Ramji Dixit & Another vs Bhrigunath & Others on 12 January, 1968

Equivalent citations: 1968 AIR 1053, 1968 SCR (3) 489

Author: K.S. Hegde

Bench: K.S. Hegde, M. Hidayatullah, R.S. Bachawat, C.A. Vaidyialingam

PETITIONER:
RAMJI DIXIT & ANOTHER

Vs.

RESPONDENT:
BHRIGUNATH & OTHERS

DATE OF JUDGMENT:
12/01/1968

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
HIDAYATULLAH, M. (CJ)
BACHAWAT, R.S.
VAIDYIALINGAM, C.A.
GROVER, A.N.

CITATION:
1968 AIR 1053 1968 SCR (3) 489
CITATOR INFO :
R 1970 SC 564 (55,97,112,176)
R 1970 SC1292 (10)
RF 1971 SC 530 (54,329)
RF 1971 SC1409 (33)
RF 1973 SC1461 (12,19)
RF 1974 SC2364 (4)
D 1975 SC1058 (8)
RF 1977 SC1361 (192)
R 1978 SC 597 (58)
O 1978 SC 803 (30,31,32,33,34,37)
RF 1986 SC1126 (48)
RF 1989 SC1741 (10)

ACT:
U.P. Zamindari Abolition and Land Reforms Act (U.P. 1 of 1951), ss. 152, 171, 172-Inheritance by Hindu widow-Becomes bhumidhar-Whether life estate.

HEADNOTE:
On the death of her husband, certain cultivatory lands devolved on a Hindu widow. She became a bhumidhar on the enactment of the U.P. Zamindari Abolition and Land Reforms Act of 1951. Thereafter she gifted the lands to respondents 1 and 2. On her death, the appellants. who were reversioners to her husband's estate filed a suit claiming that the widow had only a life-estate in the bhumidhari lands, and therefore. the gift which was to enure beyond her life time was incompetent. The suit was dismissed. Dismissing the appeal, this Court,
HELD : There is nothing in the Act which indicates that when a female who inherits the rights of a bhumidhar, under s. 171 or s. 172 or a. 172A, any residuary interest remains vested in any other person. Under the Act she is the owner of the property : the entire estate is vested in her. Absence of testamentary power in a female bhumidhar qua her holding is reconcilable with devolution upon the heirs of the female bhumidhar, and an absolute title during her life time. That is clearly illustrated by the nature of the interest which the heirs of the classes referred to in 9. 172(2)(a) (ii) hold. [774 H, 776 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 458 of 1965.

Appeal by special leave from the judgment and order dated December 10, 1963 of the Allahabad High Court in Second Appeal No. 1315 of 1958.

J. P. Goyal and Sobhag Mal Jain, for the appellants. M. K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by Shah J. One Raj Kishore was possessed of sir and khudkasht lands, which on his death in 1923 devolved upon his widow Sanwari. With the coming into force on July 1, 1952, of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951, Sanwari acquired the status of a bhumidhar in respect of those sir and khudkasht lands. On December 18, 1952, Sanwari made a gift of the bhumidhari lands in favour of respondents 1 & 2. Sanwari died in 1954. Claiming to be the nearest reversioners to the estate of Raj Kishore, the appellants commenced an action in the Court of Munsif, Deoria, for a declaration of their title to the lands gifted by Sanwari, and for a decree for possession of those lands on the 7 68 plea, inter alia, that holding only a Hindu widow's estate in the bhumidhari lands Sanwari was incompetent to create an interest by gift which was to enure beyond her lifetime. The suit was dismissed by the Trial Court, and the decree was confirmed in appeal by the Additional Civil Judge, Deoria. In second appeal

before the High Court of Allahabad Desai, C.J., and S. N. Dwivedi, J., agreed with the judgments of the courts below. Jagadish Sahai, J., was of the opinion that Sanwari held in the bhumidhari lands in dispute only a life estate. Against the decree of the High Court confirming the decree of the District Court, the plaintiffs have appealed to this Court.

