
(1967) 02 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 507 of 1962

Smt. Umrai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-1967

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 172

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 172

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 172

Citation : (1967) 37 AWR 487

Hon'ble Judges : S.C. Manchanda, J

Bench : Single Bench

Advocate : V.B.L. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Manchanda, J.—This is a writ petition Under Article 226 of the Constitution directed against the orders of the Consolidation authorities holding that a married daughter notwithstanding UP Act 20 of 1954 was not entitled to succeed to the interest of her mother a widow who had inherited an interest as Sirdar.

2. The material facts are these. Smt. Kewal Pati the widow of Jung Bahadur Singh was recorded as Sirdar of the plots in dispute in the revenue papers. She had before the date of vesting inherited an interest as a widow. She died on 21-12-1966, leaving behind her only married daughter Smt. Umrai, the Petitioner. Consolidation, operations started in the village and in proceedings u/s 8 of the Act, the aforesaid Kewal Pati made a statement that her name be expunged from the revenue papers and that of the Petitioners recorded in her place and as such, the name of the Petitioner was ordered to be recorded as Sirdar in place of her mother Smt. Kewal Pati. In the meanwhile, Kewal Pati died and as the order passed in the proceedings u/s 8 of the Act were not incorporated in the statement of plots and tenure holdings published u/s 11 of the Act, the Petitioner filed objections u/s 12 for correction of the entries in her

favour in the said statement. The claim of the Petitioner was disputed by one Ram Lakhan who claimed to be Kewal Pati's husband's sister's son. This claim was rejected on 30-4-1959, by the Consolidation Officer who directed the Petitioner's name to be recorded as Sirdar over the plots in dispute. Against that order Ram Lakhan filed an appeal u/s 34(3) of the Consolidation of Holdings Rules. The Settlement Officer took the view that neither of the parties were the heirs of Smt. Kewal Pati and proceeded to declare the plots in dispute to be the property of the Gaon Samaj. Against that order the Petitioner preferred a revision. While this was pending the statement of proposals u/s 20(1) of the Act was published and consequently the revision was stayed u/s 22(2) of the Act. Somehow, again, notwithstanding the decision in appeal, as given by the Settlement Officer in the statement of proposals published u/s 20(1), the Petitioner was shown to have been allotted Chak No. 21 in view of her Sirdari plots in dispute. Thereupon, Ram Lakhan Singh again filed objections u/s 20(2), claiming to be the sister's son of Jang Bahadur Singh, the husband of Smt. Kewal Pati. The Petitioner controverted these allegations and claimed that she was the daughter of Kewal Pati and therefore, entitled to succeed to her interests as Sirdar and also on the basis of a registered surrender deed executed in her favour in 1923, by her mother Smt. Kewal Pati. The Chairman of the Gaon Samaj admitted that the Petitioner was the heir of Kewal Pati and had been in possession for a long time. The Consolidation Officer, however, felt himself bound by the decision given by the Settlement Officer Under Rule 34(3) of the Rules and held the plots in dispute to be the property of the Gaon Samaj. Ram Lakhan did not file any appeal and was presumably satisfied with the decision given against him; but the Petitioner filed an appeal which was dismissed, holding that the previous order u/s 12 passed Under Rule 34(3) operated as *res judicata*. Thereupon, the Petitioner filed a revision before the Deputy Director, who allowed it and remanded the case to the Consolidation Officer for decision on merits, holding that the orders passed in proceedings u/s 12 of the Act were erroneously taken to be final and binding. Ram Lakhan Singh did not appear in the remand proceedings, the objections were disposed of *ex parte* and the plots in dispute were held to be the property of the Gaon Samaj. The appeal and the revision of the Petitioner were un-successful on the ground that she was the married daughter and therefore, not entitled to succeed under the provisions of Sections 171 and 172 of the UP ZA and LR Act, hence this petition by Smt. Umrai.

3. The short question that arises is whether the rights of a married daughter are in any way different from an unmarried daughter so far as succession to the Sirdari interest of her widowed mother is concerned. Before Act 20 of 1954, came into force the general order of succession as given in Section 171 of the ZA and LR Act only considered an unmarried daughter and in the order of succession she was ninth. By the amending Act of 1954, the word "unmarried" before "daughter" in the order of succession was removed and substituted by the word "daughter" and she was placed seventh. The word "unmarried" having been removed, before "daughter" and only "daughter" retained cannot mean anything

else but that the distinction hitherto drawn between an "unmarried" and "married" daughter in regard to succession henceforth stood removed.

4. The learned Junior Standing Counsel, however, contended that the succession in the present case fell Under Sub-clause (b) of Sub-section (1) of Section 172 as the daughter in the present case would be inheriting the interest of her mother as Sirdar after the date of vesting, she having died on 21-12-1956 and as such it is only the unmarried daughter who can succeed. There is no force in this contention as here the daughter is succeeding to the interest of her mother as Sirdar, which she had acquired before the date of vesting as a widow and the before when the widow died her daughter, the Petitioner, would succeed thereto. It is Clause (b) of Sub-section (2) of Section 172 which would govern the present case and not Section 172(1)(a). Sub-section (2) so far as it is material reads:

Where a Sirdar who has before the date of vesting inherited an interest in any holding as a widow...(b) dies...the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male tenant. Smt. Umrai was the daughter of the last male tenant and when his widow died, who had before the date of vesting inherited an interest as a widow, then upon her death the provisions of Section 171(g) of the Act would make the daughter an heir, whether married or unmarried and entitled to succeed. The order of the Consolidation Authorities, therefore, was clearly and patently erroneous in law and cannot be allowed to stand. The distinction that hitherto existed prior to 1954 between a married and unmarried daughter, as regards the rights to succeed to the interest to the widow acquired by her before the date of vesting, no longer survives. The married daughter, therefore, had erroneously been excluded and the plots given to the Gaon Samaj.

5. For the reasons given above, the order of the Consolidation authorities is quashed by the issue of a writ of certiorari. The petition is allowed with costs.