
(1963) 08 KAR CK 0020
In the Karnataka High Court
Case No : Second Appeal No. 141 of 1956

Akhter Begum

APPELLANT

Vs

Hasna Begum and Others

RESPONDENT

Date of Decision : 13-08-1963

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 28, 40, 46

Citation : AIR 1964 Kar 216 : (1964) 1 MysLJ 128

Hon'ble Judges : A.R. Somnath Iyer, J

Bench : Single Bench

Advocate : Chabia, for S. Rangaraj, for the Appellant; V. Tarakaram, for the Respondent

Judgement

1. The appellant is defendant 4 and respondent 1 when this appeal was preferred was the plaintiff, the other respondents being the other defendants. The plaintiff is now dead and her legal representatives have been brought on record.
2. The suit was brought for a declaration that the plaintiff was entitled to a sixth share in the suit proper-ties and that declaration when the suit was brought was considered by the plaintiff to be sufficient since the properties were then in the custody of the Assistant Custodian of Evacuee property functioning under the Administration of Evacuee Property Act, 1950. The plaintiff's case was that the properties which formed the subject-matter of the suit belonged to a certain Abdul Hye and that after his death they became the properties of his widow Sher Banu. The plaintiff contended that after the death of Sher Banu, her sisters and brothers who were the heirs of Sher Banu became entitled to those properties and that the plaintiff being one such heir was entitled to a sixth share in all the suit properties.
3. The principal ground on which defendant 4 resisted the suit was that the purchase of the properties in the name of Sher Banu was benami for her two sons Bashir and Munir and that those two persons had made a gift of all the suit properties to defendant 4 who was being brought up by them. In paragraph 5 of

her written statement, defendant referred to a registered deed of gift in respect of items 4 and 5 and stated that the other items of properties were all handed over to the possession of defendant 4 by Bashir and Munir. It is not disputed that Bashir and Munir became evacuees within the meaning of that expression occurring in the Administration of Evacuee Property Act.

4. At one stage, the Assistant Custodian of Evacuee Property in Bellary took possession of all the properties in suit. At that stage, the plaintiff and defendant 4 contended before the Assistant Custodian that the properties which had been taken possession of by him were not evacuee properties and did not belong either to Bashir or Munir. On this representation made by the plaintiff and defendant 4, the Assistant Custodian made two sets of orders. By one of them, what he directed the parties to do was to seek an adjudication by the Civil Court on the question as to who really was the owner of items 4 and 5 which were claimed by defendant 4 under the registered deed of gift referred to by her in paragraph 5 of her written statement. In respect of items 1 to 3 in schedule A and also in respect of the properties described in schedule B, the order-made by the Assistant Custodian was to release those properties from his own administration under the Administration of Evacuee Property Act.

5. It was after the Assistant Custodian made these orders that the plaintiff's suit was instituted. Many issues were framed in the case covering the points which were the subject-matters of controversy between the parties. But the case was never posted for evidence by the Subordinate Judge in whose court the suit was instituted since at one stage, on behalf of the plaintiff it was mentioned to the Subordinate Judge that the suit could be disposed of on a preliminary ground. An Additional issue was accordingly framed by the Subordinate Judge and that issue covered the question whether the decision of the Assistant Custodian of Evacuee Property releasing the properties from his administration could not be questioned in a Civil Court. Arguments were heard on this issue and the conclusion reached by the Subordinate Judge was that the Civil Court had no jurisdiction to question the adjudication made by the Assistant Custodian. The Subordinate Judge was also of the view that this finding which he recorded on the additional issue should inevitably lead to a decree in favour of the plaintiff. He accordingly made a decree in favour of the plaintiff. The appeal preferred by defendant 4 to the district Judge from this decree which the Subordinate Judge made was dismissed on the identical ground. So defendant 4 appeals.

6. It seems to me that the view taken by the Courts below that the decision of the Assistant Custodian whatever it was had the effect of entitling the plaintiff straightaway to a decree as prayed for by her, cannot be supported. Now, as I have already pointed out, all that the Assistant Custodian did in respect of items 1 to 3 in schedule A and the properties described in schedule B was to release those properties from his own administration on the ground that they were not evacuee properties within the meaning of that expression occurring in the Act. In regard to items 4 and 5, since there was a controversy as to whether the plaintiff

was entitled to those properties or defendant 4 was entitled to them, the Assistant Custodian referred them to a Civil Court whose adjudication they were directed to seek.

