

(1962) 12 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1285 of 1989

Chhittar Khan and Others

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 13-12-1962

Acts Referred:

Administration of Evacuee Property (Central) Rules, 1950 — Rule 15B
Administration of Evacuee Property Act, 1950 — Section 16, 16(1)
Civil Procedure Code, 1908 (CPC) — Section 80
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 20A
Specific Relief Act, 1963 — Section 42

Citation : (1963) 1 ILR (P&H) 579 : (1963) 65 PLR 551

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : J.N. Sethi, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Pandit, J.—One Yasin, minor, a Meo of village Agaon in district Gurgaon, was the last male holder of the property in dispute. In 1947 during the communal disturbances, he along with his mother, Mst. Jummi, left his village for migration to Pakistan. During the journey, they stayed at Najafgarh Camp, where he died of smallpox. Mst. Jummi, however, left for Pakistan, but- returned to India after short time. In her absence, the Custodian assumed control of the land in dispute, thinking that Yasin had gone to Pakistan.

2. Mst. Jummi, on her return to India, made an application u/s 16(1) of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Act), for the restoration of the land belonging to her deceased son, Yasin. On 17th May, 1951 this application was dismissed by the Deputy Custodian, Gurgaon, on the ground that the death of Yasin in the Indian Union had not been established. Later on Mst. Jummi contracted karewa with one Kanhaya, who was one of the collaterals of her husband. She, however, died on 16th March, 1955. On 3rd October, 1955, Chhittar Khan and others, claiming themselves as the only

surviving collaterals of Yasin and, therefore, entitled to inherit his land, made an application u/s 16 of the Act for the revision of the order, dated 17th May, 1951, passed on Mst. Jummi's application and for the restoration of this land to them. On 18th March, 1956 it was decided by the Assistant Custodian that Yasin had died in the Indian Union and that the applicants were his collaterals in the 15th or 16th degree. Since he was doubtful if these collaterals so distantly related to the deceased, could, in law, inherit the land left by him, he observed that the matter should be decided by a civil Court. He, however, forwarded the file of the case to the Additional Custodian, Evacuee Property, Punjab, Jullundur, for necessary orders recommending that the applicants were entitled to the restoration of the property of Yasin, deceased, in case, they could get their title established in a civil Court. On 17th June, 1957 the Under-Secretary to the Government of India, Ministry of Rehabilitation, informed the applicants that their application, dated 3rd October, 1955 made under Sub-section (1) of Section 16 of the Act had been rejected by the Central Government on the ground that the property claimed by them was not their property.

3. The applicants, thereupon, instituted the present suit against the Union of India and the Custodian on 1st March, 1958 for a declaration that they being the only surviving collaterals of Yasin were his lawful heirs and were legally entitled to the land left by him. It was alleged by them that the refusal by the Rehabilitation Authorities to restore the property to them u/s 16 of the Act was illegal.

4. The suit was resisted by the Defendants on a number of pleas, which gave rise to the following issues:

- (1) Are allottees, etc., necessary" parties to this suit? If so, what is the effect of non-joinder?
- (2) Has Civil Court no jurisdiction to try this suit?
- (3) Is the suit barred by res judicata?
- (4) Was a valid notice u/s 80, Code of Civil Procedure, given to the Defendants? If not, what is its effect?
- (5) Is the suit within limitation?
- (6) Are Plaintiffs collaterals of Yasin and were entitled to succeed to him in respect of the property in dispute?
- (7) Had Yasin died? If so, when?
- (8) Is the suit barred by the provisions of Evacuee Interest (Separation) Act and Displaced Persons (Compensation and Rehabilitation) Act?
- (9) Is the property not evacuee one?

5. The trial Judge held that the allottees of the land in dispute were necessary parties to the suit and the omission on the part of the Plaintiffs to implead them

rendered the suit bad in law; that although the civil Court had the jurisdiction to entertain and hear the present suit for the declaratory relief, nevertheless it had to be thrown out being incompetent by reason of the proviso to Section 42 of the Specific Relief Act; that the suit was not barred by the principles of res judicata; that a valid notice u/s 80, Code of Civil Procedure, was given to the Defendants; that the suit was barred by limitation: that the Plaintiffs were the collaterals of Yasin in the 15th or 16th degree and they were, therefore, entitled to succeed him; and that it had been proved that Yasin had died in the Indian Union, as regards issue No. 9, it was held that the controversy relating to this issue could not be gone into by the civil Court by reason of the provisions of Section 46 of the Act. On these findings, the Plaintiffs' suit was dismissed.

6. Aggrieved by this decision, the Plaintiffs filed an appeal before the learned Additional District Judge, Rohtak, who held that the suit was barred by limitation; that the allottees had a vested right in the land in dispute and they were necessary parties to the suit; and that the civil Court had no jurisdiction to decide this case. On these findings, the appeal was dismissed and the judgment of the trial Court was affirmed. Against this, the present second appeal has been filed by the Plaintiffs.