The U.P. Zamindari Abolition and Land Reforms Act 1 of 1951 was primarily intended to abolish the rights of intermediaries and to define the interest of various classes of holders in possession of agricultural lands who since the extinction of the rights of intermediaries had direct relation with the State. By S. 4 on the commencement of the Act all estates situate in Uttar Pradesh stood transferred to and vested in the State free from all encumbrances. Extinction of the interest of the intermediaries did not however affect the interest of the tenants in the land who derived their right of occupation from the intermediaries. By s. 129, for the purpose of the Act, there were to be three classes of tenure-holders-(1) bhumidhars; (2) sirdars and (3) asamis. By S. 130 every person belonging to one of the classes specified in cls. (a) & (b) was to be a bhumidhar and was to have all the rights and to be subject to all the liabilities, conferred or imposed upon bhumidhars by or under the Act. The persons so entitled to bhumidhari rights were-(1) all persons who as a consequence of the acquisition of estates became bhumidhars under s. 1 8; and (2)--all persons who acquired the rights of bhumidhars under or in accordance with the provisions of the Act. Section 1 8 provided, subject to exceptions not material for the purpose of this appeal, that all lands of the descriptions in cls. (a) to (e) shall on the date immediately preceding the date of vesting be deemed to be settled by the State with the intermediary. lessee, tenant, grantee or grove- holder, as the case may be, who shall, subject to the provisions of the Act, be entitled to take or retain possession as a bhumidhar thereof. Persons belonging to the classes mentioned in s. 3 of the U.P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, who had obtained the declaration referred to in s. 6 of that Act in respect of any holding or share thereof were also to be deemed bhumidhars of the holding or the share therein in respect of which the declaration had been made and continued in force. Section 134 provided for acquisition of bhumidhari rights by a sirdar, by paying to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar. The Act provided by s. 189 that the interest of a bhumidhar in his holding or any part thereof shall be extinguished-(a) when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of the Act; (aa) when the holding or part thereof has been transferred or let out in contravention of the provisions of the Act; (b) when -the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land, or (c) when he has been deprived of possession and his right to recover possession is barred by limitation. By s. 152 it was provided that :

> "The interest of a bhumidhar shall be transferable subject to the conditions hereinafter, contained. in this chapter."

Restrictions on the, rights of a bhumidhar to transfer a holding by sale, gift, mortgage, lease and exchange were prescribed by ss. 1.54, 155, 156 and 165 and transfers in contravention of the provisions rendered the bhumidhars liable to eviction from the holding. Section 169 provided:

"(1) A bhumidhar may by will bequeath his holding or any part thereof except as provided in sub-section (2).

(2) No bhumidhar entitled to any holding or part in the right of a widow, widow of a male lineal descendant in the male line of descent, mother, daughter, father's mother, son's daughter, sister or half-sister being the daughter of the same father as the deceased, may bequeath by will such holding or part.

(3). . . . . .

Section 171 provided, inter alia, that subject to the provisions of s. 169, when a bhumidhar being a male dies, his interest in his holding shall devolve upon classes of heirs male and female-in the order of succession given in cls. (a) to (r). The section was amended from time to time.

Females who were entitled to inherit to the holding under the section as finally amended by Act 37 of 1958 were-(a) widow of a predeceased male lineal descendant who has not remarried when there were male descendants; (b) widow and widowed mother and widow of a predeceased male lineal descendant in the male line of descent, who had not re- married; (ee) unmarried daughter; (ff.) unmarried sister;

(g) married daughter; (m) married sister; (n) half-sister being the daughter of the same father as the deceased. Section 172(1) provided, inter alia, that on the death or marriage of a woman who had inherited the interest in the holding after the date of vesting under the Act, as an heir to a male bhumidhar, as a 7 70 widow, widow of a male lineal descendant, mother, father's mother, daughter, son's daughter or sister or half-sister of the last holder, the holding shall devolve upon the nearest surviving heir determined in accordance with the provisions of s. 171 of the, last male bhumidhar, and the same rule of devolution shall be followed when the female abandons or surrenders the holding. Sub-section (2) of S. 172 dealt with devolution of interest on the death of a female bhumidhar belonging to any of the classes listed in sub-s. (1) who had inherited an interest in any holding before the date of vesting, as an intermediary of the land comprised in the holding, or held the holding as a tenant belonging to the class" specified. If the female holder was entitled to a limited estate in the holding in accordance with the personal law, the interest was to devolve upon the nearest surviving heirs in accordance with the provisions of s. 171 of the last male intermediary or tenant of the land, and if she was under the personal law entitled to the holding absolutely, it was to devolve in accordance with the table in s. 174. It was further provided that where a female bhumidhar of any of the classes mentioned in sub-s. (2) dice, abandons or surrenders and where the female being a widow, widow of a male lineal descendant in the male line of descent, mother, father's mother, marries and such bhumidhar on the date immediately before the date held the holding otherwise than as an intermediary or tenant referred to in cl. (a) of s. l72(2), the holding shall devolve upon the nearest surviving heir of the last male tenant, ascertained in accordance with the provisions of s. 171. Section 172A, which was incorporated by Act 30 of 1954, provided that where an inferior female tenure holder like a sirdar or an adhivasi has inherited any interest in any holding in any of the relationships mentioned in s. 171(2) and has acquired the rights of a

