

Court No. - 37

Case :- WRIT - B No. - 1259 of 2024

Petitioner :- Ashok Kumar And 4 Others

Respondent :- State Of Up And 7 Others

Counsel for Petitioner :- A.C.Tiwari(Ac),Krishna Kumar Chaurasia,Rama Shanker Mishra

Counsel for Respondent :- Anil Kumar Singh,C.S.C.,Jagdish Singh,Pradeep Singh

Hon'ble Dinesh Pathak, J.

1. Heard Shri A.C.Tiwari and Shri Krishna Kumar Chaurasia, learned counsels for the petitioners, Shri R.C.Singh (Senior Advocate) assisted by Shri Anil Kumar Singh, learned counsel for the contesting respondent no.6 as well as learned Standing Counsel for the State-respondents and perused the record on Board.

2. Instant writ petition has arisen from the proceedings under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 (in brevity 'U.P.C.H. Act'). The petitioners are aggrieved with, and assailed, the order dated 24.02.2024 passed by the Deputy Director of Consolidation/Additional District Magistrate (F&R) (in brevity 'D.D.C.') (respondent no.2) in Revision No.250 of 2024 (Ashok Kumar & Another vs. Rainbala & Others) and Revision No.255 of 2024 (Rainbala vs. Chhotey Lal & Others) reversing the common judgment dated 07.09.2020 passed by the Settlement Officer of Consolidation (in brevity 'S.O.C.') (respondent no.3) in three connected appeals, arising out of order dated 14.03.2019 passed by the Consolidation Officer (respondent no.4) under Section 9-A(2) of U.P.C.H. Act.

3. Facts culled out from the record are that Khata No. 58 belongs to one Vishram s/o. Dukhi (predecessor in the interest of both the contesting parties). He executed a registered sale deed dated 27.02.1985 in favour of petitioners no.1 to 3 under the guardianship of their father, late Doodhnath. As such, Khata No.58A created in the name of Vishram and Khata No.58B created in the name of Jay Nath and Others. Property belonging to Vishram is in dispute. In the basic consolidation record, Vishram was recorded. He had four sons; (1) Kriparam, (2) Doodhnath, (3) Chhotey Lal and (4) Krishnanand. Krishnanand had died on 26.08.1974 leaving behind his wife Heeravati and one daughter Rainbala (respondent No.6). Vishram had executed a registered will deed dated

07.02.1975 in favour of his three remaining sons namely, Kriparam, Doodhnath and Chhotey Lal. In the said will deed, it has been recited that 2.5 beegha land has been purchased in favour of Heeravati. Against the entry of basic consolidation record, four objections were filed under Section 9-A(2) the U.P.C.H. Act; first by Heeravati claiming 1/4 share in the property in question being a widow of Krishnanand. Second objection was filed by Rainbala (daughter of Krishnanand) claiming her right and title on the basis of unregistered will deed dated 28.07.1985, said to have been executed by Vishram to the extent of 1/4 share in the property in question. Third objection was filed by Doodhnath and Chhotey Lal claiming their right and title on the basis of registered will deed dated 07.02.1975 to the extent of 1/3 share each along with Gulpatti Devi who is widow of another brother Kriparam. Fourth objection has been filed by Gulpatti Devi wife of Kriparam claiming her right and title on the basis of registered will-deed dated 07.02.1975. Indirectly, she is supporting the case of Doodhnath and Chhotey Lal. Case of the petitioners is that Heeravati had re-married with Amrit Lal, therefore, she has no right, title and interest in the property of Krishnanand and unregistered will deed dated 28.07.1985 would not confer any right and title in favour of respondent No. 6.

4. The Consolidation Officer, vide order dated 14.03.2019, has discarded the claim of Heeravati being a wife of Krishnanand and accepted the claim of Rainbala to the extent of 1/4 share on the basis of unregistered will deed dated 28.07.1985. Further, he has given 1/4 share to each remaining branches namely, Kriparam, Doodhnath and Chhotey Lal. Assailing the order passed by the Consolidation Officer, three appeals were preferred; first by Ashok Kumar (petitioner herein) (Appeal No 348/493/2020), second appeal was preferred by Chhotey Lal and Others (being Appeal No 462/641/2020) and third appeal was filed by Heeravati (Appeal No.476/662/2020). The S.O.C., vide common order dated 07.09.2020, has relegated the parties before the Consolidation Officer to examine the genuineness of the registered will deed dated 07.02.1975 and unregistered will deed dated 28.07.1985. During pendency of appeal, Heeravati died on 07.08 2020 substituted by her daughter Rainbala. Assailing the order passed by the S.O.C., two revisions were preferred; one by Ashok Kumar, being Revision No. 250/2024, and second by Rainbala, being Revision No. 255/2024. The D.D.C., by order impugned dated 04.02.2024, has dismissed the revision

