APPELLATE CIVIL

Before A. D. Koshal, J.

SAMDU ETC.—*Appellants.*

versus

SUBHAN KHAN ETC.—*Respondents.*

Regular Second Appeal No. 1529 of 1960

November 3, 1971.

Evacuee Interest (Separation) Act (LXIV of 1951)—Sections 2(d) and 20(1)—Suit not relating to "composite property"—Jurisdiction of Civil Court to entertain such suit—Whether barred.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 2(f) and 46(a)—Vesting of evacuee property in the Custodian—Determination of by the Civil Court—Whether barred.

Code of Civil Procedure (Act No. V of 1908)—Section 80—Act of a public officer not being complained of in a suit—Such officer—Whether entitled to notice—Suit by mortgagee of evacuee property seeking declaration simpliciter of having become its owner because of non-redemption of the mortgage within the prescribed period—Notice not given to the Custodian even though impleaded in the suit—Such suit—Whether barred.

Limitation Act (IX of 1908)—Section 19—Person making report to the village Patwari giving description of the rights purchased or transferred as mortgagee rights—Such description—Whether amount to acknowledgement of the subsistence of the mortgage.

Held, that before the bar in sub-section (1) of section 20 of the Evacuee Interest (Separation) Act, 1951 can operate, the Court must be satisfied that the suit in question relates to any claim to "composite property" as defined in section 2(d) and that the claim falls within the ambit of section 2(b) of the Act. In order to constitute "composite property" within the meaning of section 2(d), the property or any interest therein must have been declared to be evacuee property or must have vested in the Custodian under the Administration of Evacuee Property Act, 1950. According to section 8(2) of this Act, unless a property is declared to be evacuee property in compliance with the provisions of section 7 of the Administration of Evacuee Property Ordinance, 1949, it can be deemed to have vested in the Custodian only if it is the property of a person who had become an evacuee before the date on which the East Punjab Evacuee Property (Administration) Ordinance, 1949 was repealed. Thus where the lands in dispute in a suit or the mortgagors' rights therein are neither declared to be evacuee property

nor the date on which the mortgagors became evacuee is known, such lands or the rights of the mortgagors therein do not constitute "composite property". Hence the jurisdiction of the civil Courts to entertain a suit relating to such property will not be barred by reason of the provisions of section 20 of the Evacuee Interest (Separation) Act, 1951.

Held, that the language employed in section 8 of the Administration of Evacuee Property Act, 1950 makes it clear that even though a property may be "evacuee property" within the meaning of clause (f) of section 2 of the Act, it shall not be deemed to have vested in the Custodian unless it was either declared to be evacuee property under section 7 of the Act or had vested in the Custodian under any law repealed by the Act. The question of a property being evacuee property is thus distinct from one of its vesting in the Custodian and the latter cannot be regarded as a question the entertainment of or adjudication upon which by a civil Court is barred by clause (a) of section 46 of the Act. (Para 25)

Held, that the bar created by section 80 of the Code of Civil Procedure operates in the case of a suit against a public officer only when such suit is 'in respect of any act' of such public officer. If no act of a public officer is complained of in a suit, such officer would not be entitled to the protection of the section even though he is impleaded as a defendant. The nature of a suit is to be determined solely with reference to the plaint. Where the plaintiff, being the mortgagee of evacuee land, only seeks a declaration simpliciter of having become the owner of the land by reason of the mortgage not having been redeemed within the prescribed period, the suit is not 'in respect of any act' of the Custodian who is impleaded as defendant representing the interest of evacuee-mortgagors. Section 80 of the Code is not a bar to such suit if notice is not given to the Custodian.

(Paras 11, 15, 16 and 17)

Held, that where a statement is relied on as expressing jural relationship, it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made and the intention to admit cannot be imposed on its maker by an involved or a far-fetched process of reasoning. When in a report made to the village Patwari the person making it merely gives a description of the rights which he has purchased or transferred and it is by way of giving that description that he states such rights to be mortgagee rights, he does not consciously or even by implication admit that the mortgage exists. The right of redemption is no doubt inherent in the transaction of mortgage, but the person making the report does not acknowledge that the right of redemption of the mortgagors is subsisting at the time when the report to Patwari is made.

(Para 18)

Regular Second Appeal from the decree of the Court of Shri B. L. Balhotra, Additional District Judge, Rohtak, Gurgaon dated the 3th day of June, 1960, *affirming that of Shri Isher Singh Hoara, Sub-Judge* 1st *Class, Gurgaon, dated the* 11th *December,* 1959, *dismissing the plaintiff's suit.*

Both the Courts' left the parties to bear their own costs.

