

PETITIONER:
VIJAY PAL SINGH AND ANOTHER

Vs.

RESPONDENT:
DY. DIRECTOR OF CONSOLIDATION & ORS. WITH CIVIL APPEAL NO. 250

DATE OF JUDGMENT 02/05/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 146 1995 SCC (5) 212
1995 SCALE (3) 694

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned. Substitution allowed in CA 993/79 and 2506/78.

Common question of law arises for decision in these matters. They are disposed of altogether.

Khata Nos. 26, 83 and 111 in Dhanauli village in Meerut District of Uttar Pradesh originally belonged to Devia, who had three sons, namely, Naiadar Singh, Bhanwar Singh and Kunwar Singh. Naiadar Singh died in 1916, Bhanwar Singh died in 1910 leaving behind his widow Shiv Devi. Kunwar Singh died on December 6, 1912 leaving behind him Ram Phool Singh, Richhpal Singh, Narain Singh and Sohan Singh, the appellants in C.A. No. 2506/78. Shiv Devi died on September 8, 1956 leaving behind her daughter Champi Devi. The appellants in C.A. No. 991-993/79 are son-in-law of Champi and Rajendra Pal Singh, grand son of Champi. In the consolidation proceedings, a dispute had arisen whether Champi was entitled to 1/3rd share in the property left by Devia and inherited by his three sons referred to herein before. The mutation entries in the revenue records disclose that the three brothers were in separate possession and enjoyment during their lifetime. On their demise, the names of the widows of Naiadar Singh, namely, Smt. Sarjo Devi and widow of Bhanwar Singh, namely Shiv Devi, were entered in the revenue records as possessors of the respective lands held by Naiadar Singh and Bhanwar Singh. It is an admitted fact that the name of Shiv Devi continued to be in the revenue record. The Consolidation Officer found that her name was muted in consolidation for her maintenance and the Settlement Officer rejected her claim for 1/3rd share on the ground that she was not in possession and in her own right and since Bhanwar Singh died in 1910 she has no right to share in the property left by her husband and the sons of Kunwar Singh. The Hindu Women's Right to Property Act, 1937, does

not apply to the claim made by Shiv Devi. On appeal, the Settlement Officer found that she was in possession of the property in her right having succeeded to Bhanwar Singh. But her right is one of limited estate. After the Hindu Succession Act, 1956 had come into force, limited estate was enlarged into absolute right in respect of Khata numbers 26 and 83; in respect of Khata number 111 since it is a tenancy right, having purchased the tenancy rights after paying ten times the land revenue, she became the owner. Therefore, it was held that she was entitled to 1/3rd share. Accordingly, the land was mutated and her name was recorded to the extent of her 1/3rd share. The same was confirmed by the Deputy Director Consolidation. Appellants Ram Phool Singh and others, representing the branch of Kunwar Singh, filed writ petition in the High Court. The learned single Judge allowed the writ petition and maintained the order dated October 5, 1978 of the Consolidation Officer holding that Champi did not acquire any right since Shiv Devi had not succeeded to the estate of her husband Bhanwar Singh. Therefore, she was not entitled to separate share and recording of the holdings in her name was incorrect. Thus, these appeals by special leave.

The question is whether Smt. Champi, daughter of Shiv Devi, has 1/3rd share in the properties left by her father Bhanwar Singh. It would appear from the record that after the demise of Devia, the names of three sons were mutated in the revenue record and the finding of the Settlement Officer is that, though they were in separate possession and enjoyment of the properties in their respective shares, since there was no partition by metes and bounds, Shiv Devi did not acquire any right. It is not in dispute that Shiv Devi's name continued in the revenue record to the extent of 1/3rd share held by Bhanwar Singh. This fact establishes that prior to 1910 Bhanwar Singh obviously separated from his brothers and was in possession of his 1/3rd share to which he was entitled. Obviously, by family arrangement between the brothers, on demise of their father Devia, it was mutated and on demise of her husband, Shiv Devi's name was mutated. Even assuming that the contention of the respondents should be accepted, she remained in possession towards her maintenance, by operation of s.11 of the U.P. Zamindari and Land Reforms Act, 1950 which recognises the right of Shiv Devi as widow of Bhanwar Singh. Section 11 is in recognition of the pre-existing personal law.

It is settled law that the widow is entitled only to limited estate for maintenance. By operation of sub-s.(1) of s. 14 of the Hindu Succession Act, her limited estate enlarged into absolute right as she was in possession when the Act came into force. Thereby she becomes the absolute owner of the property. When she died intestate, her daughter Champi became absolute owner as Class-I heir, since she was in possession and enjoyment of the land in her own right. The entries in the revenue record corroborate the same. Thereby she became the absolute owner.

It is not in dispute that Champi had bequeathed 1/6th share to her son-in-law Vijay Pal Singh and remaining share was gifted to her grand son Rajendra Pal Singh. Thereby they became entitled to the property by virtue of will and gift respectively. So far as khata No.111 is concerned, s.22 of the North-Western Provinces Tenancy Act, 1901, provides mode of devolution. In the absence of the male lineal descendants, the widow is entitled to succeed to the tenancy rights and on her demise the daughter and daughter's son are entitled to the succession. Having succeeded to that interest, the tenancy right of Champi got enlarged into the

ownership right by her paying ten times land revenue by operation of s. 134 of the U.P. Land Reforms Act. Thus, she became absolute owner in respect of her 1/3rd share in Khata no.111. Therefore, the question of applicability of sub-section (2) of s.4 of the Hindu Succession Act does not arise. The High Court, therefore, was not right in holding that Shiv Devi having had no interest in the property, since her husband Bhanwar Singh died in 1911, the respondents had become owners by intestate devolution. Appeal Nos. 991-993/79 are accordingly allowed and appellants therein are entitled to 1/3rd share in all the three Khata numbers.

Learned counsel for the respondents in C.A. Nos. 991-993/79 placed reliance on the judgment of the single Judge of the High Court reported in Kameshwar Singh (deceased by L.Rs.) vs. Deputy Director of Consolidation, Pratapgarh and others, 1983 ALJ 699. The ratio therein has no application to the facts in these cases as s.174 of the Land Reforms Act got attracted. But here, as stated earlier, Shiv Devi's limited right has been enlarged into absolute right under s.14(1) of the Hindu Succession Act.

Civil Appeals No. 991-93/79 are allowed and Civil Appeal No.2506/78 is dismissed. No costs.