

SUPREME COURT OF INDIA

Deputy Custodian General Evacuee Property

Vs.

Daulat Ram

C.A.No.1460 of 1967

(A. N. Grover, K. K. Mathew and A. K. Mukherjea, JJ.)

22.12.1972

JUDGEMENT

GROVER, J.:-

1. This is an appeal by certificate from a judgment of the Punjab and Haryana High Court.

2. The facts may be briefly stated. Late Nadar Chand the father of respondents obtained a money decree for Rs. 16,771/- against one Mokham Din in the year 1935. During the course of execution proceedings the decree was forwarded to the Collector for execution under S. 68 of the Code of Civil Procedure. The Collector made an order on September 30, 1940 directing that land in two villages belonging to the judgment debtor be leased out to the decree holder for 20 years with effect from Kharif 1941. The Judgment debtor had lands in other villages also but the entire land in these two villages was leased out to the decree holder. It appears that the decree holder took execution proceedings in 1941, 1943 and 1948 but on each occasion the proceedings were consigned to the record room. On the partition of the country the judgment debtor who was a Muslim became an evacuee and his land vested in the Custodian of Evacuee Property under the Evacuee Laws then in

force. On June 8, 1949 the Assistant Custodian made an order that possession of the property which had been leased out should be given to the decree holder in satisfaction of the decree on the condition that on the expiry of the term of the lease his claim would be deemed to have been satisfied. On October 2, 1949 the Additional Custodian confirmed that order saying that possession might be delivered to the decree holder. As mentioned in the judgment of the High Court the possession was not delivered till March 1951. The possession which was given was of much less area than the area covered by the lease. The decree holder was also dispossessed from certain land as the same had been allotted to displaced persons. On December 29, 1960 the decree holder moved the Additional Custodian, Jullundur, complaining that possession of the remaining area had not been given. This application was rejected by the Additional Custodian on February 7, 1961. The matter was taken in revision to the Deputy Custodian General of Evacuee Property. Certain orders including one of remand were made which need not be mentioned. Finally the Deputy Custodian General dismissed the revision application. He held inter alia that the execution application of the decree holder was barred under the provisions of Article 182 of the Indian Limitation Act and the decree had become inexecutable. His order was challenged under Article 226 of the Constitution before the High Court. A learned single Judge dismissed the petition. The appeal under clause 10 of the Letters Patent filed by the present appellants, however, succeeded. The Division Bench, after considering all the relevant provisions, quashed the order of the Deputy Custodian General on the ground that the significance of the various legal provisions had not been fully appreciated by the Custodian Department or by the learned single Judge. The High Court expressed the view that the decision of the Deputy Custodian General on the question of limitation was altogether erroneous.

3. Learned counsel for the Deputy Custodian General who is the appellant before us has not sought to challenge the decision of the High Court on the point on which it was given. He has sought so raise a question which was never agitated before the High Court. The contention now sought to be raised is that assuming that the Division Bench took the right view on the question of limitation the period for which the land had been farmed out by the Collector by his order made in September 1940 had already expired. That period of 20 years could not, be extended. The effect of quashing the order of the Deputy Custodian General dated October 31, 1964 would be to restore the order of the Additional Custodian dated October 2, 1949. That would lead to various complications. One of such complications will arise out of the claim of the appellants that they are entitled to remain in possession beyond the period of the lease because possession was in fact not given of the entire land and it was only of a part of that land that possession had been given and that also at a date much later than the order of the Collector. Indisputably no such argument was raised before the High Court and following our well settled practice we decline to entertain any such contention raised for the first time here.

4. As no other point has been agitated the appeal fails and it is dismissed with costs.

Appeal dismissed.