

(1996) 09 AHC CK 0045
In the Allahabad High Court
Case No : Second Appeal No. 800 of 1995

Jamil Ahmad and others

APPELLANT

Vs

Smt. Kumud Rajdeo Singh and others

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 46
Civil Procedure Code, 1908 (CPC) — Section 100, 100(4), 65, 80, 9
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 20, 24, 40
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 87, 90, 91, 92
Evacuee Interest (Separation) Act, 1951 — Section 10, 17
Transfer of Property Act, 1882 — Section 41

Citation : AIR 1997 All 374

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : L.P. Naithani, M.A. Qadir and M.M. Ghildiyal, for the Appellant; V.K.S. Chaudhary, M.A. Khan and L.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. The appeal was presented on 1-8-1995 against the first appellate judgment and decree dated 31-5-95 in Civil Appeal No. 457 of 1991 passed by the VIIth Additional District Judge. Azamgarh. The first appeal arose from the Original Suit No. 55 of 1965 decreeing the suit by the judgment and decree dated 27-11-68 recorded by the Additional Civil Judge. Azamgarh.

2. Prior to the presentation of the appeal Sri L. P. Singh had filed a caveat on 3-7-95. The matter came up in presence of the learned counsel for both the parties on 1-9-95 when the appeal was admitted and the prayer for stay of the operation of the first appellate decree together with the hearing of the appeal was expedited by another judicial order of the same date. At the time of admission, however, no substantial question of law was framed by the Judge

admitting the appeal. The memo of appeal, however, indicated that ground Nos. 3, 4, 5 and 6 involved questions of law. When the matter came up for hearing a preliminary objection was taken on behalf of the respondents for absence of framing of substantial questions of law as required u/s 100(4), C.P.C. Accordingly, two substantial questions of law were framed and those are as follows: First, what is the effect of the cancellation/modification/clarification of the sale certificate dated 14-8-64 touching the suit property. Second, whether the relief sought for could have been granted by the Civil Court.

3. The suit was filed by Zamil Ahmad and another for a declaration that the sale, if any, and the sale certificate dated 14-8-64 in respect of the area beyond and outside the evacuee property was null and void as also for a mandatory injunction directing the defendant Nos. 1 to 8 to remove all constructions as shown in the plaint map as also to remove the name plate affixed at the corner rate. The plaintiffs also claimed eviction of the defendant No. 1 from the building marked O.

4. One Dr. Hafiz Ullah was the ancestor of the plaintiffs. The property indicated by special mark in the plaint situated in village Narauli Tappa Harbansh School. Pargana Nizamabad. Tehsil Sadar, District Azamgarh, was known as Hafiz Manzil. This Hafiz Manzil with the house, trees and other fixtures belonged to the aforesaid Dr. Hafiz Ullah, a retired Civil Surgeon. He expired in 1948 leaving behind the plaintiffs and pro forma defendants Nos. 9 to 15. The property devolved upon plaintiffs and these pro forma defendants. Of these heirs, pro forma defendants Nos. 9 to 15 and Anish Ahmad. Raish Ahmad and Hamira Bibi Migrated to Pakistan while others remained in India. The share of the migrants, in the property of Dr. Hafiz Ullah was to the extent of 35/128th part as computed under the Mohamedan Law. This portion of the property was declared evacuee property under the Administration of Evacuee Property Act. This property was subsequently acquired by the Central Government under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act. The evacuee share and non-evacuee share had remained joint and so these shares were separated on 17-3-54 under the provisions of the Evacuee Interest Separation Act by the Competent Officer. An exception was taken by the Assistant Custodian Of Evacuee Property and, accordingly, on 23-7-54, a revised order was passed by the Competent Officer. An exception was again taken of this order also and a fresh scheme of separation was framed which was objected to by the non-evacuees. On 14-3-56 the Competent Officer passed the final order on separation of shares of evacuees and non-evacuees. In the property of Dr. Haliz Ullah. Upon this final order, the evacuee property comprised of an area of 0.971 acre of bad quality land and 1.071 acre of good quality land, the total area being 2.042 acres. On 15-7-59 the plaintiffs were intimated to give up the management of the portion of Dr. Hafiz Ullah property which was demarcated as evacuee property as the same was to be sold u/s 20 of the Displaced Persons (Compensation and Rehabilitation) Act (Act 14 of 1954). The defendant No. 1 Dr. Raj Dev Singh, (now dead and represented through his heirs) constructed a

