PUNJAB AND HARYANA HIGH COURT

Ram Gopal

Vs

Banta Singh

(A.N. Grover ,J.)

25.02.1958

JUDGMENT

A.N. Grover, J.

1. This appeal arises out of a suit brought by one Ram Gopal for possession of 34 Kanals and 4 marlas of land comprising Khasra Nos. 1092, 1123 and 1225 in village Akal Garh Dhapai. This land originally belonged to Umar Din father of Gulam Mohd defendant No. 4. He effected exchange of the land with the plaintiff in the year 1946. As a result of this transaction the plaintiff gave to Umar Din 35 Kanals and 7 marlas of land bearing Khasra Nos. 2695, 1275, 940, 898 and 992 in the same village. Umar Din being an agriculturist and the plaintiff being a non-agriculturist the sanction of the Deputy Commissioner was sought under the provisions of the Punjab Alienation of Land Act, but the same was declined. The plaintiff claims that owing to the repeal of the aforesaid Act the transaction of exchange which was only voidable has become valid and operative and he is therefore entitled to possession of the land. Defendants Nos. 1 and 2 who are mortgagees of a part of the land from Umar Din pleaded that they were entitled to retain the land till the same was redeemed. The plaintiff, however, admitted in the plaint that he was willing to pay off the mortgage money and therefore, the principal contesting defendant was Smt. Harbans Kaur, an allottee of Khasra No. 1092 and the Custodian also resisted the suit principally on the ground that the civil Court had no jurisdiction to try the same. On the pleadings, the following issues were framed:
(1) Whether the civil Court has jurisdiction to try the suit?
(2) Whether there was any exchange of land between the plaintiff and defendant No. 4, if so, to what effect? The Court of first instance decided both the issues against the plaintiff and dismissed the suit. On appeal the learned Additional District Judge came to the conclusion that the transaction of exchange was not in fact hit by the Punjab Alienation of Land Act and was valid from its very inception. On the question, however, of the jurisdiction of the civil Court to decide the suit, the learned Judge considered that the jurisdiction of the civil Court was barred under the provisions of Section 46 of the Administration of Evacuee Property Act (Act No 31 of 1950). The appeal was consequently dismissed.

2. Before me the finding that the exchange transaction was valid from its very inception has not been assailed on behalf of the defendant-respondents. The only question that requires decision is whether any bar is created by the provisions of Section 46 of the aforesaid Act. The contention of Mr. D.N. Aggarwal on behalf of the appellant is that it is the civil Court alone which is competent to adjudicate any dispute with regard to title, and, the question whether the exchange was valid or invalid and whether the plaintiff had any rights in the land in dispute, or whether it was the property of the Muslim evacuee, fell within the jurisdiction of the civil Court and the Custodian was not competent to give any decision with regard to these matters. My attention has been invited to a decision of Falshaw J. in Narendar Kumar v. Custodian General of Evacuee Property in India "P" New Delhi, AIR 1956 Punj. 163 (A). In this case it has been held that the words of Section 46 do not bar any civil or revenue Court from entertaining any suit whatever concerning evacuee property, but only bar the adjudication by these Courts on the matter whether any particular property is or is not evacuee property. There is nothing in the words of Section 46 which bars persons from challenging the validity of the sale by which the property passed into the hands of the person who later became an evacuee. Indeed the Custodian is not competent to adjudicate upon a question of that kind, which could only be decided by an ordinary civil Court. According to the ratio of this decision the question whether after the transaction of exchange the land in dispute was the property of the appellant or of the Muslim Umar Din who later, became an evacuee can be decided only by the civil Court and the Custodian would have no jurisdiction to adjudicate upon the same. The following observations of the learned Judge deserve particular notice:

> "It may be that the effect of a decree, in case the plaintiff successfully impugned the sale, would be the extinction of the title of the vendor subject to any conditions, imposed by the terms of the decree, and this would have the effect subject to the fulfilment of any such conditions, of causing the cessation of the interest of the Custodian in property, but in my opinion merely because this may be the ultimate effect of a suit of this kind, the suit does not become one in which the question whether certain property is or is not evacuee property is involved."