filed on behalf of Ashok Kumar and allowed the revision filed on behalf of Rainbala. He has acknowledged the right and title of Rainbala to the extent of 1/4 share on the basis of unregistered will deed dated 28.07.1985 and also acknowledged the right of Heeravati being a widow of Krishnanand in remaining 3/4 share of the property to the extent of her 1/4 share.

5. Learned counsel for the petitioners submits that :-

5(i). The D.D.C. has illegally given 1/4 share to Rainbala, based on an unregistered will deed dated 28.07.1985, said to have been executed by Vishram, whereas, the execution of the said will deed has never been proved under the law.

5(ii). The S.O.C. has rightly relegated the parties before the Consolidation Officer to examine the validity of registered will deed dated 07.02.1975 and unregistered will deed dated 28.07.1985. However, it has illegally been quashed by the D.D.C. in exercise of his jurisdiction under Section 48 of U.P.C.H Act, whereas, he has no jurisdiction to substitute his finding by interfering in the judgment passed by the S.O.C.

5(iii). The previous will deed dated 07.02.1975 is a registered document, therefore, it cannot be cancelled by the subsequent unregistered document dated 28.07.1985.

5(iv). The compromise dated 10.10.2002 arrived at between the petitioners (no. 1 to 3) and Rainbala (respondent no. 6) in the court of the Consolidation Officer has no sanctity in the eyes of the law since the petitioners (no. 1 to 3) have filed their objection dated 21.12.2017 to the said compromise. Even otherwise, said compromise is not bearing upon the share of remaining co-tenure holders, namely Kripa Ram and Chhotey Lal. Moreover, Chhotey Lal has filed a separate objection as well.

5(v). Learned counsel for the petitioners has emphasized that the D.D.C. has illegally considered the right and title of the parties, simultaneously, under Section 169 and 171 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (in brevity 'U.P.Z.A&L.R. Act'), whereas, both are different provisions dealing with separate grounds for devolution of property.

5(vi). The D.D.C. has illegally not considered the miscellaneous application dated 02.05.2023, whereby a prayer was made to compare the signature of Vishram made over the previously registered will deed dated 07.02.1975 and unregistered will deed dated 28.07.1985 with the sale deed dated 27.02.1985 executed in favour of Jay Nath and Others.

5(vii). The D.D.C. has illegally ignored the documentary evidence filed on behalf of the petitioners to prove the second marriage of Heeravati. In support of his submission, counsel for the petitioners has placed reliance on the certified copies of some sale deeds which were executed either in her favour or by herself, being the wife of Amrit Lal. Copy of said sale deeds were filed before this Court along with a supplementary affidavit.

5(viii). The mutation proceeding initially decided in favour of respondent no.6 and evidence adduced by the parties in said proceeding has no bearing upon the title proceeding before the consolidation court. In support of his submission counsel for the petitioners has placed reliance upon **Jitendra Singh vs. State of Madhya Pradesh and Others**, SLP (C) No. 13146 of 2021 decided on 06.09.2021 by the Hon'ble Supreme Court reported in (2021) 6 S.C. 185, **Ram Dular vs. D.D.C.**, decided on 08.02.1994 by the Hon'ble Supreme Court reported in (1994) 1 S.C.R. 735, **Satya Narayan and Others vs. D.D.C. and Others** reported in 2006 (100) R.D. 563 and **Praful Kumar Singh vs. State of U.P. and 11 Others**, Writ-C No.22675 of 2023 decided by the Co-ordinate Bench of this Hon'ble Court vide order dated 19.09.2023.

5(ix). Statement of witness in the mutation proceeding are not admissible evidence in the subsequent title proceeding decided before the consolidation courts.

5(x). Order under challenge, being illegal, perverse and unwarranted under the law, is liable to be quashed.