boundary wall and then started further construction under the colour of removing of boundary wall. The plaintiffs were under impression, in good faith, that only the evacuee property was sold as that portion was only to sell. However, when on 14-8-64 the sale certificate was issued to defendant No. 1 the plaintiffs came to know that an area larger than the aforesaid 2.042 acres was shown in the sale certificate. On the basis of this sale certificate defendant No. 1 started a mutation proceeding in which objection was raised by the plaintiffs. On 24-12-64 the defendant No. 1 put up a barbed wire fencing and on 9-2-64 started new constructions encroaching over some of the area of common road and on 24-2-65 defendant No. 1 took possession of the building in spite of objection of the plaintiffs. He was served with a notice but he did not pay heed to the same. The plaintiffs alleged a monetary loss incurred by them due to this wrongful possession and claimed to recover the same from defendant No. 1. There were allegations that defendant No. 1 had cut and removed trees belonging to the plaintiffs and a claim was laid for that also. In May, 1965, defendant No. 1 was asked to remove the constructions and to pay the compensation and to vacate the house 0 as also to remove the encroachments but the same was not complied with. Hence the suit.

5. There were two sets of written statement. Defendants Nos. 2 to 8 filed one and the other was filed by defendant No. 1. The defendants Nos. 2 to 8 were the Union of India and different officers under the statutes concerning management of evacuee property. These defendants Nos. 2 to 8 stated that the suit property including other property was taken over as a composite property belonging to the evacuees, Anish Ahmad, Raish Ahmad and Smt. Hamira Bibi, Evacuee and Non-Evacuee interests were separated by the competent officer and the area allotted to the custodian was given on rent to the Munsif Azamgarh as a tenant. Since then the custodian had remained in possession of the said property. The evacuee property was subsequently acquired by the Central Government u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act, (Act 44 of 1954) and put to auction. Objections were raised on behalf of the non-evacuee and the same was decided. Demarcation was made and the evacuee property was acquired and was put to auction sale on 22-6-65 and was sold to the highest bidder defendant No. 1. The non-evacuees did not raise any objection to such auction. Defendant No. 1 was given possession in January, 1961 and sale certificate was issued on 14-8-64. The suit was described as barred by Sections 12, 20B, 27 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act as also under other legal provisions.

6. The auction purchaser, Dr. Raj Dev Singh, defendant No. 1, filed a separate written statement. It was stated on his behalf that the auction sale was first advertised on 22-2-59. Objections were raised on behalf of non-evacuees. Upon such objections, the auction sale was postponed. A demarcation was done of the evacuee and non-evacuee portions and only then the auction took place on 26-11-59. The defendant No. 1 was the highest bidder and the area of the property so auctioned and so purchased by him was 3.042 acres which

comprised the building, trees and other fixtures as also the gate and the guard room O. Defendant No. 1 had been in possession of this property since 1-1-61 on payment of rent and revenue and other taxes. The sale certificate was issued to him on 14-8-64. The suit was described as barred by the provisions of different Acts concerning evacuee property. The defendant No. 1, after purchase and after being put in possession, was under the bona fide belief that he was the absolute owner of a total area of 3.042 acres. He spent more than Rupees one lakh since 1961 and raised constructions of a substantial building over various portions of the land purchased by him within the knowledge of the plaintiffs who had never asserted their title to those portions.

7. The trial Court decreed the suit in favour of the plaintiffs and pro forma defendants with reference to map No. 16642. The defendant Dr. Raj Dev Singh and others preferred an appeal. The first appellate Court held that in map No. 16642, the evacuee share was shown in green colour and the managing officer had auctioned only that portion shown in the green colour in the said map extending up to the line indicated by the letters G and H on the eastern boundary. He was further of the view that jurisdiction of the Civil Court was barred under the provisions of different enactments touching evacuee property. He concluded that the custodian was the owner of the property put to auction which was demarcated at the time of the auction on 26-11-59 and the sale proceedings thereof went in favour of the defendant No. 1 with payment of due consideration without notice as to any infirmity in the title of the custodian. The benefit of Section 41 of the T.P. Act was available to the defendant No. 1. It was further held that when the claim of the non-evacuees in the composite property was once determined by the custodian the same was not open to challenge, even though any share of the non-evacuee to the composite property was sold away. The proceeds of the sale, as paid by the auction purchasers can be proportionally paid to the non-evacuees and there was no wrong exercise of jurisdiction by the competent office and the sale was free from all encumbrances. The suit was declared barred by the provisions of law and the appeal was allowed and the judgment and decree of the Court below were set aside.

