

Ram Gopal Reddy

Vs

Additional Custodian Evacuee Property, Hyderabad

Civil Appeal No. 885 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, V. Ramaswami - I, R. Satyanarayan Raju JJ)

06.01.1966

JUDGMENT

WANCHOO, J. -

The only question raised in this appeal on a certificate granted by the Andhra Pradesh High Court is whether the suit brought by the appellant is barred under s. 46 of the Administration of Evacuee Property Act, No. 31 of 1950, (hereinafter referred to as the Act). The facts are not in dispute and may be briefly narrated.

On November 15, 1946, the appellant claimed to have purchased certain patta lands from one Abdul Aziz Khan and paid him Rs. 6,127/8/- in Osmania Sicca. The appellant got possession of the land and thereafter in June 1949 Abdul Aziz Khan applied in the Tahsil office for the transfer of the patta in the name of the appellant. Before, however, any transfer was made, Abdul Aziz Khan seemed to have migrated to Pakistan. Consequently, the Deputy Custodian took steps to declare Abdul Aziz Khan an evacuee. In that connection the appellant received notice from the Deputy Custodian in December 1950 under s. 7 of the Act asking him to show cause why the land should not be declared evacuee property. Though the appellant's case was that he engaged a counsel to appear on his behalf before the Deputy Custodian, no one seems to have appeared on his behalf, and in consequence, the Deputy Custodian declared the property to be evacuee property. Thereafter the appellant was given a notice requiring him to surrender possession of the land to the Tahsildar. The appellant then made representation before the Deputy Custodian that he had purchased the property from Abdul Aziz Khan in 1946 and was the owner thereof from before the Evacuee Property Law came into force. The Deputy Custodian called upon him to produce evidence and thereafter recommended to the Custodian that the property might be declared not to be evacuee property. The Custodian did not accept this recommendation on the ground that there was no registered sale deed duly executed by Abdul Aziz Khan in favour of the appellant and even up to the time when Abdul Aziz Khan became an evacuee. It may be that if Abdul Aziz Khan had tried to get back the land and no transfer of property could therefore be said to have taken place in 1946, and ordered that the declaration of the property as evacuee property should stand and further said that if the appellant was aggrieved by this decision he could obtain a declaration of his rights from a competent court. In consequence, the appellant filed the suit out of which the present appeal has arisen in the court of the Subordinate Judge, Nizamabad and prayed that a declaration be made that he was the owner of the property and in possession thereof and that the Custodian be ordered to execute and register a sale deed thereof in his favour. The suit was resisted by the Custodian and the main contention raised on his behalf was that the suit was barred under section 46 of the Act. The Subordinate Judge however held that the appellant was entitled to the benefit of section 53-A of the Transfer of Property Act (No. 4 of 1882)

and that the civil court had jurisdiction inasmuch as the sale had taken place before 1947.

The Custodian then went in appeal to the High Court, and the only question raised there was that the suit was barred under section 46 of the Act. The High Court reversed the decision of the Subordinate Judge and held that the appellant had been given notice under section 7 of the Act in December 1950 and did not appear before the Deputy Custodian with the result that the property was declared as evacuee property. The High Court further held that after this declaration the appellant's remedy was to proceed by way of appeal or revision under the Act and that a suit was barred in view of section 46 thereof. The appellant's contention that as he was a third party he was entitled to maintain the suit was negatived by the High Court. In consequence the High Court dismissed the suit but directed the parties to bear their own costs. The appellant then obtained a certificate from the High Court to appeal to this Court, and that is how the matter has come up before us.

We are of opinion that there is no force in this appeal. It is unnecessary to consider the cases cited at the bar on behalf of the appellant for whatever may be the position of law where the title of the evacuee himself is in dispute, as to which we express no opinion, there can be no doubt that where the property admittedly belonged to the evacuee and the person filing the suit claims to be a transferee from the evacuee, the suit would certainly be barred in view of section 46 of the Act. Section 46 inter alia lays down that "save as otherwise expressly provided in this 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." It is admitted that the appellant had received notice from the Deputy Custodian under section 7(1) of the Act but had neglected to appear before him and it was in those circumstances that the Deputy Custodian declared the property to be evacuee property. That order of the Deputy Custodian could be taken in appeal under section 24 by the appellant to the authorities provided under the Act, and if necessary the appellant could also go in revision to the Custodian General under section 27. The scheme of the Act clearly is that where the property admittedly belongs to the evacuee any person claiming the property or any interest or right therein has on receipt of a notice under section 7(1) to appear before the authorities entitled to deal with the matter under the Act. Any person aggrieved by an order of such an authority made under section 7 has the right to appeal under section 24 and if necessary to go in revision under section 27. 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 question and to go in appeal and in 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 to or interest in any property is or is not evacuee property. Where therefore the property or any right to or interest in any property undoubtedly belonged to the evacuee and any transferee from the evacuee claims the property or any right to or interest therein he has to avail of the remedies provided under the Act. If he fails to do so he cannot file a suit in the civil or revenue court to have the question whether any property or any right to or any interest therein is or is not evacuee property decided in view of the clear provision of section 46 (a) of the Act. The fact that the Custodian in his order said that the appellant could go and establish his right in a competent court is of no assistance to the appellant, for if the law bars the jurisdiction of civil and revenue courts the Custodian's observation that the party before him could go to a competent court to establish his right will not confer jurisdiction on a civil or revenue court. Nor can it be said on the facts found in the present case that the appellant had become the owner of the property before 1947, for, admittedly the property was worth more than Rs. 100 and it is not disputed that a registered sale deed was necessary to pass title from Abdul Aziz Khan to the

appellant. No registered sale deed was executed in this case and therefore the property did not pass from Abdul Aziz Khan to the appellant even up to the time when Abdul Aziz Khan became an evacuee. It may be that if Abdul Aziz Khan had tried to get back the property, section 53-A of the Transfer of Property Act would come to the aid of the appellant in defence. But the present suit has been filed to establish the right of the appellant as owner of the property and in such a suit the appellant cannot take the benefit of section 53-A of the Transfer of Property Act. We, therefore, hold in agreement with the High Court that the suit is clearly barred under section 46 (a) of the Act.

The appeal therefore fails and is hereby dismissed. In the circumstances we pass no order as to costs.

Appeal dismissed.

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