

person and was told that his brother was to be married to a daughter of D and the earnest money was not repaid. B was tried under section 420. It was held as under:—

“That the criminal offence under section 420 had not been disclosed. There was nothing more in the circumstance of the case than a breach of contract that is refusal to marry the girl to A’s brother giving cause of action in a civil Court.”

(11) The observations made in these authorities apply to this case. In the instant case the consideration for the agreement between the accused and the complainants was opposed to public policy and, therefore, the agreement was void and the complainants were not entitled to obtain any relief for breach of this agreement from a Civil Court. Consequently no offence under section 420, Indian Penal Code was made out against the accused in view of the law laid down in the aforesaid authorities. As a result the revision petition is accepted and the conviction and sentence of Ramji Lal are set aside and he is acquitted.

N. K. S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

THE UNION OF INDIA, ETC.,—Appellants.

versus

LACHHI RAM, ETC.,—Respondents.

Letters Patent Appeal No. 303 of 1970.

July 17, 1972.

Evacuee Interest (Separation) Act (LXIV of 1951)—Section 20—Property—Whether composite or not—Jurisdiction of civil Courts to decide—Whether ousted—Limitation Act (IX of 1908)—Section 19—Acknowledgment under—Requisites of, stated—Order of Revenue Officer making reference to a statement of a person—Whether amounts to acknowledgment by that person.

Held, that according to section 20 of the Evacuee Interest (Separation) Act, 1951, any claim to composite property has to be decided

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by the Competent Officer and not by a civil or revenue Court. This section does not lay down that whether a property is composite or not has also to be decided by the authorities under the said Act alone and no civil or revenue Court can entertain any suit or proceeding with regard to the character of the property. Therefore, the jurisdiction of the civil Court to decide whether a property is composite or not is not ousted.

(Para 5)

Held, that a statement on which the plea of acknowledgment under section 19, Limitation Act, 1908, is founded need not amount to promise and need not indicate the exact nature or the specific character of the liability. It must, however, relate to a present subsisting liability and indicate the existence of jural relationship between the parties and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances.

(Para 8)

Held, that an order of a revenue officer making reference to a statement of a person cannot be said to be an acknowledgment by that person of a liability as it is not signed by him. Such an order does not amount to an acknowledgment within the meaning of section 19 of the Act.

(Para 6)

Letters Patent Appeal from the decree of the Hon'ble the Chief Justice Mr. Mehar Singh, dated the 16th day of September, 1969, passed in R.S.A. 1894/59, reversing that of Shri B. L. Malhotra, Senior Sub-Judge, with enhanced appellate powers dated 2nd November, 1959, which affirmed that of Shri O. P. Singla, Sub-Judge, II Class, Gurgaon, dated 26th December, 1958 (dismissing the plaintiffs suit and granting a decree to the plaintiffs of the suit, with costs throughout, holding that they are the owners of the property referred to in the suit because they have acquired title to it by prescription it not having been reduced by the mortgagors within 60 years down to 1937.

M. S. Jain, Advocate, for the appellants.

P. S. Jain and V. M. Jain, Advocates, for the respondents.

JUDGMENT

Judgment of the Court was delivered by:—

Tuli, J.—The facts giving rise to this appeal under clause 10 of the Letters Patent from the judgment and decree of Mehar Singh, C.J., dated September 16, 1969, are these.

(2) Some time prior to the year 1877 the land in suit was mortgaged by the predecessors-in-interest of the defendants, other than the official defendants; with the predecessors-in-interest of the plaintiffs. The land was taken on rent as tenants by the mortgagors from the mortgagee and thus continued to remain in possession thereof. Some time in the year 1922, the mortgagors approached the revenue authorities and stated that they were the owners of the land and were in adverse possession thereof *qua* the mortgagee and that a mutation be attested in their favour as owner of the land. The Revenue Officer accepted the claim of the mortgagors and attested the mutation in their favour by order June 9, 1922. Against that order, Bhoopa, who was the predecessor-in-interest of the plaintiffs at that time, filed an appeal before the Collector on the ground that his name should not have been deleted from the records. His appeal was accepted on December 22, 1922, and the mutation effected in favour of the mortgagors was set aside. The previous entries were thus restored.