8. The sequence of events may be indicated now to have a full grasp and to have a clear picture of the dispute between the parties. On 14-3-56 the competent officer, Faizabad, recorded an order in Claim No. 106 of 1953 (Aqil Ahmad v. Assistant Custodian) separating the evacuee interest u/s 10 of the Evacuee Interest (Separation) Act (64 of 1951). An objection raised to the sale of the property was decided by the Managing Officer on 22-9-59. On 26-11-59 the Managing Officer had put the property to auction in the presence of non-evacuees. Auction was held after due publicity and it was knocked down to the highest bidder Dr. Raj Dev Singh. He was put in possession in January, 1961. Sale certificate was signed by the Managing Officer on 14-8-64 and was registered on 19-9-64. This was in relation to the evacuee property. The Competent Officer, U.P. at Lucknow confirmed the map and report (concerning auction sale) on 26-2-65. Dr. Raj Dev Singh was not a party thereto. Zamil

Ahmad challenged the correctness of the area, mentioned in the sale certificate and issued a notice u/s 80, C.P.C. intimating an intended suit. The Managing Officer made a note thereon on 15-9-65 directing a corrigendum to be issued concerning the area. This note was made without any information to Dr. Raj Dev Singh. On 23-11-65 Zamil Ahmad initiated Original Suit No. 55 of 1965 against Dr. Rajdev Singh and others, before the Civil Judge, Azamgarh. On 18-2-66 the Settlement Officer, having been delegated the powers of Settlement Commissioner, allowed the appeal No. 100 of 1965 of Dr. Rajdev Singh against the order of the Managing Officer dated 15-9-65 and the matter was remanded to the Managing Officer for rehearing. A revision was preferred before the Settlement Commissioner (with powers of Chief Settlement Commissioner) by Zaibetul Nisa to correct the sale certificate covering the extent of the area (in place of 3,042 acres there should have been 2,042 acres). An order was made on 25-10-68 directing the correction to be made and for steps to be put back the non-evacuee in possession of the excess area if the respondent No. 1 Rajdev Singh was already put in possession. The suit initiated by Zamil Ahmad was proceeding, commissioner report was received to this suit on 8-1-68. The Additional Civil Judge, Azamgarh, decreed the suit for possession in favour of Zamil Ahmad on 27-11-68. There was a direction for removal of construction from this joint "rasta" and "makan" and for removal of barbed wire fencing and also for damages. A first appeal was preferred by Dr. Rajdev Singh before the High Court bearing No. F.A. 138 of 1969. It was later transferred to the District Judge as Civil Appeal No. 57 of 1991. Rajdev Singh alleged that he was not heard in the revision application before the Settlement Commissioner and he moved an application for restoration and for setting aside the order dated 25-10-68. This application was dismissed by the Settlement Commissioner on 25-7-70. Dr. Rajdev Singh thereafter moved the Joint Secretary Government of India and that application was dismissed on 28-1-71. A Writ Petition No. 868 of 1971 was moved by Dr. Rajdev Singh which too was dismissed in limine on 28-8-71. A SLP No. 265 of 1972 was preferred against the High Court order and this SLP was dismissed by the Supreme Court on 18-8-72.

