

PETITIONER:
SHRI PREM BALLABH BELWAL

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT: 24/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCALE (5)564

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.
Substitution allowed.
Respondent Nos.4 and 5 are ordered to be transposed as appellants.

This appeal by special leave arises from the judgment of the Allahabad High Court made on January 4, 1979 in CMWP No.2960/77. The admitted position is that the first appellant as tenure-holder under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (Act 1 of 1961) (for short, the 'Act') held bhumiswami lands of an extent of 182 acres in Ram Nagar and Nainital Tehsils of Nainital District and in tehsil Ranikhet of Almore district. In addition, his wife Smt. Basanti Devi held 127 bighas (24 acres) of agricultural land in the village Sanwalde, Tehsil Ram Nagar. After the Act had come into force, the tenure-holder was enjoined to file his return under Section 5 in Chapter II of the Act. When the land held by his wife was sought to be included in the holding of the appellant, his wife filed objection stating that she was in possession of the land as Sirtan of the agricultural land which is later termed as 'Asami' right; she had no title to the property and was liable to be ejected any time and, therefore, the land could not be included in the holding of the tenure-holder. The claim was rejected by the Tribunals and in the writ petition, the learned Judge, while holding that Smt. Basanti Devi is not a holder within the meaning of Section 3(9) of the Act and not a "tenure-holder" within the meaning of Section 3(17) of the Act, came to the conclusion that being a member of the "family" defined under Section 3(7) of the Act, she was holding the land of 24 acres. Consequently, the land was required to be included in the holding of the tenure-holder, namely, the appellant.

Shri Satish Chandra, learned senior counsel for the appellant, sought to draw a distinction between holding and occupation of the land. Section 3(21) of the Act envisages

that the expressions not defined in the Act would be construed to be the appropriate expressions as defined in the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short, 'Abolition Act'). Section 3(14) of the Abolition Act defines 'land' to include land held and the land occupied. The Act envisages imposition of ceiling in respect of the land held by a tenure-holder. The occupation thereby, which would envisage some semblance of title to the property, alone would be included in the holding of a tenure-holder. Since Basanti Devi was not holding land as a tenure-holder but was in precarious occupation and enjoyment of the land, the same cannot be included in the holding of the tenure-holder. It is true that Section 3(14) of the Abolition Act, while defining the land, made a distinction between land invested with title and land in occupation and enjoyment for the purpose of the Abolition Act. The Ceiling Act envisages land held by the tenure-holder for the purpose of imposition of the ceiling. The object of the Act is that no tenure-holder should hold and remain in possession and enjoyment of agricultural land in excess of ceiling limit. The family must not hold in excess thereof. It would be seen that the distinction sought to be made in the Abolition Act read in isolation of the Ceiling Act does indicate that there is a difference between the person having title to the property and person remaining in occupation and enjoyment of land governed under the provisions of the Abolition Act. The assami under the Abolition Act does not appear to get any absolute right except as envisaged in the Abolition Act and is liable to ejectment on fulfillment of the conditions envisaged in the relevant provisions of the Act. The Act defines 'family' under Section 3(7) to include the tenure-holder, his wife, if she happens to be a tenure-holder, her husband, the spouse, the minor daughters, sons except married daughters. The tenure-holder himself/herself is a holder, will be treated to be a tenure-holder and computation of the ceiling would be done in accordance with law. If the tenure-holder happens to be a member of the family, though the wife has property of her own, the intentment of the Act appears to that the lands held by the tenure-holder, the wife/husband in the name of minor children but not married daughters, all are to be included in the holding of the tenure-holder. After excluding 7-1/2 hectares of the land as the ceiling determined under Section 5 and after permissible computation, the rest of the land is to be declared as surplus land.

It is not in dispute that Smt. Basanti Devi died on 9.2.1979 pending ceiling proceedings. It is also stated in paragraph 2 of the SLP that the respondent Nos.4 and 5, sons succeeded to her estate. In other words, they have held the land after her demise as successors. Under these circumstances, in determining as to what was the incidence of her holding 24 acres, it would be suffice to hold that her lands passed on to her sons. It is but necessarily to be concluded that she had held the land as assami and the tenure-holder held the land of his wife. Total land held by him is 182+24 acres, i.e., 206 acres. It is sought to be offered that the tenure-holder is prepared to surrender the land held by his wife and that, therefore, the excess bhumiswami land held by the tenure-holder may not be taken to be in his possession. We would make it clear that in the event of the appellant's surrendering the 24 acres of land held by Smt. Basanti Devi, necessarily the same land cannot be included in the holding of the husband, the first appellant - tenure-holder. In the event of their not surrendering the land, the ceiling authority shall

necessarily compute the entire land in the holding of tenure-holder and the surplus land accordingly be determined and the procedure prescribed for surrender should be followed and action taken according to law within four months from the date of receipt of the order of this Court.

The appeal is accordingly dismissed with the above observations. No costs.

JUDIS