

A

STATE OF U.P.

v.

BANKE SINGH AND ANR.

JANUARY 25, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*U.P. Imposition of Ceiling on Land Holdings Act, 1960 :*

C *S.5—Surplus land—Declaration of—Execution of will—Exclusion of land willed away—Held, will having been executed after the specified date, it cannot be excluded for purposes of determination of surplus land.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2936 of 1996.

D

From the Judgment and Order dated 21.9.88 of the Allahabad High Court in W.P. No. 1731 of 1985.

Ashok K. Srivastava for the Appellant.

E

Mukul Mudgal for the Respondents.

The following Order of the Court was delivered :

Leave granted.

F

This special leave petition arises from the order of the High Court of Allahabad, Lucknow Bench made on September 21, 1988 in Writ Petition No. 1731 of 1984.

G

Though the respondents had been served earlier and Sri Mukul Mudgal who had taken notice has reported on September 1, 1995 that he could not appear and stated that he be permitted to withdraw from the undertaking. He has also not filed his Vakalatnama. In these circumstances, since respondents are not represented, learned counsel for the appellant was directed to produce necessary material on the basis of which respondent Banke Singh became owner of the land. The learned counsel has now

H produced the records.

The only question in this case is : whether the respondents would get benefit of 1/4th share in the surplus land declared by the competent authority? On September 8, 1982, Krishan Pal Singh filed objection, who claimed land of Khata Nos. 340, 341 and Khata No. 33 of village Nawada and Khata No. 77 of Village Jamla Jot on the basis of a will executed by Smt. Gajraji. On that basis, the said land is required to be excluded from the surplus land. The primary authority had rejected the claim by proceedings dated July 30, 1983 and on appeal the District Judge allowed the appeal by order dated November 9, 1983 and excluded 1/4th of the land held by Gajraji on the basis of the Will dated September 2, 1978. When it was questioned, the High Court dismissed Writ Petition No. 1731/84. Hence, this appeal by special leave.

Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (U.P. Act No.1 of 1961) (for short, 'the Act') in Chapter II imposes ceiling on land holdings. Certain exemption mentioned in the Article gets excluded from surplus land. Section 5 postulates that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of ceiling area applicable to him.

Sub-section (6) postulates determination of the ceiling area applicable to a tenure-holder. It provides that any transfer of land made after the 24th day of January 1971, which but for the transfer, would have been declared surplus land under this Act, shall be ignored and not taken into account. Explanation-I provides that for the purpose of this sub-section the expression transfer of land made after the twenty-fourth day of January, 1971 includes, among other things, -

Any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner, shall be construed to be a transfer for the purpose of sub-section (6).

Admittedly, the Will was executed on February 10, 1978 long after the specified date. By the Will a devise was made by Gajraji, owner of the land bequeathing her 1/4th share in favour of her brother's grand-son,

A Krishan Pratap Singh. Therefore, it must be construed to be a devise "in any other manner" within the meaning of Explanation I (b) of sub-section (6) of the Act. It shall be ignored for the purpose of determination of the surplus land. The High Court and the appellate authority, therefore, were not right in directing to exclude the said land.

B The appeal is accordingly allowed. No costs.

G.N.

Appeal allowed.