R. S. Mittal, Advocate, *for the applicants.*

H. N. Mehtani, Assistant Advocate-General (Haryana), *for respondents Nos.* 5 *to* 30.

JUDGMENT

KOSHAL, J.—(1) By this judgment I shall dispose of two Regular Second Appeals Nos. 1529 and 1530 of 1960 preferred by the plaintiffs which have arisen from suits Nos. 725 and 737 of 1958 respectively and in which the facts are similar and the points of law requiring determination identical.

(2) In suit No. 725 of 1958, the three plaintiffs are Samdu, Rehmat Khan and Sabhan Khan, sons of Phul Khan. They are the successors-in-interest of the original mortgagees of land measuring 4 *bighas* 13 *biswas* situated in village Nagina, Tahsil Ferozepur Jhirka, District Gurgaon and consisting of Khasras Nos. 85, 95 and 490. The history of this land right from the year 1877 up to the date of the institution of the suit has been traced in document Exhibit P. 1, which is an excerpt from the revenue record. In the year 1888, the land was designated by Khasra Nos. 74, 79 and 80 and 413, Khasra Nos. 74 and 79 were then owned by one Mst. Amiri and the other two Khasra numbers by one Shajardi. Mst. Amiri mortgaged her two Khasra numbers in favour of Mst. Jan Bibi,—*vide* mutation No. 57 decided on the 19th of June, 1888. Khasra No. 80 was mortgaged by Shajardi in favour of one Habib Ullah and in that behalf mutation No. 429 was sanctioned on the 8th of December, 1891. Another mortgage was created by Shajardi in respect of Khasra No. 413, the mortgagees being Imam Khan and his brother Phul Khan, who was the father of the plaintiffs. Mutation No. 1089 was sanctioned with regard to this mortgage on the 17th of December, 1896.

(3) When the *jamabandi* for the year 1906-1907 was prepared, the ownership of the entire land stood transferred to *shamilat thula hashab.*

(4) On the 31st of May, 1913 Phul Khan, aforesaid purchased the mortgagee rights in Khasras Nos. 74, 79 and 80 (which had by then been redesignated as Khasras Nos. 82, 90 and 91 respectively) from Mst. Majidan and others, the successors-in-interest of Jan Bibi and Habib Ullah, the original mortgagees. On the 17th of October, 1913, he made a report to the village Patwari that the mortgagee rights in Khewat No. 398 (which was comprised of Khasras Nos. 82 and 90) had been sold to him under an oral transaction and that he had obtained possession of the said Khasra numbers. This report was thumb-marked by him and on the basis thereof mutation No. 1069 (Exhibit D. 2) was sanctioned in his favour on the 31st of December, 1913. In the meantime, i.e., on the 3rd of November, 1913, he had made another report to the Patwari stating that the mortgagee rights in Khewat No. 400 (which then consisted of Khasra No. 80) had been sold to him by Mst. Majidan widow of Habib Ullah and that he had obtained possession of the Khasra number. This report was reduced by the Patwari to writing and Phul Khan thumb-marked it. Mutation No. 1068 (Exhibit D. 1) was sanctioned in pursuance of this report on the 19th of November, 1913.

(5) After the death of Phul Khan and Imam Khan, the plaintiffs stepped into their shoes as mortgagees of the land in dispute.

(6) In suit No. 737 of 1958, the number of the plaintiffs is four. They are the three sons of Phul Khan, above mentioned, and one Daindar, son of Godar. All four of them are the successors-in-interest of the original mortgagees of 4 *bighas* of land situated in village Nagina above mentioned and consisting of Khasras Nos. 470, 471, 673 and 674. The history of this land from the year 1877 up to the date of institution of the suit is available in the except from the revenue record (which in this suit also stands exhibited as P. 1). In the year 1877, the land was designated by Khasra Nos. 398 and 581 of which the owner was one Mam Raj. Sometime before the 16th of May, 1886, the land was mutated in favour of his wife Mst. Amiri as owner-mortgagor and of one Hurmat Khan as the mortgagee. Hurmat Khan mortgaged his mortgagee rights in Khasra No. 398 in favour of one Main-ud-din,—*vide* mutation No. 67 decided on the 16th of May, 1886. On the 19th of May, 1899, Main-ud-din orally transferred his rights as sub-mortgagee in favour of his duaghter named Fiazi. On the 30th of May, 1899, he made a report to the village Patwari that he had gifted his mortgagee rights in Khasra No. 398 to his daughter Fiazi to whom he had also transferred

possession of the said Khasra number. The Patwari recorded the report to which Main-ud-din affixed his signature. Mutation No. 1839 (Exhibit D. 1 in suit No. 737 of 1958) was sanctioned on the basis of that report on the 6th of August, 1899.

