

(1984) 01 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 441 of 1976

Gian Parkash and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 7
East Punjab Evacuees (Administration of Property) Act, 1947 — Section 4

Citation : AIR 1984 P&H 356

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

1. This is plaintiffs' second appeal whose suit for the grant of permanent injunction was partly decreed though it was held that they were in unauthorised possession of the suit land and that they will not be dispossessed therefrom except with due process of law.

2. The dispute between the parties relates to one bigha and seven biswas of land comprised in khasra No. 1128. The plaintiffs claimed title to the land, in dispute, on two grounds. The first ground was that the said land was shamilat deh and that the said land in their possession was not in excess of their share in the shamilat deh in the village. They were co-sharers therein and that they were in possession of the land, in dispute, before January 26, 1950. On these allegations, it was asserted that Khasra No. 1128 did not vest in the Gram Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961. It was also pleaded that the suit filed by the Gram Panchayat earlier was dismissed by the trial Court. The second ground was that the plaintiffs had been in possession of the land, in dispute, before the year 1947 and that they had acquired title to the same by adverse possession. The present suit was filed on October 24, 1972. It was also alleged that the suit land was never evacuee property though in the revenue records, it was recorded as ghair mumkin quabristan. The plaintiffs pleaded that if the suit land was ghair mumkin quabristan then its title vested in the ahle Islam and not in the Custodian of the

Evacuee property. It was also averred that they were served with notice u/s 7 of the Administration of Evacuee Property Act, 1950 (hereinafter called the Act), by the Assistant Custodian who, after hearing them, declared that the disputed land was not evacuee property. Since they apprehended interference with their possession over the suit land; hence the present suit. The suit was contested on the ground that the plaintiffs were in illegal possession of the suit land since 1956-57. Since the suit property was evacuee property being entered as ghair mumkin quabristan. it vested in the Custodian. Therefore, the Civil Court had no jurisdiction to try the suit. The trial Court found that the plaintiffs were not proved to be the owners of the suit land as it was evacuee property, that they were in its possession and that they could not be dispossessed therefrom except in accordance with law. Consequently, it decreed the plaintiffs' suit accordingly. The plaintiffs filed an appeal before the lower appellate Court who affirmed the said findings of the trial Court and. thus, maintained the decree passed in favour of the plaintiffs by it. Dissatisfied with the same, the plaintiffs have come up in second appeal to this Court.

3. The learned counsel for the appellants vehemently contended that it has been wrongly held by the Courts below that the suit land was evacuee property and the same had vested in the Custodian under the evacuee laws. According to the learned counsel, vide order Exhibit P. 15, dated February 10, 1955, the Assistant Custodian found that it was not an evacuee property as contemplated u/s 7 of the Act. Thus, argued the learned counsel, after having passed the said order, it could not be held that the suit land was evacuee property. On the other hand, the learned counsel for the State submitted that in the order, Exhibit P. 15, it was never found that the suit property was not evacuee property. As a matter of fact, the Assistant Custodian did not feel the necessity of entering into any controversy on this point as he had no jurisdiction in the matter because the same being shamilat deh had vested in the Gram Panchayat. Thus, according to the learned counsel, it could not be contended that it was declared to be non-evacuee property vide order, Exhibit P. 15. It was further contended that the said order was without jurisdiction. and the land had already vested in the Custodian being evacuee property as it was admittedly shown as ghair mumkin quabristan throughout in the revenue records.

4. After hearing the learned counsel for the parties and going through the relevant evidence on the record, I do not find any merit in this appeal.

5. The order, Exhibit, P. 15, was passed after the issuance of the notice u/s 7 of the Act. It has nowhere been stated therein that the land. in dispute, is not evacuee property. The view taken therein by the Assistant Custodian was that since the Government had legislated that property situated within shamilat deh shall vest in the Panchayat and whereas it was proved from the record on the file that Khasra No. 1128 was within shamilat deh, he did not feel the necessity of entering into any controversy on the point raised by the parties and could safely say that the Custodian has no jurisdiction over the matter under the later law of

the land. Besides, the property in question is not vested in the Custodian u/s 8 of the Act. Admittedly, the property being ghair mumkin quabristan vested in the Custodian under the East Punjab Evacuees (Administration of Property) Act, 1947. u/s 4 of the above said Act, all evacuee property situated within the province shall vest in the Custodian for the purposes of the said Act and shall continue to be so vested until the Provincial Government by notification otherwise directs. It is not the case of the plaintiffs that there was any notification directing that the land, in dispute, does not vest in the Custodian. It was held in Haji Esmail Noor Mohammad and Co. and Others Vs. The Competent Officer, Lucknow and Others, , that Section 7 of the Act only applies to properties other than those which have been vested automatically in the Custodian. It was further held the above said case that no declaration that the property was evacuee was necessary. The contention of the learned counsel for the plaintiffs that the said property could not be held to be evacuee property because the owners thereof were not the evacuees as it was shown as ghair mumkin quabristan only in the revenue records has no merit because admittedly the suit land was entered as the ghair mumkin quabristan in possession of ahle Islam, and therefore, it vested in the Custodian automatically and in that situation, the notice u/s 7 of the Act, issued by the Assistant Custodian was without any consequence and it did not affect the rights of the Custodian.

6. Once it is so held that the suit land vested in the Custodian, being evacuee property, the Civil Court had no jurisdiction to go into the matter. The learned counsel for the appellants relied upon *Rajendra Prakash v. Gyan Chandra* : AIR 1980 SC 1206, to contend that if the property was never declared as evacuee property, then, in that situation, the jurisdiction of the Civil Court to go into that question was not barred. In the above said case, the property was never declared evacuee property u/s 7 of the Act and. thus, the same never formed part of the compensation pool. Thus, the ratio of the above said decision has no applicability to the facts of the present case. Under these circumstances, I do not find any infirmity or illegality in the concurrent findings of the two Courts below as to be interfered with in second appeal.

7. Consequently, this appeal fails and is dismissed with costs.

8. Appeal dismissed.