

(1972) 01 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 695 of 1961

Vishan Dass and Another

APPELLANT

Vs

Jaisi Bai Ude Bhan

RESPONDENT

Date of Decision : 18-01-1972

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 36
Displaced Persons (Debts Adjustment) Act, 1951 — Section 32

Citation : AIR 1972 P&H 310

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : A.L. Bahri, for the Appellant; S.L. Puri and M. Puri, for the Respondent

Judgement

1. On 13th July, 1946, Shrimati Jaisi Bai effected two mortgages with possession of the land that she owned in village Wanbachra, District Mianwali, now in West Pakistan. The first one was with regard to agricultural land, measuring 62 Kanals 17 Marlas, and it was in favour of Vishan Dass and his brother Ram Lal for Rs.5,500/-. The other was with respect to 55 Kanals 5 Marlas in favour of Khem Chand and his brother Amir Chand for Rs.5,000/-. It may be stated that all the mortgagees in both the cases were brothers. The mutations regarding these mortgages were sanctioned, but the relevant entries with regard to them and not, however, been recorded in the Jamabandis, because of the partition of the country that took place in 1947. On migration to India, Jaisi Bai was allotted some land in village Dulera Kalan in District Gurgaon. She got possession of that land and a Sanad was also granted to her regarding it on 4th October, 1955. In July, 1959, two suits were brought by the mortgagees--the first one (Suit No. 437 of 1959) was by Vishan Dass and Ram Lal; and the other (Suit No. 438 of 1959) by Khem Chand and Amir Chand--for joint possession of 62/1609th and 55/1609th shares respectively, against Jaisi Bai. These suits were brought on the basis of the mortgages effected by her in Pakistan, as mentioned above. It was alleged that the mutations in respect of these mortgages had been effected, but

the necessary relevant entries were not made in the Jamabandi papers.

2. The suits were contested by the mortgagor, Jaisi Bai. She denied that she had effected any mortgages and in any case, according to her, they were without consideration. It was also alleged by her that the plaintiffs were not entitled to the land allotted to her in India in lieu of the alleged mortgages.

3. Both these suits were consolidated in the Court below and evidence was recorded in the first one, namely, suit No. 437 of 1959.

4. The trial Court decreed these suits, holding that the mortgage-deeds had been executed by the defendant in favour of the plaintiffs and the said mortgages were for consideration. It was also held that the defendant had been allotted land in village Dulera Kalan in lieu of the land left by her in Pakistan and the possession of the said land was also given to her. The plaintiffs were, consequently, entitled to joint possession of 62/1609th and 55/1609 the share in that land, as claimed by them.

5. Dissatisfied with this decision, Jaisi Bai went in appeal before the learned Senior Subordinate Judge, Gurgaon. Before him, it was conceded by the counsel appearing for her that the mortgages had been effected by Jaisi Bai for consideration in favour of the plaintiffs. But an argument was raised that the suits were not competent, inasmuch as there were two other Acts, namely, the Displaced Persons (Debt Adjustment) Act 70 of 1951 and the Displaced Persons (Compensation and Rehabilitation) Act, 1954, under which the plaintiffs could seek their remedies and they could not file suits for this relief in Civil Courts. This contention prevailed with the learned Judge and he accepted the appeals and dismissed the suits. Against that decision, two appeals have been filed by the plaintiffs and this judgment will dispose both of them.

6. The only question for determination is whether the plaintiffs could file suits of the present nature in a Civil Court. It is undisputed that if a defendant raises an objection that a particular civil suit is barred because of the provisions of a certain Act, he has to conclusively show that the said matter is within the sole jurisdiction of the Tribunal set up by that Act and also that the jurisdiction of the Civil Court is specifically barred under the particular Act. Otherwise, it is plain that all civil matters have to be adjudicated upon and decided by Civil Courts.

7. The learned Senior Subordinate Judge relied on Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, in support of the finding that the Civil Court had no jurisdiction to entertain the suit. That section reads:

"Bar of jurisdiction--Save as otherwise provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

8. A bare reading of this section would show that if any matter has to be decided by the Central Government or any officer or authority appointed under the Act, then the Civil Court will not have any jurisdiction to entertain a suit with regard to that matter. My attention was not invited to any provision in the Displaced Persons (Compensation and Rehabilitation) Act, under which the plaintiffs, in the instant case, could have their remedy. As I have already mentioned, the plaintiffs' case was that Jaisi Bai had mortgaged her land with possession in their favour in Pakistan, but their mortgages had not been shown in the revenue papers of that place and, therefore, when the land was allotted to her in India in lieu of the land left by her in Pakistan, their names were not mentioned by the authorities as mortgagees qua that land. They wanted the Civil Court to determine in the first instance as to whether or not she had actually mortgaged for consideration her land in Pakistan in their favour and then give them relief with respect to the land that was allotted to her in India in lieu of the land left by her in Pakistan. The plaintiffs could not get this relief by making an application under any section of the Displaced Persons (Compensation and Rehabilitation) Act. There is no doubt that if they could do so under that Act, then the jurisdiction of the Civil Courts to try that matter would have been barred u/s 36 of the Act.

9. The learned Judge then referred to the provisions of Sections 16 and 32 of the Displaced Persons (Debt Adjustment) Act 70 of 1951. Section 16 says that where a debt incurred by a displaced persons is secured by a mortgage, charge or lien on the immovable property belonging to him in West Pakistan, the Tribunal may, for the purpose of any proceeding under that Act, require the creditor to elect to retain the security or be treated as an unsecured creditor. The section goes on to say that if the creditor elects to retain the security, he may make an application to the Tribunal in that behalf and then the procedure is given as to how that application will be dealt with. Section 32 deals with the scaling down of debts.

10. It would be seen that strictly speaking, these sections will have no application to the instant case. But even if it could be argued that the plaintiffs could make an application to the Tribunal, that Act nowhere lays down that it is the only remedy available to them and the Civil Court is barred from entertaining a suit of the present nature. As I have already said, in order to oust the jurisdiction of the Civil Courts from entertaining the suits, two things had to be established by the defendant. The first was that a particular Tribunal was empowered to give the relief claimed to the plaintiffs and secondly, that in that very Act, under which the said Tribunal had been constituted, it had been clearly laid down that the aggrieved person could not file a civil suit for that purpose. My attention was not invited to any provision of the Displaced Persons (Debt Adjustment) Act, in which it was stated that the plaintiffs could not institute a suit for the relief claimed. Therefore, it is clear that the jurisdiction of the Civil Courts for entertaining the present suits is not barred under the provisions of either of these two Acts and the learned Senior Subordinate Judge was, therefore, wrong in observing that the Civil Courts could not try them.

11. Counsel for the respondent then submitted that a reading of the judgment of the learned Senior Subordinate Judge would show that according to him, even if the suits could be entertained by a Civil Court, he was of the view that such a relief could not be granted by the Civil Court and the suits were, therefore, liable to be dismissed on that ground as well. As I read the judgment, it is not quite clear as to whether what the learned counsel contends is correct or not. The learned Judge has specifically held that the plaintiffs could seek their remedies under the two Acts, mentioned above, but he has nowhere categorically stated that even if the suits lay in the Civil Court, it could not give them the relief prayed for.

12. In view of what I have said above, I would accept the appeal, set aside the judgment of the learned Senior Subordinate Judge and remit the case to him for rededcision after giving a firm finding on issue No. 3. It is needless to say that the other two issues had already been decided in favour of the plaintiffs and the findings thereon were not challenged before me. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court as well. Parties have been directed to appear before this lower Appellate Court on 14th February, 1972, for further proceedings in the case.

13. Appeal allowed.