

ording to the Hindu Succession Act, is a preferential heir. Even if Mst. Achhari had inherited the property in the absence of any will, Mst. Taro would be the next heir both to her husband Ganga Singh as well as to the widow herself.

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—
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For the reasons given above, therefore, the reversioners have no *locus standi* to challenge the will made by Ganga Singh irrespective of the fact whether the property is ancestral or otherwise and we consequently accept this appeal, set aside the decree of the Courts below and dismissed the suit of the plaintiffs. In view, however, of the fact that change in the law had taken place during the pendency of this appeal, we leave the parties to bear their own costs throughout. Cross-objections by the plaintiffs *ipso facto* fail and are dismissed.

GOSAIN, J.—I agree.

Gosain, J.

B. R. T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

CUSTODIAN EVACUEE PROPERTY, PUNJAB,
JULLUNDUR,—Appellant.

versus

PRABHU DAYAL AND OTHERS,—Respondents.

Regular Second Appeal No. 1119 of 1958.

Code of Civil Procedure (V of 1908)—Order 42 Rule 1—Second Appeal—Copy of the trial Court's judgment not filed—Presentation of appeal—Whether valid—Trial Court's judgment not stamped—Effect of—Administration of Evacuee Property Act (XXXI of 1950)—Section 46—Jurisdiction of the Custodian under—Extent of—Custodian—Whether has the power to decide if a property is under mortgage or that the suit for redemption is barred by time.

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—
July, 24th.

Held, that according to the rules of the Punjab High Court, in case of the second appeals, the memorandum of appeal shall, in addition to the copies specified in Order 41 Rule 1 of the Code of Civil Procedure, be accompanied by a copy of the judgment of the court of first instance. Where such copy is not produced within time, the presentation of the appeal is not valid.

It is

Held, that if the trial Court's judgment filed along with the second appeal, is not stamped, it cannot be deemed to be filed at all. It should not be allowed to be stamped after the expiry of the period of limitation for filing the appeal, as valuable right has accrued to the respondent by reason of efflux of time.

Held, that section 46 of the Administration of Evacuee Property Act, 1950, no doubt, confers absolute jurisdiction on the Custodian to decide whether certain property is evacuee property or not and whether certain persons are evacuees or not. No power, however, is conferred on the Custodian under the Act to decide whether the property is under mortgage or not or that the suit for redemption respecting the mortgage is within time or is barred by time. It is a fundamental principle of law that the jurisdiction of the special tribunals must be found within the four corners of the Act or the Charter constituting them. Unless the Custodian has been given the specific power under the Act to determine whether the mortgagees have become owners of the property after the expiry of 60 years, it will fall for determination by the ordinary civil courts of the realm. Moreover the question whether the suit for redemption is barred by time or not is a suit between the Custodian on the one hand and the mortgagees on the other, and unless the power is given to the Custodian specifically under the Act to decide this matter, he cannot be a judge in his own cause, for the Custodian in such a case would be like any other party to a litigation.

Molu Mal v. Sri Ram and others (1); *Naul and others v. Mula and others* (2); *Mathra and others v. Ram Singh and another* (3), *Shahadat and others v. Hukam Singh* (4)

- (1) A.I.R. 1921 Lah. 73
- (2) A.I.R. 1926 Lah, 626
- (3) A.I.R. 1927 Lah, 747
- (4) A.I.R. 1924 Lah. 124

and Mohammad Fazal Elahi v. Ram Lal and another (1); relied upon. *Gurparshad and others v. Assistant Custodian-General of Evacuee Property and others* (2) and *Parkash Chand and others v. Custodian Evacuee Property, Jullundur, and another* (3); distinguished.

Second appeal from the decree of the Court of Sh. A. N. Bhanot, Additional District Judge, Gurgaon, dated the 26th day of July, 1958, affirming that of Sh. Bahal Singh, Senior Sub-Judge, Gurgaon, dated the 28th November, 1956, granting the plaintiffs a decree with costs for declaration to the effect that they had become the owners of the land in suit and the defendants had lost their rights to redeem the land. The Lower Appellate Court also allowed costs to the plaintiffs-respondents.

