



Reserved on 18.08.2025

Delivered on 25.08.2025

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - B No. - 31127 of 2019

Sukh Ram And Others

.....Petitioner(s)

Versus

U.P. Board Of Revenue Lko Thru. Judicial
Member And Others

.....Respondent(s)

Counsel for Petitioner(s)	: Hemant Kumar Mishra, Arti Ganguly, Pankaj Kumar Singh, Ravi Prakash
Counsel for Respondent(s)	: C.S.C., Ishwar Dutt Shukla, Sanjeev Dwivedi

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Hemant Kumar Mishra, learned counsel for petitioners as well as learned Standing Counsel for the State-respondent and Sri Ishwar Dutt Shukla, learned counsel for private respondents.
2. The petitioner by means of present writ petition has assailed the validity and legality of the order dated 14.10.2019 passed by Uttar Pradesh Board of Revenue wherein they have dismissed the revision preferred by the petitioner and has upheld the validity of the orders passed by courts below, namely, orders dated 11.08.2000, 14.06.2011 and 17.10.2011.
3. The dispute which falls for consideration in the present case pertain to the succession of the property of one Govinde S/o Daili. Govinde had died in 1960 leaving behind his wife Smt. Hardei and after the death of Govinde name of Hardei was recorded in the revenue records on 17.08.1964.
4. After a very long period of time around 36 years, an application was moved by respondent Nos. 4 & 5 on 04.07.2000 U/S 34 of Land Revenue Act for mutating their names in place of Smt. Hardei on account of fact that Smt. Hardei has remarried 15 years prior and therefore as per

provisions of Section 172 of U.P. Zamindari Abolition and Land Reforms Act, 1950 has ceased her right to succeed to the property of Govinde on account of her marriage with one Haripal and in the aforesaid circumstances a prayer was made to mutate the name of Pyare Lal and Shatrohan.

5. The Tehsildar, Tehsil – Sadar, Lucknow considering the fact that no objections were filed against the application U/S 34 of Land Revenue Act and perused the revenue records wherein he found that the disputed land was recorded in the name of Govinde in the revenue records pertaining to fasli 1400-1405 as well as in 1406-1411 after whose death his widow Hardei succeeded to the said property and also considered the evidence given by the Regional Lekhpal, Anil Kumar, according to which Hardei the widow of Govinde had remarried Haripal and accordingly came to the conclusion that in the aforesaid circumstances Hardei would be divested of her share succeed of the property of Govinde. While the applicant was the nephew of Govinde and that Govinde had died intestate the applicant was held to be duly entitled to succeed the property of Govinde and accordingly allowed the application and accordingly deleted the name of Hardei with the further direction that name of Praye Lal and Shatrohan were likely to be substituted in her place.

6. Subsequently, Hardei W/o of Govinde moved an application for recall on 19.09.2002 stating that she had succeeded to the property of Govinde who was her husband and further stated that she was never served notice during the proceeding and the order dated 11.08.2000 was ex-parte. She had further clearly stated in paragraph no. 8 of her application that after the death of Govinde she has never married and the application for mutation was given by the Pyare Lal and Shatrohan only to usurp the property of Hardei and accordingly sought recall of the order dated 11.08.2000.

7. It has been submitted that it is during pendency of the recall application that Hardei W/o Govinde died on 27.04.2005 and her application for recall was also rejected on 14.06.2011 by Tehsildar, Sadar, Lucknow. The Tehsidlar, Sadar, Lucknow duly recorded the fact of the death of the applicant Hardei. The Tehsildar, Sadar, Lucknow has duly considered the evidence of Shiv Narain S/o Moti Lal as well as statement of Lekhpal on the basis of which he has returned a finding that Hardei had married

Haripal after death of previous husband.

8. A perusal of the statement of the Anil Kumar, Regional Lekhpal which was recorded on 09.08.2000. It was stated that the name of Hardei was mutated in the revenue records after the death of Govinde and that she has remarried after his death with Haripal and that Pyare Lal and Shatrohan S/o Raman are nephew of Govinde. It is relevant to notice that from the aforesaid statement, it is clear that Anil Kumar, Regional Lekhpal was not present during the said wedding and has only stated that said fact on account of knowledge derived by him from the villagers but has failed to disclose as to which villager has given the said information and as to whether he has verified the said information.

