
(1984) 08 AHC CK 0045
In the Allahabad High Court
Case No : Writ Petition No. 3048 of 1979

Shanti Devi

APPELLANT

Vs

District Judge, Gonda & Others

RESPONDENT

Date of Decision : 06-08-1984

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(7)

Citation : (1984) 08 AHC CK 0045

Hon'ble Judges : U.C.Srivastava, J

Final Decision : Allowed

Judgement

U.C. Srivastava, J.

1. The writ petition is directed against the order passed by the Prescribed Authority and the appellate order pegged by the District Judge dismissing the appeal filed by the Petitioner against the order passed by the Prescribed Authority and sending back the matter to the Prescribed Authority for determination of the surplus land after considering the choice of the petitioner.

2. A notice under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holding Act was issued to the opposite party no. 3 and the land was declared to be surplus land. The case of the petitioner is that she is the separated wife of opposite party no. 3 and has been separated long long ago and in the year 1935 land was given to her by her father even and her separation has been recognised by court of law. The petitioner filed objections pleading that she is no longer the wife of the? opposite party no. 3 and the marital relations have come to an end in the year 1954 and she was tenure holder in her own rights. The sarpanch of the Nyaya Panchayat also stated before the Prescribed Authority that they were separate from the year 1954. The objection filed by the petitioner was dismissed. The petitioner's appeal was also dismissed. The District Judge took the view that as there was no decree for judicial separation she could not be treated to be a judicially separated wife even though an attempt was made by the husband also to take such a plea by means of amendment. According to the petitioner there

was a partition in the year 1959 and her share was separately recognised and mutation was also effected on her name. It was the result of the partition decree which was passed on 13.8.1959. The learned counsel for the petitioner contended that separation of the petitioner was already proved from the evidence on record " and this separation took place prior to coming into force the Hindu Marriage Act and, further, her separation was recognised by a court of Law in the partition decree which tantamounted to "judicial separation", the phrase used in Section 3 (7) of the U.P. Imposition of Ceiling on Land holdings Act. In this connection the learned counsel made reference to a single Judge decision of this Court reported in 1982 ALJ 103 Gangotri Devi v. State of U.P. The District Judge was to take into consideration relevant facts and considerations and decide the appeal according to law. It was open to the District Judge as an appellate Court also to accept the choice of the petitioner and the choice accepted could have been given effect to in papers.

3. In the result the writ petition deserves to be allowed.

4. The writ petition is allowed and the order passed by the District Judge dated 16.7.79, a copy of which has been annexed to the writ petition as Annexure no. 8, is quashed. The District Judge is directed to restore back the appeal to its original number and hear and decide the same in accordance with law and in the light of the observations made above. There will be no orders as to the costs.

(Petition allowed)