

Ram Chand Puri
v.
The Lahore Enamelling and Stamping Company Ltd.,
(in Ligu.)
Khosla, C. J.

the debt of the appellant is provable, and not barred by limitation.

I would therefore, allow this appeal and setting aside the order of the learned Company Judge hold that the claim of the appellant in respect of Rs. 2,359-7-9 has been proved. The appellant will recover costs in appeal.

Gurdev Singh J.

GURDEV SINGH, J.—I agree with my Lord the Chief Justice.

B.R.T.

CIVIL MISCELLANEOUS
Before Bishan Narain, J.

BASHESHAR DAYAL,—Petitioner

versus

CUSTODIAN GENERAL EVACUEE PROPERTY,—
Respondent

Civil Writ No. 222-D of 1956

Administration of Evacuee Property Act (XXXI of 1950)—Section 40—Confirmation of sale of property sold by a Muslim in February, 1948, who became evacuee in June, 1948—Application for a confirmation of sale made in March, 1948—Confirmation of sale refused on the ground that it was not bona fide although for adequate consideration—Grounds in support of the order being that no previous permission of the Custodian was obtained and the purchaser knew that the seller intended to be evacuee—Whether tenable to determine good faith—Order held untenable under section 40(4)(a)—Whether can be supported under section 40(4)(c).

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Held, that section 40 of the Administration of Evacuee Property Act, 1950, does not lay down that if an intending evacuee or a Muslim in anticipation of his becoming evacuee enters into the transaction, then the transaction requires confirmation. Under the Administration of Evacuee Property Act, 1950, confirmation of the Custodian is required only if the transferor becomes an evacuee after the transfer.

Held, that the circumstances that the purchaser had not obtained the prior permission of the Custodian before entering into the sale transaction with a Muslim cannot be taken into consideration in determining whether the transaction was entered into in good faith. Similarly the circumstance that there is a possibility of the Muslim becoming an evacuee should not be taken into consideration when determining whether the transaction was entered into in good faith nor not. The bona fide of the transaction is to be judged from circumstances other than the circumstance that the transferor may at some subsequent date become an evacuee.

Held, that the purpose of the Administration of Evacuee Property Act, 1950, is that the evacuee property should be properly administered and that no person should be allowed to take undue advantage of the fact that the transferor concerned was thinking of becoming an evacuee. If the transaction is otherwise fair and for valuable consideration, then it cannot be considered to be in contravention of the object of the said statute.

Held, that it is not open to the High Court to try to justify an order made by a Tribunal on the ground that it could have been made under some other provision of law when the authority concerned had not decided the case on the basis of that provision of law. It is, no doubt, true that the label given to a decision is not final in the matter and that it is open to the Court to look at the substance of the order and to determine under which provision of law it is made. Where, however, the Deputy Custodian-General holds that the transaction cannot be confirmed under section 40(4)(a) of the Act and does not purport to hold that the transaction has not to be confirmed for any other reason as given in sub-section 4(c) of section 40 of the Act, it is not open to the High Court in proceedings under article 226 of the Constitution to uphold that order on the ground that it could have been made under sub-clause (c) when it finds that it could not be made under sub-clause (a).

Petition under Article 226/227 of the Constitution of India praying as under :—

- (a) that this Hon'ble court may be pleased to send for the relevant records of the case and after perusal of the same issue a writ in the nature

of *mandamus* or *certiorari* as it may deem fit or pass other orders and give such directions quashing the order of Deputy Custodian-General and the Additional Custodian and holding that the properties purchased by the petitioner are not evacuee properties, the transaction of sale was entered into in good faith and the title passed to the petitioner.

- (b) that the Custodian-General be further directed to confirm the sale in accordance with the provisions of Act XXXI of 1950.
- (c) that the Custodian-General and his subordinate officers be restrained from recovering any sum from the petitioner on account of rent of the properties or by way of damages for their use and occupation.
- (d) that the Custodian-General and his subordinate be further directed to pay to the petitioner such sums as have been realised on account of the rent of the properties.

N. C. CHATTERJEE AND MR. R. S. NARULA, ADVOCATES,
for the Petitioner.

JINDRA LAL, ADVOCATE, for the Respondent.

Bishan Narain, J.

JUDGMENT

BISHAN NARAIN, J.—Basheshar Dayal has filed this petition under article 226 of the Constitution challenging the validity of the order made by the Deputy Custodian-General on 15th September, 1956, refusing to confirm the sale of the properties made by Shri and Shrimati Abdul Rehman in favour of the petitioner.

The facts leading to this petition are not in dispute. By a registered sale deed, dated 17th February, 1948 Basheshar Dayal purchased three pieces of property for Rs. 60,000. Out of the consideration money, Rs. 15,000 were left with the vendee for payment to a previous mortgagee.