9. Even the statement of Shatrohan which is on record, he has stated that his aunt (Chachi) Hardei had married 2-3 years after the death of Govinde. Shatrohan has stated his age to be 30 years while Govinde died in the year 1960 and Shatrohan in all probability was not even born when Hardei had married Haripal, and apart from the above he is an interested party in the case and no evidence was produced by him.

10. After the death of Hardei, the petitioners also claimed their rights on the disputed land and for having their names to be mutated in the revenue records in place of Hardei as she has left a registered will in favour of petitioners dated 11.08.2000 and on the basis of the will, the petitioners claimed their rights to succeed the property of Hardei.

11. Accordingly, in the aforesaid circumstances, the Tehsildar, Sadar, Lucknow while deciding the application of respondents U/S 34 of Land Revenue Code, 2006, held that the remarriage of Hardei had taken place about 15 years prior to filing of the said application and consequently from the date of remarriage, she has become dis-entitled to succeed the property of Govinde and any Will made subsequently will not have any effect upon bequeathing the right of the Hardei in favour of petitioners inasmuch as on account of succession as per provision of Section 172 of the U.P.Z.A. & L.R. Act, the applicants i.e. Pyare Lal and Shatrohan would succeed to the property of Govinde and accordingly rejected the application for recall and reaffirming the previous order dated 11.08.2000.

12. The petitioners being aggrieved by the order of Tehsildar, Sadar, Lucknow dated 14.06.2011 as well as order dated 11.08.2000 preferred an

appeal U/S 210 of the Land Revenue Act before the Dy. Collector (Revenue), Lucknow who rejected the appeal by means of order dated 17.10.2011, against which a revision was preferred before the Board of Revenue which was also rejected by means of order dated 14.10.2019 which has been assailed in the present writ petition.

13. Learned counsel for petitioners has submitted that the central issue which deserves to be decided on the basis of evidence was the fact as to whether Hardei W/o Govinde had remarried after his death to Haripal. In case she had remarried then by the operation of provision of Section 172 of U.P.Z.A. & L.R. Act, the property of Govinde will devolve upon his nearest surviving heirs which are private respondents who are nephew of Govinde.

14. While on the other hand, in case it is established that she did not remarry after the death of Govinde then there is no dispute with regard to registered will having been executed by her on 28.08.1990 in favour of petitioners who would be entitled to succeed to the property of Govinde/Hardei. There is no dispute that on an application made by private respondents U/S 34 of Land Revenue Act, the application was allowed ex-parte where Hardei had not participated. It was alleged that after the death of Govinde in 1960 Hardei had married Haripal and therefore had disintitiled herself from succeeding the property of Govinde as per Section 172 of U.P.Z.A. & L.R. Act, which reads as under:-

“

172. Succession in the case of a woman holding an interest inherited as a widow, mother, daughter, etc.

- [(1) When a bhumidhar, [* *] [Substituted by U.P. Act No. 20 of 1954.] or asami who has after the date of vesting, inherited an interest in any holding-*

(a)as a widow, widow of a male lineal descendant, in the male line of descent, mother or father's mother dies, marries, abandons or surrenders such holding or part thereof; or

(b)as a daughter, son's daughter, sister or half-sister being the daughter of the same father as the deceased [marries] [Inserted by U.P. Act No. 37 of 1958.] dies, abandons or surrenders such holding or part thereof,

the holding or the part shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male bhumidhar, [* *] [Omitted by U.P Act No. 8 of 1977(w.e.f. 28.01.1977).] or asami.]*

(2) Where a bhumidhar [* *] [Omitted by U.P. Act No. 8 of 1977(w.e.f. 28.01 1977).] who has before the date of vesting inherited an interest in any holding as 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] [Substituted by U.P. Act No. 20 of 1954.]-*

(a) dies and such bhumidhar [* *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] was on the date immediately before the said date an intermediary of the land comprised in the holding or held the holding as a fixed rate tenant, or an exproprietary or occupancy tenant in Avadh or as a tenant on special terms in Avadh and-*

(i) she was in accordance with the personal law applicable to her entitled to a life estate only in the holding, the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male intermediary or tenant aforesaid; and if

(ii) she was in accordance with the personal law applicable to her entitled to the holding absolutely the holding shall devolve in accordance with the table mentioned in Section 174;

(b) [dies, abandons or surrenders and in the case of a widow, widow of a male lineal descendant in the male line of descent, mother, father's mother, marries such bhumidhar [* *] [Substituted by U.P. Act No. 20 of 1954.] on the date immediately before the said date held the holding otherwise than as an intermediary or tenant referred to in Clause (a), the holding shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of Section 171) of the last male tenant.]*

(3) The provisions of sub-section (1) mutatis mutandis apply to an asami who inherited the holding before the date of vesting.