bhumidhar in such land, the right so ac- quired shall for purposes of devolution under s. 172 be deemed to be accession to the holding of the last male holder thereof. Section 174 provided, inter alia, that when a female bhumidhar, [other than a bhumidhar mentioned in ss. 171 (sic.)or 172] dies, her interest in the holding shall devolve in accordance with the order of succession given in that section. By that list, the predeceased son's widow and predeceased son's predeceased son's widow, daughter, mother and sister were the female heirs competent to inherit the holding. Section 175 provided that in the cage of a co- widow, or a co-tenure-holder, who dies leaving no heir entitled to succeed under the provisions of the Act, the interest shall pass by survivorship.

Section 152 expressly provides that the interest of a bhumidhar shall be transferable, subject to the conditions contained in Ch. VIII. The conditions to which the transfer is subject are to be found in ss. 154, 155, 156, 157, 161, 163, 164 and 165.

These conditions do not purport to qualify the interest, or the title in the holding of a bhumidhar : they merely impose restrictions upon the right of a bhumidhar to transfer his interest. By s. 152 no distinction is made between the power to transfer the interest by act inter vivos by a male bhumidhar and a female bhumidhar. Prima facie, therefore, the power of a female bhumidhar to transfer her interest in a holding by act inter vivos is as extensive as the power which a male bhumidhar may exercise in respect of his interest in a holding. By s. 169(1) a bhumidhar is declared competent by will to bequeath his holding or any part thereof except as provided in sub-s. (2). But a female bhumidhar belonging to any of the -classes specified in sub- s. (2) is declared incompetent to bequeath by will her holding. This restriction operates against every female bhumidhar entitled to a holding in the right of a female relation mentioned in sub. s. (2). It is plain on the words of the statute that a female who is entitled to the holding in the right of a widow of a male lineal descendant in the male line, or mother, daughter, father's mother, son's daughter, sister or half-sister, whether under s. .171 or under s. 174, is declared incompetent to bequeath the holding by will. Counsel for the appellant contends that s. 152 makes the in- terest in a holding of a bhumidhar whether male or female transferable, but it is not intended thereby to declare that the interest of a female bhumidhar is in all cases absolute. Undoubtedly, if the interest of a bhumidhar in a holding is limited, he cannot transmit a larger interest than his own. But there is no express provision in the Act which defines the interest of a female bhumidhar under the Act. It is common ground that the personal law of inheritance of the holder does not determine the nature of the estate vested in a female bhumidhar. Counsel for the appellant says, however, that the Act contains, indications that the interest of a female bhumidhar extends only to a life- interest in the holding held by her. Those indications are, according to counsel for the appellant-(a) to females of the classes mentioned in s. 169 (2) the right to make a testamentary disposition of bhumidhari holding was expressly denied; (b) on the death of a female bhumidhar who had inherited the holding under s. 171 from a male bhumidhar or on abandonment or surrender by her the holding devolves not upon her heirs but upon the nearest surviving heirs of the last male bhumidhar, (c) on the death of a female belonging to any of the classes mentioned in sub-s. (2) of s. 172 who had inherited the land comprised in the holding before the date of vesting and was in accordance with the personal law applicable to her entitled to a life-estate only in the holding, the holding devolves upon the nearest surviving heirs of the last male intermediary or the tenant and in the case of a female tenure-holder not belonging to the classes mentioned in S. 172(2) (a) the holding devolves on death, abandonment or surrender

