

(1991) 11 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 943 of 1979

Union of India and anr.

APPELLANT

Vs

Ram Narain (dead) By LRs.

RESPONDENT

Date of Decision : 27-11-1991

Acts Referred:

Citation : (1992) 2 LJR 468 : (1992) PLJ 232 : (1992) 2 RRR 51

Hon'ble Judges : B.C.Varma;CJ., J

Advocate : A.K. Jaiswal, for A.G. Haryana., Advocates for appearing Parties

Judgement

B.C. Varma, C.J.

1. This second appeal has been filed by the defendant Union of India and the State of Haryana against the judgment and decree passed by the Additional District Judge, Ambala, who accepted the appeal against the judgment and decree of the trial Court which returned the plaint to the plaintiffrespondent for presentation to the proper Court.

2. The property, in dispute, originally belonged to one Ram Narain who vide sale deed dated December 10, 1946, transferred it in favour of Juman. Juman, in turn, on the same day, agreed to reconve that property to Ram Narain, on payment of the consideration named therein, that is, Rs. 2,000/-. Ram Narain, continued in possession. Juman is then said to have migrated to Pakistan and the property, in question, was declared as evacuee. The appellant attempted to sell that, property. Proceedings were, however, taken before the Tehsildar and thereafter before the Settlement Commissioner who held the property to be evacuee property and rejected the plaintiff respondent's claim to that property. Ram Narain then filed a suit arraying the Union of India and the State of Haryana as defendants, questioning the decision of the Tehsildar and the Settlement Commissioner and claimed declaration that he was the owner in possession of the property, in question. The suit was initially decreed in Ram Narain's favour. However, the judgment and decree were set aside in appeal. The plaintiff brought the present suit for possession by redemption or, in the alternative, for the

specific performance of the agreement dated December 10, 1946, alleging that he was ready and willing to make payment of Rs. 2,000/ and get the property reconveyed. That suit was resisted on different pleas inter alia that the Civil Court had no jurisdiction to try the suit, the property vested in the Custodian and the alleged mortgage was denied. The suit was also said to be barred in term of Order III rule 2, Code of Civil Procedure. As stated above, the trial Court held that it had no jurisdiction to entertain the suit, but the lower appellate Court took a different view. In the opinion of the lower appellate Court, the plaintiffrespondent had proved that he was entitled to specific performance of the agreement and get the property reconveyed.

3. The learned counsel for the appellants argued only on the question of the jurisdiction of the civil Court to entertain the suit for specific performance. In my opinion, his contention has to be rejected in view of the decision of the Supreme Court in Custodian Evacuee property, Punjab v. Jafran Begum, AIR 1968 Supreme Court 169. The ambit of section 46, which is said to create a bar to the civil court's jurisdiction to deal with any matter which can be decided under Section 7 of the Administration of Evacuee Property Act, 1950, has been explained. The clear dictum of the Supreme Court in that regard is that Section 40 bars jurisdiction of the civil and revenue Courts to entertain and adjudicate upon any question whether any property or any right or interest in any property, is or is not evacuee property. The decision in that regard made by the concerned authorities under the said Act is final. This decision was applied and followed by this Court in Samdu v. Subhan Khan, 1972 PLR 435, stating in clear terms that section 46 of the aforesaid Act bars the entertainment of the adjudication upon (by the civil Courts) two questions, namely (i) Whether a particular person has or has not become an evacuee, and (ii) Whether the property, in dispute, belongs to such a person. It is clear that in the present case, none of the said two questions arises. Admittedly, for the purpose of the suit, the property is evacuee, but the question is Whether the plaintiffrespondents's right to obtain reconveyance could be enforced ? The learned counsel for the appellants did not address the Court with any conviction on this aspect of the matter. The lower appellate Court has found the agreement of reconveyance BCV proved was not disputed that the respondent, was ready and willing to perform his part of the contract. In any case, the evidence on the record does lead to such a conclusion. I hold that the respondent was so ready and willing. Neither in the pleadings nor at the bar any circumstance was pointed out as might create any impediment in awarding the plaintiffrespondent a decree for specific performance. I do not find anything on the record that the parties were at issue that such a right under the deed of reconveyance could not be enforced against the appellants under any law for the time being in force. 1, therefore, refrain from considering that question in the present case.

4. The result of the aforesaid discussion is that the plaintiffrespondent has rightly been held entitled to the decree for specific performance and it has been rightly held that the civil court had the jurisdiction to try the suit of the present nature.

The appeal, therefore, fails and is consequently dismissed with costs. Costs assessed at Rs. 200/.