

(1968) 08 PAT CK 0021
In the Patna High Court
Case No : A.F.A.D. No. 1038 of 1963

Managing Officer, Evacuee Property and Another
Vs
Mt. Nasiban and Others

APPELLANT
RESPONDENT

Date of Decision : 02-08-1968

Acts Referred:

Administration of Evacuee Property (Amendment) Act, 1954 — Section 10, 4
Administration of Evacuee Property Act, 1950 — Section 28, 4(1), 46, 7, 7A
Civil Procedure Code, 1908 (CPC) — Section 9
General Clauses Act, 1897 — Section 3(13)

Citation : AIR 1969 Patna 272 : (1969) 17 BLJR 637

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : K.D. Chatterji and Ghunni Lal, for the Appellant; S. Ali Ahmad and Iqbal Ahmad, for the Respondent

Final Decision : Allowed

Judgement

S.N.P. Singh, J.—This appeal by defendants Nos. 3 and 4 arises out of a suit filed by the plaintiffs respondents for a declaration that the properties mentioned in Schedule A of the plaint are not evacuee properties and the orders passed by the Assistant Custodian and others under the Administration of Evacuee Property Act, 1950, are illegal and without jurisdiction and also for a permanent injunction restraining the defendants from putting the suit properties to sale and interfering with the right, title and possession of the plaintiff's.

2. The plaintiffs put forward the case that one Syad Samad San was the owner of holding No. 352 corresponding to municipal holding No. 362 (a), which was a portion of old holding No. 451, Ward No. II. Plot No. 889, of Ranchi Municipality. Samad Sha died leaving four sons, namely, Wajid Shah, Khalil Shah, Ahshan Shah and Jalal Shah, and four daughters, namely, Hajra Khatoon, Saira Khatoon, Mehrun Khatoon and Samsul Khatoon. Jalal Shah died leaving behind him a son named Belal Shah and a daughter named Bilquisnissa. The share of Jalal Shah in the municipal holding was inherited by Belal Shah and Bilquisnissa in proportion

to 2/3rd and 1/3rd respectively. Khalil Shah, one of the sons of Samad Shah and Belal Shah son of Jalal Shah, sold out from their shares a portion of the vacant land in the holding to plaintiffs Nos. 1, 2 and 3 and the wife of plaintiff No. 4 and the mother of plaintiffs Nos. 5 to 7 by four registered sale deeds dated the 3rd of September, 1948. Thereafter the plaintiff's came in possession of the land and got their names mutated in the Ranchi Municipality. They constructed four small houses which were given municipal holdings Nos. 178 (b), 178 (c), 178 (d) and 178 (e). After the death of Mosst, Jahidan, her heirs came in possession of her holding No. 178 (b).

The plaintiffs thus claimed that they are still continuing in possession of Schedule A properties which they had purchased under the four registered sale deeds. According to the plaintiffs, before the execution of the sale deeds, the Ranchi Municipality in execution of a decree for arrears of rent had sold off the entire holding No. 352 and on payment of the decretal dues the sale was set aside on the 23rd of May, 1955. For the sake of convenience the co-sharers allowed the name of Bilquisnissa to stand in the municipal records in respect of the holding. Bilquisnissa migrated to Pakistan to live with her husband. After her migration to Pakistan, the Assistant Custodian, Ranchi, declared on the 25th of November, 1955, the entire holding No. 352 including the portions purchased by plaintiffs Nos. 1 to 3, wife of plaintiff No. 4, and the mother of plaintiffs Nos. 5 to 7 as evacuee property without notice u/s 7 of the Administration of Evacuee Property Act, 1950, hereinafter to be referred to as "the Act". On the aforesaid facts the plaintiffs alleged that the declaration that the property was evacuee property was wholly illegal and without jurisdiction. According to the plaintiffs, as the order of the Assistant Custodian was upheld in appeal and revision, it has thrown a cloud on the title and possession of the plaintiffs in respect of their holdings Nos. 178 (b) to 178 (e). Hence the suit for the reliefs, as stated above.