6. Per Contra, learned counsel for the contesting respondents has contended that:-

6(i). Will deed dated 28.07.1985 has been proved as per law by its scribe, attesting witnesses and two other witnesses, which has rightly been considered by D.D.C. while passing the impugned order. In support of his submission,

counsel for the respondents has placed reliance upon the case of **Meena Pradhan and Others vs. Kamla Pradhan and Another** reported in A.I.R. 2023 S.C. 4860, **Smt. Amravati vs. D.D.C., Bulandshahar and Others** reported in 2019 (145) RD 366 and **Ravindra Kumar vs. D.D.C., Varanasi** reported in 1994 RD 481.

6(ii). Petitioners no.1 to 3 themselves have admitted the execution of an unregistered will deed dated 28.07.1985 in a compromise dated 10.10.2002. In their objection, they have not denied their signatures being signatories in the compromise, which has rightly been acknowledged by the Consolidation Officer and the D.D.C. Thus, the will dated 28.07.1985, being the last will of the testator, is binding upon all the parties.

6(iii). The D.D.C. has returned a finding of fact qua marital status of Heeravati, who had secured a teaching job on 23.07.1990 under the Dying in Harness Rules, being a widow of Krishnanand. The theory of her second marriage with Amrit Lal has rightly been negated by the revisional court.

6(iv). After the death of Vishram on 01.08.2005, Heeravati and her daughter Rainbala had claimed their right and title separately, based on succession and the will deed dated 28.07.1985, respectively. Thus, the claim of Heeravati has rightly been considered under Section 171 of U.P.Z.A. & LR Act, being a widow of Krishnanand. Further, the claim of Rainbala based on the will deed dated 28.07.1985 under Section 169 of U.P.Z.A. & L.R. Act.

6(v). It is further submitted that the will deed of any testator can be modified or revoked/cancelled by a subsequent will deed, even if the former is a registered deed. The Transfer of Property Act is not applicable in respect of the will deed. Under Section 62 of the Indian Succession Act, a will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Thus, the will dated 28.07.1985 is the final will as per the wishes of its testator. In support of his submission, he has placed reliance on the judgment passed by a Co-ordinate Bench dated 20.11.1978 in the matter of **Rajeev Kumar vs. State of U.P.** reported in 1979 (5) A.L.R. 151.

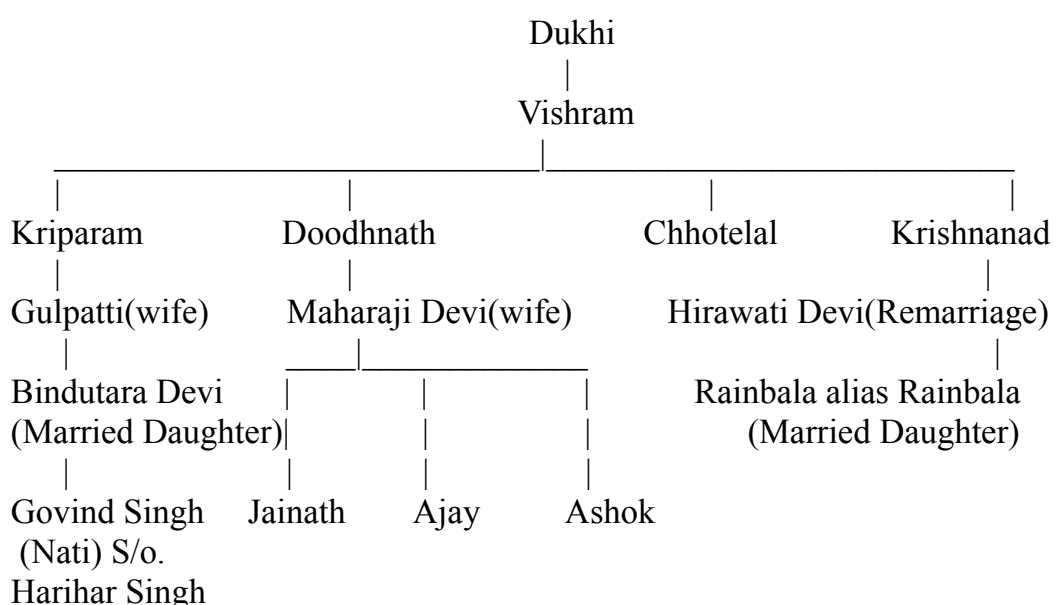
6(vi). He has emphasised that under Section 169 of the U.P.Z.A. & L.R. Act, registration of the will deed was made mandatory since 23.08.2004 by virtue of

U.P. Act No.27 of 2004, whereas, the will deed was executed on 28.07.1985. Therefore, same is exempted from registration.