The balance of Rs. 45,000 was payable to Messrs Bishamber Dass and Company. The vendee duly paid these amounts. On 16th March, 1948, the petitioner applied for confirmation of the sale under section 5-A of the East Punjab Evacuees' (Administration of Property) Act, 1947, (Act 14 of 1947), as amended by the East Punjab Ordinance (No. 2 of 1948). It has been found by the Deputy Custodian-General that the vendors migrated to Pakistan in June, 1948, and thus became evacuees under the above Act. During the pendency of this application for confirmation, the East Punjab Evacuees' (Administration of Property) Act, 1947, was repealed by the Administration of Evacuee Property Ordinance, 1949 (Central Ordinance No. 27 of 1949), which in its turn was repealed by the Administration of Evacuee Property Act, 1950 (Act 31 of 1950) and came into force on 18th April, 1950. The Assistant Custodian rejected the confirmation application by order dated 10th August, 1951, on the ground that the transaction had not been completed by the time allowed by the Government, that is, by 12th January, 1948, although he had found that it was a bona fide transaction and for adequate consideration. On appeal the Assistant Deputy Custodian by his order dated 26th November, 1952 remanded the case and directed the petitioner to amend the application so as to bring it in consonance with the Administration of Evacuee Property Act, 1950. The Assistant Custodian, after remand, rejected the application for confirmation by order dated 14th May, 1953 on the ground that the transaction had not been made in good faith. The Assistant Deputy Custodian on appeal once again remanded the case to the Assistant Custodian to decide the application in accordance with law and specified the points on which decision of the Assistant Custodian was required. After this remand, the

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Assistant Custodian confirmed the sale by his order dated 27th August, 1955. The then Additional Custodian, however, reopened the case on his own motion and rejected the confirmation application by order dated 22nd May, 1956 on the ground that the sale was not proved for consideration and further held that the transaction had not been effected in good faith. The petitioner then filed a revision petition before the Deputy Custodian-General, who by order dated 15th September, 1956 dismissed it on the ground that the transaction was not bona fide although he came to the conclusion that the sale has been proved to be for adequate consideration. The present petition is directed against the order of the Deputy Custodian-General.

From these facts it is quite clear that the petitioner's application for confirmation of the sale transaction dated 17th February, 1948 has had a very chequered career. The point, however, that arises in the present petition is if the impugned order can be challenged in the present proceedings under article 226 of the Constitution.

It has been argued on behalf of the petitioner that there is an error apparent on the face of the decision of the Deputy Custodian-General. After considering all the circumstances of the case he has held that the sale was for consideration which was adequate. He, however, held that the transaction had not been proved to have been entered into in good faith because, (1) the petitioner had not obtained the previous consent of the Custodian before entering into the transaction, and (2) that at the time of the transfer the petitioner knew that the vendors were contemplating migration to Pakistan and that in anticipation of their migration, they were entering into this transaction.

According to the learned Deputy Custodian-General, a transaction effected in such circumstances was wholly inconsistent with the object with which evacuee property was to be administered. Accordingly, he held that the transaction had not been entered into in good faith and, therefore, refused to confirm it.

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The learned counsel for the petitioner argued that both the reasons given by the Deputy Custodian-General for coming to the conclusion that the transaction in dispute had not been entered into in good faith were wholly extraneous to the matter and could not be taken into consideration for this conclusion. The learned counsel invited my attention to the various provisions of various enactments relating to administration of evacuee property and argued that the Deputy Custodian-General was in error in taking these matters into consideration when considering the bona fide of the transaction.

To determine this matter it appears to me necessary to describe various provisions relating to confirmation of transactions entered into by an Indian citizen with an evacuee. The East Punjab Evacuees' (Administration of Property) Act, 1947 (Act No. 14 of 1947) did not contain any provision relating to confirmation of transaction affecting evacuee property. By East Punjab Ordinance No. 2 of 1948, the East Punjab Evacuees' (Administration of Property) Act, 1947, was amended and section 5-A was introduced. This new section reads —

“5-A. (1) No sale, mortgage, pledge, lease, exchange or other transfer of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee.

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or by the agent, assign or attorney of the evacuee or such person, on or after the fifteenth day of August, 1947, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian under this section.

(2) * * * *

(3) * * * *

(4) The Custodian shall hold a summary inquiry into an application, which is not rejected under sub-section (3), and may decline to confirm the transaction if the transaction is not evidenced by a document in writing registered under the Indian Registration Act, 1908, before the 31st day of December, 1947, and it appears to the Custodian that—

(a) the transaction was not a bona fide one for valuable consideration; or

(b) the transaction is in the opinion of the Custodian prejudicial to the prescribed object; or

(c) for any other reason, to be given by the Custodian in writing, the transaction ought not to be confirmed.