3. It appears that the suit was contested by some of the defendants on the grounds, inter alia, (a) that the suit is barred by Section 46 of the Act and by Section 20 of the Evacuee Interest Separation Act 1951; (b) that holding No. 352 was the property of Mosst. Bilquisnissa, who migrated to Pakistan in the year 1948, (c) that the Assistant Custodian declared Bilquisnissa as an evacuee and the proper-tics in suit as evacuee properties after service of notice on Bilquisnissa u/s 7 of the Act; (d) that in the proceedings before the Assistant Custodian Khalil and Belal contested the matter; (e) that some of them filed appeal and revision which they lost; (f) that the order passed by the Assistant Custodian, which was confirmed by the Custodian and the Deputy Custodian General, was valid and within jurisdiction; and (g) that holding No. 352 vested in the Custodian u/s 8(1)(b) of the Act from 15th August, 1947.

4. The learned Munsif who tried the suit came to the findings on a consideration of the evidence that Bilquisnissa was not the sole owner of holding No. 352 as Khalil and Belal, the vendors of the plaintiffs, and others had share therein, that the plaintiffs had title to the suit properties that the Assistant Custodian. Ranchi,

had no jurisdiction to deal with the suit properties and to declare the same to be evacuee properties because no notice u/s 7 of the Act was given within the perscribed time to the persons interested and that the Civil Court had jurisdiction to entertain the suit as the Assistant Custodian acted without jurisdiction. On the aforesaid findings the learned Munsif decreed the suit and held that the suit properties were not evacuee properties and the orders passed by the Assistant Custodian and others under the Act were without jurisdiction, illegal and void. He also passed an order restraining the defendants from putting the suit properties to sale and from declaring the right, title and possession of the plaintiffs.

Being aggrieved by the judgment and decree of the trial court, the defendants preferred an appeal which was heard by the Additional Subordinate Judge oi Ranchi. It appears from the judgment of the learned Additional Subordinate Judge that at the time of argument the appellants challenged the finding of the learned Munsif on issue No. 6 only, namely, whether the orders passed and the actions taken by the custodian authorities were without jurisdiction, illegal and void. The learned Additional Subordinate Judge concurred with the findings of the learned Munsif that the entire proceedings and the orders passed by the evacuee authorities were illegal, without jurisdiction and void. He arrived at that finding on two grounds, namely, that notice, u/s 7 of the Act was given only to Bilquisnissa and not to all persons interested in the property as required u/s 7 of the Act and that notice u/s 7 of the Act on Bilquisnissa was served at a time when the Act was not in force.

5. In the present appeal Mr. K. D. Chatterji, learned counsel appearing for the appellants submitted that the courts below have taken a wrong view of the law in holding that the orders passed by the evacuee authorities were illegal, without jurisdiction and void. According to learned counsel, the suit filed by the plaintiffs is clearly barred by Section 46 of the Act.

6. At the outset I would mention that it is no longer in dispute between the parties that a notice u/s 7 of the Act was served on Bilquisnissa on the 4th of April 1955 but no notice was served either on the plaintiffs or on their vendors Belal Shah and Khalil Shah. At one stage, in course of his argument, Mr. K. D. Chatterji had made certain submission on the footing that the plaintiffs had appeared in the proceedings before the Assistant Custodian and had filed objections and they had preferred an appeal before the appellate authority and ultimately a revision before the Deputy Custodian General which they lost. It transpired, however, on examination of the order of the Assistant Custodian and the order-sheet of Evacuee Case No. 9 of 1955 that the plaintiffs did not appear before the Assistant Custodian. The orders passed in appeal and revision do not show that the plaintiffs preferred the appeal or the revision. As it appears from Exhibit 10, the order of the Assistant Custodian of Evacuee Properties, Ranchi, dated the 29th of November, 1955. Belal Shah and Khalil Shah appeared in the proceedings before him and filed objections on the grounds, inter alia, that Mosst. Bilquisnissa had no title, interest or possession in the holding in question

as she migrated to Pakistan and that they were in exclusive possession over the properties in question.

The Assistant Custodian overruled the objections holding that the objectors had no title, interest or possession over the properties in question that their claim was bogus and that they had nothing to do with the properties. According to the finding of the Assistant Custodian, the property in question was an evacuee property and Mosst. Bilquisnissa was an evacuee. The objectors went up against the order of the Assistant Custodian but they lost before the appellate authority as well as before the Deputy Custodian General. Evacuee Properties, where they filed revision petition. It appears, however, that the plaintiffs or some of them filed claim petitions u/s 7 of the Evacuee Interest Separation Act, 1951, but their petitions were dismissed on the 12th August, 1958, by the Competent Officer. Patna. Thereafter the plaintiffs filed the suit from which the present appeal arises on the 28th of November, 1958.

