

(1974) 06 MAD CK 0021
In the Madras High Court

T. Balakrishna Mehta

APPELLANT

Vs

M.S. Mahadeva Iyer and The Assistant Custodian of Evacuee
Property and Others

RESPONDENT

Date of Decision : 25-06-1974

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 46

Citation : (1975) 88 LW 262 : (1975) 1 MLJ 247

Hon'ble Judges : K. Veeraswami, C.J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The plaintiff appeals from a decree of Ganesan, J., dismissing his suit for a declaration of his title to the plaint-schedule property and for possession. There is a long history behind the dispute, but on the view we take, it is not necessary to cover the entire field. The suit property is of an extent of 4131 sq. ft. included in a larger extent of 9 grounds 665 sq. ft. in S. No. 145, Mount Road, Madras- Originally, it belonged to the Nawab of Arcot and from him it devolved on Nawab Muna-war Khan, who left two children, Nawah Ghulam Mohideen Khan, who died recently, and Azeem Unnissa Begum. In June, 1912 one Mohammad Abdul Khader Saheb purchased the property from Nawab Munawar Khan. The purchaser's son, in his turn, conveyed the property by way of sale to one Amathur Kareem Hamithunnissa Begum Saheba for a certain consideration. It is evident from this sale-deed that the property was purchased by the vendor from the Prince of Arcot, that the vendor was indebted to his wife in a certain sum towards mahr and that the sale was to discharge the mahr debt. The extent covered by the sale was 4131 sq. ft., the relative Collector's Certificate being No. 3035 and old Survey No. 447-448, Re-survey Nos. 32, 35 and 36. Both Mohammad Abdul Khader Saheb and his wife died leaving one son and four daughters. In September, 1919, this Court appointed Khan Saheb Mohammad and Mohammad Abdul Huz Saheb Ashiff Hussain Saheb as property guardians of the minors in a petition under the Guardians and Wards Act. In March, 1922, this Court directed that the property be sold by the property-

guardians in public auction. This public auction was in December, 1922. One T. Ranganatha Mehta the brother of the plaintiff, happened to be the purchaser. The consideration paid by Mehta was a sum of Rs. 9,100. The sale was confirmed by this Court and a sale certificate was issued later. In March, 1938, the Corporation of Madras took on lease this property for the purpose of a school. It appears, in 1947, there was a partition in the family of the purchaser in public auction, and at that, this property fell to the share of the appellant. He got back delivery of possession from the Corporation in March, 1961. In December, 1963, finding that the property was notified for sale under the Administration of Evacuee Property Act, the appellant sent representations to the Regional Settlement Commissioner, Bombay, claiming ownership. He was represented at Bombay by his counsel. In January, 1968; by which time the appellant had demolished the building on the site for the purpose of reconstruction, the purchaser from the Regional Settlement Commissioner, got into possession of the property. Thereafter, the appellant instituted the suit out of Which the present appeal arises.

2. With reference to the record of evidence, the learned trial Judge has found that sometime in 1954, the suit property had been included in the schedule of properties belonging to the evacuee, Azeem Unnissa Begum, we referred to earlier, who opted to migrate to Pakistan. The Custodian of Evacuee Property himself has not been impleaded as a defendant. The appellant sought declaration of his title and possession only as against the purchaser under the provisions of the Act.

3. The suit was resisted on various grounds which are reflected in the issue framed at the trial.

4. The learned Judge found title in the appellant, but, among other things, held that Sections 28 and 46 of the Administration of Evacuee Property Act, barred the suit and that the appellant was also barred by estoppel from claiming the property. This finding was rendered in view of the representation made by the appellant's counsel in December, 1963, at Bombay before the Regional Settlement Commissioner, in conjunction with counsel for the respondent, that the property now in question was not part of the evacuee property sold by the Regional Settlement Commissioner to the respondent and that the property purchased by the appellant in public auction in December, 1922, was some other property. It is not in dispute that the Regional Settlement Commissioner did make an order declaring the property now in question as evacuee property. Though notice had not been given by this Officer to the appellant, the latter, on his own, made representations to the Officer and also he was represented by counsel in the proceedings before him who made representations as just now stated. Naturally, the Regional Settlement Commissioner declared the property as evacuee property, there being no dispute before him about it.

