
(2005) 04 AHC CK 0197
In the Allahabad High Court
Case No : Writ Petition No. 39 of 1977

State of U.P.	Vs	APPELLANT
Smt. Gaya Kunwari and Others		RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Hindu Marriage Act, 1955 — Section 10, 29(2), 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18

Citation : (2005) 4 AWC 3880 : (2005) 99 RD 247 : (2005) 2 RD 247 : (2005) 2 UPLBEC 1409

Hon'ble Judges : Pradeep Kant, J; Jagdish Bhalla, J; Bhanwer Singh, J

Bench : Full Bench

Advocate : N.C. Mehrotra, Additional Chief Standing, for the Appellant; Nirmal Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Jagdish Bhalla, J.—This case comes before us upon a reference by learned Single Judge who felt that there is apparent conflict between a Bench decision and a Single Judge decision on the point set out below and being of considerable importance which require consideration by a Larger Bench.

2. The facts, inter alia before the learned Single Judge, in short were that respondents, Smt. Gaya Kunwari and Smt. Bimla Devi were the wives of late Banarasi Prasad. It is said that as per partition decree of the Civil Judge, Unnao, issued way back on 19.1.1948, the shares of respondents No. 2 and 3 were separated and both of them have been, living separately and managing their holdings independently. On the other hand, the State Government had taken stand in the Court below that the holdings of all the three respondents should be treated as one for the purposes of the Ceiling Act and surplus land. Before proceeding further, it would be relevant to point out that respondent No. 1 Banarasi Prasad son of Ram Lal died on 18.2.1977 and, therefore, an application for substitution, which was registered as Civil Misc. Appln. No. 448(w) of 1978,

was allowed by an order dated 19.9.1986 and Banshidhar, Sridhar and Sri Nivas, all son of Banarasi Prasad (deceased) were substituted as opposite parties Nos. 1/3, 1/4 and 1/5. Banshidhar-opposite party No. 1/3 also died on 20.1.2003.

3. The Prescribed Authority by the judgment and order dated 20.7.1975, came to the conclusion on the basis of documentary evidence that respondents No. 2 and 3 were living separately and their holdings cannot be included in the holdings of late Banarasi Prasad for the purposes of declaration of surplus land. Aggrieved by the said judgment, the petitioners filed a Civil Appeal No. 296 of 1975 in the Court of Ist Addl. District & Sessions Judge, Unnao. The Appellate Court by the Judgment and order dated 31.8.1976, approved the judgment of the Prescribed Authority and dismissed the appeal preferred by the petitioners.

4. Hence the present writ petition.

5. It has been argued on behalf of the State that both the wives come within the definition of Section 3(7) of the Ceiling Act and unless there is judicial separation from the Competent Court they cannot be treated as separated. When the matter came up before learned Single Judge, he raised a question that there is apparent conflict between the Bench decision and Single Judge decision, and, therefore, referred the matter to Hon"ble the Chief Justice for constituting a Larger Bench for consideration of the case.

6. The next question, which remains for consideration, is the meaning of words "judicial separation" in reference to Hindu Marriage Act and U.P. Imposition of Ceiling on Land Holdings Act.

7. Sri N.C. Mehrotra, Addl. Chief Standing Counsel submitted that in Sarju Prasad v. Additional District Judge, reported in 1980 ALJ 512, this Court after considering the case of Ramphal v. Additional District Judge reported in 1979 AWC 196, as also the judgment rendered in Writ Petition No. 493 of 1975; Ram Prasad v. State, held that judicially separated wife for the purpose of Section 3(7) of the Act, does not embrace within its ambit the right of separation between the husband and wife by mere custom. But on the other hand, in Gangotri Devi v. State of U.P., 1981 AWC 545, of which mention has been made in the present reference, it was held that the expression "judicially separated" is not to be understood in the technical sense in grant of decree u/s 10 of the Hindu Marriage Act and the wife was deserted and living separately and the land recorded in her favour should not be clubbed with the holding of her husband.

