

SMT. CHATRO WIDOW OF NAND RAM AND ORS. A  
v.  
SAHAYAK SANCHALAK CHAKBANDI, MEERUT AND ORS.

DECEMBER 11, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.] B

*U.P. Zamindari Abolition and Land Reforms Act, 1950 : Sections 171, 172 and 174.*

*J purchased proprietary right of Zamindari—She inducted her husband T as tenant who died in 1947-48—T not a Bhumidar but J was a Bhumidar—Question as to who had succeeded to the estate of either T or J—High Court holding that J succeeded tenancy rights held by T and that she having died intestate, the succession would be in the line as provided in section 172—Held view taken by High Court was not correct—J being the proprietor her husband had only tenancy rights; on his demise, the lesser right of tenancy which her husband had got merged with that right as a proprietor and therefore brother of T was not entitled under Section 172—Section 174 alone would apply.* C  
D

*Practice and Procedure—Raising fresh plea at appellate stage—Permissibility of.* E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 669 of 1980.

From the Judgment and Order dated 8.5.79 of the Allahabad High Court in C.M.W.P. No. 1949 of 1973. F

B.D. Aggarwal and P.D. Sharma for the Appellants.

S.P. Sharma for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arise from the judgment of the learned single judge of the Allahabad High Court, made in W.P. No. 1894/73 on May 8, 1979. G

The admitted facts are that one Jallo had purchased the proprietary right of Zamindari in 1933. She, thereby, became Khudkhash-holder, in H

- A other words, proprietary-holder. She inducted her husband Tunda as a tenant who died in 1358 F., i.e., 1947-48. The U.P. Zamindari Abolition Act came into force in 1359 F., i.e., 1948-49. The question arose : as to who had succeeded to the estate of either Tunda or Jallo in respect of the lands bearing Khata Nos. 76, 96 and 108 in Danawali @ Atta within police station Nachra
- B Tehsil Hapur, District Meerut, now renamed as Ghaziabad? The Tribunals under the Consolidation Act had held that after the demise of Tunda the subordinate interest of tenancy rights held by him stood merged in the proprietary right held by Jallo and thereby Section 174 of the U.P. Zamindari Abolition and Land Reforms Act (for short, the 'Act') would apply which stood confirmed by the Director. In the writ petition the learned single judge
- C had held that since Tunda had the tenancy rights and on his demise his wife succeeded to the tenancy rights, by operation of Section 172 of the Act; she succeeded to that interest as a widow of Tunda and on her demise the succession would go to the heirs specified in Section 172. Birbal, the brother of Tunda, therefore, would get the tenancy rights in preference to the appellants-daughters of Tunda and Jallo. The question is: whether the view taken
- D by the High Court is correct in law?

It is seen that under Section 171 of the Act the general order of succession is regulated. It postulates that subject to the provisions of Section 169, when a bhumidar or assami, being a male, dies, his interest in

E holding shall devolve in accordance with the order of succession envisaged therein. Since Tunda was not a bhumidar of the lands in the aforesaid Khata numbers, Section 171 has no application. Section 172 prescribes succession thus :

- F "172. Succession in the case of a woman holding an interest inherited as a widow ----- (1) when a bhumidar, or assami who has after the date of vesting, inherited an interest in any holding (a) as a widow - dies, and such bhumidar was on the date immediately before the said date an intermediary of the land comprised in the holding or held as a fixed rate tenant, or an exproprietary or
- G occupancy tenant in Avadh or as a tenant on special terms in Avadh and she - shall devolve upon the nearest surviving heir (such heir bring ascertained in accordance with the provisions of Section 171) of last male intermediary or tenant."

- H The question is: whether Jallo succeeded to the tenancy rights of

Tunda? As held, Tunda was not a bhumidar. On the other hand, Jallo was the bhumidar. Though Tunda had assami rights in the land as a tenant during his lifetime, on his demise when she succeeded him, the subordinate right of assami stood merged with bhumidari higher right held by Jallo and that, therefore, the succession under Section 172 was not open to any one. Section 174 envisages thus :

"Succession to a woman holding an interest otherwise :- when a bhumidar or assami (other than a bhumidar or assami mentioned in Section 171 or 172) who is a woman dies, her interest in the holding shall devolve in accordance with the order of succession given below :

- a) Son.....
- b) Husband.....
- c) Daughter....."

It is seen that when Jallo died intestate, her succession to an estate held by her is otherwise than provided in Section 171 or 172. As a consequence, the succession was open in accordance with the order envisaged therein. In the absence of sons, necessarily the next line of descendants in order is of daughters. The appellants being daughters, they are entitled to succeed over others enumerated in clauses (e) to (i). Under the circumstances, the view of the learned single judge that Jallo succeeded tenancy rights held by Tunda and that she having died intestate, the succession would be in the line as provided in Section 172, is not correct in law.

Learned counsel for the respondents contended that there were 8 tenants including Tunda, the husband of Jallo and Birbal being one of the successors-in-interest, is also entitled to the property as an heir of ownership of Tunda. In support thereof, he wanted to rely upon Section 40 of the U.P. Tenancy Act. Such argument was not addressed before the High Court. We cannot allow the learned counsel to raise that question for the first time. The High Court proceeded on the premise that Tunda is the tenant and he having died intestate, his wife Jallo succeeded to the property as a tenant to the tenancy rights. On that basis the learned judge had applied Section 172 of the Act. In view of the above findings of fact we

A have already considered that Jallo being the proprietor her husband had only tenancy rights; on his demise, the lesser right of tenancy which her husband had got merged with that right as a proprietor and therefore Birbal is not entitled under Section 172. Section 174 alone would apply to the facts and circumstances.

B The appeal is allowed. The judgment and order of the learned single judge stands set aside. Consequently, the writ petition stands dismissed. No costs.

The Contempt Petition is dismissed.

C T.N.A.

Appeal allowed.