

(1951) 04 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 39 of 1950

The Custodian Evacuee Property	Vs	APPELLANT
The Simla Banking and Industrial Co.		RESPONDENT

Date of Decision : 20-04-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 50, 51, 60
Independence Act, 1947 — Section 4
Punjab Colonization of Government Lands Act, 1912 — Section 13, 17, 18, 30, 4

Citation : (1951) 04 P&H CK 0035

Hon'ble Judges : Soni, J; Harnam Singh, J

Bench : Division Bench

Advocate : H.L. Sarin, for the Appellant; I.D. Duz, for the Respondent

Judgement

Harnam Singh, J.—The question raised in Letters Patent Appeal No. 39 of 1950 is whether in execution proceedings Civil Court have jurisdiction to appoint a Receiver for the realization of rents and profits of evacuee property for payment to the D.H.

2. In Civil Suit No. 18 of 1924 the trial Court passed a preliminary decree for Rs. 30,764/11/5 in favour of the Simla Banking and Industrial Company Ltd., hereinafter referred to as the company, against Khan Bahadur Khwaja Abdul Ahad Defendant on 9-7-1924, and on 3-3-1925, a final decree was passed. Khan Bahadur Abdul Ahad having died On 12-5-1928, a personal decree was passed against the legal representatives of the J.D. to the extent of the estate of the deceased in their possession.

3. In the execution proceedings arising out of the application for execution of the decree made on 1-3-1937, the Company applied on 29-3-1941, for the appointment of a Receiver. The application failed in the executing Court and the order of the executing Court was upheld by Din Mohammad, J., on 19-6-1944. From the judgment of Din Mohammad, J., passed on 11-7-1944, the company appealed under Clause 10, Letters Patent. On 17-4-1945, a D.B. of the H.C. of

Judicature at Lahore allowed the Letters Patent Appeal, set aside the judgment of the Single Judge and directed the executing Court to appoint a Receiver as prayed.

4. Proceedings for the appointment of a receiver were pending in the executing Court when the Punjab Province was divided u/s 4, Independence Act, 1947.

5. On 25-3-1949 the executing Court dismissed the application of the company for the appointment of the Receiver. In dismissing the application the executing Court said:

I feel that I cannot proceed with the execution application and the only remedy for the D.H. is as suggested by me that he should take a certificate of non-satisfaction from this Court and give it to the Custodian, Himachal Pradesh, and realise the money from him. Certainly it is a very hard case for the D.H. but I cannot help it if circumstances go against the D.H.

6. From the order passed by the executing Court on 25-3-1949, the Company came up in appeal in this Court and on 30-5-1950, Kapur, J., allowed the appeal with costs throughout.

7. In deciding "Simla Banking and Industrial Co., Ltd. v. Abdul Ghafoor" Ex. F.A. No. 135 of 1949 Kapur, J., said:

Under Section 51, CPC a Court has the power to enforce execution by five different methods and sub Clause (d) provides by appointment of a Receiver. Attachment and sale are dealt with in Sub-clause. (b). I cannot agree in spite of a judgment of the F.B. in " Surendra Prosad Singh and Another Vs. Tekait Singh and Others, that execution by appointment of a Receiver amounts to equitable attachment. Their Lordships of the P.C. in AIR 1925 176 (Privy Council) a case u/s 60, Code of Civil Procedure, where the right of maintenance was the subject-matter of dispute held that the proper remedy lies, in a fitting case, in the appointment of a Receiver for realising the rents and profits of the property paying out of the same a sufficient and adequate sum for the maintenance of the J.D., and his family, and applying the balance, if any, to the liquidation of the J.D.'s debt. In cases u/s 18, Punjab Colonization of Govt. Lands Act, 1912, it was held that a Receiver can be appointed u/s 51, Code of Civil Procedure, to liquidate a decree from the profits of the land by granting a lease, although the interest in the land of the J.D. cannot be attached or sold by reason of Section 18, Punjab Colonization of Govt. Lands Act (see Karam Das v. Ram Asra Mai AIR 1942 1 Lah. 126" and "Mohammad Sharif v. Mrs. Boughton" AIR 1938 Lah. 458. I am, therefore, of the opinion that (1) in spite of Section 17 of the Act execution u/s 51, CPC by means of appointment of a Receiver is allowable and (2) the appointment of a Receiver u/s 51(d), CPC is not equitable attachment and is, therefore, not barred by Section 17, of the Act. The submission that by virtue of Section 4 of the Act Section 51, Code of Civil Procedure, stand-repealed "pro tanto" is, in my opinion, devoid of any force.