8. Elaborating further, learned State Counsel submitted that the law laid down in aforesaid cases were considered by the Hon"ble Supreme Court in the case of Jeet Singh and Others Vs. State of U.P. and Others, The Hon"ble Supreme Court while approving the decision rendered in Sarju Prasad disapproved the findings laid down in Gangotri Devi's case (supra). Similar question also cropped up in Darshan Prasad and another Vs. Civil Judge II, Gorakhpur and others, and the Hon"ble Supreme Court while rejecting the claim of appellant Darshan Singh held that even though a judicial separation of Smt Sarasvati Devi may not have

taken Place, Smt. Saraswati Devi for all intents and purposes was a judicially separated wife and the agricultural lands in her ownership and possession cannot be clubbed in the land of the appellant husband for determining the ceiling area.

9. In Jeet Singh's case (supra) the Hon'ble Supreme Court considered the definition of word "family" occurring in Section 3(7) of the Ceiling Act and said that wife is included in the family of her husband except a judicially separated wife. The Apex Court rejected the contention that a wider meaning should be given to the term "judicially separated wife" to include a wife who may be living separately from her husband and the land owned or possessed in lieu of her right of maintenance should be excluded from the ceiling limit of her husband. While dismissing the appeal the Supreme Court held as under :--

"It is difficult for us to accept this contention in view of the clear provisions of the Ceiling Act, 1960 which apart from being a beneficial Act, for the landless has used the term "judicially separated" wife after the coming into force of the Hindu Marriage Act, 1955. This cannot be given a meaning to include a wife merely living separately from the husband, but having not obtained a decree for judicial separation under the provisions of the Hindu Marriage Act, 1955.

10. Sri Nirmal Tewari, learned Counsel for the respondents argued with vehemence that in the present case the husband and wife separated in 1948 i.e. long before coming into force of Hindu Marriage Act and Ceiling Act. The word "judicial separation" cannot be understood in technical sense of grant of decree u/s 10 of Hindu Marriage Act. He has also invited our attention to the meaning of words "judicially" and "separated" as defined in various dictionaries.

11. Sri Tewari also stated that by a final decree of partition dated 19.1.1948, passed by the Civil Judge, Unnao in suit No. 17 of 1949, the family of Late Banarasi Prasad Pathak who was erstwhile Zamindar was partitioned and separate Khewat were prepared way back in the year 1948 and Late Smt. Gaya Kunwari and Smt. Bimla Devi became proprietor with their own rights in the estate of Late Banarsi Prasad. It is said that their boarding and lodging was also separated from the husband and were living separately and managing their respective properties separately. Further, on abolition of zamindari w.e.f. 1.5.1952 the wives were given fresh separate rights in respect of land which was conferred on them on being intermediary by virtue of their cultivatory possession of the land comprised therein and they became Bhumidhar with transferable rights u/s 18 of the U.P.Z.A. & L.R. Act. Not only this, in consolidation operation the rights of aforesaid ladies were recognized and their respective land was recorded separately in their names in separate Khatas.

12. It has also been argued that Smt. Gaya Kunwari in her counter affidavit had stated in clear words that she is living separately ever since 1948 as the husband Banarasi Das had not taken care of her nor any matrimonial relations and obligations exist. After separation, she had never resumed matrimonial relationship and is residing separately. Identical stand has been taken by Smt.

Bimla Devi in her counter affidavit.

13. In nutshell, the argument of the respondents Counsel is that since the husband and wife never resumed cohabitation since their partition in 1948 till the death of husband-(Banarasi Das) and rights of wife and husband having been recognized in the consolidation operations and names were recorded separately in their respective names in the Khatas, they cannot be treated be a member of one family. For another reason i.e. by a final decree of partition dated 19.1.1948, separate Khewats were prepared in the year 1948 and both the ladies i.e. Smt. Gaya Kunwari and Smt. Bimla Devi became proprietor with their own rights (Bhumidhar with transferable rights) in the Estate of Late Banarasi Prasad, their land cannot be clubbed while determining ceiling area of the land and surplus land. Reliance in this regard has been placed on Jeet Singh v. State of U.P., reported in 1981 ALJ 62.

