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SMT. GULAB DEVI  
v.  
THE DEPUTY DIRECTOR OF CONSOLIDATION AND ORS.

NOVEMBER 6, 1996

B

[M.M. PUNCHHI AND K.S. PARIPOORNAN, JJ.]

*UP. Zamindari Abolition and Land Reforms Act, 1950/ U.P. Tenancy Act, 1939 :*

C

*s.174(h)/s.35(b) and (i)—Succession to a woman holding an interest otherwise than u/s 171 or s.172—Widow succeeding to the tenancy of her deceased husband—After the death of the widow both unmarried daughters succeeded to the estate—Thereafter Zamindari Abolition Act came into force—One of the sisters got married and the other sister died—Succession to the estate of deceased sister—Held, the estate was obtained by the appellants and her sister on the death of their father which occurred prior to the coming into force of the Zamindari Abolition Act and under the provisions of s.35 of the Tenancy Act—Therefore, provisions of s.174 of the Zamindari Abolition Act would apply and as provided in clause (h) thereof, sister is an heir without the qualification of being a married or an unmarried sister—The appellants are declared to be the heirs to the estate of her deceased sister.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8556 of 1983.

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From the Judgment and Order dated 12.1.83 of the Allahabad High Court in C.M.W. No. 7446 of 1973

Yogeshwer Prasad, Ms. Rachna Gupta and Ms. Deep Shikha Bharti, for Mrs. Rani Chhabra for the Appellants.

G

M.K.D. Namboodir; (NP) for Respondents.

The following Order of the Court was delivered :

H

We have remained unassisted because no one has appeared for the respondents.

From the judgment under appeal we gather that the High Court has proceeded on the basis of the genealogy drawn that Jageshwar Singh had 1/4th share in a joint holding. On the death of Jageshwar Singh, his widow Bhagwanti succeeded to his estate under Section 35 of the U.P. Tenancy Act, 1939 [the Act] which provides for a special rule of succession to a male tenant in contrast to personal law, and under head (b) thereof, the widow comes in the second position after the male lineal descendants in the male line of descent coming in the first. After her death, resort again had to be made to the same provision to discover who next would succeed to the estate and it turned out to be that under head (i), the unmarried daughter had a right to succeed. On that basis, both the daughters of Jageshwar Singh, namely, Gulab Devi, the appellant herein and Ram Kumari (whose estate is in dispute) succeeded to the property of their father in equal shares. After such succession, the U.P. Zamindari Abolition and Land Reforms Act, 1950 [the Abolition Act] came into force. While so, on 30.10.1954 Ram Kumari died. Shortly thereafter, consolidation operations commenced in the village. Since Gulab Devi concededly stood married on the date of the death of Ram Kumari, dispute arose between her and the collaterals of Jageshwar Singh relating to succession to the estate of Ram Kumari. The Consolidation Officer and the Settlement Officer held in favour of the appellant but the Deputy Director, in revision, and the High Court, in affirmance, have held that the marriage of the appellant stood in the way of her succeeding to the estate of her sister, Ram Kumari. We are, thus, required to discover from the inter-play of the legal provisions whether the view taken by the Deputy Director [Consolidation] and the High Court is correct.

As said before, both the sisters were tenure-holders in their own right to their respective shares on the date when the Abolition Act came into force. It is not disputed that they had received their respective tenancy holdings having succeeded to the estate of their father in accordance with Section 35 of the Tenancy Act. It would be worthy of emphasis that they had not succeeded to the estate under the provisions of the Abolition Act.

Section 171 of the Abolition Act governs succession to male Bhumidhars or Assamis. It is maintained by learned senior counsel for the appellant that the word "Bhumidhar" would include a tenure-holder and that the provision is applicable to the case of the estate involved. We proceed on that footing since this assertion has not been refuted. Now, no succession to a male has opened after the coming into force of the Abolition Act. So, section 171 is out of the way. Section 172 provides succession in the case

- A of a woman holding an interest inherited as a widow, mother, daughter etc. This provision applies to the case of a tenure-holder who dies after the date of vesting having obtained the estate before the date of vesting while the Abolition Act being in force. The death, abandonment or surrender of or made by a female would have the effect of putting back the property fictionally in the hands of the last male holder whose heirs would have to
- B be searched in the list provided under Section 171 of the abolition Act. Since, instantly the estate had vested in the two sisters prior to coming into force of the Abolition Act and sequally before the date of vesting, Section 172, therefore, was out of applicability. Resort then has to be made to Section 174 of the Act which provides succession to a woman holding an interest otherwise than the one covered under Section 171 or
- C 172. The provision provides that when such a woman dies, her interest in the holding shall devolve in the order of succession given therein, and in clause (h), 'sister' is an heir without the qualification of being a married or an unmarried sister. Now, on the fact-situation, it is plain that the succession to the estate of Ram Kumari could only be governed by the provisions of Section 174 of the Abolition Act. Since neither Section 172 nor Section
- D 171 could derivatively apply to her case, for the estate was obtained by her on the death of her father which occurred prior to the coming into force of the Abolition Act and under the provisions of Section 35 of the Abolition Act, the High Court as well as the Deputy Director of consolidation seemed to have committed an error which deserves rectification to that effect at our end. We, therefore, upset those orders by
- E allowing this appeal as also the writ petition preferred by the appellat before the High Court, declaring her to be the heir to the estate of her sister, Ram Kumari, without any obstacle preventing. Ordered accordingly.

No costs.

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R.P.

Appeal allowed.