

(1951) 07 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Ex. Second Appeal No. 170 of 1949

Firm Amin Chand Hakam Chand

APPELLANT

Vs

Mst. Noshah Begum and Others

RESPONDENT

Date of Decision : 17-07-1951

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 17
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 60
East Punjab Evacuees (Administration of Property) Act, 1947 — Section 8

Citation : AIR 1954 P&H 235

Hon'ble Judges : Eric Weston, C.J;Falshaw, J

Bench : Division Bench

Advocate : A.M. Suri and Mehr Chand Sud, for the Appellant; S. Daljit Singh and P.L. Bahl, for the Respondent

Final Decision : Dismissed

Judgement

1. The present appellant on 5th of November 1947 filed a suit to recover an amount of Rs. 5,000/- against the legal representatives of one Ahsan Ullah, and on 7-11-1947 obtained attachment before judgment of a quantity of sleepers lying at Abdullapur. It appears that this Ahsan Ullah had been doing timber business at Abdullapur but in August 1947 he committed suicide. In the application for attachment before judgment, it was stated by the plaintiff that the property, namely the sleepers, sought to be attached had been abandoned and was likely to be taken possession of by Government. There is no dispute that the legal representatives of Ahsan Ullah lived at Dehra Dun at all material times. They were represented in the suit but on 13-5-1948 a compromise application was put in whereby the claim was reduced to Rs. 3,000/-.

In the application there was mention of the sleepers attached, and it was stated that these had already been taken possession of by the Custodian of Evacuee Property, but if they became available they would be property from which the decree could be satisfied. The decree drawn up, however, was a simple money

decree making no mention of any specific property charged or otherwise liable for the satisfaction of the decree. On 14-6-1948 the present applicant took out execution asking for sale of the attached sleepers, and on 28-6-1948 the Custodian filed an application asking that the attachment should be raised as the property was evacuee property which had vested in him. The executing Court by order made on 14-8-1948 held that the property was evacuee property at the time the attachment was sought to be raised and made an order raising the attachment.

The present applicant then went in appeal to the District Court and by order dated 24-11-1948 the District Judge of Ambala upheld the decision of the trial Court that the legal representatives of Ahsan Ullah must be held to be evacuees u/s 2 (b) (ii) of the East Punjab Evacuees' (Administration of Property) Act, 1947. The appellant now comes in appeal from this order.

2. By reason of Section 8 of the Administration of Evacuee Property Act, 1950, any property in a State which already vested as evacuee property in a Custodian was directed to be deemed to be evacuee property declared as such under the 1950 Act. It is not in dispute before us that if the property was evacuee property under the East Punjab Act of 1947 it has continued as evacuee property under later enactments. Section 2 (b) (ii) of that Act includes within the definition of "evacuee" a person ordinarily resident in the territories comprised in the Province of the East Punjab, who on account of civil disturbances, or the fear of such disturbances, or the partition of the country (ii) cannot personally occupy or supervise his property or business or watch His interests or enforce his rights.

It is claimed that it was for the Custodian to prove affirmatively all facts necessary to be established under this definition. This proposition may be accepted, but it seems clear that there was evidence on the record which justified the two Courts below in coming to the findings of fact to which they came. As already mentioned in the application for attachment before judgment by the present appellant himself the suggestion appeared that the property had been abandoned. There was evidence that the legal representatives of Ahsan Ullah had not been to Abdullapur or to Jagdhri during the pendency of the suit. There was also on the record an application filed on behalf of these legal representatives stating that they were unable to come from Dehra Dun where they were living and asking for the issue of the commission to examine them there. These difficulties in the way of the legal representatives of Ahsan Ullah coming to Abdullapur may fairly be placed as due to the disturbances which followed partition, which disturbances; we are informed, were the reasons for Ahsan Ullah committing suicide.

3., An argument was led that by reason of the attachment the appellant had obtained a substantive right in the property. But this right was liable to become nothing and did become nothing by reason of the provision of the East Punjab Evacuees' (Administration of Property) Act, 1947, which prohibited, or rather exempted from, attachment, distress or sale of Evacuee property in execution of

the decree of a Civil or Revenue Court (see Section 8). The appellant by his attachment before judgment did not obtain a vested right to sell this property. All he obtained was an order making the property available for sale in the eventuality that the property might be liable to sale. There is no question in this case of interference with any fundamental right granted by the Constitution of disposal of property. There being evidence to justify the findings that the property was evacuee property and that the property vested in the Custodian he was entitled to have an attachment before judgment set aside, and this is the order he has obtained. It is, of course, open to the appellant to make his claim before the Custodian but with this we are not at present concerned.

4. There is no question of law on which we could interfere in second appeal which is dismissed with costs.