14. Placing reliance on Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, learned Counsel contended that if two constructions are possible upon the language of the statute, then the one which is consistent with good sense and fairness should be adopted by the Court otherwise it will introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute. As regard to the controversy involved in the present writ petition relating to determination of ceiling area, learned Counsel argued that once there is separation of family, the question has to be decided on the basis of evidence. In the present case the final decree of partition dated 19.1.1948, passed by the Civil Judge, Unnao in Suit No. 17 of 1948 clearly establishes that the property was partitioned and the wives of late Banarasi Das became proprietor of their respective shares. In support of this contention, the respondents has placed reliance on a Division Bench of this Court in Sahu Ram Kishran v. State of U.P., 1957 ALJ 436. It has also been argued by the learned Counsel for the respondents that the view expressed by this Court in Jeet Singh v. State of U.P., 1981 ALR 62, is consistent with the good sense and covers the controversy involved in the present case.

15. In our view the origin of the reference is the conflict between the Bench decision and the Single Judge decision and both the cases having been considered by the Hon''ble Supreme Court in Jeet Singh's case (supra) wherein the view expressed in Gangotri Devi's case has been rejected. Thus the question which has been referred to us has already been answered by the Hon''ble Supreme Court. Therefore, the Hon''ble Supreme Court has already answered the question, which has been referred to the Full Bench, and the controversy has been set at rest. In Jeet Singh's (supra) the Hon''ble Supreme Court while disagreeing with the ratio of judgment in Gangotri Devi's case (supra) observed that if under any personal law the person is not entitled to get any order of a Court for a judicial separation it would only mean that they would not be entitled to the benefit of exclusion provided u/s 3(7) of the Act.

16. Section 5 of the Act is the pivotal provision under which imposition of ceiling

on land holdings is to be computed and surplus land is determined. In computation of the ceiling area the family defined u/s 3(7) becomes relevant to give additional land to the extent of the members of the family envisaged therein. While aggregating the ceiling area judicially separated wife has been excluded to be a member of the family. In *Darshan Prashad and Anr. v. Civil Judge II, Garakhpur and Ors.*, 1992 Suppl (2) SCC 87, the similar argument was advanced i.e., a wider meaning should be given to the term "judicially separated wife" to include a wife who may be living separately from her husband and agricultural land owned in lieu of her right of maintenance should be excluded from the ceiling limit of her husband, but the same was rejected. Thus the submission made by the learned Counsel for the respondents is devoid of any force

17. Thus it is imminently clear that even if there was some sort of separation between the husband and wife, when the Ceiling Act, came into force, such separation could not constitute "judicial separation" between them and the holdings existing in the names of husband and wife are liable to be clubbed together for computation of ceiling area.

18. It would also be relevant to mention here that there was a divergence of opinion between two learned Judges of this Court on the question as to whether a wife who was living separately from her husband as a consequence of customary intervention could be termed as a judicial separation. While one learned Judge expressed the view that on account of a customary intervention by the Panchayat leading to the wife living separately cannot be termed as a judicial separation while another learned Judge took the view that any dissolution of a Hindu marriage in a manner permitted by custom or in a manner contemplated by any special enactment would be a separation recognized by law. The said divergence of opinion was resolved by a Division Bench of this Court in the case of *Sarju Prasad v. IVth Addl. District & Sessions Judge, Basti*. The Division Bench held as under :--

"For the purposes of Section 3(7), the expression "judicially separated wife" does not embrace within its ambit the idea of separation between husband and wife by mere custom. The provision of Sections 4(a), 10 and 29(2) of the Hindu Marriage Act, 1955 also strengthen the above conclusion. The expression "judicially separate wife" in Section 3(7) of the Ceiling Act has been used not only to cover cases of Hindu tenure holders but is equally applicable to parties professing other religious beliefs."

19. In view of the aforesaid proposition, the contention of Sri Nirmal Tiwari that if the words "judicial separation" is understood as in Section 10 of the Hindu Marriage Act, then obviously it would apply only to a Hindu and not to a Muslim or persons of other religions is devoid of any substance.

20. In conclusion, the judgment and order dated 20.7.1975, passed by the Prescribed Authority, Unnao under the U.P. Imposition of Ceiling on Land

Holdings Act and the appellate order dated 31.8.1976, suffers from serious infirmities and the interpretation drawn by the Appellate Court is not correct.

21. Accordingly, the writ petition is allowed and the judgment and order dated 20.7.1975, passed by the Prescribed Authority, Unnao and the appellate order dated 31.8.1976, are hereby set aside.

22. Parties will bear their own costs.