

SUPREME COURT OF INDIA

Har Pyari (Smt)

Vs.

Ind Additional Judge

(M Punchhi, A Anand and S R Babu JJ.)

09.10.1998

ORDER

1. Leave granted.

2. Heard learned counsel for the parties.

3. The appellant herein, Har Pyari, was a co-heir along with her two sisters to the estate of their father. One of the sisters separated but the other sister Ram Pyari and the appellant continued to be together in possession and ownership of their joint holding. It transpired that proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 were taken to determine the excess land of the right holder. Only Ram Pyari was associated in the proceedings. No notice was sent to Har Pyari, appellant. The procedural illegality apart, the property of the appellant was taken to be as if belonging to Ram Pyari and excess area to the tune of 3.22 acres was ordered to be taken away by the State. Since the appellant was not in the know of the order as she had never been served the notice and associated in the proceedings, she only awoke when she came in the clutches of the State when asked to surrender the excess land. Her objection to such course was met with

resistance by the State and its functionaries which has led her ultimately to this Court after having exhausted all her remedies in the hierarchy. Her claim was rejected basically on the ground of being time-barred and not on merits.

4. As we have narrated the facts above, it would be a case of grave injustice to the appellant that she be asked to surrender the excess area merely on the ground that she had failed to object to the proceedings at the appropriate time forgetting that no one served her with any notice for the purpose and it could not be attributed that she had otherwise known. It is otherwise not disputed that if the holding which was taken to account is split up in the ownership of Ram Pyari and the appellant, there is no excess area.

5. The State was asked to give a positive affidavit in this respect but the affidavit filed is beautifully vague on the most crucial issues arising in the case. We, therefore, have no hesitation in granting relief to the appellant, inasmuch as we allow this appeal, set aside the orders of all the courts below and declare that there is no excess area with the appellant. No costs.