SMT. VIRAJ KUNWAR AND ORS. A

v.

II ADDL. DISTT. JUDGE AND ORS.

DECEMBER 5, 1995

[K. RAMASWAMY, FAIZAN UDDIN AND B.N. KIRPAL, JJ.] B

U.P. Imposition of Ceiling on Land Holdings Act, 1960 as amended by U.P. Act 18 of 1973—Sections 3(7) & 3(17)—Tenure Holder—Restricted definition—Whether judicially separated wife can be an independent tenure holder—Held, No, when her husband is a tenure holder. C

Respondent No. 3, husband of the first appellant, as a tenure holder submitted his return u/s 10 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, as amended by U.P. Act 18, 1973. He was declared holder of the surplus agricultural land. Therefore, he surrendered the land to an extent of 30 bighas as irrigated land. The first appellant claimed that she judicially separated from her husband in 1973 and the children were staying with her and the third respondent had given 16 bighas of unirrigated land to her; therefore, the land in their possession should be computed as a separate holding. In the writ petition, the High Court held that the first appellant was not entitled to the separate computation of the holdings as a tenure holder. Hence this appeal by special leave. D E

The question raised for determination was whether the first appellant was a tenure holder under the Act.

The appellant contended that judicially separated wife is also independent tenure holder under the Act and the children living with her are entitled to have their lands tagged with her holding. F

Dismissing the appeal, this Court

HELD : 1.1. Tenure holder has been defined in Section 3 (17) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, to mean "a person who is the holder of a holding but except in Chapter III, does pot include - (a) a woman whose husband is a tenure-holder; (b) a minor child whose father or mother is a tenure-holder". The definition thus clearly excludes the wife and the minor children to be independent tenure-holders when the G H

A **wife or the husband, as the case my be, is a tenure-holder under the same scheme of the Act. [230-D]**

1.2. In computation of the ceiling area the family defined under Section 3(7) becomes relevant in computation of the members of the family to give additional land to the extent of the members of the family envisaged
B **therein. While aggregating the ceiling area a judicially separated wife has been excluded to be a member of the family. Section 3 (17)(a) would exclude the wife when husband is a tenure-holder - and that, therefore, she cannot be at the same time an independent tenure-holder, when the husband is a tenure holder, though she was judicially separated from her**
C **husband. In this definition, the judicially separated wife has not been excluded for obvious reason that though by judicial separation the wife and the husband may not be living together, in law, still she remains to be his wife so long as there is no divorce putting an end to the marital tie. Under those circumstances, judicially separated wife cannot be an independent tenure-holder when her husband is a tenure-holder within the**
D **meaning of Section 3(17) of the Act. [231-D-F]**

Shiv Ram Misra **v.** *Distt. Judge, Hamirpur,* **(1979) ALL. L.J. 213, overruled.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2737 of
E 1981.

From the Judgment and Order dated 11.10.79 of the Allahabad High Court in W.P. No. 562 of 1977.

S.S. Javeli and P.R. Ramesha for the Appellants.
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A.B. Rohtagi and Ashok K. Srivastava for the Respondents.

The following Order of the Court was delivered :

The first appellant is the wife of Nirmal Kumar Jain, the third
G respondent. She has a minor son Sanjeev Kumar and daughter Snehlata. Respondent No. 3 as a tenure-holder submitted his return under Section 10 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 as amended by U.P. Act 18, 1973 (for short,"the Act"). He was declared surplus-holder of the agricultural land. He surrendered the land of an
H extent of 30 bighas 13 biswas and 3 biswansis as irrigated land (45 bighas

19 biswas 15 biswansis unirrigated land). The first appellant claimed that due to family disputes in the wed-lock she and her aforesaid minor children were living separately. The third respondent had given 16 bighas, 10 biswas and the biswansis of unirrigated land to the first appellant, 12 bighas, 17 biswas and 17 biswansis to his minor daughter and 16 bighas, 10 biswas and 19 biswansis to his minor son. This unirrigated land was in their possession and enjoyment being cultivated through their farm servant. When the notified officer had came to the land to take possession, she became aware of the fact that the third respondent had surrendered the land and on her enquiry it came to light that under the Act the said land came to be surrendered.

It is her claim that she was judicially separated from her husband on 12th May, 1973 and the children were staying with her and that, therefore, the land in their possession should be computed as a separate holding. If so computed, only one bigha 15 biswas and 19 biswansis would be declared to be surplus land under the Act. That question came to be considered ultimately by the High Court in the writ petition. The High Court in the impugned order held that the first appellant was not entitled to the separate computation of the holding as a tenure-holder. Thus this appeal by special leave.

