

(1967) 04 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 132 and 234 of 1963

Smt. Savitri Devi

APPELLANT

Vs

Jt. Director Consolidation and Others

RESPONDENT

Date of Decision : 13-04-1967

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172(1)(b)

Citation : (1967) 37 AWR 766

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : Ram Surat Singh, for the Appellant; R.C. Ghatak and N. Lal and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—One Kanhaiya Lal died in 1955 leaving two daughters Smt. Savitri and Smt. Javitri. Javitri died in 1958 leaving four sons Girish Chandra, Prakash Chandra, Chandra Sheikhar and Bhaiya Lal. Savitri has filed the instant petition and has impleaded Javitri's sons as Respondents Nos. 6 to 9 in this as well as in the connected writ petition No. 234 of 1963.

2. In proceedings under the UP Consolidation of Holdings Act objections were filed in respect of Bhumidhari and Sirdari plots situate in three separate villages, one of them being Lachrnan Nagla. A dispute arose whether upon the death of Javitri her interest devolved upon Savitri or upon Javitri's sons. Ultimately in three second appeals filed by Savitri in respect of the plots of all three villages, the Deputy Director of Consolidation held that upon the death of Javitri the succession to Kanhaiya Lal reopened and the interest of Javitri devolved upon her sons. Three revision applications were filed by Savitri and they were numbered as Revision Nos. 167, 168 and 169 of 1962. The revision applications were dismissed by the Joint Director of Consolidation. Civil Misc. Writ. Mo 132 of 1963 has been filed by Savitri praying for relief against, inter alia, the order of the Joint Director of Consolidation dismissing the three revision applications. The

connected petition, Civil Misc. Writ No. 234 of 1963, has also been filed by Savitri for the same relief.

3. At the outset, a preliminary objection has been raised by learned Counsel for Respondents Nos. 6 to 9. It is pointed out that inasmuch as the plots in dispute lay in three separate villages and separate proceedings in respect of the three sets of plots were taken all along and resulted in three second appeals and thereafter in three revision applications, the Petitioner was bound to file three separate writ petitions and inasmuch as no writ petition had been filed challenging the findings in respect of the plots in village Lachman Nagla, the findings in respect of the remaining plots operate as *res judicata*, inasmuch as the issues which arose in the three revision applications are identical. Now it is possible that if the Petitioner had sought relief in the two writ petitions filed by her in respect of the plots in two villages only and had not prayed for relief in respect of the plots in the third village Lachman Nagla the plea of *res judicata* may have operated against her. But it is clear from the relief sought by her in each of the two writ petitions that she has applied for the quashing of the orders disposing of all the three revision applications. The only possible objection and one which has indeed been raised by learned Counsel for the Respondents Nos. 6 to 9, is that the Petitioner should not be permitted to seek relief against the order disposing of the three revision applications through a single or even two writ petitions. As to that, having regard to the circumstances, it seems to me that the Petitioner should be allowed to furnish an additional court fee of Rs. 50/- so that one of the two writ petitions should be treated as a consolidated petition in respect of the reliefs relating to the plots in village Lachman Nagla also. The Petitioner has made a prayer for the same and is permitted to furnish the additional court fee. The court fee having been furnished, writ petition No. 132 of 1963 shall be treated as a consolidated petition against the order disposing of two revision applications, including that relating to village Lachman Nagla. The reliefs in respect of the plots covered by the third revision application shall be deleted. Writ Petition No. 234 of 1963 shall be considered as one praying for relief against the order disposing of the third revision application alone and reference to the reliefs against the order disposing of the other two revision applications shall be deleted.

4. There is no difficulty whatsoever as to the merits of the question raised upon these petitions. Kanhaiya Lal died in 1955. His interest was inherited by his two daughters, Savitri and Javitri. Section 172(1)(b) of the UP ZA and LR Act provides that when a Bhumidhar or Sirdar, who has after the date of vesting inherited an interest in the holding as a daughter, dies the holding or the part thereof shall devolve upon the nearest surviving heir such heir being ascertained in accordance with the provisions of Section 171 of the last male bhumidhar or sirdar. The interest inherited by Javitri had devolved on her upon the death of Kanhaiya Lal who admittedly died after the date of vesting. Upon the death of Javitri that interest now devolves on the nearest surviving heir of Kanhaiya Lal. That heir must be determined by reference to Section 171 and it is clear from the

terms of Section 171 that a married daughter Under Clause (g) has been preferred to a daughter's son Under Clause (h). Savitri is the married daughter of Kanhaiya Lal and is clearly entitled to the interest left by Javitri upon her death.

5. Learned Counsel for the Respondents Nos. 6 to 9 has referred to the decision of this Court in Bhupal and Ors. v. Board of Revenue 1962 AWR 228 and to the latter Full Bench decision of this Court in Ramji Dixit and Anr. v. Bhrigunath and Ors. 1964 AWR 75. Those two cases do not affect the decision of the question raised in these petitions. There the question arose as to the legal consequence of transfers made by heirs, inheriting as the widows of the Hindu male holder, during their life time. The question was not whether the interest left by the widows would or would not devolve according to the provisions of Section 172. Reference has been made also to Section 175 of the Act. Section 175 refers to co-widows and co-tenure-holders who have died leaving no heirs entitled to succeed under the provisions of the Act. In that event the interest in the holding passes by survivorship. In the petitions before me the case is not one where the interest passes by survivorship but one where it devolves under the provisions of Section 172 in accordance with the line of succession set out in Section 171.

6. The Petitioner succeeds.

7. The petition is allowed. In the circumstances of the case, there is no order as to costs.