

Waddu Mal
Gian Chand
Masand
v.
Cantonment
Board, Jullundur

Dua, J.

parties are directed to bear their own costs throughout.

BISHAN NARAIN, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL.

Before Bishan Narain and I. D. Dua, JJ.

R. L. AGGARWAL AND OTHERS,—Appellants.

versus

DARSHAN LAL AND ANOTHER,—Respondents.

Letters Patent Appeal No. 479 of 1958

1960

May 2nd

Evacuee Interest (Separation) Act (LXIV of 1951)—Sections 2(d), 6, 8 and 17—Proceedings under the Act taken—Determination whether the evacuee had any interest in the property—Whether to be made by the Custodian or the Competent Officer—Conditions precedent to taking proceedings under the Act.

Held, that it is for the Competent Officer to determine whether a given property is or is not composite property in accordance with the provisions of sections 8 and 17 of the Evacuee Interest (Separation) Act, 1951, and it is not correct to say that this matter must be decided by the Custodian under the Administration of Evacuee Property Act. Under section 6 of the Evacuee Interest (Separation) Act the Competent Officer has jurisdiction to determine the evacuee's interest and then to separate it only if the property concerned is composite property as defined in the Act and not otherwise. Therefore, a party, whether custodian or a claimant, approaching the Competent Officer must prove that the property in dispute is composite property.

Held, that section 8(2) of the Evacuee Interest (Separation) Act, 1951, embodies a rule of estoppel based on general principles of *res judicata*. The Competent Officer is enjoined by this provision not to reopen the "determination and decision" of the Custodian that the property or

interest therein is evacuee property. The use of the words "determination and decision" indicates that such a decision must have been made in the presence of the interested parties and after an enquiry has been held on the matter. If such a determination or decision had been made by the Custodian, then the Competent Officer, when determining whether or not the property is evacuee property, should exclude evidence on this subject. If no enquiry has been held in the presence of the claimants under any enactment at all, then it is for the Competent Officer to hear the parties' evidence and decide if the property is composite property under the Evacuee Interest (Separation) Act and that a non-evacuee has an interest therein.

Letters Patent Appeal under clause 10 of the Letters Patent Appeal against the order of Hon'ble Mr. Justice A. N. Grover, passed in Civil Writ No. 82 of 1958, on 1st October, 1958.

S. M. SIKRI, ADVOCATE-GENERAL, for the Appellants.

H. L. SARIN, L. M. SURI, ADVOCATES, AND B. S. BINDRA, ADVOCATE FOR D. S. KEER, ADVOCATE, for the Respondents.

JUDGMENT

BISHAN NARAIN, J.—The Custodian informed Bishan Narain, J. the Competent Officer appointed under the Evacuee Interest (Separation) Act, 1951, in accordance with provisions of section 6 of the Act to the effect that the land measuring 110 *bighas* situated in village Bapah, tehsil Thanesar, was composite property in which evacuees had mortgagors' interest. He required separation of that interest. The Competent Officer was also informed that Darshan Lal claimed the mortgagee's interest in the property. In response to the notice issued by the Competent Officer, Darshan Lal filed his claim under section 7 of the Act alleging that the evacuees had no interest in the property when they left this country for Pakistan as the mortgagees had been in continuous possession of the land in dispute as such for more than 60 years by that

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time and relied on Article 148 read with section 28 of the Indian Limitation Act. The Competent Officer held that the Custodian's declaration that the evacuees as mortgagors had interest in the property was binding on him and then treating it as composite property extinguished the mortgagee's interest therein in accordance with section 9 of the Evacuee Interest (Separation) Act, 1951. The Appellate Officer on Darshan Lal's appeal affirmed this decision. Darshan Lal then applied under Article 226 of the Constitution challenging the validity of these orders. A Single Bench of this Court quashed these orders on 1st October, 1958. The learned Judge in the course of his judgment observed—

“It is urged that if no determination had been made by the Custodian then it is for the Competent Officer to decide whether any particular property or any interest therein is evacuee property or not, and as there has been no determination of that nature in the present case it should be left to the Competent Officer to determine the same. I am unable to accede to this contention.”

The Custodian and the authorities under the Evacuee Interest (Separation) Act have filed this appeal under clause 10 of the Letters Patent challenging the correctness of the above-mentioned observation. The appellants have not raised any other point before us and they agree that the impugned orders made under the Evacuee Interest (Separation) Act should be quashed but for different reasons.

The only point, therefore, that arises in this appeal is whether the Custodian or the Competent

Officer has to determine whether the evacuees had any interest in the property after proceedings under the Evacuee Interest (Separation) Act have been taken. To decide this point it is necessary to examine the powers conferred on the Competent Officer under the Evacuee Interest (Separation) Act.