(7) When *jamabandi* for the year 1906-1907 was prepared, the land in dispute was transferred to *shamilat thula hashab.*

(8) The sub-mortgage created by Hurmat Khan in favour of Main-ud-din was redeemed by the former,—*vide* mutation No. 2940 decided on the 31st of December, 1922.

(9) The four plaintiffs are the succesors-in-interest of Hurmat Khan mortgagee.

(10) The defendants in the two suits are the same. They are 31 in number. Defendants Nos. 1 to 4 are non-evacuees, who represent all the co-owners of *thula hashab* including themselves, in accordance with the provisions of rule 8 of Order 1 of the Code of Civil Procedure (hereinafter referred to as the Code). Defendants Nos. 5 to 30 are evacuee-owners of the *thula* and are represented by the Custodian of Evacuee Property, Punjab (hereinafter referred to as the Custodian) and the Union of India. Defendant No. 31 is the State of Punjab into whose shoes has now stepped the State of Haryana by virtue of the provisions of the Punjab Re-organisation Act, 1966.

(11) In each suit the plaintiffs asserted that they had served the Custodian as also the State of Punjab with notices under section 80 of the Code and prayed for the grant of a declaration that they had become the owners of the land in dispute by effluse of time inasmuch as none of the mortgages above mentioned had been redeemed within the period of 60 years computed from its creation.

(12) Defendants Nos. 1 to 4 confessed judgment. On behalf of defendants Nos. 5 to 30 the suit was contested by the Custodian who pleaded that it was liable to dismissal for want of notice to him under section 80 of the Code and also because it was barred by the

provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, by those of section 46 of the Administration of Property Act, 1950 (hereinafter referred to as the Administration Act) and by those of the Evacuee Interest (Separation) Act, 1951 (hereinafter called the Separation Act). On merits it was averred by the Custodian that the plaintiffs had not become full owners of the land in dispute by prescription.

(13) The two Courts below held that no notice under section 80 of the Code had been served on the Custodian and that the suit merited dismissal on that ground alone. They further found that the reports made to the Patwari by Main-ud-din on the 30th of May, 1899, and by Phul Khan on the 17th of October, 1913, and the 3rd of November, 1913, amounted to acknowledgments in writing of the right of redemption of the concerned mortgagors within the meaning of section 19 of the Indian Limitation Act, 1908, so that the mortgagors became entitled to compute fresh periods of limitation (60 years in each case) from those dates. The result, according to the Courts below, was—

(i) that all the mortgages detailed above were alive on the 29th of October, 1951, when the Separation Act came into force,

(ii) that as 26 of the mortgagors were evacuees, their interest in the land vested in the Custodian as evacuee property so that the land itself was "composite property" within the meaning of that expression as defined in section 2(d) of the Separation Act, and

(iii) that the claims of the plaintiffs in the two suits being claims to composite property section 20 of the Separation Act was a bar to the maintainability of both the suits.

(14) In view of these conclusions the two suits were dismissed by both the Courts.

(15) The first contention raised by Mr. Mital, learned counsel for the plaintiffs, was that section 80 of the Code had no application to the facts with which we are here concerned inasmuch as neither of the two suits had been instituted in respect of any act purporting to be done by the Custodian in his official capacity. Mr. Mital conceded that the Custodian was a public officer to whom no notice under section 80 of the Code had been sent but added that no act,

official or otherwise of the Custodian had been attacked by the plaintiffs who merely sought a declaration of their own rights of ownership in the land in dispute. The contention appears to be well founded. Section 80 of the Code is as follows:

> "80. No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—
>
> (a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government ;
>
> (b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway ;
>
> (c) in the case of a suit against a State Government, a Secretary to that Government or the Collector of the District ; and, in the case of a public officer, delivered to him or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

(16) It is plain that the bar created by the section operates in the case of a suit against a public officer only when such suit is "in respect of any act.........". If no act of a public officer is complained of in a suit, such officer would not be held entitled to the protection of the section even though he is impleaded as a defendant This was the view taken by their Lordships of the Privy Council in *Revati Mohan Das* v. *Jatindra Mohan Ghosh and others* (1). In that case a mortgage upon an estate known as Taluk Raj Narain Sen was created by one Raj Mohan Gupta, who was then the common manager of the estate, appointed under section 95 of the Bengal Tenancy Act. Raj Mohan Gupta died and was succeeded by one Harihar Ghosh on whose death in turn his son Jatindra Mohan Ghosh was appointed as the common manager. The mortgagee brought a suit for the recovery of the mortgage money.

