasht lands allots such lands to a person in lieu of maintenance allowance. In the present case, Smt. Phoola got the lands on the basis of a compromise entered into in the year 1932 and she was in possession thereof.

9. Accordingly, it can not be said that Viswanath and Baleshwar allotted the land in dispute to the petitioner in lieu of maintenance allowance. It was a compromise through which petitioner was given the land for maintenance.

10. It appears that the Supreme Court has drawn a distinction between giving land for maintenance and allotting land in lieu of maintenance allowance.

11. Moreover, by virtue of Section 14 of Hindu Succession Act, 1956 after passing of the said Act petitioner became full owner (Bhoomidhar in respect of agricultural land in U.P.). Section 14 of the Hindu Succession Act is quoted below:

Property of a female Hindu to be her absolute property.

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

12. Accordingly, even if it is held that Section 11 of U.P.Z.A.L.R. Act is applicable still after passing of Hindu Succession Act 1956, petitioner became Bhoomidhar by virtue of Section 14 thereof.

13. It is also important to notice at this juncture that the C.O. in his order (which is against petitioner) held that in the Khatauni extracts of 1356, 1359 and 1362 fasli name of petitioner was recorded as Khudkasht holder and bhoomidhar. In case petitioner had only become Asami after enforcement of U.P.Z.A.L.R. Act then her name would not have been recorded as bhoomidhar and continued as such.

14. Accordingly, writ petition is allowed. Judgment and order passed by D.D.C. and C.O. are quashed. Judgment passed by S.O.C. is restored even though on somewhat different grounds.