7. Learned Counsel for the Appellants, in the first place, contended that the finding of the lower appellate Court on the question of limitation was incorrect.

8. After hearing the counsel for the parties, I find that there is merit in this contention. The learned Additional District Judge has held that since, according to the Appellants, Yasin was not an evacuee and they were not claiming as heirs of an evacuee, they were not entitled to make an application u/s 16 of the Act and, therefore, the dismissal of their application by the Ministry of Rehabilitation on 17th June, 1957 did not give them any cause of action to go to the civil Court and pray for a declaration regarding their title. According to the learned Judge, the right to claim this property accrued to the Appellants immediately the Custodian assumed control of the same as evacuee property. Since this happened in 1947, the present suit, which was brought in March, 1958, was clearly barred by limitation, having been filed more than six years after 1947. The relevant portion of Section 16 of the Act is as under:

Section 16(1) Subject to such rules as may be made in this behalf, any evacuee or any person claiming to be an heir of an evacuee may apply to the Central Government or to any person authorised by the Central Government in this behalf (hereinafter in this section referred to as the authorised person) that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force may be restored to him.

(2) On receipt of an application under Sub-section (1), the Central Government or the authorised person, as the case may be, shall cause public notice thereof to be given in the prescribed manner, and after causing an enquiry into the claim to be held in such manner as may be prescribed, shall-

(a) if satisfied-

- (i) that the conditions prescribed by rules made in this behalf have been satisfied;
- (ii) that the evacuee property is the property of the applicant; and
- (iii) that it is just or proper that the evacuee property should be restored to him; make an order restoring the property to the applicant, or;

(b) if not so satisfied, reject the application:

Provided that where the application is rejected on the ground that the evacuee property is not the property of the applicant, the rejection of the application shall not prejudice the right of the applicant to establish his title to the property in a civil Court, or

(c) if there is any doubt with respect to the title of the applicant to the property, refer him to a civil Court for the determination of his title.

* * *

9. It is true that under Sub-section (1) of this section, an evacuee or any person claiming to be an heir of an evacuee can make an application to the Central Government, but this Sub-section is subject to such rules as may be made in this behalf. The relevant Rule, which has been made in this connection, is 15-B of the Administration of Evacuee Property (Central Rules), 1950, which is in these terms:

Rule 15-B, A certificate u/s 16 may be granted to the following classes of persons, namely; (i)(a) any person who since the first day of March, 1947, has continued to reside in India and did not at any time migrate to Pakistan and whose property has been declared as evacuee property;

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10. A perusal of this Rule would show that Yasin could make an application u/s 16 of the Act for the restoration of the property, which had been wrongly declared to be evacuee property, to him, since he did not go to Pakistan. If Yasin could file such an application, I do not see any reason why his heirs cannot do so after his death. They filed this application on 3rd October, 1955, but the same was dismissed by the Ministry of Rehabilitation on 17th June, 1957 on the ground that the property in dispute was not the property of the Appellants. Therefore, the present suit, which was filed on 1st March, 1958, for a declaration of their title to this property under the proviso to Sub-section (2) of Section 16 of the Act, was well within time as the cause of action arose to the Appellants on the date when their application u/s 16 of the Act was dismissed by the Ministry of Rehabilitation.

11. Learned Counsel then contended that the Additional District Judge erred in

law in holding that the allottees of the property in dispute had a vested right in it and they were necessary parties to the suit.

12. There is force in this contention as well. The learned Additional District Judge gave this finding on the ground that the application by the Appellants u/s 16 of the Act was not competent. This ground has already been reversed by me as mentioned above. The Appellants were claiming a declaration against the Union of India and the Custodian, "Evacuee Property, only. They were not wanting any relief against the allottees of this land. It is true that the allottees are in possession of the property in dispute and it would have been better if they had also been impleaded as parties to the suit, but it cannot be said that they are necessary parties and in their absence the Appellants' suit could not proceed. u/s 20-A of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, if the Central Government came to the conclusion that it was not expedient or practicable to restore the whole or any part of the property in dispute to the Appellants by reason of the same being in occupation of a displaced person, then it could either transfer some other evacuee property out of the compensation pool to the Appellants or pay cash compensation in lieu thereof. It is possible, therefore, that the allottees may not be affected at all. I am, consequently, of the opinion that they were only proper, but not necessary, parties to the suit. As such, in their absence the suit cannot be dismissed.

Lastly, it was submitted that the finding of the lower appellate Court that the civil Court had no jurisdiction to try this suit was wrong.

13. There is force in this submission also. Proviso to Sub-section (2) of section. 16 of the Act clearly gave jurisdiction to the civil Court to try the present suit filed by the Appellants, because their application u/s 16 of the Act had been rejected on the ground that the evacuee property did not belong to them.

14. In view of what I have said above, I would accept this appeal, set aside the judgment and decree of the Learned Additional District Judge and remit the case to him for giving a finding on the remaining issues and then deciding the appeal in accordance with law. In the circumstances of this case, however, the parties will bear their own costs throughout.