7. The first important point which falls for consideration in the present appeal is whether the courts below have committed an error of law in holding that the notice on Bilquisnissa was served at a lime when the Act was not in force. The courts below have taken the view that the notice u/s 7 could be given to Bilquisnissa up to the 6th of November, 1954. The above finding of the courts below is based on the interpretation of some sections of the Administration of Evacuee Property (Amendment) Act, 1964 (Act 42 of 1954) hereinafter to be called "the Amendment Act." Section 4 of the Amendment Act inserted Section 7A of the Act. The relevant portion of Section 4 of the Amendment Act reads as follows:

"Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954.

Provided that nothing contained in this section shall apply to -

(a) any property in respect of which proceedings are pending on the 7th day of May, 1954 for declaring such property to be evacuee property; and

(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident in Pakistan:

Provided further that no notice u/s 7 for declaring any property to be evacuee property with reference to Clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

X X x X x"

Section 10 of the Amendment Act reads as follows:

"The amendments made in the principal Act by Section 4 and Section 8 of this Act shall be deemed to have come into force on the 7th day of May, 1954."

Construing the provisions contained in Section 4 and Section 10 of the Amendment Act, the courts below took the view that notice u/s 7 of the Act could be issued within six months after the 7th of May, 1954, that is up to the 6th of November, 1954. Reliance was placed on a decision in the case of Rubab Bai and Others Vs. Asst. Custodian of Evacuee Property Cum-Managing Officer and Another, . The view which the courts below have taken appears to be entirely wrong. Under the proviso to proviso (b) of Section 4 of the Amendment Act no notice could be issued after the expiry of six months from the commencement of the Amendment Act. The amendment Act received the assent of the President on the 8th of October, 1954. Section 3(13) of the General Clauses Act lays down that the word "'Commencement" used with reference to an Act or Regulation, shall mean the day on which the Act or the Regulation comes into force." The Amendment Act could not have come into force on a day prior to the 8th of October, 1954, when it received the assent of the President. The date of the commencement of the Amendment Act, therefore, will be no other date but the 8th of October, 1954. The period of six months mentioned in the proviso to proviso (b) of Section 4 of the Amendment Act must be counted as specifically required by that proviso from the commencement of the Amendment Act. Section 10 of the Amendment Act has, no doubt, given retrospective effect to the provisions of Section 7A of the Act but it does not mean that the Amendment Act came into force on the 7th of May, 1954.

As held in the case of Satya Dev Cheema Vs. Additional Deputy Custodian, Evacuee Property, Bharatpur, the reason why Section 4 of the Amendment Act was made retrospective was to cover those cases where the property might have been declared evacuee property after the 7th of May, 1954, but before the Amendment Act came into force even though the cases might not be covered by the two provisos. I am, therefore, of the opinion that in a case covered by Proviso (b) notice could be issued within six months from the 8th of October, 1954, that is, up to the 8th of April, 1955. The view which I have taken is supported by the decision in Satya Dev Cheema Vs. Additional Deputy Custodian, Evacuee Property, Bharatpur, Malik Mohammad Jalil and Others Vs. The Asstt. Custodian (Judicial) and Another, and Hayat Karim Khan Vs. The Collector and Deputy Custodian Evacuee Property, Sholapur, . In the Madhya Pradesh case, which has been relied upon by the learned Subordinate Judge, the point was not fully considered and as such it is not possible to place any reliance on that decision. As the notice on Bilquisnissa was served before the 8th of April, 1955, that is, on 4th of April, 1955, it must be held that a valid notice was served on her when the Act was in force. In my considered opinion the courts below took a wrong view of law in holding that the notice on Bilquisnissa was served at a time when the Act was not in force.