C. D. DEWAN, for Appellants.

S. L. PURI, for Respondents.

JUDGMENT

MAHAJAN, J.—The mortgage in dispute was effected in the year 1863. The present appellant is one of the successors-in-interest of the original mortgagor and the present respondents are the successors-in-interest of the original mortgagees. The mortgagor made an application under the Redemption of Mortgages Act (Punjab Act, II of 1913) for redemption of the mortgage in the year 1925 to the Collector. The Collector allowed the application and the mortgagor entered into possession of the mortgaged property. The mortgagees sued for possession under section 12 of the Act and got a decree for possession and consequently got back the possession of the mortgaged property and since then are in possession as mortgagees. On the 5th of October, 1955, the present suit was filed by Prabh Dyal and Smt. Sampti, who are successors-in-interest of the mortgagees, for a declaration that they have become owners of the said land

Mahajan, J.

(1) A.I.R. 1935 Lah. 124

(2) A.I.R. 1959 Punj, 230

(3) A.I.R. 1959 Punj, 64

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by reason of the expiry of the period of limitation fixed for redemption under Article 148 of the Indian Limitation Act. This plea prevailed with both the Courts below with the result that the trial Court decreed the suit and an appeal against it was rejected by the learned Additional District Judge. The Custodian of Evacuee Property has come to this Court in second appeal.

Mr. S. L. Puri, learned counsel for the respondents, has raised a number of preliminary objections. His first objection is that the trial Court's judgment was not filed when the appeal was filed on the last day of limitation, i.e., the 22nd of October, 1958, and that the judgment of the trial Court was filed on the 30th of October, 1958. An application for obtaining its copy was made on the 29th of October, 1958. Mr. Chetan Dass, learned counsel for the appellant, admits that if the delay in filing the copy of the judgment of the trial Court is not condoned, the appeal would be barred by time. He, however, prays that the delay in filing the same may be condoned. In my view no case has been made out for the exercise of discretion under section 5 of the Limitation Act in his favour. There is no explanation why an application was not made to obtain the copy of the judgment within the period of limitation for filing an appeal. The application for the copy was filed after the period of limitation had expired. In such circumstances the time spent in obtaining the copy of the judgment of the trial Court cannot be said to be time requisite within the meaning of the expression in section 12 of the Limitation Act. Moreover it was filed a week after the date of the expiry of the period of limitation including the time spent in obtaining the copy of the judgment of the lower appellate Court. Thus it cannot be said that it is a fit case where any indulgence can be shown to

the appellant, either under section 5 of the Limitation Act or in the matter of dispensing with the filing of the copy of the trial Court's judgment. It was held in *Molu Mal v. Sri Ram and others* (1), that "according to the rules of the Lahore High Court (the rules of this Court are the same) in the case of second appeals the memorandum of appeal shall, in addition to the copies specified in Order XLI, rule 1, be accompanied by a copy of the judgment of the Court of first instance. Where such copy is not produced within time, the presentation is not valid." To similar effect are the decisions *Naul and others v. Mula and others* (2), and *Mathra and others v. Ram Singh and another* (3). I am in respectful agreement with the authorities mentioned above. On this short ground the appeal would fail.

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The other preliminary objection of Mr. Puri is that the trial Court's judgment is not stamped and it cannot be deemed to have been filed at all. It cannot now be allowed to be stamped as the period of limitation for filing the appeal has expired. He relies on the observations of Scott-Smith, J., in *Shahadat and others v. Hukam Singh* (4), which are as under:—

"In my opinion, it is the duty of the counsel when filing an appeal to see that all the documents requiring stamp are properly stamped. He cannot shelter himself behind his clerk, and if his clerk has been guilty of any carelessness, he is responsible for that. A valuable right has accrued to the respondent by reason of the period of limitation for filing the appeal having elapsed, and I do not

(1) A.I.R. 1921 Lah. 73

(2) A.I.R. 1926 Lah, 626

(3) A.I.R. 1927 Lah, 747

(4) A.I.R. 1924 Lah, 401

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think it would be fair to him to admit
this appeal."

