

RAM JATAN AND ORS.

v

DY. DIRECTOR OF CONSOLIDATION AND ORS.

FEBRUARY 12, 1996

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

*Tenancy Laws :*

*Agra Tenancy Act :*

*Sections 24,25—Succession to estate—S.24 applies only where the occupancy tenant dies intestate—Deceased during his lifetime bequeathed the property to his daughters' son under registered Will—Accepted by Director of consolidation and upheld by High Court—Held, there is no illegality warranting interference.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3616 of 1996.

From the Judgment and Order dated 18.1.93 of the Allahabad High Court in C. Misc. W.P. No. 9233 of 1980.

C.P. Pandey for the Appellants.

Sunil Gupta and H.K. Puri for the Respondents.

The following Order of the Court was delivered :

Leave granted. Heard the counsel on both sides.

The Director of the Consolidation recorded as a fact that Newaj Mal, the maternal grand-father of the respondent No. 2 had executed a registered Will bequeathing his property to the respondent. This fact was not disputed by the lower authorities. Thereby, the Director had set aside the orders passed by the Consolidation Officer and the Settlement Officer, the appellate authority and had held that the respondent is entitled to be mutated in the records as an owner of the land in dispute. In writ petition, the High Court has upheld that finding. Thus it dismissed the Writ Petition No. 9233/80 by order dated January 18, 1993.

- A It is contended by the learned counsel for the appellants that by virtue of Class IV of the order of succession given in Section 24 of the Agra Tenancy Act, the appellant being the brother of the deceased Newaj Mal, is entitled to preferential succession to the respondent who comes under Class VI, viz., Daughters' son. It is contended that the respondent was co-sharer during the life-time of the Newaj Mal; he was 18 years old at that time and that, therefore, he can have a preferential right to the appellant.
- B

- Section 24 of the Agra Tenancy Act prescribes that when a male proprietary tenant, occupancy tenant, statutory tenant or non-occupancy tenant dies, his interest in the holding shall devolve in accordance with the order of succession given thereunder. Class V deals with brother being a son of the same father as the deceased and Class VI deals with the daughter's son. The proviso envisages that no such daughter's son or collateral relative shall be entitled to inherit, who did not share in the cultivation of the holding at the time of the tenant's death. In other words, Section 24 would apply where the occupancy tenant dies intestate and then the order of succession devolves in the manner indicated thereunder. Under Class V a brother may be entitled to a preferential right over daughter's son. Class VI provided that the daughter's son was a co-sharer in the cultivation of the holding during the life time of the deceased.
- C
- D

- E Section 25 envisages succession of a female tenants. It is seen that after the death of Newaj Mal, his wife Lakshmi had succeeded to his estate and after her demise, the second respondent has come into possession. The second respondent is claiming succession to maternal grand mother. He also claims that he was in joint cultivation with his grand mother. It is unnecessary for us to go into that question. Suffice it to state that the appellant is not entitled to avail Section 24 for the reason that the deceased during his life time had bequeathed the property to his daughter's son under the registered Will which was accepted by the Director and has been upheld by the High Court. Thus we find no illegality warranting interference.
- F

- G The appeal is accordingly dismissed. No costs.