8. The position, therefore, comes to this that a valid notice u/s 7 of the Act was

served on Bilquisnissa before the Assistant Custodian declared her to be an evacuee and her property in question to be an evacuee property. It was contended by learned counsel appearing for the plaintiff respondents that u/s 7 of the Act the Assistant Custodian had to give the prescribed notice to all "the persons interested" in the property in question and as such the failure to give notice to the plaintiffs, who according to the findings of the courts below had title to the property in question, vitiated the order of the Assistant Custodian declaring the property in question to be an evacuee property. According to learned counsel, the foundation of jurisdiction of the custodian to declare a property to be an evacuee property is the service of notice in the prescribed manner to all the persons interested in the property in question and if notice has not been given to all the persons interested, those persons to whom no notice has been given can challenge the order of the Custodian declaring a property to be an evacuee property in a civil suit on the ground that the Custodian acted without jurisdiction. Mr. K. D. Chatterji, learned counsel appearing for the appellants, on the other hand, contended that it is entirely within the jurisdiction of the Custodian to decide the question as to who are the persons interested in the property in question and his decision on that question cannot be challenged in a suit.

9. Learned counsel for the appellants in support of his argument that the decision of the Custodian cannot be challenged in a suit relied on Sections 4(1) 28 and 46 of the Act. Section 4(1) of the Act reads as follows:

"The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything in consistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law".

Section 28 of the Act reads thus:

"Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, Custodian. Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding."

A mere reading of Section 28 shows that there is absolute bar to the jurisdiction of any Court to entertain a suit with respect to an order passed by the authorities mentioned in that section.

Section 46 of the Act specifically bars the jurisdiction of civil or revenue Court on three matters and it reads thus:

"Save as otherwise expressly provided in this Act no civil or revenue Court shall have jurisdiction -

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b)

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine."

In the case of Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad, their Lordships of the Supreme Court while considering the scope of Section 46 of the Act observed as follows:

"The scheme of the Act clearly is that where the property admittedly belongs to the evacuee any person claiming the property or any interest or right therein has on receipt of a notice u/s 7(1) to appear before the authorities entitled to deal with the matter under the Act. Any person aggrieved by an order of such an authority made u/s 7 has the right to appeal u/s 24 and it necessary to go in revision u/s 27. The Act thus provides a complete machinery for a person interested in any property to put forward his claims before the authorities competent to deal with the question and to go in appeal and in revision if the person interested feels aggrieved. Having provided this complete machinery for adjudication of all claims with respect to evacuee property, the Act, by Section 46, bars the jurisdiction of civil or revenue courts to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property."

Mr. Ali Ahmad, learned counsel appearing for the plaintiff respondents sought to distinguish the Supreme Court case on the ground that the plaintiff appellant of that case had received notice from the Deputy Custodian u/s 7(1) of the Act but had not appeared before him and then the Deputy Custodian declared the property in question as evacuee property. No doubt on facts the Supreme Court case is distinguishable from the instant case inasmuch as a notice u/s 7(1) of the Act was served on the plaintiff of the Supreme Court case whereas no such notice was served on any of the plaintiffs of the present case. The decision of the Supreme Court that the suit was barred u/s 46 of the Act. however, does not appear to be founded on the ground that a notice u/s 7(1) of the Act was served on the plaintiff-appellant of that case and he failed to appear before the Deputy Custodian. In a recent decision in the case of Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, the Supreme Court has elaborately considered the scope of Sections 4 7 28 and 46 of the Act. It was held in that case that generally speaking the jurisdiction of civil or revenue court is barred u/s 46 of the Act and no such court can entertain any suit or adjudicate upon any question whether a particular property or right to or interest therein is or is not an evacuee property.

While considering the scope of Section 7 of the Act, Wanchoo. C. J., observed as follows-

"Section 7 empowers the Custodian to give notice, where he is of opinion that certain property is evacuee property, to the person interested and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property. It is clear in view of the definition of "evacuee property" to which we have already referred, that two questions will arise in every case where the Custodian has to declare whether a property is evacuee property. These two questions are (i) whether a particular person has or has not become an evacuee and (ii) whether the property in dispute belongs to him. Both these questions have to be decided u/s 7 of the Act by the Custodian.""