(5) If the Custodian confirms the transaction, he may confirm it unconditionally or subject to such conditions and terms as he may consider proper.

Section 5-B then provides a right of appeal to any person aggrieved from the decision made under section 5-A of this Ordinance.

This Ordinance was extended to Delhi on 28th January, 1948, with necessary modifications.

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In the present case the sale was registered on 17th February, 1948 in the presence of the vendors. Therefore, vendors had not become evacuees by that date. Under section 5-A of the East Punjab Evacuees' (Administration of Property) Act, 1947, however, if a transaction is entered into in anticipation of a person becoming an evacuee, even then confirmation of the Custodian is required. Therefore, in the present case the vendee apprehending that the vendors may become evacuees applied for confirmation of the transaction on 16th March, 1948. Admittedly this application was made within the time fixed in the relevant provision. It appears that in June, 1948 the vendors migrated to Pakistan and the properties left by them became evacuee properties. While this application was pending, the East Punjab Evacuees' (Administration of Property) Act, 1947, was repealed by the Administration of Evacuee Property Ordinance, 1949 (Central Ordinance No. 27 of 1949). This Ordinance in its turn was repealed by the Administration of Evacuee Property Act, 1950, which came into force on 18th April, 1950. The Central Ordinance and the Central Act of 1950 considerably changed the provision relating to confirmation of transactions with an evacuee. We are not concerned with the provision in the Administration of Evacuee Property Ordinance of 1949. Section 40 of the Administration of Evacuee Property Act, 1950, reads—

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"S. 40. (1) No transfer of any right or interest in any property made in any manner whatsoever after the 15th day of August, 1847, by or on behalf of any person whose property is notified or declared to be evacuee property, shall be effective so

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as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

- (2) * * * *
- (3) * * * *

(4) The Custodian shall hold an inquiry into the application in the prescribed manner and may reject the application, if he is of opinion that—

- (a) the transaction has not been entered into in good faith or for valuable consideration, or
- (b) the transaction is prohibited under any law for the time being in force, or
- (c) the transaction ought not to be confirmed for any other reason.
- (5) * * *

This section 40 was modified again in 1953 by section 13 of the Amending Act 2 of 1953. It is, however, not necessary for our present purposes to reproduce section 40 as it stood after the Amending Act of 1953 had come into force.

The petitioner's application for confirmation came up before the Assistant Custodian on 10th August, 1951 when he dismissed it. This order, therefore, was made after the Administration of Evacuee Property Act, 1950, had come into force. It has been laid down by the Supreme Court that in such circumstances the application had to be decided in accordance with the provisions of the Administration of Evacuee Property Act, 1950, and not in accordance with the provisions of East Punjab Ordinance No. 2 of 1948, [*vide Indira Sohan Lal v. Custodian of Evacuee Property, Delhi, and others* (1)]. It is clear, therefore, that the petitioner's application for confirmation dated 16th March, 1948 had to be decided in accordance

(1) A.I.R. 1956 S.C. 77.

with the Central Act of 1950 as it stood before its amendment in 1953. The petitioner appealed against the order of the Assistant Custodian dated 10th August, 1951 and on appeal the case was remanded by order dated 26th November, 1952 and the petitioner was directed to bring the application for confirmation in consonance with the Administration of Evacuee Property Act, 1950. The needful was done by the petitioner. Thereafter proceedings were started, but during these proceedings section 40 of the Administration of Evacuee Property Act, 1950, was again amended as I have already said by Act 2 of 1953. It, therefore, became necessary that this application for confirmation of 1948 should be decided in accordance with section 40 of the Administration of Evacuee Property Act, 1950, as it stood after the 1953 amendment.

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So far there is no dispute between the parties.

Now the question arises whether the reasons given by the learned Deputy Custodian-General in the impugned order are reasons which could be taken into consideration when deciding an application under section 40 of the Administration of Evacuee Property Act, 1950.

The first reason given by the Deputy Custodian-General is that the petitioner did not obtain the permission of the Custodian for entering into the transaction of sale. Now the East Punjab Ordinance No. 2 of 1948, which for the first time introduced the rule of confirmation, did not provide for permission of the Custodian for entering into a transaction with an evacuee. This rule was introduced for the first time by section 40, subsection 2(a) of the Act as amended in 1953. If

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the petitioner in 1948 had made an application to the Custodian before entering into the present transaction with the evacuees concerned, then the Custodian would have returned the application on the ground that there is no provision in law for making such an application. At that time the Custodian had no jurisdiction to scrutinise a transaction with an evacuee and that this right of scrutiny was given for the first time by the Administration of Evacuee Property (Amendment) Act (Act 2 of 1953), that is, after the present transaction had been entered into. It, therefore, follows that the Deputy Custodian-General was in error in taking this circumstance, that the petitioner had not obtained the previous permission of the Custodian, into consideration when deciding as to the bona fide of the present transaction under section 40 of the Administration of Evacuee Property Act, 1950.

