
(1967) 07 AHC CK 0016
In the Allahabad High Court
Case No : Writ Petition No. 719 of 1966

Smt. Munni Devi

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-07-1967

Acts Referred:

Constitution of India, 1950 — Article 15, 15(1)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172(2)(b)

Citation : (1967) 37 AWR 576

Hon'ble Judges : Lakshmi Prasad, J

Bench : Single Bench

Advocate : Hargur Charan Srivastava, for the Appellant; B.L. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Lakshmi Prasad, J.—This is a petition Under Article 226 of the Constitution. The dispute in the case relates to certain tenancy plots which stood recorded in the name of Ghanshyam, opposite party No. 5, in the basic year. The Petitioner preferred an objection u/s 9 of the UP Consolidation of Holdings Act claiming herself to be a sirdar of the disputed plots on the ground that these were the tenancy plots of her father Sheo Balak. It may here be mentioned that Ghanshyam is the grandson of Bala Prasad, own brother of Sheo Balak. The Consolidation Officer allowed her objection. Ghanshyam went in appeal which was allowed by the Settlement Officer, Consolidation. The Settlement Officer, Consolidation found that the disputed tenancy was of Sheo Balak, that the Petitioner was the daughter of Sheo Balak, that Sheo Balak died sometime, in the year 1942 and that the Petitioner was married sometime prior to 1949 when father of Ghanshyam was alive. On these findings he held that even though the Petitioner inherited the tenancy on the death of her father she lost it on her marriage and the same passed to Ghanshyams father, the then nearest collateral of the last male tenureholder. Aggrieved by the finding that the Petitioner is the daughter of Sheo Balak, Ghanshyam preferred a revision. The Petitioner

preferred a revision against the order allowing the appeal of Ghanshyam. Both the revisions were heard by the Deputy Director and disposed of by a common judgment dated 20-7-1966, a certified copy of which is Annexure 2. He dismissed both the revisions, even though he reversed the finding of the Settlement Officer, Consolidation, regarding the time of marriage of the Petitioner. The Petitioner alleges that the Deputy Director relying on the statement of the Petitioner held that the marriage of the Petitioner took place near about May 1954. Still he rejected her claim on the ground that a married daughter became an heir under the provisions of the UP ZA and LR Act only by an amendment which came in December, 1954 and since the Petitioner was married prior to the commencement of the Amendment Act she could not be the heir of her father. It is in these circumstances that this petition is preferred with a prayer that the impugned order Annexure 2 be quashed on the ground that the view of law taken by the Deputy Director is manifestly erroneous having regard to the finding of fact recorded by him.

2. The petition is opposed by Ghanshyam, opposite party No. 5.

3. I have heard learned Counsel for the contesting parties. The sole point raised by the learned Counsel for the Petitioner is that the Deputy Director committed a manifest error in laying down that the Petitioner has no right to inherit because on her own showing she was married ten to eleven years prior to her statement made in May 1965 and a married daughter could inherit under the provisions of the Zamindari Abolition and Land Reforms Act only since after the amendment introduced in it in December, 1954. As against that the contention on behalf of the contesting opposite party is that even if the aforesaid observations of the Deputy Director are legally incorrect the final decision given by him can be sustained on the ground that the Petitioner having inherited from her father under the provisions of the UP Tenancy Act, lost her right because of her marriage under the provisions of the UP Tenancy Act, viz., Section 36 thereof, in case it be found that she married prior to 1949, as is the finding given by the Settlement Officer, Consolidation and under the provisions of the UP Zamindari Abolition and Land Reforms Act, viz., Clause (b) of Sub-section (2) of Section 172 thereof, in case it be found, as is said to have been held by the Deputy Director that she married near about May 1954, because Clause (b) of Sub-section (2) of Section 172 of the UP ZA and LR Act till before the amendment introduced in it by UP Act XX of 1954, which came into force on 10-10-1954, did envisage that a sirdar inheriting as a daughter would lose her right on marriage. On being confronted with the position as raised by the learned Counsel for opposite party, learned Counsel for the Petitioner has raised two points. His first contention is that a perusal of the impugned order passed by the Dy. Director shows that there is no clear cut finding given by him in regard to the time of marriage. A perusal of the judgment passed by the Dy. Director does show that he has relied on the statement of the Petitioner made in May 1965, to the effect that she was married ten or eleven years ago. This statement by itself does not appear to lead to a definite conclusion because, if it is interpreted to mean that

her marriage took place ten years ago, then it would be subsequent to the amendment introduced by UP Act XX of 1954. As against that, if it is taken to mean that she was married eleven years ago then of course, it would mean that the marriage took place near about May 1954, i.e. prior to the amendment introduced by UP Act XX of 1954. So, there appears to be some substance in the contention of the learned Counsel for the Petitioner that in the absence of a clear cut finding given by the Dy. Director, it is not possible to conclude as to whether unamended Section 172 of the UP ZA and LR Act or amended Section 172 thereof would apply to the case. In that view of the matter, I am inclined to accept his contention that the impugned order be quashed with the direction to decide the revision afresh in the light of the observations made above after giving a definite finding, on a consideration of the entire evidence on the record, on the question as to when the marriage of the Petitioner actually took place.

4. The other point raised by the learned Counsel for the Petitioner is that the provision in Section 172 of the ZA and LR Act saying that a sirdar inheriting as a daughter would lose her right on marriage is hit by Article 15 of the Constitution and as such, as provided in Article 13 of the Constitution, it be held to be void. This contention is without any substance. Article 15(1) of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The word "only" occurring in Article 15(1) has been a subject matter of interpretation in various cases and the settled view is that if the sole ground of discrimination is one of those enumerated in Article 15(1), then alone such a discrimination would be hit by it. In other words, if there is any other ground or consideration for the differential treatment besides those prohibited by the Article under consideration the discrimination will not be unconstitutional. The impugned provision in Section 172 in regard to a sirdar inheriting as a daughter that she would lose her right on marriage, is obviously, is based not only on the ground of sex but on Other considerations which have weighed in laying down a table of heirs in Section 171 wherein daughter gets no share in the tenancy if the son is alive. In that view of the matter Article 15 cannot be invoked to render the particular provision in Section 172 void. There is yet another approach to the question, namely that by virtue of Article 31-B of the Constitution, in so far as the UP Zamindari Abolition and Land Reforms Act finds mention at item No. 11 of the 9th Schedule of the Constitution, it enjoys immunity from being attached on the score that any of its provisions is inconsistent with any provision of part III of the Constitution. So, in any view of the matter, the contention has to be rejected and the dispute in the case has to be decided with reference to Section 172 of the UP Zamindari Abolition and Land Reforms Act as it stood on the date the Petitioner is found to have married herself, I conclude accordingly.

5. In the end the petition is allowed and the impugned order passed by the Deputy Director is quashed with the direction that the revision shall be disposed of afresh by the Deputy Director in the light of the observations made in the body of the judgment after recording a definite finding on an entire consideration

of the evidence on the record, as to when actually the marriage of the Petitioner took place. In the circumstances of the case, parties are directed to bear their costs in this Court.