upon the heirs mentioned in S. 171 of the last male tenant; (d) the right of the female heir belonging to the classes specified in s. 172(1) who inherited the holding under s. 171 and of a widow, widow of a male lineal descendant in the male line, mother, and father's mother- who has inherited before the date of vesting and does not fall within S. 172(2)(a) is forfeited upon marriage or remarriage; and (e) by s. 172A interest acquired by a female heir inheriting an interest bhumidhari interest under S. 134 or S. 235 is for the purpose of devolution under s. 172 to be deemed an accession to the holding of the last male holder. These provisions, counsel contends, clearly indicate that the interest of the female bhumidhars mentioned in s. 169(2) is not intended to enure beyond her life,-time and is liable to be extinguished in certain conditions even during her life-time, and is on that account merely a life-interest. We are unable to accept this submission as correct. Counsel for the appellants asks us to infer that the estate of a female bhumidhar falling within sub-s. (2) of s. 169 is a life-interest as a matter of necessary implication from the express denial of the right to bequeath the holding and devolution according to special rules on death, abandonment or surrender, and forfeiture on marriage or remarriage in certain cases. But there is, in our judgment, no discernible relation between the nature of the estate of a female .holder, and the restriction placed upon the power of testamentary disposition or the special rules of devolution of the holding of a female bhumidhar on death, abandonment or surrender, or forfeiture resulting from marriage or remarriage. From the various provisions made in the Act it is impossible to evolve any consistent or logical pattern, indicating that the Legislature intended by imposing the special rules of devolution of the interest of a female bhumidhar on death, marriage, abandonment or surrender, to make her tenure in the holding a mere life-estate. Restriction on the power of testamentary disposition is not imposed upon only those females who inherit the holding under S. 171 on the death of a male bhumidhar. It applies alike to the tenure of a female bhumidhar who inherits the holding from a female bhumidhar under s. 174, and from a male bhumidhar under S. 171. A female bhumidhar under s. 174 apparently has an absolute interest in her holding: the persons who inherit the holding from her according to the order of succession mentioned in s. 174 also take the holding in absolute right. In the table of heirs in s. 174 are included a predeceased son's widow, a predeceased son's predeceased son's widow, daughter, mother and sister, and there being no indication to the contrary the holding of a female bhumidhar will devolve upon those female heirs in absolute right. Those heirs are included in the list of female heirs in s. 169(2). The result is that while under s. 174 the female heir would take the holding on inheritance from a female with full power to transfer by act inter vivos, she would still be subject to a restriction on her power of testamentary disposition. Again the female heir of any of the classes mentioned in s. 172(2) (a) (ii) who is entitled to a holding absolutely though not liable to be divested on marriage also is incompetent to bequeath her holding, if she has inherited it in the right of any of the female relations mentioned in s. 169(2). The rule that on death or marriage of a female bhumidhar who has inherited a holding under s. 171 the holding will devolve upon the heirs of the last male bhumidhar also does not imply that her tenure is merely of a holder for life. Under the general law, a restriction upon the power of testamentary disposition does not necessarily carry with it a limitation upon the tenure of the holder so as to restrict the power of disposition inter vivos. It is well-recognized that a muslim by his personal law is incompetent to dispose of property exceeding a third without the consent of the heirs. But it cannot be suggested that his power of disposition Inter vivos is on that account restricted.

Counsel for the appellants asked us to assume that sub-s. (2)of s. 169 only applies to holdings inherited by female heirs front male bhumidhars under' s. 171. But the Legislature has made no such express provision, and we are unable to hold that such a reservation is implied. The fact that in sub-s. (2) of s. 169 as it stands enacted after amendment by Act XX of 1954 all females who inherit the holding from a male bhumidhar under s. 171 are listed as incompetent to bequeath a holding is a very slender foundation for inferring the legislative intent that the restriction upon the power of disposition is sought to be limited to females who inherit the holding under s. 171. It may be noticed that under s. 171 as originally enacted, the widow of a male lineal descendant in the male line of descent was an heir to male bhumidhar, but she was not disqualified from bequeathing the holding under s. 169(2) as originally enacted.

Other indications to the contrary may also be gathered from the amendments made by the Legislature in ss. 169(2) and 171 from time to time. Under s. 169(2) as originally enacted, amongst the classes of persons who were prohibited from making a testamentary disposition was the father's -- father. By s. 173 of the Act when a bhumidhar inheriting an interest in a holding as a father's father, whether before or after the date of vesting, died, abandoned, or surrendered such holding, the holding was to devolve upon the nearest surviving heir (ascertained in accordance with s. 171) of the last male bhumidhar from whom the fathers father had inherited the holding. By Act XX of 1954, s. 173 was repealed, and reference to the father's father was deleted from the list of heirs incompetent to bequeath by will a bhumidhari holding. If denial of testamentary power to a holder of bhumidhari land implied that the holder had merely a life-estate to the Legislature must be imputed an intention to convert what was a life-interest till Act XX of 1954 was passed into an absolute estate. The position of a father's father in the scheme of the Act before and after the amendment of the Act in 1954 would, if the argument of the appellant be accepted, furnish a striking illustration of obscurity in the provisions of the Act.