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Now under section 6 of the Evacuee Interest (Separation) Act, the Custodian or a claimant may approach the Competent Officer for separation of the evacuees' interest wherein non-evacuees have also an interest. Such a property is called "composite property" in the Act. It is obvious from the provisions of section 6 that the Competent Officer has jurisdiction to determine the evacuees' interest and then to separate it only if the property concerned is composite property as defined in the Act and not otherwise. The condition precedent for the exercise of powers under the Evacuee Interest (Separation) Act is that the property must be composite property. Now this expression "composite property" has been defined in section 2(d) of the Act as meaning—

"any property which, or any property in which an interest, has been declared to be evacuee property or has vested in the Custodian under the Administration of Evacuee Property, Act 1950 (31 of 1950) and—

- (i) in which the interest of the evacuee consists of an undivided share in the property held by him as a co-sharer or partner of any other person, not being an evacuee; or
- (ii) in which the interest of the evacuee is subject to mortgage in any form in favour of a person, not being an evacuee; or

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(iii) in which the interest of a person, not being an evacuee, is subject to mortgage in any form in favour of an evacuee; or

(iv) in which an evacuee has such other interest jointly with any other person, not being an evacuee, as may be notified in this behalf by the Central Government, in the Official Gazette."

This definition does not cover all possible kinds of joint interests in properties wherein evacuees and non-evacuees are interested. The powers of the Competent Officer are, however, limited to those properties only which are governed by the definition reproduced above. Presumably, the joint interests of evacuees and non-evacuees in other cases can be separated by ordinary civil Courts.

Now a property can be held to be a composite property within the Evacuee Interest (Separation) Act only if two conditions are satisfied and not otherwise: (1) the property has been declared to be evacuee property or has vested in the Custodian under the Administration of Evacuee Property Act, 1950 (Act 31 of 1950), and (2) that a non-evacuee has interest therein of the category mentioned in the definition clause. If either of these two conditions is not satisfied then the Competent Officer has no jurisdiction to take proceedings under the Evacuee Interest (Separation) Act. Therefore, a party whether Custodian or a claimant approaching the Competent Officer must prove that the property in dispute is composite property. The Competent Officer can proceed to determine the extent of evacuees' interest in the property and to separate that interest in accordance with the provisions of the Evacuee Interest (Separation)

Act only after he has held the property to be composite property under the Act. After the property has been held to be composite property then the rights and liabilities of the parties are to be decided as laid down in this Act irrespective of what these rights and liabilities are under other enactments or under general law. A Competent Officer has to determine these rights and liabilities after holding an enquiry into the rival claims in accordance with section 8 of the Act.

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In the present case the parties are not agreed if the property is composite property. Both parties, however, agree that at one time the evacuees or their predecessors-in-interest were owners of the property and that Darshan Lal and his predecessors-in-interest had the mortgagees' rights therein at one time. The Custodian's case is that the property vested in him under the East Punjab Evacuee Property (Administration) Ordinance, 1949 (Ordinance No. 9 of 1949) on 11th July, 1949 and that at the time of this vesting Darshan Lal had subsisting mortgagee interests in this property. Darshan Lal, however, does not accept this position and his case is that at the time when the mortgagors left this country for Pakistan their rights of redemption had been extinguished by passage of time. The question arises as to who is to decide this dispute and how?

Now under section 7 of the Administration of Evacuee Property Act, 1950, the Custodian is empowered to declare a property to be evacuee property after holding an enquiry in accordance with the provisions of that Act and then to notify these properties as such in the official gazette. Such properties then vest in the Custodian and section 8 of the Administration of Evacuee Property Act lays down the various dates from which

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a particular piece of property shall vest in the Custodian. No property, however, can be declared to be evacuee property on or after 7th May, 1954 (*vide* section 7-A). A declaration under section 7 is subject to appeal etc., by the various officers appointed under the Act. If a property has been declared to be evacuee property by following this procedure laid down under the Administration of Evacuee Property Act, then obviously the first condition relating to composite property is satisfied. This is, however, not the end of the matter. Section 8(2) of the Administration of Evacuee Property Act lays down that if a property has vested in the Custodian under the provisions of a State legislation then such property shall be deemed to have been declared as such and shall be deemed to have vested in the Custodian under the Administration of Evacuee Property Act. It is under this provision of section 8(2) that the Custodian claims the property to be evacuee property by alleging that this property vested in the Custodian under clause 5 of the East Punjab Evacuee Property (Administration) Ordinance, 1949 (Ordinance 9 of 1949). In my opinion in the present case the Custodian has invoked jurisdiction under the Evacuee Interest (Separation) Act and, therefore, must prove this allegation to the satisfaction of the Competent Officer that the property in dispute is composite property so that the Competent Officer may proceed to separate the evacuees' interest therein. For this purpose the Custodian must also prove that the evacuees on the relevant date had some interest under general law, that is independently of the provisions of the Evacuee Interest (Separation) Act, in the property which could vest in them and that some interest at that time belonged to the claimant or to non-evacuees. If the Custodian fails to prove these matters then he fails to prove