I am in respectful agreement with these observations, In *Kailash Chand v. Addl. Deputy Custodian General, New Delhi*[1], Kapur J. expressed the view that it was not for the Custodian to trespass on the jurisdiction of civil Courts and start determining questions which should be decided by the civil Court unless there were specific words to the contrary. In that case it was held that the Custodian had no jurisdiction to decide the question whether the sale which had taken place in 1939 was an invalid sale because of certain provisions of Hindu Law. A similar view was expressed by Kapur J. in Civil Writ No. 203 of 1953 D/-30-10-1953 (Punj) (C). The interpretation of Section 46 of the Administration of Evacuee Property Act has led to considerable difficulty as Sub-section (a) is so worded as to lend support to the view that it is within the province of the Custodian to decide (i) whether the person who owns the property has

become an evacuee, and (ii) whether he did own the property. If it is within the province of the Custodian to adjudicate on the second matter, namely whether the evacuee owned the property or not, it would seem that whenever the question of title arises between the evacuee and a non-evacuee, it is left to the Custodian to give an adjudication on that point.

But this will clearly come in conflict with the whole scheme of the Administration of Evacuee Property Act. The very preamble of the Act shows that it is an Act to provide for the administration of the evacuee property and for certain matters connected therewith. The question of administering evacuee property could not possibly involve judicial determination of complicated questions of title between non-evacuees claiming to be owners of a particular property and the Custodian claiming that the property in question belonged to the evacuee. To take an example, if before the partition of the country a property admittedly belonged to a Hindu owner but by mistake or accident the Custodian considered that it belonged to tin; Muslim who became an evacuee after the partition, then will it be within the province of the Custodian to decide the question of lido and to give a decision which would almost be in his own favour? Suppose again that there were numerous claimants to a particular property including some Muslim claimants who had become evacuee, then is there any indication in the entire statute that the Custodian is to be the final arbitrator of all complicated disputes which may involve the examination of numerous title deeds extending over a long period of time? In this connection it is worth noticing that all evacuee legislation falls under Entry 41 of List III, Seventh Schedule, Constitution of India, the aforesaid entry being -- "Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property." Therefore the words which have been used "custody, management and disposal" do not indicate the con-ferment of any such powers as only a civil Court can have, namely, adjudication of disputes relating to title, which would clearly fall within the ambit of Section 9 of the Code of Civil Procedure. There is vet another reason for holding that the legislature could never hove intended that such powers should be conferred on the Custodian to the exclusion of civil Courts which is contained in the well known maxim: nemo debet esse Judex in propria sua Causa, which means that no man can be a judge in his own cause. It is a fundamental rule in the administration of justice that a person cannot be a judge in the cause wherein he is interested, nemo sibi esse iudex vel suis jus dicere debet. As stated in Broom's Legal Maxims, Hobart C. T. is reported to have said that "even an Act of Parliament made against natural equity, as to make a man a judge in his own cause, is void in itself; for jura naturoe sunt immutabillia and they are leges legum." But although it is contrary to the general rule to make a person judge in his own cause, "the legislature can, and no doubt in a proper case would, depart from that general rule, '"and an intention to do so being clearly expressed, the Courts give effect to their enactment. I, however, find that there is no such intention clearly expressed in the Administration of Evacuee Property Act with regard to the point which is under consideration. I am fortified in the view which I am taking by the observations of Rajamannar C. J. in *M. B. Namazi v. Deputy Custodian of Evacuee Property. Madras*[2], which were as follows:-

"There is, however, one thing about which I am not quite clear. The Ordinance no doubt

> declares the order of the Custodian declaring any property to be evacuee property as final. That might be so in one sense, i.e., if any property belongs to a person who has been declared to be an evacuee within the meaning of the definition in the Ordinance, then the Custodian's order would be final. But does the finality amount to an adjudication on title in case there is any dispute? Take for instance the case where a property is declared to be evacuee property on the assumption that it belongs to A who is an evacuee. Does it mean that some one else cannot say that the property really does not belong to the evacuee but belongs to himself who is not an evacuee? I am inclined to hold that the order of the Custodian or the notification under Section 7 of the Ordinance is not final, in case of disputed title."

