

Smt. Gajodhari Devi

Vs

Gokul and Another

Civil Appeal No. 3964 of 1989

(M. N. Venkatachaliah, Ranganath Misra JJ)

26.09.1989

JUDGMENT

RANGANATH MISRA, J. –

1. The appellant filed a writ petition before the Allahabad High Court assailing the order made by Member, Board of Revenue in a second appeal under the Uttar Pradesh Zamindari Abolition & Land Reforms Act and the writ petition having been dismissed in limine, this appeal has been filed by special leave.
2. The appellant had claimed for a declaration that she was a co-tenureholder along with defendants 1 and 2 and was entitled to a share on partition. Ram Sewak was the original tenureholder and left behind three sons, namely, Gokul, Parmeshwari Din and Ram Kumar. The defendants are heirs of Ram Kumar. Claim was laid for partitioning the holding into three shares and for separate possession. Defendants 1 and 2 challenged the claim of the appellant by saying that she was not a co-tenureholder on the ground that she had remarried one Raghuraj, a year before she laid the claim.
3. The short question for determination in this appeal is as to whether the appellant being admittedly the widow of a co-sharer of the holding at the time Ram Sewak died, she ceased to be a co-sharer or tenureholder on getting remarried to Raghuraj. The appellant became widow in 1953. Ram Sewak died some time in 1961. At the time of death of Ram Sewak the appellant was the widow of his son and was entitled to a share in the property on that basis. Admittedly, she remarried subsequently. The right of the appellant has to be determined with reference to the time when Ram Sewak died. There is no law which takes away the appellant's right which vested in her when succession opened and it is not the case of the respondents that on remarriage there has to be divesting. Unnecessary emphasis was laid on the fact of remarriage by the Tribunals below. We set aside the judgment of the Board of Revenue affirming the order of the Additional Commissioner which upheld the decision of the sub-Divisional Officer in the suit for partition under Section 176 of the Act.
4. The appeal is allowed and the appellant is held to be a co-sharer entitled to partition. The Sub-Divisional Officer concerned shall now proceed to divide the property and allocate appellant's share to her in accordance with law. The appellant shall be entitled to costs throughout. Hearing fee in this Court is assessed at Rs. 3000.

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