(1) A.I.R. 1934 P.C. 96.

The suit was decreed by the trial Court but was dismissed by the High Court in appeal on the ground that no notice under section 80 of the Code had been given to Jatindra Mohan Ghosh who was a public officer. In second appeal their Lordships of the Privy Council, before whom Jatindra Mohan Ghosh was arrayed as respondent No. 1, observed:

> "In the case of a suit against a public officer it is only where the plaintiff complains of some act purporting to have been done by him in his official capacity that notice is enjoined. Counsel for respondent 1 contends that this condition was satisfied by the execution of the mortgage, or, alternatively, by the failure to pay off the mortgage. In their Lordships' opinion neither branch of this contention is sufficient to bring the section into play in the present case. On the first branch it is sufficient to point out that the mortgage was not executed by respondent 1, but by a former manager, and that the appellant does not complain in any way of the execution of the mortgage. This contention does not seem to have been raised in the High Court.
>
> "On the alternative contention their Lordships are unable to hold that non-payment by respondent 1 is an act purporting to be done by' the manager 'in his official capacity'. Under the general definitions contained in Section 3, General Clauses Act, 1897, an 'act' might include an illegal omission, but there clearly was no illegal omission in the present case. It is also difficult to see how mere omission to pay either interest or principal could be an act purporting to be done by the manager in his official capacity. The mortgage imposed no personal liability upon the manager, but merely provided that if payment was not made the mortgagee would be entitled to realize his dues by sale through the Court, and this was all that the appellant sought by his suit. The manager for the time being no doubt had an option to pay in order to save the sale, but failure to exercise an option is not in any sense a breach of duty. The appellant made no claim against respondent 1 personally. He was there only as representing the estate of which the sale was sought. In their Lordships' opinion, such a suit is not within the ambit of section 80 and no notice of suit was required."

The principle enunciated in these observations is fully applicable to the facts of the present case. As pointed out by Mr. Mital, the plaintiffs in the two suits did not attack any act of the Custodian and section 80 of the Code, therefore, is no bar to either of the suits.

(17) Mr. Mehtani, learned counsel for the Custodian, pointed out that although the plaints in the two suits mentioned no act of the Custodian which was sought to be challenged by the plaintiffs, the latter made applications asking for the issuance of temporary injunctions in both the suits and in those applications they stated that the Custodian intended and threatened to oust the plaintiffs from the land in dispute. With the contents of those applications we are not here concerned and the nature of the suits has to be determined solely with reference to the plaints in which no relief was sought such as may flow from an intention or threat of the type attributed to the Custodian in the two applications. In each of the two suits the plaintiffs sought only a declaration simpliciter without asking for the relief of injunction and, as the plaints stand, it cannot be said that either of the suits was "in respect of any act purporting to be done" by the Custodian. Section 80 of the Code cannot, therefore, be held to be a bar to either suit and the concurrent finding of the Courts below to the contrary is reversed.

(18) The next contention of Mr. Mital was that the reports made by Main-ud-din and Phul Khan to the village Patwari could not be so construed as to amount to acknowledgments of the right of redemption of the mortgagors within the meaning of section 19 of the Indian Limitation Act, 1908, and that the mortgagors were not, therefore, entitled to compute fresh periods of limitation from the dates when the reports were made. This contention must also be held to be unexceptionable. In all the three reports under examination the person making it had merely given a description of the rights which he had purchased or transferred and it was by way of giving that description that he stated such rights to be mortgagee rights. It is no doubt true that the right of redemption is inherent in a transaction of mortgage but then the authors of the reports were not consciously or even by implication referring to such a right at all nor were admitting that it existed. In this view of the matter they cannot be held to have acknowledged that the right of redemption of the mortgagors was subsisting at the time

when the reports were made. This is exactly what was held in *Tilak Ram and others* v. *Nathu and others* (2). In that case Parmeshwardas, a mortgagee of land, made statements referring to the fact of his being such a mortgagee, in four documents. One of these documents was a written statement filed in a suit. The written statement contained an averment that Parmeshwardas held the land as mortgagee thereof. Another document was a sale deed executed by Parmeshwardas by virtue of which he sold his mortgagee rights in favour of others. In repelling the contention that these documents contained statements amounting to acknowledgements within the meaning of section 19 of the Indian Limitation Act, 1908, their Lordships relied on the following observations made in *Shapur Fredoom Mazda* v. *Durga Prosad* (3):

