PETITIONER:
SMT. VIROJ KUNWAR & ORS.

Vs.

RESPONDENT:
II ADDITIONL DISTRICT JUDGE & ORS.

DATE OF JUDGMENT05/12/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
FAIZAN UDDIN (J)
KIRPAL B.N. (J)

CITATION:
1996 SCC (1) 570 JT 1995 (9) 297
1995 SCALE (7)317

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The first appellant is the wife of Nirmal Kumar Jain, the third 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 surrendred the land of an 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 19 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 come 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 special 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 Mishra 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-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;"

'Tenure-holder' has been defined in Section 3 [17] to mean "a person 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 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 3 [7] defines 'family' as under :

> "[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];"

'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 on land holdings is to be computed and surplus land determined. Sub-section [1] envisages 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 [3] enumerates computation of the ceiling area in the case of tenure-holder having a family thus :

"[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 tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land [including land held 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 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 of judicially separated 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 she was juducially separated from her husband. In this definition, the judicially separated wife has not been excluded for obvious reason that though by judicial separation the expressed provision contained in Section 3 [17] (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.