9. The order dated 14-3-56 as referred to the above in Claim No. 106 of 1953 indicates that the Competent Officer, Faizabad, on 17-3-54 had passed an order proposing the separation of the evacuee interest by an actual partition scheme in accordance with the share of the evacuee and the non-evacuee which were held to be 35/125 and 93/128 respectively. In pursuance to that order the Commissioner prepared a report and a map on 15-7-54 showing in different colours different buildings and what was given to the custodian and what would remain for the non-evacuees. Under an order of the Competent Officer the scheme was directed to be changed and the Commissioner was directed to submit a fresh scheme for partition. Then a fresh report was submitted on 11-11-54. The custodian took up an objection and upon that the order dated 14-3-56 was passed. It was indicated what would be the share of the custodian and it was identified with reference to the map. The share allotted to the

custodian would vest free from all encumbrances and liability. The remaining share in the property would belong to the claimants on which the evacuees will have no interest. The order was appended by a map. In this very Claim No. 106 of 1953 the Commissioner had made a report on 1-1-65 in terms of the order dated 14-6-56 where he was directed to prepare a neat map. This map was accepted and made a part of the order dated 14-3-56. It was observed in the order dated 26-2-65 that if the custodian had sold a larger share than allotted to him, the non-evacuee co-sharer should not recognise the sale and should get possession of the share allotted to them. It was further observed that the building 0 and the road passing through the portion allotted to the custodian will remain joint as determined in the order dated 14-3-56 and the parties were to take possession according to the shares allotted to them. The case was closed. The order of the Managing Officer on 15-9-65 indicates that an area of 3.042 acres has inadvertently been mentioned by the sale clerk in the sale certificate dated 14-8-64 and that area was to be deleted from the sale certificate and a corrigendum was to be issued accordingly with a true copy of the partition map as referred to in the judgment of the Competent Officer in Claim No. 106 of 1953 finally decided on 26-2-65. This order dated 15-9-65 stood challenged in Appeal No. 100 of 1965 and the Settlement Commissioner, by his order dated 18-2-66 set aside the impugned order of the Managing Officer as Rajdev Singh was not given an opportunity of hearing. The order of the Settlement Commissioner in Revision No. 108/UP/105 dated 25-10-68, however, indicates that the Settlement Commissioner accepted that the sale certificate for 3.042 acres issued in favour of the respondent Rajdev Singh was wrong and it was set aside. He directed the authorities to take appropriate steps to issue a fresh sale certificate to Dr. Rajdev Singh for an area of 2.042 acres only which was the evacuee share that has formed part of the compensation pool. It was directed that if the department had been instrumental in putting Rajdev Singh in possession of the excess area, the authorities would take steps to put the non-evacuee back in possession. As mentioned above a restoration application filed by Dr. Rajdev Singh against the last mentioned order was dismissed and his representation before the Government of India was also dismissed and so were his writ petition and special leave petition.

10. Three Acts are relevant in the matter of administration of evacuee property and in the matters connected thereto. Those, Acts, are (i) Administration of Evacuee Property Act (Act 31 of 1950). This was enacted for the administration of evacuee property and for certain matters connected therewith. The Act also defined what was an evacuee property and there has been no dispute between the parties on that point. It is not necessary to go through the definition. (ii) Evacuee Interest Separation Act (Act 64 of 1951). This act was enacted for making special provisions for separation of the interest of an evacuee from other persons in a property and the matters connected therewith. At times a property was held jointly by several persons only some of whom migrated to Pakistan and it was necessary to locate what was the share of the evacuee in the joint

property. (iii) Displaced Persons (Compensation and Rehabilitation Act (Act 54 of 1954). This Act was meant to provide for payment of compensation to and rehabilitation of displaced persons and for matters connected there with. Under the scheme of these Acts the Custodian of Evacuee Property takes up a property as an evacuee property and thereafter the interest of evacuees in the property is separated from the interest of non-evacuee therein and only thereafter the evacuee interest so determined goes to the compensation pool for rehabilitation of displaced persons and for payment of compensation to them.