> "If the statement is fairly clear then the intention to admit the jural relationship may be implied from it, the admission in question need not be express, but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement."

and then proceeded to lay down :

> "The right of redemption no doubt is of the essence of and inherent in a transaction of mortgage. But the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. It follows that where a statement setting out jural relationship is made clearly without intending to admit its existence an intention to admit cannot be imposed on its maker by an involved or a far-fected process of reasoning."

(19) In the light of these remarks their Lordships interpreted the statements made by Parmeshwardas in the written statement and the sale deed executed by him to be references to the mortgage

(2) A.I.R. 1967 S.C. 935.
(3) A.I.R. 1961 S.C. 1236.

for the purpose of describing his own interest and not with any consciousness or intention to admit the fact that the mortgages in question were subsisting at the time. The case is practically on all fours with the instant one, in so far as the interpretation to be placed on the reports made by Main-ud-din and Phul Khan is concerned. Those reports must be held not to contain any evidence of an intention on the part of their authors to admit that the mortgages in quesion subsisted and the references made therein to those mortgages must be taken to have been made merely by way of description of the rights which were being acquired or parted with.

(20) The next contention of Mr. Mital was that section 20 of the Separation Act was no bar to the maintainability of the two suits. The provisions of the Act which must be examined in this behalf are clauses (b) and (d) of section 2 and sub-section (1) of section 20. These may be set out here with advantage:

"2. In this Act, unless the context otherwise requires,—

(* * * *

(b) 'claim' means the assertion by any person, not being an evacuee of any right, title or interest in any property—

(i) as a co-sharer or partner of an evacuee in the property; or

(ii) as a mortgagee of the interest of an evacuee in the property; or

(iii) as a mortgagor having mortgaged the property or any interest therein in favour of an evacuee;

and includes any other interest which such person may have jointly with an evacuee and which is notified in this behalf by the Central Government in the Official Gazette;

(d) 'composite property' means 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 and—

(i) in which the interest of the evacuee consists of an undivided share in the property held by him as a cosharer 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

(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;"

"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."

(21) Before the bar in sub-section (1) of section 20 can operate, the Court must be satisfied that the suit in question relates to any claim to composite property as defined in section 2(d) and that the claim falls wihin the ambit of section 2(b). Now in the two suits brought by the plaintiffs the claim made by them is an assertion by persons not being evacuees of a right or interest in a property as mortgagees of the interest of persons who are evacuees. Their claim is, therefore, of the type covered by clause (ii) of section 2(b). That, however, is not sufficient to make the property in dispute "composite property" within the meaning of section 2(d) according to which that property or an interest therein must have been declared to be evacuee property or must have vested in the Custodian under the Administration Act. It was common ground between the parties that the land in dispute or the mortgagors' rights therein had never been declared evacuee property. Mr. Mehtani, however, submitted that the land in dispute had vested in the Custodian under sub-section (2) of section 8 of the Administration Act which runs thus:

"8. (1) * * * *

(2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act,

and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest :

* * * * *."

(22) This sub-section was analysed by me in *Union of India* v. *Joti Parshad* (4), with reference to the provisions of legislation relating to evacuee property repealed by the Administration Act and I found that unless a property was declared to be evacuee property in compliance with the provisions of section 7 of the administration of Evacuee Property Ordinance, 27 of 1949, it could be deemed to have vested in the Custodian only if it was the property of a person, who had become an evacuee before the 18th of October, 1949, the date on which the East Punjab Evacuee Property (Administration) Ordinance, 1949 was repealed. Apparently there is nothing on the record to show the date or dates on which defendants Nos. 5 to 30 became evacuees. If the date of evaluation of any of these defendants was prior to the 18th of October, 1949, his property would be deemed to have vested in the Custodian by reason of the provisions of sub-section (2) of section 8 of the Administration Act. If, on the other hand, that date was the 18th of October, 1949, or subsequent thereto, the property of that defendant would not be deemed to have so vested. As such date in the case of each of defendants Nos. 5 to 30 has not been made available to the Court, it cannot be said that his interest in the land as a mortgagor has vested in the Custodian. That being so, one of the main ingredients of the definition of composite property contained in section 2(d) is lacking in the case of the land in dispute.

