
(1986) 08 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 474 of 1978

Jodh Singh (deceased) Rep. By L.Rs.

APPELLANT

Vs

Joginder Singh

RESPONDENT

Date of Decision : 22-08-1986

Acts Referred:

Citation : (1987) PLJ 6 : (1987) RRR 50

Hon'ble Judges : S.S.Sodhi, J

Advocate : Gurdial Singh, Advocates., Y.P. Gandhi, Advocates for appearing Parties

Judgement

S.S. Sodhi, J.

1. The controversy in appeal here is whether the land in suit vested in the Custodian under section 11 of the Evacuee Interest (Separation) Act, 1951 (hereinafter referred to as the Act).
2. It is the common case of the parties that the land in suit belonged to the plaintiff. On March 25, 1946, the plaintiff mortgaged this land with possession to Ali Mohd., Shad Mohd and Mohammed Din, the sons of Allah Ditta, under two mortgagedeeds, the mortgage amount being Rs. 3,075. On the partition of the country the mortgagees migrated to Pakistan leaving behind this evacuee interest in the land in suit.
3. The Competent Officer by his order of December 30, 1957, held the land in suit vested in the Custodian in terms of section 11 of Act. It appears that the land was thereafter allotted by the Custodian to Balbir Singh defendant No. 4 who in turn sold it to Joginder Singh defendant No. 6 and Joginder Singh later exchanged this land with defendant No. 7 Raja Singh.
4. The plaintiff, Jodh Singh, filed the present suit seeking a decree for possession of the land in suit by redemption of the mortgage of Rs. 3,075. It is in this context that the question arises whether the land came to vest in the Custodian or it continues to be the property of the plaintiff.

5. A reference to the provisions of section 6 of Act would show that in order to determine or separate the evacuee interest in a composite property a general notice is required to be issued to all persons who claim an interest in such property as also a special notice to every person who, in the opinion of the Competent Officer may have a claim in such property. This notice being to invite claims from persons interested in the property in order that the matter regarding the separation of evacuee interest or vesting of the property in the Custodian may be determined. Section 11 thereafter provides that, if no claim is filed or found to exist, the property shall vest in the Custodian free from all encumbrances and liabilities. In the present case, the record shows that a general and a special notice was duly ordered to be issued but the notice under section 6 was issued to one Jawand Singh son of Ghanaya Singh of village Mohkiampur whereas the plaintiff, Jodh Singh, belonged to another village, namely, Babak in tehsil Dasuya of district Hoshiarpur. This being so, there can be no escape from the conclusion that proper notice was sent or served upon the plaintiff. As regards the effect of this, the matter now stands clinched by the judgment of the Full Bench in *State of Haryana and others v. Vinod Kumar and others*, 1987 R.R.R. 81 : 1986(1) P.L.R. 222 where, in dealing with an order passed by the Collector under the Punjab Security of Land Tenures Act, 1953, declaring land surplus thereunder, it was held that the jurisdiction exercised by the authorities under that Act is not of such a nature that the orders passed would bind the public at large. Such orders are orders in personam and the fundamental principle as to their nature is that they bind only the parties to it or the persons named therein. As regards persons who are neither parties nor named in such an order, the order in the eye of law is ineffective and non est. Further, it was held that if an order is passed by a tribunal of a limited jurisdiction without issuing a notice to the concerned party, the order would be a nullity and open to challenge in the civil Court even if the statute expressly bars the jurisdiction of the civil Court to entertain a suit to challenge the validity or legality of the order passed by such tribunal.

6. The law and principles as enunciated by the Full Bench in *Vinod Kumar's* case (*supra*) are fully applicable to the present case too. In the absence of any notice having been served upon the plaintiff, the order whereby the property in suit was held to vest in the Custodian cannot but be held to be void and honest. This being so, the plaintiff must indeed be held to be the owner of the land in suit and consequently entitled to a decree for possession by redemption of the mortgage.

7. The plaintiff is thus hereby granted a decree for possession on payment of Rs. 3,075 to the Custodian (if not already paid). The judgment and decree of the lower appellate Court is accordingly hereby set aside and this appeal is consequently accepted. There will, however, be no order as to costs.