6(vii). Respondent no. 6 has filed the original copy of the will deed dated 28.07.1985 in Case No.17/17-18 (State vs. Vishram) before the Consolidation Officer on 18.03.2004, whereas, the petitioners have never filed the original copy of the will deed dated 07.02.1975 before any competent authority. Even witnesses of the aforesaid will deed had not been examined to prove its validity. At a belated stage, the petitioners claimed their right and title to the extent of 1/3 share each, based on the will deed dated 07.02.1975.

6(viii). There is no illegality, perversity or irregularity in the order under challenge, thus, the instant writ petition is liable to be dismissed, being misconceived and devoid of merits.

7. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of the record, it is manifest that property in dispute belongs to Vishram. Genealogical tree of Vishram is quoted herein below:-



8. Dispute arose qua entitlement of the heirs and legal representatives of Krishnanand (predeceased son of Vishram). Admittedly, Hirawati Devi is the wife of Krishnanand and Rainbala is the daughter of Krishnanand. It is also admitted that Krishnanand had died on 26.8.1974 and Vishram (father of Krishnanand) had died on 1.8.1985. Subsequently, Hirawati Devi died on 7.8.2020 during the pendency of appeal before the S.O.C. Hirawati Devi is claiming her right being a widow of Krishnanand. However, the remaining

collaterals are denying her right on the ground that she remarried during life time of Vishram. Rainbala (grand daughter of Vishram) is claiming her right, title and interest to the extent of 1/4 share based on unregistered will deed dated 28.7.1985. Conversely, the remaining successors of Vishram, who are petitioners herein, are claiming their right, title and interest over the entire property in question based on a registered will deed dated 07.2.1975, with the plea that Vishram had bequeathed his entire property in favour of his remaining three sons, namely, Kriparam, Doodhnath and Chhote Lal to the extent of 1/3rd share each. Rainbala came with the case that previous registered will deed dated 07.02.1975 was revoked by subsequent unregistered will deed dated 28.7.1985, wherein she has been accorded a 1/4 share in the property. Thus, there are three aspirants for the property, first is Hirawati, second is Rainbala and third the remaining sons of Vishram.

9. In view of the narration, as mentioned above, it would be appropriate to discuss the legality and validity of the registered will deed dated 07.02.1975 and unregistered will deed dated 28.07.1985. So far as the legality and validity of the registered will deed dated 07.02.1975 is concerned, it is admitted to both the parties that attesting witnesses of the aforesaid Will deed had died before the advent of the consolidation operation in the village. Execution of the registered will deed dated 07.02.1975 has never been proved as per law enunciated under Section 63 of the Indian Succession Act, 1925 and under Section 68 of the Evidence Act. It is no more *res integra* that mere registration of any document is not suffice to prove its execution and contents. No effort has been made by the petitioners, at any stage before the consolidation courts, to prove the aforesaid will deed. S.O.C. himself has doubted quo legality and validity of the registered will deed dated 07.02.1975 and, accordingly, relegated both the parties before the Consolidation Officer. to get the validity of the aforesaid both the will deeds examined as per law. It appears, prima facie, that the Consolidation Officer and the D.D.C. are illegally influenced with the registration of the aforesaid will deed without examining the validity of its' execution and contents.

10. Both the parties as well as all three consolidation courts have emphasised to examine the existence of unregistered will deed dated 28.07.1985, wherein