Further his Lordship made the following observation :

"Under Section 7 the Custodian has to determine whether certain property is or is not evacuee property. To determine that he is to find out whether a particular person is or is not an evacuee. Having found that, he is to find whether the property in dispute belongs to that person. If he comes to the conclusion that the property belongs to that person, he declares the property to be evacuee property. Now there is nothing in Section 7 which shows that the custodian cannot enter into all questions whether of fact or of law in deciding whether certain property belongs to an evacuee. There is no reason to hold that u/s 7 the Custodian cannot decide what are called complicated questions of law or questions of title. It is difficult to see how the Custodian can avoid deciding a question of title if it is raised before him in proceedings u/s 7. Nor do we find it possible to make a distinction between questions of fact and questions of law that may arise before the Custodian u/s 7. If he has the power to decide questions of fact, which the learned Judges in the order under appeal seem to concede, we do not see why he should not have the power of deciding questions of law also. Further if the learned Judges in the order under appeal are correct in saying that if a question of title rests on a simple allegation of fact it can be finally determined by the Custodian, we cannot see on what reasoning it can be said that where a question of title depends on a question of law it cannot be finally decided u/s 7 by the Custodian. His power u/s 7 is to decide whether certain property is evacuee property or not and there is nothing in Section 7 which restricts that power to deciding only questions of fact. There can in our opinion be no escape from the conclusion that u/s 7 when deciding whether certain property is evacuee property or not, the Custodian has to decide all questions, whether of fact or law, whether simple or complicated, which arise therein".

Ultimately his Lordship expressed his view in these words:--

"Where, therefore the question whether certain properties are evacuee properties has been decided u/s 7 etc., whether that decision is based on issues of fact or issues of law, jurisdiction of Courts is clearly barred u/s 46(a). It is difficult to see how a distinction can be drawn between decisions u/s 7 based on questions of fact and decisions based on questions of law. The decision is made final whether

based on issues of law or of fact by Section 28 and Section 46 bars the jurisdiction of Civil and Revenue Courts in matters which are decided u/s 7 whatever may be the basis of decision, whether issues of fact or of law and whether simple or complicated".

In my opinion, the decision of the Supreme Court in the above mentioned case fully supports the contention which has been raised on behalf of the appellants. It is significant to note that in the Supreme Court case also no notice u/s 7 of the Act had been issued to Jafran Begum, the plaintiff of that case. She had neither appeared before the Deputy Custodian nor did she prefer an appeal against the order of the Deputy Custodian. Subsequently she filed an application before the Custodian claiming by virtue of a Will made in her favour by her husband that she became the owner of the property in question. The Custodian dismissed the application. Thereafter she made a representation to the Government of Pepsu and then filed a review application. The review application was dismissed. She then went in revision to the Deputy Custodian General but her revision was also dismissed. The Deputy Custodian General, however, suo motu reviewed the order holding that the respondent as the widow was entitled to one-eighth share under Muhamadan law and held that only seven-eighth share of the house in question became evacuee property and one-eighth share of the respondent was not evacuee property. Thereafter she filed the suit.

Mr. Ali Ahmad sought to distinguish that case on the ground that the plaintiff of that case filed a review and revision application before the authorities whereas in the instant case no petition for review or revision was filed. It is really difficult to appreciate the distinction which has been sought to be made by learned counsel. There was nothing to prevent the plaintiffs of the present case to file a review or revision petition. Indeed the husbands of two of the plaintiffs were examined as witnesses by the two objectors namely, Belal Shah and Khalil Shah, the vendors of the plaintiffs. The Supreme Court case cannot be distinguished from the instant case on the point that no notice was served on the plaintiffs. 10. Mr. AH Ahmad in course of his argument relied on the decisions in *Saira Bai v. S. S. Joshi*, AIR 1960 Madh Pra 260, *Allaudin Allabux Vs. M.B. Meher*, *Marium Bai v. Assistant Custodian of Evacuee Property*, Jetpur AIR 1952 Sau 1 and *Samsudin Jhaver v. Assistant Custodian, Evacuee Property, Rajkot* AIR 1953 Sau 73. As these cases were under Article 226 of the Constitution of India, the scope of Sections 28 and 46 of the Act was not fully considered therein. The decisions therefore, in those cases are of little assistance to learned counsel appearing for the respondents. Three decisions of this Court on the scope of Sections 28 and 46 of the Act were brought to our notice in course of the hearing of the present appeal. In the case of *Md. Zakiuddin Vs. District Assistant Custodian of Evacuee Property, Patna Collectorate and Others*, it was held by a Division Bench that in view of the specific bar laid down under Sections 28 and 46 of the Act, it would not be possible for Civil Court to assume jurisdiction to re-open the question about the title of an evacuee property after it had adjudicated upon to be so by a competent officer under the provisions of the Act or in any of the preceding

ordinances. It was observed in that case that the Civil Court has no jurisdiction to try any question of title in regard to the evacuee property, particularly in respect of persons who participated in the proceeding u/s 7 of the Act before the Assistant Custodian, Mr. Ali Ahmad riving on that observation submitted before us that impliedly it was held that the Civil Court has jurisdiction to try the question of title in respect of persons to whom no notice u/s 7 of the Act was served and who have not participated in the proceeding. As that point was not specifically decided in that case, it is not possible to accept the submission of learned counsel.