(4) Nothing in sub-section (1) shall apply to a person succeeding to an interest in any holding under the provisions of Section 174.

Explanation. - For the purposes of this section the expression "last male bhumidhar, [* *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] or asami" includes the last male tenant, grove-holder, permanent lessee in Avadh, grantee or sir or khudkasht holder, as the case may be."*

15. The aforesaid application was allowed on 11.08.2000 subsequent to which an application for recall was preferred by Hardei wherein in paragraph No. 8, she has clearly stated that she has not remarried and she was not served with any notice in proceedings U/S 34 of Land Revenue Act which were defective and in fact the orders were passed without

effecting service upon her. Before her application could be decided, she died on 27.04.2005 and subsequently the petitioners entered into the said litigation claiming their rights to succeed the property of late Hardei on the basis of a will executed by her on 28.08.1990.

16. The Tehsildar, Sadar, Lucknow decide the application rejecting the contention of the petitioners as well as application of recall filed by late Hardei and upheld his previous order dated 11.08.2000. While passing the said order, he relied upon the evidence on record which were in the shape of statement of Anil Kumar, Regional Lekhpal and the evidence of Shatrohan, both of them stated that Hardei had married after death of Govinde.

17. The appellate authority and the revisional authority have merely reiterated the findings recorded by Tehsildar, Sadar and held that due opportunity of hearing has been given to all the parties and the order has been passed after due perusal of material records which did not require interference.

18. The writ petition has been vehemently opposed by Sri I.D. Shukla, learned counsel appearing on behalf of private respondents. He has submitted that there is no dispute that Hardei had remarried after death of Govinde which in fact is evident from various documents filed by the petitioners themselves specially the document where the address of Hardei has been disclosed to be same address as that of Haripal and submitted that once it is established that Hardei and Haripal were living together then there is no difficulty to presume that they were living as husband and wife. He further supported the findings recorded by all the authorities below and prayed for dismissal of the writ petition.

19. The objection of the private respondents that the concurrent findings of the three courts below with regard to the alleged remarriage of Smt. Hardei cannot be interfered with under Article 226 of the Constitution is without substance. The authorities cited by them, namely State of U.P. v. Laxmi Sugars and Oil Mills Ltd. (2013) 10 SCC 509 and General Manager, Electrical Rengali Hydroelectric Project, Odisha v. Girdhari Sahu (2019) 10 SCC 695, merely reiterate the principle that writ courts ordinarily do not disturb findings of fact. They do not, however, preclude interference where the findings suffer from perversity or manifest error

apparent on the face of the record. It is well settled that a writ court can intervene when conclusions are based on no evidence, are contrary to material on record, or proceed on a clear misdirection in law.

20. Having heard the rival contention of the parties. The only aspect which is to be determined by this Court is as to whether there was sufficient material on record on the basis of which the Tehsildar and the Sub-Divisional Magistrate have held that that Hardei widow of Govinde had remarried after his death. Accordingly in case it is established that Hardei has remarried then as Section 172 of Zamindari Abolition and Land Reforms Act will dis-entitle her from succeeding to the estate of Govinde (her late husband). This fact was only stated in the application filed by the private respondents U/S 34 of Land Revenue Act and clearly denied by Smt. Hardei in her application for recall.

21. In order to establish a marriage under the Hindu Marriage Act, it had to be demonstrated that Smt. Hardei was married to Haripal in accordance with Section 7 of Hindu Marriage Act. Oral statement of certain parties merely stating that Haripal was married to Haripal would not establish a valid marriage.

22. This aspect of the matter was considered by Hon'ble Supreme Court in the case of **Dolly Rani Vs. Manish Kumar Chanchal, 2025 (2) SCC 587**, and held as under:-

“21. Under [Section 8](#) of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with [Section 7](#), there can be a marriage registered under [Section 8](#). The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case.