Finding that there was no inconsistency between Section 17 of Act-XXXI (31) of 1950, hereinafter referred to as the Act, and Section 51(d), Code of Civil Procedure, Kapur J., ordered:

I must order that a Receiver be appointed for the realization of rents and profits of the two houses, mentioned in the application and on their realisation the monies should be paid to the D.H. The or Receiver will be appointed by the learned Senior Sub-ordinate J. and I have no doubt that any order passed by the learned J. or any lawful direction given will be obeyed by the Respondent.

8. As stated above the question raised in this appeal is whether in execution proceedings Civil Court have jurisdiction to appoint a receiver for the realization of rents and profits of evacuee property.

9. Section 4 of the Act provides:

4 "Act to override other laws". The provisions of this Act and of the rules and orders made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument; having effect by virtue of any such law.

10. The question that then arises for decision is whether the provision of Section 51 and Order XL, CPC are inconsistent with the provisions of the Act.

11. Now, it is settled law that the conditions required for a repeal by implication are stringent. The rule laid down in "Kutner" v. "Phillips" 1891 2 QB 267 was:

A repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provision of an earlier one that the two cannot stand together. Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied; or unless there is a necessary inconsistency in the two Acts standing together.

12. In "Clyde Engineering Co. Ltd." v. "Cowburn (37) Com. W.L.R. 466 Higgins, J. said:

When is a law "inconsistent" with another law? Etymologically, I presume that things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power of provision in the other.

13. In "32 Com. W.L.R. 466" the opinion of the majority (Knock, C.J. and Gavan Duffy, J., with the concurrence of Isaac, J.) was:

Two enactments may be "inconsistent" although obedience to each of them may be possible without disobeying the other. Statutes may do more than impose duties they may, for instance, confer rights; and one statute is inconsistent with another when it takes away a right conferred by that other even though the right

be one which might be waived or abandoned without disobeying the statute which conferred it.

14. From what I have said it appears that the test of inconsistency is whether a proposed act is consistent with obedience to directions contained in two statutes.

15. Applying this test of inconsistency to the present case I have no doubt that the provisions of Sections 13 and 30 of the Act are inconsistent with the provisions of Section 51 and Order XL, Code of Civil Procedure.

16. In the present case a Receiver has been appointed for the realization of rents and profits of the two houses mentioned in the application and on their realization the monies are to be paid to the decree-holder. Section 13 of the Act provides:

(13) (1) Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by the evacuees shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with Sub-section (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person.

Section 30 enacts:

Any person who pays to or receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

17. Clearly, the provisions of Section 51 and Order XL CPC are not consistent with Sections 13 and 30 of the Act for the two laws cannot be obeyed at the same¹ time. In this view of the matter it is necessary to examine any inconsistency between Section 17, of the Act and Section 51 and Order XL Code of Civil Procedure.

18. Finding as I do that the provisions of Sections 13 and 30 of the Act are inconsistent with the provisions of Section 50 and Order XL CPC I allow this appeal, set aside the order directing the appointment] of the Receiver for the realization of rents and profits of the houses in question and the payment of the monies to the D.H. The Custodian will have his costs in proceedings in this Court as well as in the Court below.

Soni J.

19. I agree.