In the case of Arun Kumar Sinha and Others Vs. The Union of India (UOI) and Others, it was held that when there is complete absence of notice u/s 7 of the Act, the suit for declaration that the order of the Custodian is without iurisdiction is not barred by Section 46 of the Act. As a notice u/s 7 of the Act was served in the instant case on Bilquisnissa before the property in question was declared to be an evacuee property, it cannot be said in the instant case that there was complete absence of notice. In the case of Bibi Abeda Khatoon and Another Vs. Assistant Custodian of Evacuee Property and Another, it was held that a distinction is to be made between absolute lack of jurisdiction and irregular exercise of iurisdiction in spite of the provisions of Sections 28 and 46 of the Act and any order of the Custodian etc., passed without jurisdiction can be challenged in a Civil Court. On the question of notice under Section 7, it was held that the object of notice u/s 7 of the Act to an interested person is to give him or her an opportunity to be heard by the Assistant Custodian before the matter is finally decided. It was further observed that if a person without having received a notice appears before the Assistant Custodian the object is achieved and such a person cannot, therefore, be allowed to challenge in Civil Court the order to be without jurisdiction on the ground of want of service of notice. In that case also the point under consideration was not clearly decided.

11. In M.B. Namazi Vs. Deputy Custodian of Evacuee Property and Others, Rajamannar, C. J. has made the following observation:

"There is, however, one thing about which I am not quite clear. The Ordinance no doubt declares the order of the Custodian declaring any property to be evacuee property as final. That might be so in one sense, i.e., if any property belongs to a person who has been declared to be an evacuee within the meaning of the definition in the ordinance, then the custodian's order would be final. But. does the finality amount to an adjudication on title in case there is any dispute? Take for instance the case where a property is declared to be evacuee property on the assumption that it belongs to A who is an evacuee. Does it mean that some one else cannot say that the property really does not belong to the evacuee but belongs to himself who is not an evacuee? I am inclined to hold that the order of the Custodian or the notification u/s 7 of the ordinance is not final, in case of disputed title".

The Supreme Court in the case of Custodian of Evacuee Property Punjab and

Others Vs. Jafran Begum, , held that those observations could not be accepted as laying down the correct law.

12. In my considered opinion, in view of the decision of the Supreme Court in the case reported in Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, the contention raised by Mr. K. D. Chatterji appearing for the appellants must prevail. The order of the Assistant Custodian declaring the property in question as an evacuee property belonging to Bilquisnissa cannot be challenged on the ground that no notice was served upon the plaintiffs.

13. Mr. K. D. Chatterji, learned counsel appearing for the appellants, raised one more contention which has to be noticed. He submitted that the present suit is barred in view of the provisions of Sections 18 and 20 of the Evacuee Interest Separation Act, 1951. As I have already stated, the plaintiffs of the present case or some of them had filed claim petitions u/s 7 of the Evacuee Interest Separation Act, 1951, which were dismissed on the 12th of August, 1958, by the competent officer, Patna. Learned counsel appearing for the plaintiff respondents submitted before us that u/s 5 of the Evacuee Interest Separation Act a competent Officer has jurisdiction to decide any claim relating to the composite property and the order passed by him determining the interest of the evacuee and the claimants in the property in question is final and is not open to challenge in a Civil Court. According to the learned counsel, as no such question was decided in the instant case and the claim petitions of the plaintiffs or some of the plaintiffs were dismissed by the competent officer on the ground that no relief can be granted by him as it was not a case of composite property, the provisions of Sections 18 and 20 of the Evacuee Interest Separation Act, 1951, are not attracted and the present suit is not barred. There appears to be force in this contention. It is, however, not necessary to decide this point as I have taken the view that the suit of the plaintiffs is barred u/s 46(a) of the Act.

14. In the result, the appeal is allowed, the judgments and decrees of the Courts below are set aside and the suit of the plaintiffs is dismissed with costs throughout.

Kanhaiyaji, J.

15. I agree.