Shri Javali, learned senior counsel relying upon the definition of 'family' under Section 3 (5) read with that of 'tenure-holder' under Section 3 (17) contended that judicially separated wife is also an independent tenure-holder under the Act. The children living with her, viz., the minor son and the daughter are entitled to have their lands tagged with her holding. If so tagged, she can be said to be holding excess land to the extent of 1 bigha and odd, as referred to earlier. The tribunals below and the High Court have committed grave error in holding that the lands held by the first appellant and two minor children should be tagged to the lands held by her husband, the third respondent. In support thereof, he placed strong reliance on a judgment of a single Judge of the Allahabad High Court in *Shiv Ram Misra* v. *Distt. Judge, Hamirpur,* (1979) All. L.J. 213. The contention has been resisted by the learned counsel appearing for the respondents.

The question, therefore, is whether the first appellant is a tenure-

A holder under the Act. Section 3(9) defines 'holding' as under :

> [9]. 'holding' means the land or land held by a person as a Bhumidar, Sirdar, Asami or Gaon Sabha or an Asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or as a tenant under the U.P. Tenancy Act, 1939, other than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of sub-lease is co-extensive with the period of the lease;"

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'Tenure-holder' has been defined in Section 3 (17) to mean "a person C who is the holder of a holding but except in Chapter III, does not include - (a) a woman whose husband is a tenure-holder; (b) a minor child whose father or mother is a tenure-holder". The definition thus clearly excludes the wife and the minor children to be independent tenure-holders when the wife or the husband, as the case may be, is a tenure-holder under D scheme of the Act. By operation of restrictive definition of the tenure-holder and exclusion of wife thereof from tenure-holder only one tenure-holder, i.e., husband or wife, as the case may be, alone would be the tenure-holder and minor children would be members of the family. Section Section 3 (7) defies 'family' as under :

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> "(7) 'family' in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be [other than a judicially separated wife or husband], minor sons and minor daughters [other than married daughters];"

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'Ceiling area' has been defined under Section 3 (2) to mean "the area of land not being land exempted under this Act, determined as such in accordance with the provisions of Section 5".

Section 5 is the pivotal provision under which imposition of ceiling G on land holdings is to be computed and surplus land determined. Sub-section (1) evidences that "on and from the commencement of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of ceiling area applicable to him". Sub-section H [3] enumerates computation of the ceiling area in the case of tenure-holder

having a family thus : A

> "(3) Subject to the provisions of sub-sections (4), (5), (6) and the ceiling area for purposes of sub-section (1) shall be -
>
> (a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held B by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregate two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of C such additional land,".

In other words, in computation of the ceiling area the family defined under Section 3 (7) becomes relevant in computation of the members of the family to give additional land to the extent of the members of the family envisaged therein. While aggregating the ceiling area a judicially separated D wife has been excluded to be a member of the family. The question, therefore, is whether judicially separated wife is a tenure-holder under the Act. It is seen that Section 3 (17) (a) would exclude the wife when husband is a tenure-holder and that, therefore, she cannot be at the same time an independent tenure-holder when the husband is a tenure-holder, though E she was judicially separated from her husband. In this definition, the judicially separated wife has not been excluded for obvious reason that though by judicial separation the wife and the husband may not be living together, in law, still she remains to be his wife so long as there is no divorce putting an end to the marital tie. F

Under those circumstances, judicially separated wife cannot be an independent tenure-holder when her husband is a tenure-holder within the meaning of Section 3 (17) of the Act. If construction is adopted, it is consistent with the provisions of the Act for the reason that under the Amendment Act judicially separated wife has been brought in for com- G putation of the aggregate of the ceiling area under Section 5 obviously for the reason that the legislators intended that when there is judicial separation between wife and husband, she cannot be treated to be a member of the family for the purpose of aggregating the ceiling area held by the tenure-holder. The learned single Judge in the judgment [supra] obviously H

A has overlooked the impact of the definition under Section 3 (17) (a) and held that in the absence of any express exclusion of the judicially separated wife to be the tenure-holder she is entitled to be a separate holding as a tenure-holder. We are of the opinion that the view of the learned judge is clearly in negation of the expressed provision contained in Section 3 (17) B (a) of the Act. Therefore, it is not correct law.

The decision of the High Court, therefore, does not warrant interference. The appeal is accordingly dismissed. No order as to costs.

R.A. Appeal dismissed.