11. In the case at our hands there is no dispute that Dr. Hafiz Ullah was the original owner of the suit property. There is further no dispute that the plaintiffs and the pro forma defendants and others were the heirs to Dr. Hafiz Ullah and a good number of them had migrated to Pakistan while the others opted to stay in India. After the property of Dr. Hafiz Ullah being taken charge of by the custodian under the Administration of the Evacuee Property Act, the interest of the evacuees and the non-evacuees was separated under the second mentioned Act by the Competent Officer. As indicated above the first order of separation was taken exception to by the custodian and the order was revised. Even against that order, an objection was raised and a fresh scheme was framed. A further objection was raised, and this time by the non-evacuees, and the final order was recorded by the competent officer on 14-3-56. It was definitely determined in that final order of separation of the evacuee and non-evacuee interest that the evacuee share comprised 0.971 acres of bad quality land and 1.071 acres of good quality land, totalling 2.042 acres of land. On 15-7-59 the plaintiffs were intimated to give up the management of that portion of land in the properties of Dr. Hafiz Ullah and this portion was demarcated as the evacuee property. Only thereafter this share was sold under the provisions of Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. In that sale the evacuee share and portion was purchased by Dr. Rajdev Singh, the original defendant No. 1 (now deceased and represented through his heirs). The plaintiffs did not object to the sale under the impression that only the evacuee share was being sold as could have been done under the law. But the sale certificate was issued to the purchaser indicating the area as 3.042 acres. Only on the issuance of the sale certificate, the plaintiffs could know of this mistake and that was the background of the suit. On the other hand Dr. Rajdev Singh had pleaded that when he had paid good money for the whole area of 3.042 acres and was put in possession thereof, he could not be ousted and the Civil Court was incompetent to determine if the area sold was 2.042 acres or 3.042 acres. Only under this dispute the substantial questions of law were framed in the back ground of the sequence of events as indicated in the earlier paragraphs of this judgment.

12. On the question of absence of jurisdiction of the Civil Court, several case laws were cited before me with reference to the legislation on that point. Section 46 of the Administration of Evacuee Property Act bars the jurisdiction of the Civil Court to proceed to entertain or to adjudicate upon any question whether any property or any right or interest in any property is or is not an evacuee property

or to question the legality of any action taken by the Custodian General or a Custodian under this Act or in respect of any matters which the custodian is empowered by or under this Act to determine. The action of the custodian under the Administration of the Evacuee Property Act is not in question in the suit. As indicated in the narration of the cases of the parties and existing the sequence of events, it is clear that the dispute had crossed the scope of the above Act and, in fact, the question before the Court is what was the property sold and which property could have been sold.

13. In the matter of separating the interest of the evacuees from the interest of the others in a composite property, it is the authority of the competent officer that has been accepted by the Evacuee Interest (Separation) Act. Once such separation is made, the evacuee share so separated is to vest in the custodian free from all encumbrances. Appeals are provided for against the orders of the competent officer separating such interest and a Civil Court has no competence to entertain a suit or proceeding as relates to any claim to composite property which the competent officer is empowered by this Act to decide, as per Section 20 of the Evacuee Interest (Separation) Act. In the case at our hands it is not the order of the competent officer that has been challenged. It has been definitely ordered by the competent officer as to what would be the share of the evacuees in the composite property left by Dr. Hafiz Ullah. As indicated above the dispute is regarding the area sold and not the area determined by the competent officer. Section 36 of this Act bars the jurisdiction of the Civil Court stating that it would not entertain any suit or proceeding in respect of a matter which the Central Government or any officer or authority appointed under this Act was empowered to determine. This Act provided for transfer of the evacuee property to the compensation pool from where the sale is to be made. Thus we fall back to the basic question as to what was the land sold and that question is not one to be determined by any of the authorities under this Act.

14. Reference was also made to the rules framed under the Displaced Persons (Compensation and Rehabilitation) Act. The rules spoke of the procedure for sale of property in the compensation pool. In Chapter XIV thereof, in Rule 87, it is stated that any property forming a part of compensation pool may be sold by public auction or by inviting tenders or in such other manner as the Chief Settlement Officer may, by general or special order, direct. Under Rule 90, where any property is to be sold by public auction the property shall be sold through firms of repute who have been approved as auctioneer by the Chief Settlement Commissioner or through the officer appointed by Central Government in this behalf. The Settlement Commissioner or the officer empowered to sell any such property (meaning any property forming part of the compensation pool) shall cause a proclamation of the intended sale to be made in the language of the principal Civil Court of original jurisdiction within whose jurisdiction the property is situated. Reference was made to other clauses of Rule 90 which provided that bid in respect of which the initial deposit has been accepted shall be subject to the approval of the Settlement Commissioner and intimation of the approval is to

