

(1981) 08 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9077 of 1980

Sheo Nath Singh and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(6)
(b)

Citation : (1981) 08 AHC CK 0038

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

M. P. Mehrotra, J.

This petition arises out of the proceedings under the U. P. Imposition of Ceiling on Land Holdings Act.

The facts in brief, are these The notice under Section 10 (2) of the Act was issued to the petitioner No. 1 Sheonath Singh. It is said that subsequently a notice was issued to his wife Smt Kalawti and to Kedar Nath and Ram Nath the two sons of Smt. Kilawati Kedarnath is dead and he is bing represented by the petitioners Nos. 3 and 4. The Prescribed Authority disposed of the objections by his order dated 29101979 and a true copy of the sama is Annexure 1 to the petition Thereafter, two appeals were filed and both of them were decided by the appellate Court by a common judgment dated 1481980. The appeals were pirtly allowed. Now the petitioners have come,up in the instant writ petition and in support of the sam I have heard Sri Rishi Ram, learned counsel for the petitioners. In opposition, the learned Standing Counsel has made his submissions.

Two contentious were raised before me. Firstly, it was contended that some land was formerly ancestral Sir and Khudkasht in the hands of the petitioner No 1 Therefore, the two sons of the petitioner No I were equal cotenureholders along

with their father in such land which became Bhumidhari after the abolition of Zamindari. The appellate Court rejected the claim on the ground that as no revenue suit had been brought for partition of the respective shares in the said land, therefore, the petitioner No. 1 alone should in law be held to be the sole tenureholder of such land. The further reason was given that as the father alone stood recorded on 8/6/1973 in respect of such land, then fore, he alone could be treated as the sole tenureholder. I hold that this view is entirely wrong. In several decisions of this Court, it has been laid down that if some land was ancestral Sir and Khudkasht in the hands of a tenureholder before the date of vesting and if his sons were in existence on the date of vesting, then the sons will be deemed to be cotenureholders in such land along with their father after such land became Bhumidhari after the abolition of Zamindari, and further the fact that only the name of the father stood recorded over such land did not mean that the sons did not have their vested shares in such land. It was not at all necessary that a partition suit should have been filed or that the sons should have got their names recorded over their respective shares in such land before 8/6/1973. Accordingly, I accept this contention of the learned counsel for the petitioner.

The learned counsel next contended that a sale deed was wrongly ignored by the authorities below. In my view, this contention lacks merits. The sale deed was executed on 29th October, 1971 and it was executed in favour of her sons. The authorities below have given good reasons why the same could not be accepted and therefore, the benefit of clause (b) of the proviso of section 3 (6) of the Act was not extended in respect of such deed of transfer. No interference is called for in the said finding.

Accordingly, this petition is allowed and the judgment of the appellate Court is hereby quashed to the extent that under point No 2 in the said judgment the controversy about the shares of the sons along with their father in the land which was claimed to be ancestral Sir and Khudkasht before the date of vesting was discussed and decided. The appellate Court shall reconsider the said controversy and decide whether any, and if so, to what extent, the land included in the holding of the petitioner No 1 as the tenureholder was, before the date of vesting. Sir and Khudkasht and if so, whether it was ancestral in his hands. It will further be decided whether the two sons of the said tenureholder, namely, Ram Nath and Kedarnath were in existence on 1st July, 1952. If it be found that some land was formerly ancestral Sir and Khudkasht in the hands of the petitioner No. 1 and that his two sons, or any one of them were or was in existence on 1st July, 1952, then each of the sons will have equal share in such land along with his father, and the same shall be excluded from the holding of the petitioner No. 1. The ceiling area and the surplus land shall be redetermined thereafter. It is made clear that no other controversy shall be allowed to be raised before the appellate Court hereafter. In the circumstances of the case, there will be no order as to costs.