What, therefore, becomes at once clear is that so far as items 4 and 5 of Schedule A are concerned, there was no adjudication made by the Assistant Custodian in respect of any matter or claim or title to those properties. I fail to understand how either the Subordinate Judge or the District Judge found it possible to dismiss the claim put forward by defendant 4 in regard to those properties on the strength of anything that was said by the Assistant Custodian who said nothing about them. Even Mr. Tarakaram appearing for the legal representatives of the plaintiff had to admit that the decrees made by the courts below to the extent they relate to items 4 and 5 of schedule A are unsupportable.

7. The question which remains to be considered, therefore, is whether the position is different in regard to items 1 to 3 of Schedule A and the properties in schedule B. It does not appear to me that the decrees of the Courts below even in regard to those two sets of items can be supported.

8. The view taken by the Subordinate Judge rested entirely on the provisions of Section 46 of the Administration of Evacuee Property Act which forbids a Civil Court from entertaining or adjudicating upon any question whether any property or any right to or interest in any property is or is not evacuee property or from questioning the legality or any action taken by the Custodian-General or the Custodian under the Act or in respect of any matter which the Custodian-General or the custodian is empowered by or under the Act to determine. Mr. Tarakaram's main contention was and that was also the view taken by the Subordinate Judge -- that since the Assistant Custodian had released items 1 to 3 of schedule A and the schedule B properties from his own administration, such release by necessary implication involved an adjudication by the Assistant Custodian that they were not evacuee properties and therefore, not the properties of Bashir and Munir which he could transmit to defendant 4 as they are supposed to have been transmitted according to defendant 4. Mr. Tarakaram did not however contend that defendant 4 asked the Subordinate Judge to investigate into the legality of any action taken by the Assistant Custodian or to exercise jurisdiction in respect of any matter in which the Assistant Custodian was empowered under the Act to make an adjudication.

9. Now, it should be remembered that the scheme and purpose of the Administration of Evacuee Property Act is to take under the administration permitted by the Act properties belonging to the evacuees for the purpose of providing compensation for the refugees. For that purpose, the properties of evacuees from this country could be taken over by the authorities functioning under the Act and those authorities were also conferred power to make a determination of the question whether the properties so taken possession of were properties belonging to the evacuees and were therefore evacuee properties within the meaning of that expression occurring in the Act.

What Section 46 forbids the Civil Court from doing is to go into the question of the correctness of any adjudication made by the authorities in that way so that the administration which is directed by the Act may not be impeded by parallel determinations by the Civil Court which might inevitably lead to clash of jurisdictions. So, what is clear is if a property is taken over by the authority functioning under the Act and that property is declared by that authority as evacuee property, no Civil Court can make an adjudication to the contrary. But, to say that is not the same thing as saying that if an authority functioning under the Act declines to take under his administration a particular property because, that property is claimed by someone as belonging to him, that adjudication is conclusive on the question that the property did not belong to the evacuee, and therefore, could not be claimed by anyone claiming a title under him. The only purpose for which the authority makes that adjudication is to decline to take that property under his administration.

10. Now, in this case, if defendant 4 claimed that Items 1 to 3 of schedule A and properties in schedule B are all properties belonging to Bashir and Munir and had been gifted to defendant 4, and, the plaintiff on the contrary contended that they were not the properties of Bashir and Munir but were the properties of Sher Banu, I am unable to understand how the bar created by Section 46 could be pleaded by the plaintiff to an adjudication in the competing claims made by the plaintiff on the one hand and defendant 4 on the other. Nothing contained in Sections 28, 40 and 46 can have the effect of barring the exercise of jurisdiction by the Civil Court in that matter.

11. I, therefore, set aside the decrees of the courts below and remit the suit to the court of first Instance to be heard and disposed of by him according to law.

12. The costs of this appeal and of the appeal preferred in the lower appellate court will be costs in the case and will abide the eventual result.

13. Order accordingly.