A review of other provisions enacted in the Act from time to time also does not indicate any definite scheme, or disclose an intention to confer merely a life-estate only upon female heirs of bhumidhars. By s. 169 as originally enacted by sub-s. (2) the widow, mother, step-mother, father's father, father's mother, unmarried daughter and unmarried sister were not competent to exercise the power of testamentary disposition of the holding. We have already referred to the omission of the widow of a male lineal descendant in the male line of descent who was one of the heirs under s. 171 from the list of female heirs who were not prohibited by s. 169(2), as it stood before it was amended by Act XX of 1954, from making testamentary disposition. By the amendment made by Act XX of 1954 restrictions upon the power of testamentary disposition applied only to female bhumidhars who inherited the holding in the right of the specified relations. For the first time a married daughter or married sister and a half sister were given separate places in the list of heirs in s. 171(1) by Act 37 of 158-an unmarried daughter being preferred to a married daughter, and an unmarried sister to a married sister, but half-sisters married and unmarried took the holding simultaneously. After the amendment of the Act by Act 37 of 1958, an unmarried daughter was entitled to inherit the holding of her father, but her interest was forfeited on marriage, whereas a married daughter was entitled to inherit the holding. By the Act therefore the interest in the holding of an unmarried daughter or unmarried sister was forfeited, but a married daughter or married sister was an heir to the holding of a male bhumidhar.

The principle contended for by counsel for the appellant is also not discernible in the scheme of s. 172. When a female bhumidhar mentioned in s. 172 (2) (a) (ii) dies or a female bhumidhar mentioned in s. 172 (2) (b) who has inherited the holding before the date of vesting as a daughter, son's daughter, sister or half-sister marries, the holding will not devolve upon the heirs of the last male holder, but upon her heirs under s. 174, but the holding may still not be bequeathed by her by will. Absence of :testamentary power in a female bhumidhar qua her holding is 7 7 5 reconcilable with devolution upon the heirs of the female bhumidhar, and an absolute title during her life-time. That is clearly illustrated by the nature of the interest which the heirs of the classes referred to in S. 172(2)(a)(ii) hold.

It is in the circumstances difficult to draw any inference from the various provisions which do not disclose any logical or systematic pattern that it was intended to impose upon a female heir mentioned in the list in S. 169(2) a limitation that she was, notwithstanding the amplitude of the expressions used in S. 152, not competent to dispose of her interest beyond her life-time.

It was urged that the Legislature has by using two different expressions "interest" and "holding" in S. 172 indicated that the expression "interest" may in the case of a female heir indicate a life-interest in the holding. By S. 152 it is expressly enacted that the interest of a bhumidhar shall be transferable. It is true that no person can convey a larger interest than what he possesses. But there is nothing in S. 152 from which it may be inferred that the interest of a female bhumidhar is anything less than the interest held by a male bhumidhar. Section 169(1) provides that a bhumidhar may by will bequeath his holding or any part thereof, except as provided in sub-S. (2), and sub-s. (2) prohibits female bhumidhars of the classes mentioned therein from making a bequest by will of the holding or any part thereof. Section 1 69 seeks to make no distinction between the holding, and interest in a holding. Even in S. 171 the right of-it male bhumidhar for the purpose of devolution upon his heirs-male as well as female--is referred to as "interest". In S. 172, however, the Legislature has enacted that a bhumidhar who has after the date of vesting inherited an interest in any holding as a widow, (to use a compendious expression), or as a daughter or a sister, when she marries, dies, abandons or surrenders such holding or part thereof, the holding or any part thereof shall devolve upon the nearest surviving heir. It was argued that the Legislature has designated the estate inherited by a female as a bhumidhar as "interest" and the devolution in the contingencies mentioned as of the "holding". Similar phraseology is used in sub-s. (2) of s . 172, which speaks of inheritance of an "interest" and devolution of the "holding" upon the heirs. The same schemes is also adopted in s. 172A. Where a sirdar or an adhivasi acquires an interest in any holding 2nd then acquire the rights of a bhumidhar it is provided bys. 172A that the rights so acquired shall be deemed to be accession to the holding of the last male holder. But in S. 174 it is provided that the "interest" of a female bhumidhar, sirdar or asami, other than a bhumidhar, sirdar or asami mentioned in s. 171 or s. 172 on her death devolves in accordance with the order of succession mentioned in that section. The difference in phraseo-

logy, in our judgment, does not indicate that the expression "interest" of a female heir in a holding has a restricted connotation. The two expressions have been indiscriminately used.