5. The primary question in the appeal is whether the learned Judge was right in his view that the suit was barred under Sections 28 and 46 of the Administration of Evacuee Property Act. In our opinion he was right. Section 7 (1) provides that

where the Custodian is of opinion that any property is evacuee property within the meaning of the Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the interested persons, and after holding such enquiry into the matter as the circumstances of the case permit, pass an order declaring such property to be evacuee property. That has been done in this case and that order still stands. Though the appellant had no notice issued to him, inasmuch as he made representations and he was also represented by counsel before the officer under the Act, he must be deemed to be a party to the order. Section 28 gives a finality to such an order, inasmuch as it shall not be questioned in any Court by way of appeal or revision or in any original suit or execution proceedings.

6. Quite apart from this bar which applies to questioning the validity of the order passed by the Officer by means of a suit, Section 46, which is a provision more comprehensive and drastic, provides that save as otherwise expressly provided under the Act, no civil or revenue Court shall have jurisdiction 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. That is precisely the question in the suit as envisaged by the very first issue framed therein, read with the second issue. Section 4 (1) makes the provisions of the Act and the rules and the orders made thereunder overriding and they shall have effect notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. The scheme of the Act, therefore, appears to be to make the Act a self-contained code for dealing with evacuee property, and bar the jurisdiction of a civil Court, except as otherwise provided, either to question an order passed under the Act or to question whether a particular property is evacuee property or not. The terms of Sections 28 and 46 are so clear that we have no hesitation in agreeing with the learned trial Judge that the suit is barred.

7. The learned Counsel for the appellant pressed upon us to come to a different conclusion on the authority of *Ram Gopal Reddy Vs. Additional Custodian Evacuee Property, Hyderabad*, and *Hindustan Steel Ltd. Vs. Messrs Dilip Construction Company*. In our opinion, neither of these decisions helps the appellant in any way. All that was held in the first of them was that where a person claims derivative title to property admitted to be evacuee property, his remedy in respect of his claim is confined to the Act, and as such a claimant cannot have resort to a civil or revenue Court for adjudication that a particular property was or was not evacuee property. In the second case too, a similar view was taken. No doubt, observations are to be found that the bar would not apply to exceptional cases, but these observations have no significance in the instant case before us. In both the decisions, it is clearly laid down that Section 46 is a bar to a suit for adjudication of the question whether a particular property is or is not evacuee property.

8. Learned Counsel for the appellant made a point that the appellant had acquired a prescriptive title. In fact, Ganesan, J., also was of that view. But,

apart from the fact that we cannot go into the question whether the property now in question is evacuee property or not, the representations made by the appellant's counsel before the Regional Settlement Commissioner gave away the appellant's case as to the adverse character of his possession, his representations being that he did not dispute the property now in question as evacuee property and that his claim related to some other property.

9. On our view on the bar u/s 46, the appeal has to fail. But while the suit was pending on the original side of this Court, the appellant had moved also an application under Article 226 of the Constitution for a rule quashing a notification published in the Fort St. George Gazette, dated 15th July, 1953, under the Administration of Evacuee Property Act and the subsequent proceedings taken pursuant to the notification under the Evacuee Interest (Separation) Act, and also to quash the consequential proceedings as illegal. Ismail, J, had dismissed the petition on the ground of delay. But while we agree with him that the petition should be dismissed, we would base the decision on a different ground. We have mentioned earlier that in the 1963 proceedings before the Regional Settlement Commissioner at Bombay, the appellant had made representation through counsel that the appellant was not interested in the property in question, that it was evacuee property and that he was interested in some other property, a little removed from the property now in dispute in the suit. It appears that such representation was concurred in by not only counsel for the appellant but also the respondent's counsel before the Regional Settlement Commissioner. In such circumstances, we should take it that the appellant was a party to the order of the Settlement Commissioner and he cannot question the validity of the order either on the ground of violation of the principles of natural justice or that in making the representations, he had made a mistake. Certiorari is intended to remove errors of law apparent on the face of the record and not to set right the mistake committed by the parties or their counsel. The learned Counsel for the appellant suggested that because of the inclusion of the property now in question fraudulently in the larger property belonging to the evacuee Azeem Unnissa Begum and as fraud sets aside the most solemn transactions, we must interfere. We are not attracted by this argument and not persuaded to intervene.

10. Both the appeals are dismissed with costs in the original side appeal and none in the other.