be given to the highest bidder (the auction purchaser) by registered post. When purchase price has been received in full from the auction purchaser, only then a sale certificate in the specified form is to be issued to him and the sale certificate shall also be sent to the registering officer of the area where the property is situated. Rule 92 spoke of the procedure for setting aside a sale. Where a person desired that the sale of any property made under rule 90 or 91 should be set aside because of any alleged irregularity or fraud in the conduct of the sale or in the notice of the sale, he may make an application to the Settlement Commissioner and such application is to be made within seven days from the date of acceptance of the bid where the sale is made by public auction. The Settlement Commissioner, if satisfied after consideration of the facts of the case that a material irregularity or fraud has been committed in the publication or conduct of the sale, may make an order that the property be re-auctioned or resold. It was argued that when sale was made by public auction and the highest bid was accepted and the sale certificate was issued, the only course open to the plaintiff, as a person aggrieved, was to approach the Settlement Commissioner under Rule 92 and it should have been done within seven days of acceptance of the bid. It was contended that when a special law created a special procedure the powers of the Civil Court must be deemed to have been barred. For the application of Rule 92 the sale that was to be questioned under this rule must be one made under Rules 90 and 91. Rule 90 required that before a sale is made under this rule for any property a proclamation is to be issued for the intended sale and the proclamation is to be published in the language of the principal Civil Court of the area. In the case at our hands only a sale certificate issued long after the date of the sale is the basis of the case of the defence and it does not answer the question as to what was the land sold. Under the provision of the law, it may be reiterated, only the evacuee share in a composite property comes under the control of the administrator and only that property is liable to go to the compensation pool and it naturally follows that only that property would be liable to sale. If any other property was really sold in addition to property that had come to the compensation pool that fact could have been proved only by the sale proclamation and not by the mere sale certificate. If a property is not shown in the sale proclamation it could not have been sold. Objections under the provision of the Rule 92 were to cover irregularity or fraud in the conduct of sale or in the notice of the sale. If the notice was all right and if the sale was conducted in a proper manner, Rule 92 would not come into play. Rule 92 gave a summary procedure for correction of the irregularities or fraud and the result of such summary procedure was a resale only. In the absence of the proclamation it is not before us what was the property sold and it cannot be presumed that there had been a fraud in the publication of the sale. Rule 92 may not, therefore, be a bar to the entertainment of the civil suit which challenges the right of the defendants to claim any portion of the composite property beyond the demarcated evacuee portion that was liable to sale under the provisions of the legislation. It was also the argument on behalf of the respondents that a sale certificate is a document of title which is not to be lightly regarded or loosely

construed. Reliance was placed on a decision of the Privy Council as reported in AIR 1922 Privy Council 252. It was held herein that the plain meaning of a sale certificate is not to be defeated by reference back to documents on which decree was based. Only in this connection it was observed that certificate of sale was a document of title which was not to be lightly regarded or loosely construed. According to their Lordships of the Privy Council there was full opportunity for challenge of all the proceedings in the execution of the mortgage deed and excepting clear cases a purchaser is not to be harassed in his possession by disputes arising years after his purchase. A full reading of the judgment indicates that certain lands were not meant to be included in a mortgage but in executing of that mortgage those lands were not also sold and the sale certificate was issued. This sale was confirmed by the Privy Council and the purchasers appeal was allowed. In the case at our hands we are to bank upon the sale certificate alone and the defendants had not discharged their onus to show that was the land sold. Had it been successfully proved by the defendants that proclamation was issued for the sale of 3.042 acres of land and that area was sold, certainly the case law would have applied. In the present set of facts, in the absence of proof of the proclamation for sale, no such presumption could be made.

15. Reliance was placed on another case law as reported in Bishan Paul Vs. Mothu Ram, . It also covered an auction sale of property in the compensation pool under the provisions of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. It was held herein that the title to the property passed to the respondent on the date of confirmation of the sale and was not in abeyance till the issue of the certificate and once the certificate is issued it relates back to the date when the sale had become absolute. I believe this case law would rather support the view I am expressing consistently in the last few paragraphs. It is the sale (and its confirmation) that matters and the sale certificate only closes the bracket in the operation of sale. The title to the property passes to the auction purchaser on the date of confirmation of the sale and that would only mean that he got title to the property that was sold and not the property that is certified. We are missing the important link in this case as to what was the property proclaimed to be sold.