There is nothing in the Act which indicates that when a female who inherits the rights of a bhumidhar, under s. 171 or s. 172 or S. 172A, any residuary interest remains vested in any other person. Under the Act she is the owner of the property : the entire estate is vested in her. It is a fundamental rule of our jurisprudence that an estate does not remain in abeyance. If it was intended by the Legislature that the interest inherited by a female mentioned in S. 1 71 was to be a life-interest, there would be some indication that the reversionary or residuary interest remains vested in another person designated for that purpose. But a search in that behalf in the Act is fruitless.

On a careful review of the provisions of the Act, we are un- able to hold that it was intended by the Legislature to enact by implication that the holding inherited by a female heir belonging to one of the classes of female heirs in S. 171 is not held as a life-estate.

One important legislative development which throws some light on the question may also be noticed. The U.P. Zamindari Abolition and Land Reforms Bill was published in 1949. Before the scheme incorporated in the Bill could be implemented considerable spade-work had to be done, and the Bill could be brought before the Legislature after great delay. In the meanwhile it was apprehended, the intermediaries may deprive the tenants of the lands in their occupation. The Legislature therefore, as an interim measure, enacted the U.P. Agricultural Tenants (Acquisition of Privileges) Act 10 of 1949. By s. 3 of that Act certain classes of tenants could apply to be declared entitled to acquire the privileges on payment to the State an amount equal to ten times the annual rent payable or deemed to be payable in respect of the holding, and on making an application in that behalf to the Assistant Collector. Those rights were conferred by later amendments upon sub-tenants and unrecorded covenants. By S. 7 it was provided that upon the grant of the declaration the applicant shall, with effect from the date of payment or deposit of the amount payable, be entitled to the privileges against ejectment in execution of any decree or order of ejectment. Clause (c) was added in S. 7 by item 5 of Sch. IV of U.P. Act 1 of 1951, and that clause provided "The applicant shall, except as hereinafter excepted, be entitled, notwithstanding anything contained in the U.P. Tenancy Act, 1939, or any contract to bequeath 7 77 by will or transfer by -way of sale, simple mortgage or gift his interest in the holding or his share therein.

Section 340 of the U.P. Zamindari Abolition and Land Reforms Act 1 of 1951 provided that "where any orders have been made, proceedings taken, declarations granted, or jurisdiction exercised under the provisions of the U.P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, the provisions of the said Act shall, notwithstanding anything contained therein, be so read and construed as if the amendments mentioned in Schedule IV had been made therein and were in force from the commencement of the said Act." Clearly by the enactment of cl. (c) in S. 7 of the U.P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, the tenant who deposited the amount payable by him became competent, notwithstanding anything contained in the U.P. 'Tenancy Act, 1939, or any contract, to bequeath by will or transfer by way of sale, simple mortgage or gift his interest in the, holding or his share therein, and this holding by virtue of s. 18 of the U.P. Zamindari Abolition and Land Reforms Act in respect of an occupancy tenant, a hereditary tenant or a grove-holder and in respect of a tenant belonging to certain other specified classes became the bhumidhari holding of the tenant. In the absence of any express provision in the U.P. Zamindari Abolition and Land

Reforms Act 1 of 1951, taking away the right to make a disposition, inter vivos, which was expressly conferred by S. 7(c) of the U.P. Agricultural Tenants (Acquisition of Privileges) Act, 1949, upon the tenant who had -acquired the privileges under that Act, when the tenant became entitled to bhumidhari rights, it would be difficult to,, hold that by implication those rights were not exercisable and must be deemed to have been taken away on the coming into force of the U.P. Act 1 of 1951.

The appeal therefore fails and is dismissed. There will be no order as to costs.

Y.P. Appeal dismissed.