

## **PUNJAB AND HARYANA HIGH COURT**

Parkash Chand

Vs

Custodian, Evacuee Property

(D Falshaw, S.S Dulat, J.)

31.07.1958

### **JUDGMENT**

**S.S. Dulat, J.**

1. In June 1950 Parkash Chand and others filed two suits in the Court of a Subordinate Judge at Ferozepore--one against the Custodian of Evacuee Property and Mal Singh, and the other against the Custodian Evacuee Property and Tahl Singh. Both suits concerned landed property and the allegations an both were somewhat similar. In the suit against Tahl Singh and the Custodian it was alleged that the land in suit had belonged to one Sharajuddin who had in July 1947 sold it to plaintiff No. 5 and Babu Ram, the father of the plaintiffs 1 to 4; that Sharajuddin had died in India and never gone away to Pakistan; and that the plaintiffs had entered into possession but subsequently the Custodian of Evacuee Property had allotted the land to Tahl Singh defendant who had taken possession. The plaintiffs' claim in the suit thus was for the possession of the land on the ground that it was their property and their predecessor-in-title had never become an evacuee. In the second suit against Mal Singh and the Custodian it was alleged that the property had belonged to two Muslims -- Himmat and Mst. Viro -- and Himmat had mortgaged his share with Mal Singh on the 30th of July, 1947 and subsequently he as well as Mst. Viro sold their respective shares to plaintiff No. 5 and Babu Ram, the father of plaintiffs Nos. 1 to 4 that the Muslim owners had died in India and never gone to Pakistan; and that the Custodian of Evacuee Property had therefore no right to interfere with the property. This particular suit was for a declaration of title in favour of the plaintiffs and for an injunction to restrain the Custodian of Evacuee Property from interfering with it. Both the suits were resisted on behalf of the Custodian mainly on the ground that the civil Court had no jurisdiction to go into the question whether the property in each case was or was not evacuee property or into the question whether the original owners of the property had or had not become evacuees. The trial Court did not accept this objection and went into the evidence and held in each case that the original owners of the property had died in India and not migrated to Pakistan and that the plaintiffs had acquired valid title to the property which was not evacuee property. In the result the two suits were decreed. The Custodian of Evacuee Property appealed against the decrees and the learned Senior Subordinate

Judge, Ferozepore, who heard the appeals, came to the conclusion that the Civil Courts were debarred from deciding the question whether the disputed property in each case was or was not evacuee property, and on this view the learned Judge allowed the appeals and dismissed both the suits with costs throughout. Two second appeals were thereupon filed in this Court and were placed before a Single Judge for disposal but the learned Single Judge formed the opinion that the questions raised in, the appeals required consideration by a larger Bench, and the two appeals -- Regular Second Appeals Nos. 549 and 550 of 1951 -- were referred to this Bench.

2. The short question arising in these appeals is whether on the facts of these cases it is open to the Civil Courts to determine whether the disputed property in each case is or is not evacuee property which, of course, turns on the question whether the Muslim owners of the property in each case had or had not become evacuees. Section 49 of the Administration of Evacuee Property Act, 1950, runs thus : --

"Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction --

- (a) 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; or
- (b) \*\*
- (c) to question the legality of any action taken by the Custodian under this Act; or
- (d) in respect of any matter which the Custodian-General or the Custodian is empowered by at under this Act to determine."

The mandate contained in this provision of law is clear enough, but Mr. Mahajan in support of the appeals contends that there is judicial authority in support of his view that the Civil Courts' jurisdiction is not completely ousted in such matters. Reference is first made to a decision of this Court in *Custodian Evacuee Property, Punjab v. Gujar Singh*<sup>1</sup>, The judgment, however, shows that Weston, C. J., who decided that case, was clearly of the opinion that a Civil Court was debarred from determining whether a particular property was or was not evacuee property, and the only observation in the judgment seemingly in favour of Mr. Mahajan's argument is that although the Civil Court is thus debarred it can satisfy itself whether the property has been determined to be evacuee property and the Court is not precluded from proceeding with other matters pending such determination by the Custodian. In that particular case objection had been taken to certain execution proceedings pending in a Civil Court and the application made on behalf of the Custodian was that certain orders made by the Civil Court should be set aside. Weston C. J. found that the question whether the property was or was not evacuee property had never been determined and there was therefore no occasion to interfere with the execution. This decision thus- does not support Mr. Mahajan's case. Our attention has been drawn to another decision of this Court reported as *Mohd., Saddiq Barry v. Mohd. Ashfaq*<sup>2</sup>, where Harnam Singh J. held that the trial by the Civil Court of the question whether the property in suit is or is not