(23) As pointed out by Ismail, J., in *Mst. Khair-un-Nisa* v. The *custodian of Evacuee Property* (5):

> "as a general principle, exclusion of jurisdiction of civil Courts ought not to be inferred readily. If a particular party contends that the jurisdiction of the Civil Courts is excluded, the onus is on that party to establish the same and such an exclusion cannot be said to have been established unless every one of the requirements of the provision excluding the jurisdiction of the civil Courts is strictly complied within a ptarticular case."

(4) R.S.A. 1261 of 1960 decided on 28th of July, 1971.

(5) A.I.R. 1968 Delhi 162.

(24) The land in dispute not having been shown to be composite property, it must be held that the jurisdiction of Civil Courts to entertain the two suits is not barred by reason of the provisions of section 20 of the Separation Act.

(25) According to Mr. Mehtani the suits were barred by section 46 of the Administration Act even if section 20 of the Separation Act did not stand in their way. Clause (a) of the said section 46 takes away the jurisdiction of Civil Courts "to entertain or adjudicate upon any question whether any property or any right or interest in any property is or is not evacuee property" and the contention of Mr. Mehtani was that this Court could not determine the question as to whether or not the property of defendants Nos. 5 to 30 was or was not evacuee property. This contention is no doubt unexceptionable. As laid down in *Custodian Evacuee Property, Punjab and others, v. Jafran Begum* (6), section 46 of the Administration Act is very widely worded and clearly bars the jurisdiction of Civil Courts in the matters specified therein. However, the contention is of no help to the case of Mr. Mehtani in as much as clause (a) aforesaid bars the entertainment of or adjudication upon (by a Civil Court) only two questions which, as pointed out by their Lordships of the Supreme Court in *Jafran Begum's case* (6) (supra) are:

(i) whether a particular person has or has not become an evacuee and

(ii) whether the property in dispute belongs to such a person.

With the proposition advanced on behalf of the Custodian that defendants Nos. 5 to 30 are evacuees and that the mortgagee-rights in dispute belonged to them so that those rights, as on the date of the evacuation of defendants Nos. 5 to 30, became evacuee property, Mr. Mital has no quarrel and in fact concedes that those rights must be considered to be 'evacuee property' within the meaning of that expression as defined in clause (f) of section 2 of the Administration Act. He argues, however, that the only point requiring determination in connection with the question of jurisdiction of Civil Courts is as to whether the said mortgagee-rights, being evacuee property, ever vested in the Custodian under section 8 of the Administration Act, and such vesting, he submits, is not a matter the entertainment of or adjudication upon which by the Civil Courts is barred under

(6) A.I.R. 1968 S.C. 169.

section 46 of the Administration Act. After careful examination of the rival arguments advanced by learned counsel, I am fully inclined to agree with Mr. Mital. "Evacuee property" as defined in clause (f) of section 2 of the Administration Act is one thing, and its vesting in the Custodian quite another, as is clear from the language employed in section 8 of that Act which lays down that property shall be deemed to be vested in the Custodian only if one or the other of two conditions is satisfied. One of those conditions is that such property should be declared to be evacuee property under section 7 of that Act. The other condition envisages that such property should have vested in the Custodian under any law repealed by the Administration Act. The section leaves no doubt that a property, even though it be evacuee property within the meaning of clause (f) of section 2 of the Administration Act, shall not be deemed to have vested in the Custodian unless it was either declared to be evacuee property under section 7 of that Act or had vested in the Custodian under any law repealed by that Act. The question of a property being evacuee property is thus distinct from one of its vesting in the Custodian and the latter cannot be regarded as a question the entertainment of or adjudication upon which is barred by clause (a) of section 46 of the Administration Act.

(26) In the above view of the matter, there is no legal bar to the adjudication of the dispute between the parties by the Civil Courts and the findings of the Courts below to the contrary are reversed.

(27) Whether the appellants in each of the appeals have become the owners of the lands disputed therein remains to be seen. The period of limitation allowed by the Indian Limitation Act, 1908, for redemption of a mortgaged property was 60 years from the date of accrual of right to redeem. By the end of the year 1956, that right had been extinguished in relation to all the four mortgages described above. The plaintiffs in each case thus became full owners by prescription of the mortgaged land in their possession and are entitled to a declaration to that effect.

(28) In the result the appeals succeed and are accepted. The judgments and decrees of the lower Courts are set aside and the plaintiffs in each of the two suits are granted the declaration prayed for by them. The parties shall bear their own costs throughout.

B. S. G.