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To the same effect is the decision reported as
Mohammad Fazal Elahi v. Ram Lal and another
(1). I am in respectful agreement with the view
expressed in the decisions referred to above and
would accordingly uphold this preliminary objec-
tion as well.

Mahajan, J.

In view of my decision on the two preliminary
objections, it is unnecessary to discuss the other
preliminary objections raised by Mr. Puri, namely,
that the appeal has been filed without a power-of-
attorney and that Smt. Sampti died a year ago and
her legal representatives have not been brought
on record within limitation and therefore the
appeal has abated.

On the merits Mr. Chetan Dass contended
that it is within the competence of the Custodian
to decide whether the mortgage is barred by time
or not, and he relied on section 46 of the Adminis-
tration of Evacuee Property Act (No. 31 of 1950)
in this behalf. Section 46 of the Act is in these
terms:—

"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 pro-
perty is or is not evacuee property;
or

(b* * * * *); or

(1) A.I.R. 1935 Lah. 124

- (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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This section no doubt confers absolute jurisdiction on the Custodian to decide whether certain property is evacuee property or not and whether certain persons are evacuees or not. No power is conferred on the Custodian under the Act to decide whether the property is under a mortgage or not or that the suit for redemption respecting the mortgage is within time or is barred by time. It is a fundamental principle of law that the jurisdiction of the special tribunals must be found within the four corners of the Act or the Charter constituting them. Unless the Custodian has the power to determine the matter in dispute, namely, whether the mortgagees have become owners of the property after the expiry of 60 years, it will fall for determination by the ordinary civil Courts of the realm. Moreover, the question, whether the suit for redemption is barred by time or not, is a suit between the Custodian on the one hand and the mortgagees on the other, and unless the power is given to the Custodian specifically under the Act to decide this matter, he cannot be a judge in his own cause, for the Custodian here would be like any other party to a litigation.

Faced with this situation Mr. Chetan Dass stated that in view of the authorities reported as *Gurparshad and others v. Assistant Custodian-General of Evacuee Property and others* (1) and *Parkash Chand and others v. Custodian Evacuee Property, Jullundur, and another* (2), of this Court,

(1) A.I.R. 1959 Punj. 230

(2) A.I.R. 1959 Punj. 64

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which are binding on me sitting in Single Bench, the civil Court had no jurisdiction to decide the suit. I have gone through these authorities and they have no applicability whatever to the facts of the present case. All that has been held in both these decisions is that it is the Custodian alone who can decide if a person is an evacuee and whether a particular property is evacuee property. I have already said that this is so. But then none of these cases goes on to lay that it is within the competence of the Custodian in a dispute where he is arrayed like any other party to a litigation to be a judge in his own cause or to decide the question of adverse possession or limitation. As a matter of fact in *Gurparshad's case* (1) it was observed—

“It may be that *civil Courts* are not debarred from deciding some of these questions if properly raised in those Courts.”

For the reasons given above, this appeal fails and is dismissed with costs.

K. S. K.

LETTERS PATENT APPEAL

Before A. N. Bhandari, C. J., and G. L. Chopra, J.

SETH MAHADEV PARSHAD JAIPURIA,—Appellant.

versus

MST. MUNGI AND ANOTHER,—Respondents.

Letters Patent Appeal No. 55 of 1951.

1959
July 27th.

Code of Civil Procedure (V of 1908)—Section 99 and Order 48, Rule 3—Decree not drawn up in the form given in the appendix—Effect of—Decree—Contents of.

Held, that Rule 3 of Order 48 of the Code of Civil Procedure provides that the forms given in the appendices,

(1) A.I.R. 1959 Punj. 230