22. But if there has been no marriage in accordance with [Section 7](#), the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with [Section 7](#) of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per [Section 5](#) of the Act in the absence

of there being a “Hindu marriage” in accordance with [Section 7](#) of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law.

23. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of [Section 8](#) of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with [Section 7](#) of the Act, then the registration of such marriage under [Section 8](#) would not confer any legitimacy to such a marriage. The registration of a marriage under [Section 8](#) of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with [Section 7](#) of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all.”

23. There is no dispute that no document or marriage certificate was filed indicating remarriage of Hardei. It is during the proceedings that statement of Anil Kumar, Regional Lekhpal and Shatrohan were recorded. Anil Kumar, Regional Lekhpal in his statement has only stated that he came to know that about remarriage of Hardei from villagers. This Court does not find that the said statement would be reliable or worthy of any credence to establish the remarriage of Hardei. There is no material to indicate that either he himself was witness of the marriage or as to the person who has told him that Hardei had remarried.

24. With regard to the factum of remarriage of Hardei, the testimony of Anil Kumar, Regional Lekhpal is totally unreliable and is not trustworthy or of any credence. Shatrohan himself was a party to the proceedings and has only given lip service to the fact that Hardei had remarried. Evidently he has not even born when Hardei is alleged to have remarried nor did he give any evidence as to how he derived the knowledge that Hardei had remarried. Accordingly, the testimony of both aforesaid witnesses is unreliable and on the basis of such unreliable evidence no finding of fact with regard to the marriage of Hardei could have been returned by the Tehsildar, Sadar while deciding the aspect of mutation in favour of the applicants.

25. Even in summary proceedings where a finding has to be returned with regard to a particular fact, then such finding should be based on cogent and reliable evidence and not on the basis of conjectures and surmises. Question of marriage has to be established on facts even in absence of

documentary evidence. A Hindu marriage is solemnized in the presence of all the relatives and friends and villagers and performed by a Priest and there facts have to be established in order to prove a valid marriage.

26. Statement of Anil Kumar, Regional Lekhpal and Shatrohan are mere hearsay evidence and cannot fulfill the lacunae of any direct or cogent evidence in this regard and consequently merely on the basis of the said evidence the findings have been returned with regard to marriage of Hardei. It is in the aforesaid reasons, this Court finds itself unable to accept findings recorded by the Tehsildar, Sadar, Lucknow in his order dated 14.06.2011 and accordingly this Court finds that even the orders of the appellate authority and the revisional authority are arbitrary having upheld the order of Tehsildar, Sadar dated 14.06.2011.

27. In the present case, contrary to oral assertion made by petitioners while moving the application U/S 34 of Land Revenue Act, late Hardei while filing the application for recall in paragraph No. 8 had clearly denied that she had remarried after the death of Govinde.

28. In the aforesaid circumstances, the burden of proof lay upon the private respondents to establish that a valid marriage had taken place in accordance with Hindu rites and rituals which they have clearly failed to establish. There is no evidence let by the petitioners to demonstrate that late Hardei had validly married Haripal and in absence of any such evidence no finding can be returned with regard to remarriage of Hardei. The proof of marriage is a matter of fact and the burden of proof lay upon the private respondents to establish the same and they failed to establish the said fact before the Tehsildar, Sadar and accordingly the findings returned in favour of the private respondents and against the Hardei was illegal and arbitrary, liable to be set aside.

29. In the present case, the findings regarding Smt. Hardei's alleged remarriage are ex facie perverse. There is no proof of the essential ceremonies, of marriage being performed nor has any custom been established; instead, the courts below relied on vague assertions, stray documents, and revenue entries, while ignoring contemporaneous records where Smt. Hardei continued to describe herself as a widow. The testimonies on which reliance was placed are inconsistent and fail to discharge the burden of proving a valid remarriage. The conclusions drawn are thus contrary to both evidence and law, and cannot be sustained. Hence, this Court would be justified in setting aside the

findings despite their concurrence.

30. In the aforesaid circumstances, the writ petition is **allowed**. The orders dated 11.08.2000 , 14.06.2011, 17.10.2011, 14.10.2019 are set aside.

(Alok Mathur,J.)

August 25, 2025
Ravi/