there is a recital qua cancellation/revocation of the previous registered will deed dated 07.02.1975. Learned counsel for the petitioner, while assailing the existence of unregistered will deed dated 28.07.1985, submits that the aforesaid will deed was got executed by manipulation and collusion which is a forged document. Scriber of the aforesaid will and both the attesting witness of the aforesaid Will were close relatives of the Rainbala (legatee). Statement made by scriber and the marginal witnesses in the mutation proceedings under Section 34 of U.P. Land Revenue Act, 1901 was not admissible in evidence inasmuch as all said witnesses were not cross examined and, before the consolidation courts, they were not alive to authenticate their statements. It is next submitted that no further effort has been made before the consolidation courts to prove the validity of the unregistered will deed dated 28.7.1985. Learned Senior Counsel for the respondent has emphasised on the statements of the attesting witnesses and the scriber of the unregistered will deed dated 28.7.1985 made in mutation case, which have been filed before the consolidation courts. As per his submission, will deed dated 28.07.1985 has been duly proved by its attesting witnesses and scriber. Counsel for the respondents has laid emphasis as well on the compromise dated 10.10.2002 arrived at between the petitioners no.1 to 3 and respondent no.6 and tried to submit that the petitioners have already admitted the execution of the unregistered will deed dated 28.07.1985, therefore, now they cannot deviate from their admission. Deep scrutiny of the record evince that the alleged compromise dated 10.10.2002 was subsequently denied by the petitioners no.1 to 3 by way of filing their objection dated 21.12.2017 with an specific averment that under the undue influence, Rainbala has got the compromise inked between the parties and filed the same before the court of Consolidation Officer. It is quite amazing that despite the objection filed on behalf of petitioners no.1 to 3, compromise application dated 10.10.2002 has been relied upon by the consolidation courts. Perusal of order dated 10.10.2002 evince that the Consolidation Officer has taken the compromise on record with an observation that signatures of the parties have been identified by their respective counsels. Before passing the final order by the Consolidation Officer, petitioners no.1 to 3 who are signatories on the compromise have filed their objection denying their involvement in the compromise with free will. Under the influence of respondent no.6, they have

been forced to sign the compromise against their volition. In this view of the matter, I am sceptical of the submissions advanced by senior counsel for the respondent that in light of the compromise dated 10.10.2002 existence of unregistered will deed dated 28.07.1985 should be validated.

11. So far as statements of attesting witnesses and the scribe of the unregistered will deed dated 28.07.1985 given in the mutation proceeding under Section 34 of the Land Revenue Act, 1901 before the court of Naib Tehsildar is concerned, I am of the view that mutation proceeding is a fiscal proceeding for the purposes of recovery of land revenue and the said proceeding is not binding upon the title proceeding. Therefore, the statement, if any, made in mutation proceeding before the Naib Tehsildar cannot be relied upon in the title proceeding under Section 9-A(2) of the U.P.C.H. Act before the consolidation courts. The Consolidation Officer and the Deputy Director of Consolidation have illegally placed reliance upon the statement of attesting witnesses and the scribe of the unregistered will deed dated 28.07.1985, who were testified in the mutation proceeding, and have no legal sanctity in the title proceeding. In support of my view, I would like to rely upon the dictum of the Division Bench of this Court in the matter of **Bhurey Vs. Pir Bux and others, reported in (1973) 43 AWR 279**. Relevant Paragraph No. 11 of the aforesaid judgment is quoted hereinbelow:-

“11. Reliance was also placed upon an admission of the predecessors of the Respondents in the mutation proceedings. It is well established that any consent or admission made in mutation proceedings has no relevance in regular title proceedings. Consequently, the alleged admission of Ilahi Baksh or Ali Baksh is not admissible in the present title proceedings. The Deputy Director was in error in spelling out an exclusive title in Bhurey on the basis of these admissions.”

12. In view of the discussion made in preceding paragraphs, I am of the considered view that neither the registered will deed dated 07.02.1975 nor the subsequent unregistered will deed dated 28.07.1985 has been proved as per law enunciated under Section 63 of the Indian Succession Act and Section 68 of Indian Evidence Act. Thus, claim of both the sets, to wit, Rainbala (respondent no.6) based on unregistered will deed dated 28.07.1985 and claim of petitioners (remaining sons of Vishram) based on registered will deed dated 07.02.1975

have got no substance in the eyes of law. Both are failed to prove the legality and validity of their respective will deeds.