evacuee property is barred. Reference was also made to a Division Bench decision of this Court, *Firm Sahib Dayal Bakshi Ram v. The Assistant Custodian of Evacuee's Property*<sup>3</sup>, but in that case the real question concerned the meaning of Section 48 of the Administration of Evacuee Property Act and not Section 46. Mr. Mahajan finally referred to a Full Bench decision of the Allahabad High Court in support of his submission, being *Khalil Ahmad Khan v. Malka Mehar Nigar Begum*<sup>4</sup>. The facts of that case were, however, so vastly different from the present that it can be of no assistance to learned counsel's argument. What happened there was that one Sohani Begam created a wakf in respect of her property and named her daughter Malka Mehar Nigar Begam as the next mutwalli. This was on the 23rd of March, 1929. Subsequently, however, in November, 1938, Sohani Begam changed her mind and executed another document cancelling the first nomination. On Sohani Begam's death in December, 1943 disputes arose between Malka Mehar Nigar Begam and Khalil Ahmad in respect of the wakf property and this led to a suit by Malka Mehar Nigar Begam to establish that she was the duly appointed mutawalli. This suit was decreed in her favour in October, 1944 and an appeal to the High Court was filed on the 14th of December, 1944. A second suit was also brought by Malka Mehar Nigar Begam for the possession of the same property on the 13th of February, 1945 and it was decreed on the 28th of May, 1945 and an appeal was filed in the High Court on the 2nd of October, 1945. While the appeals were pending Malka Mehar Nigar Begam went away to Pakistan and the Deputy Custodian of Evacuee Property was substituted in her place. When the appeals were argued in the High Court, a preliminary objection was raised on behalf of the Deputy Custodian that the appeals could not be heard as the Civil Courts were debarred from deciding whether any property was or was not evacuee property. The objection was overruled and quite obviously it had to be overruled because the litigation had nothing to do with the question whether any property was or was not evacuee property and was concerned with wholly different matters, namely, whether Malka Mehar Nigar Begam or the defendants in the suits were entitled to act as mutawalli, and as far as the Custodian was concerned he merely represented the interest of Malka Mehar Nigar Begam. I do not see how this decision of the Allahabad High Court can be of any help in the present case.

3. It is quite clear that the present suits pointedly invited the Civil Courts to decide whether certain Muslims had or had not become evacuees and whether their properties were or were not evacuee property, and in view of the plain meaning of Section 46 of the Administration of Evacuee Property Act it is impossible to agree that the Civil Courts could go into and decide these questions. Mr. Mahajan contended that in case a dispute arises between the Custodian and another party the Custodian cannot be allowed to determine the matter whether the disputed property is or is not evacuee property, because that would make the Custodian a judge in his own case. I see no force in this argument. The Custodian as such has no interest in the property entrusted to his charge by the Administration of Evacuee Property Act, and it is futile to contend that he cannot be allowed to decide whether certain property is or is not evacuee property.

4. For these reasons neither on principle nor on authority am I able to agree that the Civil Courts

could decide the substantial questions in dispute in these cases and holding therefore that the lower appellate Court was right in dismissing the two suits, I would uphold the order in each case and dismiss both the appeals but leave the parties to their own costs in this Court.

**D. Falshaw, J.**

5. I agree.

Cases Referred.

155 Pun LR 94 : (AIR 1953 Punj 161)

255 Pun LR 448 : (AIR 1954 Punj 87)

354 Pun LR 318 : (AIR 1952 Punj 389)

4AIR 1954 All 362