16. Reference was also made to a decision reported in Janak Raj Vs. Gurdial Singh and Another, . Here was a case of sale of a house in execution of an ex parte money decree. The judgment-debtor applied for setting aside the decree and the decree was reversed. At that stage the auction purchaser made a prayer for confirmation of the sale it was held that the sale must be confirmed notwithstanding reversal of the decree after the sale as the title of the purchaser related back to the date of the sale and not to the date of the confirmation. This case law again goes to support the case of the plaintiff that the title of the defendant Dr. Rajdev Singh had, flowed from the auction purchaser only and that auction could be of the evacuee share only and in the absence of the proclamation, we cannot jump to a conclusion that 3.024 acres were proclaimed for sale and were actually sold out to Dr. Rajdev Singh.

17. A third case of the Supreme Court was again relied upon by the respondents as reported in *Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum*, . A question arose in this case whether a particular property or right to or interest therein was or was not an evacuee property. It was held that the jurisdiction of the Civil Court was barred u/s 46 of the Administration of the Evacuee Property Act to go into that dispute. We are not, however, faced with any question if any particular property is an evacuee property or not. Undoubtedly the evacuee property extended to an area of 2.042 acres of land in the composite property of Dr. Hafiz Ullah and this evacuee portion was duly demarcated. We are concerned with a situation if the claim of Dr. Rajdev Singh on an area of 3.042 acres could be resisted in the suit. I have made it clear in the discussion made earlier that this dispute is not covered by any provision barring the jurisdiction of the Civil Court and the Civil Court was competent to give a finding on this point.

18. In this connection reference may also be made to a Division Bench decision of the Allahabad High Court as reported in AIR 1950 All 654. In explaining Section 65 of the C.P.C. it was held in this judgment that under this section title vests in the purchaser after the confirmation of the sale from the date of the sale. It was not necessary that a sale certificate should be actually obtained and such certificate was not a document which created title, it was only an evidence of title. The learned counsel submitted the sale certificate should have at least been recorded as an evidence of the title of Dr. Rajdev Singh on the whole of the area covered therein. One is to reiterate his reasoning to say that unless it is known as to what was sold the Court cannot presume title on the land sold.

19. Reference was also made to another decision of the Allahabad High Court, reported in *Mohd. Sher Khan and Others Vs. Shafi Ullah and Another*, . In this case there was a sale of a composite property comprising of the evacuee and non-evacuee shares and it was held that the validity of the sale was not open to challenge in a Civil Court. The Court in this case had discussed the relevant provisions of the three Acts as mentioned in this judgment. IN this case at our hands we are in dark as to if the composite property to the extent of 3.042 acres was sold. The onus certainly lay on the defendants to prove it but he had not discharged this onus.

20. Reliance was again placed on a decision of a Bench of the Punjab High Court in Civil Writ Petition No. 894 of 1959 decided on 25-5-60 as reported in (1960) 62 PLR 791. Here was an auction sale of evacuee property and the highest bid was accepted by the department. The amount of claim of the bidder has been adjusted towards the payment of the price of the auctioned evacuee property. It was held that there was a binding contract of the sale and no order adversely affecting the auction purchaser can be passed without hearing the auction purchaser. Here also the facts are distinguishable. Sale in the case under reference was definitely made of an evacuee property and there was no question as to the extent of the land sold. In our case there is a big question mark on that

aspect, as to what was the land sold.

21. The question before the Civil Court was not whether the property was an evacuee property or not. There was no question as to any irregularity or fraud in the process of sale. The only dispute was regarding the validity of the sale certificate and that too, to the extent of the area of the land shown in the sale certificate. There having been no dispute that the area of the evacuee property was 3.042 acres the Civil Court had every jurisdiction to take up the matter as the bar under the three Acts were not operative for the specific question raised before the Civil Court.