13. I am sceptical of the submission advanced by learned Counsel for the petitioners that Hirawati Devi, widow of predeceased son Krishnanand, will not get the share of her deceased husband in the property in question after death of original tenure holder Vishram. In support of his submission, he has tried to rely upon certain sale deed executed by Hirawati Devi to prove that she was re-married with Amrit Lal, therefore, she cannot claim succession under the law. Certified copies of the sale deeds filed, for the first time, before this Court along with supplementary affidavit are not liable to be relied upon inasmuch as same had not been filed before the consolidation courts. For the first time, they have been filed before this Court, therefore, these documents cannot be relied upon at this juncture. D.D.C., while deciding the revision, has returned concurrent finding of fact that after the death of Krishnanand in the year 1973, his wife Hirawati Devi had secured job of teaching in the year 1992. Therefore, the Government documents considering the Hirawati Devi as widow of late Krishnanand bolster her claim over the property of Vishram being successor of her husband, namely, Krishnanand. There is nothing on the record to demonstrate that the finding of fact returned by the D.D.C., acknowledging Hirawati Devi as a widow of Krishnanand, is perverse and beyond the record. Therefore, there is no justification to interfere in the finding of fact returned by D.D.C. In this view of the matter, wherein marital status of Hirawati Devi being a widow of Krishnanand has been concluded by finding of fact, I am of the considered view that Hirawati Devi is entitled for succession, after death of Vishram, being a widow of Krishnanand (predeceased son Vishram). Her entitlement on the basis of the succession in the property of Vishram would properly be considered under Section 171 of the U.P.Z.A.&L.R. Act wherein main lineal descendants pre strip are entitled for the share in the property of the original tenure holder and widow of the predeceased son, how low-so-ever per strips shall inherit the share which would have devolved upon the predeceased son had he been alive. She is entitled for 1/4th share in the property of Vishram being a widow of his fourth son, namely, Krishnanand. It is admitted that Hirawati Devi had died on 07.08.2020 during pendency of the appeal before the S.O.C. leaving behind her daughter Rainbala (respondent no.6). Thus, being a

descendent from the branch of Krishnanand, Rainbala is legally entitled to succeed 1/4th share in the property of Vishram, being a daughter of Krishnanand and Hirawati Devi (i.e. the grand daughter of Vishram). It is evident from the record that Ashok Kumar, Jainath Singh and Ajay Singh (petitioner nos. 1, 2 and 3, respectively) are from the branch of Doodhnath. The second son, Chhotelal has been arrayed as petitioner no. 4, and petitioner no.5 (Govind Singh) is from the branch of Kriparam, being his daughter's son.

14. So far as the challenge made by learned counsel for the petitioners against the jurisdiction of the revisional court to interfere in the finding of S.O.C. is also of no avail. For ready reference, revisional jurisdiction under Section 48 of U.P.C.H. Act is quoted herein below :-

"[48. Revision and reference.—(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any other (other than an interlocutory order]' passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).]

³**[Explanation.—**((1)]4 For the purposes of this section, Settlement Officers, Consolidation, Consolidation Officer, Assistant Consolidation Officers Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.]

Explanation (2).—For the purposes of this section the expression interlocutory order' in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

⁵**[Explanation (3).—**The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to reappreciate any oral or documentary evidence.]"

Explanation (3) to Section 48 entrust wide power upon the revisional authority to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate

authority, and also include the power to re-appreciate any oral or documentary evidence. Explanation (3) has been inserted to Section 48 by way of U.P. Act No.3 of 2002 which has been made applicable w.e.f. 10.11.1980. Thus, under his wide power the D.D.C. can re-appreciate the evidence available on the record (oral and documentary). He can also examine the finding of the subordinate authorities on fact and law both. The D.D.C. being a higher authority of S.O.C. and the Consolidation Officer has rightly examined the correctness, legality and propriety of the orders passed by them and concluded the finding of fact qua marital status of Hirawati Devi being widow of Krishnanand.

15. In this conspectus, as above, instant writ petition succeeds and is **partly allowed**. The order impugned dated 04.02.2024, passed by the D.D.C. (respondent no.2) in Revision No. 250 of 2024 (Ashok Kumar and Another Vs. Rainbala and Others) and Revision No. 255 of 2024 (Rainbala vs. Chhotey Lal & Others), is partly modified to the extent that Hirawati Devi is succeeded 1/4th share of her husband, after death of Vishram, and her share will be devolved upon by her daughter Rainbala (respondent no.6) to the extent of said 1/4th share. Accordingly, the property of Vishram will be divided per strips to his four sons, namely, Kriparam, Doodhnath, Chhotelal and Krishnanand to the extent of 1/4th share each.

Order Dated :12.05.2025
VR/Sumit K.