

PUNJAB AND HARYANA HIGH COURT

Duni Chand Ram Dass

Vs

Ibrahim

(Kapur , J.)

21.04.1954

JUDGMENT

Kapur, J.

1. This is an appeal brought by the decree-holders against an order passed by the executing Court dated 22-10-1952 holding that as the property sought to be sold in execution of the decree was evacuee property, execution could not proceed under Section 17 of the Evacuee Property Act, 1950.

2. It is necessary in this case to give the facts in some detail. On 19-11-1947 the decree-holders got a decree for rupees ten thousand odd against Ibrahim. The decree-holders applied for execution of their decree on the 2nd December 1947, Mr. Bhatnagar, Subordinate Judge 1st Class held that because of the Administration of Evacuee Property Act the execution could not proceed and he consigned it to the record room. The decree-holders came up in appeal to this Court and on the 13th June 1949 the appeal was dismissed 'in limine', but it was observed by the Bench:

"The dismissal of this appeal shall not prejudice the appellant's right to move the executing Court by means of an application for vacation of the order appealed from and on such application being made if the appellant can by satisfactory evidence prove that the judgment-debtor is in fact not an evacuee and that the property in question has not vested in the Custodian the executing Court shall of course proceed to execute the decree."

Thus it was held by this Court that it was open to the decree-holders to prove that the judgment-debtor was not an evacuee or that the property in question did not vest in the Custodian.

3. The decree-holders made an application to the Assistant Custodian, Evacuee Property, Dharamsala, for registration, of their claim of the decretal amount. The Assistant Custodian held that the property left by the judgment-debtor had wrongly been taken to be evacuee property by

the Custodian staff and that the judgment-debtor was in Kashmir and had been in communication with the decree-holders and had even borrowed some money from them and the property could not therefore be treated as evacuee property and the civil Courts at Kullu "should be able to satisfy the claimants' decree by proceeding against the judgment-debtor's above property". He referred the matter to the Assistant Custodian (Judicial) who was also the Senior Subordinate Judge, Dharamsala. This authority on 6-11-1931 held that Ibrahim was not an evacuee and the property held by him at Kullu should not have been held as evacuee property and that "it should now be released from the operation of the Evacuee Property Act on the ground that it is not evacuee property."

4. On 10-9-1951 the present application for execution was filed. The Custodian on 22-12-1952 pleaded (1) that the property in dispute was evacuee property and was not therefore liable in execution to attachment and sale, and (2) that in view of the judgment of the High Court the execution could not proceed. The learned executing Court without recording any evidence held that civil Courts had no jurisdiction to adjudicate upon the question whether the property is evacuee property or not under Section 43 of the Administration of Evacuee Property Act. Probably the learned Judge was referring to Section 46 of the Act, and he dismissed the execution application and the decree-holders have come up in appeal to this Court.

5. It is submitted on behalf of the decree-holders that Ibrahim was not an evacuee either under the Act of 1947 or under the Act of 1950. Under the former Act a person was defined to be evacuee under Section 2(b) if he left the territories of India for a place outside India since the 1st day of March 1947 or he could not personally occupy or supervise his property or.... and evacuee property was defined in Sub-section (c) to include all property in which an evacuee had any right or interest, and under Section 4 evacuee property vested in the Custodian.

6. Under Section 8 of the Act of 1950 evacuee property vested in the Custodian if it had been declared to be such under Section 7 of that Act or before the commencement of the Act of 1950 it had vested as evacuee property in the Custodian. It is not necessary to go into the rest of this section. The orders of Mr. Jai Chand and of the Senior Subordinate Judge to which a reference has already been made show quite clearly that Ibrahim was in Gandarbal which is not outside India as Kashmir had acceded to India in 1947 and Kashmir was in law a part of Indian territory and even under the Constitution of 1950 Jammu and Kashmir is a 'B' Class State and therefore forms and formed a part of the territories of India and therefore it cannot be said that Ibrahim had left India. The other question is whether he could manage the property and that the property had vested in and had been taken possession of by the Custodian. There is no such plea taken by the Custodian that the property had vested in the Custodian and was being administered by him; therefore the Custodian must be taken to be bound by the decisions taken by his own predecessors. The Assistant Custodian at Dharamsala and the Assistant Custodian Judicial at Dharamsala had both held that the property was not evacuee property. There is a letter of the Registrar of the Custodian General which has been placed before me as being in conflict with the

order of the officers above mentioned. I am unable to read it as such as the Registrar is not the Custodian-General and the letter does not indicate any contrary adjudication of the question.

7. The only plea taken in this case by the Custodian was that the property in dispute was evacuee property. He did not base his objection on any finding arrived at by a competent officer of his department that the property was evacuee property and had been treated as such which the Custodian was bound to plead as was held in a judgment by Weston C. J. in -- '*Custodian Evacuee Property v. Gujar Singh*¹',

8. Mr. Anand Mohan Suri has then referred me to a Division Bench judgment in -- '*Firm Amin Chand Rakam Chand v. Mt. Noshah Begum*²', in which Section 8 of the Act of 1950 was referred to, but there the finding was that the property had been abandoned. In the present case there is no such pleading and naturally no such finding.

9. I am of the opinion that the learned Judge was in error in refusing to proceed with the execution as the property was, according to the officer of the Custodian Department themselves, not evacuee property.

10. I would therefore allow this appeal, set aside the order of the executing Court and remand the case for proceeding in accordance with law. There will be no order as to costs in this case.

Cases Referred.

1AIR 1953 Punj 161 (A)

2AIR 1954 Punj 235 (B)