

(1968) 11 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 649 of 1959

Mauji Ram Ram Rikh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-11-1968

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 28, 4(1), 46, 7
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1969 P&H 365

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : R.S. Mittal, for the Appellant; J.C. Verma, General, for the Respondent

Judgement

1. The plaintiff purchased land measuring four Bighas and two Biswas for Rs. 700 from oen Munshi, son of Kura Pathan, The sale in their favour was completed on the 17 the of June, 1947, as alleged by them. The mutation was sanctioned in their favour on the 1st of December , 1948. This mutation was reviewed on the 21st of March, 1953, and the names of the plaintiffs were removed. The plaintiffs then filed an application u/s 7 of th Administration of Evacuee Property Act, 1950, which came up for hearing before the Assistant Custodian (Judicial), Rohtak on the 16th of June, 1956. The Assistant Custodian was of the opinion that he could not hear the application in view of a letter of the Additional Custodian, Jullundur, No. J/3/6967 dated 21st of May, 1956, as the property hadvested in the president of Indian Union. He, therefore, dismissed the application with the remark that the plaintiff could seek their remedy in a civil Court.

The plaintiffs then filed the suit , out of which the appeal has arisen, on the 18th of January, 1957, in which the prayer made was that the plaintiffs should be declared as full owners of the land in suit and that they were in rightufl possession thereof and the Union of India should be restrained by perputual

injunction from interfering with their possession. In the plaint it was stated that Munshi never migrated to Pakistan as a result of Communal disturbances in 1947 and remained in India, his property never became evacuee property and, therefore, never vested in the Custodian according to any law. It has been further stated that the cancellation of the mutation by order dated 21st of March, 1953 was without jurisdiction and that the sale had been completed before the 14th of August, 1947, and therefore, the land in suit could not be treated as evacuee property. The possession of the land was alleged to have been delivered to the plaintiffs in June 1947. The plaintiffs then pleaded that the land in suit had been wrongly declared as Muslim evacuee property and vested in the Union of India and for this reason Union of India was being made a party to the suit.

2. In the written statement filed by the Union of India all the averments in the plaint were denied and it was stated that the land in suit had been rightly declared as evacuee property and the civil Court had no jurisdiction.

3. Originally three issues were framed as under:-

1. Whether the plaintiff are the owners of the property in suit?
2. Whether a notice u/s 80, Civil P. C., has been validly given ?
3. Relief.

Later on two more issues were added as under and were numbered 3 and 4:---

3. Whether civil Court has no jurisdiction to entertain the suit?
 4. Whether the suit is properly valued for purposes of Court fees and jurisdiction?
- The issue with regard to relief was numbered as 5. Issues Nos. 1 and 2 and 4 were decided in favour of the plaintiffs and issue No. 3 was decided against the defendant. As a result of the findings, the learned trial Court decreed the suit of the plaintiffs on the 10th of December, 1957>

The Union of India filed an appeal against the decree in the Court of the senior Subordinate Judge, Rohtak, which was accepted on the 2nd of December, 1958. The learned Senior Subordinate Judge held that the civil Court had no jurisdiction to entertain the suit and that the plaintiffs purchased one-half of the land in suit from Munshi. Aggrieved from that decree, the plaintiffs have filed the appeal in this Court.

4. The first point argued in appeal is whether the civil Court had the jurisdiction to entertain and decide the suit. I have set out above the pleas of the plaintiffs raised in the plaint. They had definitely stated that the land in suit had been declared evacuee property though wrongly and had vested in the Union of India. They can be declared to be the owners of the land in suit and in rightful possession thereof only if it is decided that the land was not evacuee property and the transaction of sale in favour of the plaintiffs was valid. Section 46 of the Administration of Evacuee Property Act bars the jurisdiction of any civil or revenue Court to entertain a suit or adjudicate upon any question whether any

property or any right or interest in any property is or is not evacuee property . In view of this provision , the civil Court was not competent to entertain the present suit and the learned Senior Subordinate Judge rightly dismissed it on that ground . The matter has been recently considered by their Lordships of the Supreme Court in Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, , in which it was held as under:---

"Under Section 7 the custodian has to determine whether certain property is or is not to 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."

The following observations were quoted with approval from Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad, ---

"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 questions and to go in appeal and 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 or interest in any property is or is not evacuee property".

Later on, it was held by their Lordships as under:-

"Here u/s 7 the Custodian has to decide whether certain properties or is not evacuee property and his jurisdiction does not depend upon any collateral fact being decided as a condition precedent to his assuming jurisdiction . In these circumstances, Section 46 is a complete bar to the jurisdiction of Civil or revenue Courts in any matter which can be decided u/s 7 , This conclusion is reinforced by the provision contained in Section 4(1) of the Act which provides that the Act overrides other laws and would thus override section 9 of the CPC on a combined reading of 4 28, and 46."

5. In view of the pronouncement of their Lordships of the Supreme Court , I hold that the learned Senior Subordinate Judge rightly held that the suit was not competent in the civil Court. The result is that the appeal fails and is dismissed but without any order as to costs.

6. TVN/D. V. C.

7. Appeal dismissed.