These observations were cited with approval in a Bench decision of this Court in Finn, *Sahib Dayal Bakshi Ram v. Assistant Custodian of Evacuees' Property, Amritsar*[3] In that case the scheme of the Administration of Evacuee Property Act was examined and it was pointed out that it was a scheme for the management and administration of evacuee property and that Sections 7 and 46 of the Act did not empower the Custodian to decide the question as to whether a debt due from a non-evacuee to an evacuee was or was not time barred. The same view was followed by another Division Bench of this: Court in Firm Pariteshah Sadashiv, *Amritsar v. Assistant Custodian of Evacuee Property, Amritsar*[4],. It was held that the Custodian had no power to decide the question whether a debt which was due to an evacuee was time barred or not, or for ordering the recovery of such debt as an arrear of land revenue. The entire basis of these decisions would disappear if the contention raised on behalf of the Custodian is to be accepted that Section 46 gave all such powers to the Custodian and barred the jurisdiction of the civil Courts to adjudicate upon them.

3. The next question is whether Section 48 stands in the way of a decree for possession being granted in favour of the plaintiff on the finding that the transaction of exchange was valid from its very inception. In my opinion neither Section 46 nor any other provision of the Act creates such a bar. The finding with regard to the validity of exchange would have the effect of causing the cessation of the interest of the Custodian in the property in dispute and once that result is achieved the Custodian would be completely out of the picture and there will be no hurdle in the way of the civil Court granting the decree for possession.

4. It has been urged by Mr. N.L. Saluja on behalf of the Custodian that the suit is barred by limitation as in essence it is one for specific performance of the transaction of the agreement of exchange and it would be barred under Article 113 of the Limitation Act. In the first place this contention was never raised at any previous stage of the case, but even if the question as to the bar of limitation is allowed to be raised for the first time, there is no force in the contention that has been raised. On a reference to the pleadings it becomes clear that the suit is for possession on the basis of title and it is not for specific performance of the contract which will attract Article 113. This contention must be repelled.

5. S. Tirath Singh, who appears for Smt. Harbans Kaur, has invited my attention to S. M. Zaki v. State of Bihar, AIR 1953 Pat. 112 (G). It has been laid down in that case the Section 46 of the Administration of Evacuee Property Act must be construed to mean that the jurisdiction of a civil Court or revenue Court is ousted even if the Custodian has wrongly decided that any property is an evacuee property under the Act. As the view of this Court is different, I am unable, with respect, to accept the Patna case as laying down the law correctly with regard to the true scope of Section 46.

6. Lastly it was pointed out that the appellant cannot claim to retain possession of the property which he had given in exchange to Umar Din and of which admittedly he was in possession now. Mr. D.N. Aggarwal has stated that he has no claims to that property and it would be open to the appropriate authorities to take such steps as may be necessary to treat that property as evacuee property. This is a matter which is not directly involved in the present case and therefore no decision can be given with regard to the same. It will be, however, open to the appropriate authorities to take such steps with regard to that land as they may be advised.

7. In the result, this appeal is allowed and the suit of the plaintiff is decreed. In the circumstances of the case, there will be no order as to costs in this Court.

8. I certify that it is a fit case for appeal under Clause 10 of the Letters Patent. I grant the necessary leave to do so.

Cases Referred.

157 Pun LR 440 (B)
2AIR 1951 Mad. 930 (D)
354 Pun LR 318 at P. 322: (AIR 1952 Punj 389 at pp. 390-391) (E)
454 Pun L.R. 468: (AIR 1953 Punj 21) (F)