22. We may now travel to the other aspect of the case. The sequence of events as indicated earlier in this judgment clearly shows that separation of the evacuee and non-evacuee shares was made on 14-3-1956. The property was put to sale on 26-11-1959, possession was made over in 1961, but the sale certificate was signed only on 14-8-1964. The auction sale was confirmed on 26-2-1965 by the competent officer. The correctness of that order was proposed to be (SIC) by Jameel Ahmed who served a notice u/s 80. C.P.C. On the basis of that notice a corrigendum was issued on 15-9-1965 regarding the area shown in the sale certificate. Thereafter the suit was filed. In the parallel proceeding before the authorities under the three Acts an order was passed by the Settlement Officer on 18-2-66 allowing the appeal of Rajdev Singh against the order dated 15-9-1965 and the managing officer was directed to rehear the matter. Against this order a revision was preferred before the Settlement Commissioner by Zabitul Nisa for correction of the sale certificate to indicate the proper area. An order was made directing such correction and for putting the non-evacuee in possession of the excess area if Dr. Rajdev Singh was in possession thereof. When this order was passed the suit was still pending. The suit was decreed by the trial Court. A first appeal was preferred by Dr. Rajdev Singh. In the parallel proceedings before the authorities under the three Acts. Dr. Rajdev Singh moved an application for restoration of the revision case and for setting aside the order dated 25-10-1965. This application was dismissed, Dr. Rajdev Singh thereafter moved the Central Government which too was dismissed. There was a writ petition by Dr. Rajdev Singh which too was dismissed in limine and an SLP was again dismissed by the Supreme Court. A question was raised in this appeal as to what was the effect of the cancellation/modification/clarification of the sale certificate dated 14-8-1964 touching the suit property. This cancellation etc. of the sale certificate was finally settled by the authority on 25-10-1968. The decree of the trial Court was recorded on 27-11-1968. As decided on the question of jurisdiction of the Civil Court, the trial Court had every jurisdiction to determine what was the extent of the land sold and there had been such a finding in favour of the plaintiffs. On issue No. 4 before the trial Court, if the defendant was a bona fide purchaser for value without notice and was, as such, entitled to the benefit of Section 41, T.P. Act, the trial Court gave a finding against the defendants. He relied on an admission by Dr. Rajdev Singh that no measurement of the land was ever done in his presence. The first appellate

Court, however, placed reliance on a map allegedly prepared and the time of demarcation. It is already been held that not more than 2.042 acres land could have been sold in auction and this fact has been considered up to the highest level by the concerned authority and the representation to the Government of India by Dr. Rajdev Singh on this point was disallowed, a writ application was also dismissed and so was the SLP before the Supreme Court. Thus the order dated 25-10-1968 has attained a finality and both under an interpretation of the legislation and under the order of the cancellation/modification/clarification of the sale certificate dated 14-8-1964, it could only be held that only 2.042 acres of land was sold to Dr. Rajdev Singh and the effect of such cancellation etc. is only to rein force the finding of the Civil Court otherwise arrived at on proper interpretation of the law.

23. In this connection also certain case laws were relied upon by the defendant-respondents. In the case reported in Mehar Singh Nanak Chand Vs. Shri Nauniyal Thakar Das and Others, it was held that under the Evacuee Interest (Separation) Act. Section 17 did not empower the competent officer to review this earlier order. In the case at our hands, however, it was not reviewing an order is was only correcting an error of the nature of the arithmetical errors. It is worth noting that this correction was accepted by the Chief Settlement Commissioner and it got the stamp of correctness as the Government, the High Court and the Supreme Court refused to interfere with it. Reliance was placed further on a decision of the Bombay High Court reported in Bhoorsingh Palasingh Vs. Kesumal Aratmal and Others, , wherein it was held that under the Displaced Persons (Compensation and Rehabilitation). Act, 1944, Section 24 did not empower the Chief Settlement Commissioner to decide about the validity or otherwise of the property conveyed by sale deed as it was not an "order" passed by such authority. This again may be distinguished on facts from the case at our hands. Here the sale is not questioned it was only the order of the issuance of the sale certificate which was challenged and that too only to the extent of the area indicated. Thus it may not be stated that the Chief Settlement Commissioner had wrongly exercised his powers. It was urged that in allowing the application of the other party to record an order for correction of the sale certificate Dr. Rajdev Singh was not heard at all and this was an illegality which could not have been supported. This point was urged, it can be presumed, in the writ petition which was dismissed in limine and the SLP was dismissed. It is not open for Dr. Rajdev Singh to agitate this point over again.

24. The two points framed as substantial question of law have now been decided in favour of the appellants. The appeal must be and is allowed. The judgment of the lower appellate Court is set aside and that of the trial Court is restored. The parties are to hear their own costs.

25. Appeal allowed.