

**(1984) 10 AHC CK 0026**  
**In the Allahabad High Court**  
**Case No : Reference No. 242 LR 83-84**

Shanti Devi

APPELLANT

Vs

Ramsri

RESPONDENT

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**Date of Decision :** 20-10-1984

**Acts Referred:**

Evidence Act, 1872 — Section 107, 108

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172

**Citation :** (1984) 10 AHC CK 0026

**Hon'ble Judges :** P.C.Saxena, J

**Final Decision :** Allowed

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## Judgement

1. This is a reference made by the learned Additional Commissioner, Meerut, dated 261083 under Section 218 of the U.P. Land Revenue Act, in a mutation case.

2. The facts are, briefly, that Smt. Ram Pyari is the recorded tenant of the land in dispute. On 30374 an application was moved by one Ramesh Chandra before the trial court alleging that Smt. Ram Pyari had been "farar" since 8367 and her civil death should be presumed after 7 years i.e. on 8374. A prayer was made that the name of Jwala Singh should be mutated as her successor. To this, an objection was filed by Smt. Ramshri, daughter of Smt. Ram Pyari, to the effect that her mother was alive and that after becoming a widow she had become a sadhu and came to her village from time to time.

3. The learned trial court recorded evidence of the parties and arrived at a finding that Smt. Ram Pyari is farar and that her land is in possession of Jwala Singh, Mutation was ordered in favour of the latter inspite of the fact that Jwala Singh himself had not applied for mutation.

4. A first appeal against this order was allowed by the Additional Collector who remanded the case for a fresh decision as he felt that the evidence in respect of Smt. Ram Pyari being farar was insufficient.

5. A revision against this order has been recommended for acceptance by the learned Additional Commissioner, Meerut, who has expressed the opinion that it has been proved that Smt. Ram Pyari had been farar for 7 years and, therefore, her civil death must be presumed,

6. I have gone through the file and heard arguments on both sides.

7. None of the learned lower courts have taken note to the fact that the U.P.Z.A. and LR Act does not prescribe succession to persons presumed to be "farar". Under Section 172, succession to a woman is open only if she dies, marries, abandons or surrenders her holding. The mere fact that she is farar for a particular period or otherwise would not open the question of succession. The learned lower courts have proceeded on the presumption that a person who is farar for 7 years must be presumed to be dead. This is not the correct legal position.

8. A perusal of Sections 107 and 108 of the Indian Evidence Act would make it obvious that if a person was alive within thirty years the burden of proving that he was dead would lie on the person affirming this fact but when it is proved that a person has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he was alive would shift to the person who affirms this fact.

9. It is, therefore, clear that the lower courts should have considered the matter and evidence in the light of these legal provisions and required the parties concerned to prove or disprove the fact of death and then give a finding on the point. The question of succession would arise only after a finding of death had been given. This has not been done in the present instance.

10. The revision application is, therefore allowed though for the above reasons. The orders of the trial court and the SDO are set aside and case is remanded for a fresh decision by the trial court after hearing the parties in the light of the above observations.

(Revision allowed)