(3) The mortgagors were Muslims who migrated to Pakistan while the plaintiffs are local residents. The Custodian of Evacuee Property moved the Competent Officer under the Provisions of sections 6 and 7 of the Evacuee Interest (Separation) Act, 1951 (hereinafter called the Separation Act), for separation of the interest of the evacuee from the non-evacuee interest in the land in suit. The plaintiffs appeared before the Competent Officer and took a simple plea in defence that the mortgages existed prior to 1877, that sixty years expired by 1937 and that by prescription the mortgages had been extinguished and they had become owners of the land long before the partition in 1947. The Competent Officer accepted this plea and decided the case in their favour. On appeal by the Custodian of Evacuee Property, the Appellate Authority under the said Act, reversed the order of the Competent Officer being of the opinion that the land in suit was composite property within the meaning of that expression in section 2(d) of that Act. The plaintiffs then filed Original suit No. 336 of 1957, claiming title to the land in dispute and questioning the legality and validity of the order of the Appellate Authority under that Act on the ground of want of jurisdiction.

(4) The learned trial Court framed the following issues:—

1. Whether civil Court has no jurisdiction to try the suit ?

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2. Whether notice under section 80, Civil Procedure Code, was necessary and has not been given to the Custodian, Evacuee Property?
3. Whether the plaintiffs are successors-in-interest of original mortgagees?
4. Whether the plaintiffs have been mortgagees in possession of the suit land for more than sixty years and had become owners prior to 1947 or 1951?

Issues 2 and 3 were decided in favour of the plaintiffs while issues 1 and 4 were decided together and it was held that the mortgage subsisted in 1947 or 1951 and the property was composite because the mortgagor-evacuees had subsisting evacuee interest in the land in suit. It was further held that the order of the Appellate Authority under the Separation Act dated August 8, 1957, was legal and *intra vires*. The suit of the plaintiffs was thus dismissed by the learned trial Court on December 26, 1958. The plaintiffs filed an appeal against that decree which was dismissed by the learned senior Subordinate Judge, Gurgaon, on November 2, 1959. The plaintiffs then filed R.S.A. 1894 of 1959 in this Court which was accepted by the learned Chief Justice Mehar Singh on September 16, 1969. The present appeal under clause 10 of the Letters Patent has been filed by the Union of India and the Custodian, Evacuee Property, against the judgment and decree of the learned Chief Justice after obtaining his leave.

(5) Only two points have been argued by the learned counsel for the appellants. The first point is that the civil court had no jurisdiction to try the suit in view of the provisions of section 20 of the Separation Act. That section reads as under :—

“20. (1) Save as otherwise expressly provided in this Act, no civil or revenue court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any civil court or other authority.

(2) All suits and proceedings pending before a civil or revenue court at the commencement of this Act shall; in so far as they relate to any claim filed before a competent officer

under section 7, be stayed during the pendency of any proceeding under this Act.

- (3) Nothing in sub-section (1) shall prevent any civil or revenue court from entertaining any suit or proceeding relating to any right in respect of any payment made; or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred."

All that this section says is that any claim to composite property has to be decided by the Competent Officer and not by a civil or revenue court. This section does not lay down that whether a property is composite or not has also to be decided by the authorities under the said Act alone and no civil or revenue court can entertain any suit or proceeding with regard to the character of the property. In that view of the matter, this section does not oust the jurisdiction of the civil court to decide whether a property is a composite property or not. The learned counsel for the appellants relies on the judgment of their Lordships of the Supreme Court in *Custodian, Evacuee Property, Punjab, and others v. Jafran Begum*, (1) which is clearly distinguishable. The decision of their Lordships is with regard to section 46 of the Administration of Evacuee Property Act (31 of 1950), the language of which is entirely different from the language of section 20 of the Separation Act. Section 46 of the Administration of Evacuee Property Act reads as under :—

"46. 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 or under this Act to determine."

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In clause (a) of the section, it is clearly mentioned that no civil or revenue Court shall have jurisdiction to adjudicate upon the question whether any property is or is not evacuee property apart from other matters. Such words are not to be found in section 20 of the Separation Act and, therefore, it cannot be said that the jurisdiction of civil court to decide the suit, out of which this appeal has arisen, had been ousted by section 20 *ibid*. The first point argued by the learned counsel is, therefore, repelled.

(6) The second point which has been argued is that the documents, Exhibit D. 1 and D. 2, amount to acknowledgment within the meaning of section 19 of the Indian Limitation Act, 1908; and extended the period from the date on which those documents were written. The first in order of time is the document, Exhibit D. 2, which is a copy of the order of mutation referred to above. The Revenue Officer took up the matter on the report of the Patwari and directed that interrogatories should be issued to Bhoopa. The copy of the reply received from Bhoopa has not been produced as an Exhibit in the case but reliance is placed on the reference to that reply in the order of the Revenue Officer to the effect that Bhoopa had stated in his statement, dated February 8, 1922, that Dhan Singh and others cultivated the land on his behalf and paid him his share of the produce. After making a reference to the statement, the Revenue Officer went on to hold that the possession of Bhoopa on the land during the previous twelve years had not been proved and, therefore, his name should be deleted. This document cannot be said to be acknowledgment by Bhoopa as it is not signed by him. It is only an order of the Revenue Officer and not a statement by Bhoopa. It cannot, therefore, amount to acknowledgment within the meaning of section 19 of the Indian Limitation Act, 1908.