The second reason given by the learned Deputy Custodian-General for deciding the transaction not to be bona fide is that the petitioner knew at the time of the transaction that the vendors were intending to leave for Pakistan and that the transaction was being entered into in anticipation of their becoming evacuees. It has been found by the Deputy Custodian-General that the petitioner must have known at the time of the transaction that the vendors were intending to migrate to Pakistan. This finding cannot be challenged in the present proceedings and in fact the circumstances of the case clearly indicate that the petitioner knew at that time that the vendors intended to migrate to Pakistan. This is, however, no ground for holding the transaction not to be bona fide. Section 40 of the Administration of Evacuee Property Act, 1950, does not lay down that if an intending evacuee or a Muslim in anticipation of his becoming evacuee enters into the

transaction, then the transaction requires confirmation. Under the Administration of Evacuee Property Act, 1950, confirmation of the Custodian is required only if the transferor becomes an evacuee after the transfer. The petitioner, when he entered into the transaction, could not be absolutely positive that the vendors would become evacuees and I am unable to see why the circumstance that there is a possibility of the Muslim becoming an evacuee should be taken into consideration when determining whether the transaction was entered into in good faith or not. In my view the bona fide of the transaction is to be judged from circumstances other than the circumstance that the transferor may at some subsequent date become an evacuee. I, therefore, hold that the Deputy Custodian-General was in error in taking this matter into consideration when determining the bona fide of the transaction.

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It was then urged on behalf of the respondent that in any case the present transaction was against the object or scheme of the Administration of Evacuee Property Act, 1950. This contention prevailed with the Deputy Custodian-General but I am unable to see any substance in this contention. The purpose of the Administration of Evacuee Property Act, 1950, is that the evacuee property should be properly administered and that no person should be allowed to take undue advantage of the fact that the transferor concerned was thinking of becoming an evacuee. If the transaction is otherwise fair and for valuable consideration, then I am unable to see why such a transaction should be considered to be in contravention of the object of the said statute.

The learned counsel for the respondent finally urged that in any case if these reasons are no reasons

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which should have been taken into consideration for deciding the bona fide of the transaction, then they should be taken into consideration under section 40, sub-section 4(c) of the Administration of Evacuee Property Act, 1950. This contention is without any force whatsoever. The Deputy Custodian-General does not purport to dismiss the application for confirmation under section 40, sub-section 4(c) of the Act, but purports to do so under section 40, sub-section (4)(a). It is not open to this Court to try to justify an order made by a Tribunal on the ground that it could have been made under some other provision of law when the authority concerned had not decided the case on the basis of that provision of law. It is true that the label given to a decision is not final in the matter and that it is open to this Court to look at the substance of the order and to determine under which provision of law it is made. In the present case, however, it is clear that the Deputy Custodian-General has not purported to hold that the transaction has not to be confirmed for any other reason as given in sub-section 4(c) of section 40 of the Act. When he has not applied his mind to this provision, I am unable to see how this Court in proceedings under article 226 of the Constitution can uphold an order made under sub-clause (a) on the ground that it could have been made under sub-clause (c).

For these reasons, I am of the opinion that the learned Deputy Custodian-General was in error in holding that the transaction was not entered into in good faith on the grounds given by him. The Deputy Custodian-General has held that the transaction had been entered into for valuable consideration. It appears to me that if he had not taken his own view of the scope of the term 'good faith' then he may have confirmed the

transaction in view of his finding as to consideration. In any case, refusal to confirm the transaction on the grounds given by him is not justified.

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For these reasons, I accept this petition and set aside the order of the Deputy Custodian-General, dated 15th September, 1956. It will now be open to him to decide the application of the petitioner for confirmation of the transaction dated 17th February, 1948, in accordance with law. In the circumstances, I would leave the parties to bear their own costs.

Bishan Narain, J.

R.S.

REVISIONAL CRIMINAL

Before G. D. Khosla, C.J., and Shamsher Bahadur, J.

DEVI RAM,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 310-D of 1959

Indian Evidence Act (I of 1872)—Sections 25, 26 and 27—Respective scope of—Confessional statement by a person leading to discovery of some fresh material at the time when he was neither an accused person nor in police custody—Whether can be proved against him when subsequently he is accused of an offence.

Held, that under section 25 of the Indian Evidence Act a confession, which is made to a police officer, cannot be proved against the person who is accused of an offence. This section does not set out anything regarding the state of the person who is making the confession. It is not necessary that the confession should be made when he is in police custody, nor is it necessary that he must be an accused person. The section merely means that when an accused person is being tried, a confession, which he, on a previous occasion, made to a police officer, cannot be proved against him. It is not specified that the accused

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August 4th