

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****SPECIAL LEAVE PETITION(CIVIL) NO. 2784 OF 2004****Ramdeo (D) by LRs. & Ors.****.....Petitioners****Versus****Board of Revenue, U.P. & Ors.****.....Respondents****J U D G M E N T****ANIL R. DAVE, J.**

1. Being aggrieved by an order dated 5th November, 2003 passed in Writ Petition No. 7435 of 1979 by the High Court of Judicature at Allahabad, this Special Leave Petition has been filed by the heirs of the Original Plaintiff, who had filed a suit for a declaration under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act to the effect that he was an exclusive owner of land bearing Survey No. 22, situated at Village Raipur, Pargana Karvi, District Banda.

2. For the sake of convenience, parties to the litigation have been described as arrayed in the trial court.

3. The case of the plaintiff in the suit before the Assistant Collector, Ist Class, Karvi, District Banda, was that his grand father Kali had three sons, namely, Bal Govind, Ram Kumar and Ram Jiawan and the plaintiff was the son of Ram Kumar.

4. The tenancy right in respect of the land in question was in the name of Bal Govind as he was the eldest son of Kali. Upon death of Bal Govind, who had no male issue, his right had been inherited by his widow, Malhi. Ram Kumar, father of the plaintiff and Ram Jiawan had also expired. The case of the plaintiff was that Bal Govind was not having any male issue and, therefore, Malhi, the widow of Bal Govind or Media, the daughter of Bal Govind had no right in respect of the land in question. He was aggrieved by a revenue entry whereby names of other co-sharers in respect of the land in question had been added as tenants.

5. The suit was dismissed by the Assistant Collector for the reason that the land in question stood in the name of Bal Govind in the revenue record because he was the Karta of the joint family. In the land in question, all the three brothers, namely, Bal Govind, Ram Kumar and Ram Jiawan had tenancy rights and, therefore, Ram Kumar was having only 1/3rd right in respect of the land in question. It was also recorded by the Assistant Collector in his order that only at the instance of the plaintiff entries were made in the revenue record whereby right of other co-sharers had been recorded. For the aforesaid reasons the suit praying for a declaration that the plaintiff was the sole owner of the suit property was dismissed.

6. Being aggrieved by the dismissal of the suit, the plaintiff had filed an appeal before the Additional Commissioner. The appeal was allowed and the suit was decreed.

7. Being aggrieved by the order passed in appeal, the defendants had approached the Board of Revenue by way of a Revision Application. The Board had allowed the Revision Application whereby the order passed in the appeal was set aside and the order of the Assistant Collector, 1st Class, Karvi, District Banda, had been restored.

8. Being aggrieved by the order passed by the Board of Revenue, the heirs of the plaintiff had approached the High Court by way of a writ petition and the High Court was pleased to reject the writ petition as stated hereinabove.

9. The learned counsel appearing for the petitioners—heirs of the original plaintiff submitted before this Court, that as Bal Govind was not having any male issue, female heirs of Bal Govind could not have got any right in the land in question, and, therefore, the impugned order passed by the High Court cannot be sustained. According to him, there was no co-tenant in respect of the land in question and the plaintiff being the

only person who was in possession of the land in question, the suit filed by the plaintiff ought to have been decreed.

10. On the other hand, the learned counsel appearing for the respondents submitted that names of the legal heirs of Bal Govind had been recorded in the revenue record only at the instance of the plaintiff and the plaintiff was only having 1/3rd right in respect of the land in question because his father had only 1/3rd right in the property in question. In the circumstances, the plaintiff's suit was rightly dismissed.

11. Upon hearing the learned counsel and looking to the impugned orders, in our opinion, the view expressed by the High Court confirming the order of the Trial Court is just and legal.

12. Bal Govind was the Karta of the joint family as he was the eldest son among the three sons of Kali. Bal Govind, Ram Kumar and Ram Jiawan had 1/3rd right in the land in question as tenants. In any case, Ram Kumar could not have been the sole tenant as claimed by him because there were other co-

sharers as seen from the record. In the aforesaid circumstances, we agree with the view expressed by the High Court and by the Trial Court that the branch of Ram Kumar can have 1/3rd share and Ram Deo cannot be declared as an exclusive owner of the land in question.

13. We do not find any error in the conclusion arrived at by the High Court confirming the order of the trial court. Hence, the Special Leave Petition is rejected with no order as to costs.

.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

New Delhi
March 10, 2011