(7) Against the order (copy Exhibit D. 2), Bhoopa filed an appeal before the Collector, Gurgaon, wherein he did not say a word about his status as a mortgagee. All that is stated in the various grounds in the memorandum of appeal was that the respondents were in possession of the land not as owners but as tenants. He had issued notice of ejection to them and they filed a suit in the Court of Assistant Collector I Grade to have that notice cancelled. They were directed to seek remedy in the civil court by order, dated April 28, 1922. Bhoopa went on to state further that the tenants could not claim adverse possession against him (the

landlord). He also challenged the jurisdiction of the Revenue Officer to decide the mutation. It is thus apparent from the reading of the grounds of appeal that no acknowledgment with regard to his status as mortgagee of the land was made and, therefore, it cannot be said that by this document he accepted himself to be the mortgagee of the land in suit. As this document does not amount to acknowledgment, the period of sixty years cannot be said to have been extended.

(8) The learned counsel for the appellants has submitted that in view of the decision of their Lordships of the Supreme Court in *M/s. Lakshmiratan Cotton Mills Co., Ltd. v. The Aluminium Corporation of India Ltd.* (2), it should be held that both the documents, Exhibit D. 1 and D. 2, read together amounted to acknowledgment of his status as a mortgagee by Bhoopa. We, however, find that the decision of their Lordships does not help the learned counsel for the appellants. All that was held in that judgment is, that the statement on which the plea of acknowledgment is founded need not amount to promise and need not indicate the exact nature or the specific character of the liability. It must, however, relate to a present subsisting liability and indicate the existence of jural relationship between the parties such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. The surrounding circumstances in this case rather go against the appellants. In the order of the Revenue Officer at some places Bhoopa was described as mortgagee and the persons who applied for a mutation were described as mortgagors. Bhoopa in his appeal did not refer to his status as a mortgagee but confined himself to his status as a landlord *qua* his tenants. It is abundantly clear from the grounds of appeal that he had issued a notice of ejection to them for the cancellation of which they filed a suit in the revenue Court and he nowhere accepted himself to be the mortgagee of the land. It cannot, therefore, be said that in the light of the surrounding circumstances Bhoopa admitted his status as a mortgagee *qua* the then mortgagors. As we read Exhibit D. 1, he scrupulously avoided to claim rights as a mortgagee in the appeal and confined himself solely to his status of landlord *qua* the respondents to that appeal whom he described as

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his tenants. In the words of their Lordships there was no admission of jural relationship of mortgagee and mortgagors nor was there any intention to make that admission. No other document has been pleaded by way of acknowledgment. The period of sixty years admittedly expired before 1947 and the evacuees had no interest left in the land. After the expiry of sixty years, the plaintiffs or their predecessors-in-interest had become full owners of the land. It was thus not a composite property and the authorities under the Separation Act had jurisdiction in the matter. In our opinion, no infirmity can be found with the judgment and decree passed by the learned Chief Justice in R.S.A. 1894 of 1959.

(9) For the reasons given above, there is no merit in this appeal which is dismissed but the parties are left to bear their own costs.

N. K. S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

MOHINDER SINGH,—Appellant.

versus

THE ESTATE OFFICER, ETC.,—Respondents.

Letters Patent Appeal No. 153 of 1972.

July 18, 1972.

Punjab Land Revenue Act (XVII of 1887)—Sections 72, 75 and 91—Provisions dealing with collection of land revenue as contained in sections 72 and 75—Whether mandatory—Property attached for realisation of such dues—Whether can be sold for amount falling due during the period of attachment.

Held, that the provisions contained in Chapter VI of the Punjab Land Revenue Act, 1887, dealing with collection of land revenue, under which land revenue and other sums due to the Government and recoverable as arrears of land revenue are recovered are mandatory and that the procedure prescribed therein should be strictly followed with regard to the issuing of the recovery certificate, attachment of the property and sale thereof. Clause (b) of the proviso to section 75, which lays down a definite prohibition against the sale of the attached property for the realisation of the amount falling due during the period of attachment, is mandatory in character