
(1981) 01 AHC CK 0069
In the Allahabad High Court
Case No : Writ Petition No. 2474 of 1980

Rameshwar Prasad

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-01-1981

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(3)

Citation : (1981) AWC 156

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—This petition is directed against orders determining surplus area of Petitioner under U.P. Imposition of Ceiling on Land Holdings Act. The questions that survive for consideration are whether daughters of predeceased son can be considered to be members of family for the benefit of two additional hectares in Section 3(3) and whether Hindu widow was entitled to share in ancestral sir and Khudkasht.

2. Sub section (3) defines family as under:

Family 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):

3. It does not include grand daughters. But the learned Counsel for Petitioner submitted that under Explanation to Sub-section (3) of the Act son or daughter of a pre-deceased son are entitled to two additional hectares. This according to learned Counsel indicates that a son or daughter of a predeceased son shall be deemed to be included in the family of a tenure holder. The argument proceeds on complete misapprehension of the two provisions. For the purpose of determining family a son or daughter of a predeceased son cannot be deemed to

be in

cluded in it. The sub-clause defining the word family does not permit any such construction. As regards Explanation its scope and objective is entirely different. It operates only if the family exceeds five and adult son is not a tenure holder in his right. No assistance could therefore be derived from this provision.

4. The finding that petitioner's mother was not entitled to a share in Sir and Khudkasht land appears to be well founded. The appellate authority held that there was no evidence on record to prove that her husband died after 1938. The evidence of Petitioner was rejected as insufficient to establish the time of death. The argument that as that was only evidence and it should have been accepted does not have any merit.

5. In the result the petition fails and is dismissed but there shall be no order as to costs.