
(1977) 12 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8034 of 1975

Phool Chand

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 21-12-1977

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 13
Hindu Marriage Act, 1955 — Section 11, 5
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 3, 5(3)(a), 5(3)(b)

Citation : (1977) 12 AHC CK 0035

Hon'ble Judges : K.C.Agrawal, J

Final Decision : Partly Allowed

Judgement

K. C. Agarwal, J.

The writ petition is directed against the judgment of the IInd Additional Civil Judge, Aligarh dated 24th February, 1975.

On a notice under Subsection (2) of Section 10 of the U. P. Imposition of Ceiling on Land Holdings Act (briefly stated as "the Act"), being served, the petitioner filed an objection asserting that he did not possess any land which was liable to be declared as surplus. The Prescribed Authority did not accept the objection and declared 29 Bighas 17 Biswas 12 $\frac{3}{4}$ Biswansis land as surplus. The petitioner preferred an appeal before the learned District Judge under Section 13 of the Act. The appeal was partly accepted, and the area of surplus land was reduced to 9 Bighas 2 Biswas 16 $\frac{3}{4}$ Biswansis. Aggrieved by the said judgment of the learned District Judge, the present writ petition was filed.

Two points were raised by the learned counsel for the petitioner in support of this petition. The first was that as the petitioner had nine members in the family, he was entitled under Section 5 (3) (b) of the Act to have 6 additional I hectares of irrigated land.

It is not in dispute that the petitioner were, including himself, nine members in the family. Out of these members, two of them were his wives. Subsection (3) of Section 5 of the Act lays down the area which a tenureholder would be entitled to retain after the enforcement of U. P. Act No. XVIII of 1373. Clauses (a) and (b) of Subsection (3) of Section 5 deal with two different contingencies. The main difference between Clauses (a) and (b) of Section 5 (3) is that whereas Clause (a) applies to a tenureholder having a family of not more than five persons and permits two additional hectares of land for each of his adult sons, while Clause (b) deals with the case of a tenure holder having a family of more than five members and lays down that apart from 730 hectares of irrigated land, each of the members exceeding five, and for each one of his adult sons who are not themselves tenure holders, two additional hectares of irrigated land would be available to such a tenureholder, subject to a maximum of six hectares, of such additional land. The word "family" has been defined in Section 3 of the Act as in relation to a tenure holder means himself or herself and his wife or her husband, as the case may be, (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters).

The petitioner was denied two hectares of additional irrigated land claimed by him on the ground that as the word "wife" was used in the singular in the definition, therefore, the two wives had to be treated as one unit and, consequently, they could not get separate land for each one of them. The view taken by the learned District Judge appears to be erroneous. It is undeniable that each one of the two wives had separate physical existence. Each one of them was a member of the family of the petitioner in her own right. One was not dependent for her membership or status in the family on the other. It is, therefore, erroneous to treat them as one unit. As already said above, it is the physical existence of a person as a member of the family which is relevant to consider the status of membership and not the one falling in the same class as the other. To me, therefore, it appears that the court below made a wrong approach in treating the two wives as one unit. In fact, the unit has no relevance for the purposes of conferring the benefit of Clause (b) of Subsection (3) of Section 5 of the Act.

It was, however, contended by the learned counsel appearing for the State that whereas the legislature has used the words "sons and daughters" in the plural, it used the word "wife" in the singular, and that was indicative of the intention that irrespective of the number of wives that a person had, a tenureholder would not get additional land for a second wife. To my mind, this has no substance. Section 13 of the General Clauses Act lays down that unless the context requires to the contrary, the words used in the singular will include the plural. Therefore the use of the word "wife" does not go against the interpretation placed by me that it will include the second wife as well. So far as the context is concerned, it may be pointed out that I could not find anything in the Act which could lead me to hold that the context did not require two additional hectares of irrigated land to be given to the second wife.

It may, however, be pointed out that before the coming into force of the Hindu Marriage Act, 1955, the marriage amongst Hindus was polygamous in nature. It is only after the Hindu Marriage Act that a Hindu was prohibited from taking a second wife during the life time of the first wife. Section 5 of the Hindu Marriage Act lays down the conditions of a valid marriage. Clause (1) of the said Act lays down that in order that a marriage is valid neither party should have a spouse living. Section 11 similarly provides that any marriage solemnised after the commencement of the Act contravening the provisions of Section 5 would be void. It would thus be seen that it is by the said Act that monogamy was introduced and prohibition was placed on the right of a Hindu taking a second wife. Before the enactment, a Hindu was entitled to have more than one wife, and that the marriage with them was valid. It is only after the enforcement of the Hindu Marriage Act that such a marriage would be void. Consequently, a tenureholder marrying after the aforesaid Act would not be entitled to have additional hectares of land for the second wife. A marriage which is void is no marriage. What is void is nonexistent from its inception. It does not confer any status.

In the instant case, it appears to be the acquitted case of the parties that Phool Chand, the petitioner, had taken a second wife before the enforcement of the Hindu Marriage Act, 1955. Consequently, his both the marriages were valid. Thus, he was entitled to have two additional hectares of irrigated land for the second wife as well and his claim could not be ignored on that basis.

The object of making provision of additional land made in Clauses (a) and (b) appears to be to provide additional source of income to a tenureholder to enable him to manage his family expenditure. It may be true that the main object of the Act is to provide for more equitable distribution of land by making the same available to the extent possible to landless agricultural labourers and to provide for cultivation on cooperative basis but in doing so the legislature also kept into account that the ceiling area which is left to a tenureholder is not reduced to such an extent that the tenureholder may not be able to meet his expenditure and find difficulty in making provision for his family members. It is, therefore, with this object in view that Clauses (a) and (b) provided that contingency where additional land would be available to a tenure holder subject to the conditions mentioned in the aforesaid clauses having been fulfilled by him.

So far as the argument of the petitioner's counsel for the additional claim of the two hectares of land for the daughter born in 1974 is concerned, it may suffice to mention that the Act No. XVIII of 1973 reducing the ceiling area came into force on 8th day of June, 1973, and the ceiling area has to be decided with reference to the aforesaid date. As the daughter, admittedly, was born after the 8th of June, 1973, she being not a family member of the petitioner on the relevant date, no rights can be recognised on this basis.

In the result, the writ petition succeeds in part and is partly allowed. The judgment and order of the learned IIInd Additional Civil Judge, Aligarh, is set

aside to the extent indicated above, and it is held that the petitioner would be entitled to have two additional hectares of irrigated land over and above the land given to him. There shall be no order as to costs. The stay order is discharged.