the property to be composite property and in that case no action can be taken under the Evacuee Interest (Separation) Act. If a claimant approaches the Competent Officer on the allegation that a particular property is evacuee property in which he, a non-evacuee, has interest and if these allegations or either of them is denied by the Custodian then it is for the claimant to prove these allegations. Such cases may arise when the Custodian claims absolute interest in the property and does not approach the Competent Officer for separation of evacuee interest. From this discussion it follows that it is for the Competent Officer to determine if the property had been declared or had vested in the Custodian under the Administration of Evacuee Property Act. There is nothing in the Evacuee Interest (Separation) Act nor in any other enactment which prohibits the Competent Officer to hold an enquiry into this matter.

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The respondent, however, places his reliance on section 8(2) of the Evacuee Interest (Separation) Act for the contention that it is only for the Custodian to decide such a dispute. Now an enquiry into the parties' claim takes place under section 8 read with section 17 of the Evacuee Interest (Separation) Act. Sub-section (2) of section 8 reads—

“Where the Custodian under the Administration of Evacuee Property Act, 1950, has determined that the property in question or any interest therein is evacuee property, the decision of the Custodian shall be binding on the Competent Officer.”

This provision obviously embodies a rule of estoppel based on general principles of *res judicata*.

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The Competent Officer is enjoined by this provision not to reopen the "determination and decision" of the Custodian that the property or interest therein is evacuee property. The use of the words "determination and decision" indicates that such a decision must have been made in the presence of the interested parties and after an enquiry has been held on the matter. If it were otherwise, the Legislature would have adopted in this sub-section the word "declared" or "vested" used in the definition of composite property. In my opinion the Competent Officer when determining whether or not the property is evacuee property should exclude evidence on this subject if the property had been declared to be evacuee property after an enquiry as contemplated in the Administration of Evacuee Property Act, 1950, or as is also possible under the East Punjab Evacuees' (Administration of Property) Act, 1947 (Act No. 14 of 1947) and the East Punjab Evacuee Property (Administration) Ordinance, 1949. In these State legislations it is open to a claimant to claim that the property is not evacuee property and then the Custodian has to hold an enquiry into the matter subject to appeal to the High Court under the East Punjab Evacuees' (Administration of Property) Act, 1947, and subject to appeals etc., to various authorities appointed under the East Punjab Evacuee Property (Administration) Ordinance, 1949. If no enquiry has been held in the presence of the claimants under any enactment at all, then it is for the Competent Officer to hear the parties' evidence and decide if the property is composite property under the Evacuee Interest (Separation) Act and that a non-evacuee has an interest therein. This procedure is implicit in the use of words "determination and decision" in section 8(2) of the Evacuee Interest (Separation) Act.

For these reasons, I am of the opinion that it is for the Competent Officer to determine whether a given property is or is not composite property in accordance with the provisions of section 8 and section 17 of the Evacuee Interest (Separation) Act and with respect to the learned Single Judge, it is not correct to say that this matter must be decided by the Custodian under the Administration of Evacuee Property Act. In the present case the Competent Officer admittedly has not held any such enquiry and, therefore, the order of the Competent Officer and that of the Appellate Officer was rightly quashed.

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With these observations, I would dismiss this appeal though on grounds different from those that prevailed with the learned Single Judge. There will be no order as to costs.

INDER DEV DUA, J.—I agree.

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SUPREME COURT.

Before P. B. Gajendragadkar, K. N. Wanchoo and K. C. Dass Gupta, JJ.

JAI KAUR ALIAS JAS KAUR AND OTHERS,—Appellants

versus

SHER SINGH AND OTHERS,—Respondents.

Civil Appeal No. 108 of 1956

1960

Custom—Ludhiana District—Grewal Jats—Non-ancestral property—Daughters, whether preferential heirs to collaterals—Entries in Riway-i-am Relevance and value of—Whether relate to ancestral property only—Hindu law—Acceleration of succession—Self-effacement of the limited

May 6th