

APPELLATE CIVIL

Before Harbans Singh, J.

KALU RAM AND OTHERS,—Appellants

versus

CUSTODIAN EVACUEE PROPERTY, PUNJAB,
JULLUNDUR AND OTHERS,—Respondents.

Regular Second Appeal No. 891 of 1956.

1961
Sept., 26th

Evacuee Interest (Separation) Act (LXIV of 1951)—Sections 6 and 20—Terminus a qua to determine whether mortgagee rights subsisted—Whether the date of the enforcement of the Act.

Held, that section 20 of the Evacuee Interest (Separation) Act, 1951 debars the civil or revenue Courts from entertaining any suit or proceeding in so far as it relates to any claim to composite property and even provides for the stay of the proceedings in these matters where the same are pending at the commencement of the Act. If the proceedings which are already pending on the date of the commencement of the Act, are also to be stayed then *a fortiori* no proceedings can be taken after enforcement of the Act for the determination of the interest of the evacuee in a composite property and, consequently, the date of the commencement of the Act can be treated as the *terminus a quo* for the determination of the question whether the mortgagee rights subsisted or not.

Second Appeal from the decree of the Court of Shri Hira Lal Jain, Additional District Judge, Ferozepore, dated the 7th July, 1956, reversing that of Shri Balwant Singh Sekhon, Sub-Judge, II Class, Ferozepore, dated the 10th August, 1955, against defendants Nos. 1, 3 and 4 and dismissing plaintiffs' suit in its entirety with costs of the suit to defendants 1 and 2 and the costs of the appeal to defendant No. 1.

J. N. SETH, ADVOCATE, for the Appellants.

K. S. CHAWLA, ADVOCATE, for the Respondent.

JUDGMENT.

HARBANS SINGH, J.—The facts giving rise to this appeal may briefly be stated as follows: An area of land measuring 17 *kanals* was mortgaged by a Mohammodan, whose successors migrated to Pakistan after 15th of Augus, 1947, on partition of India, with possession for Rs. 99. on 14th of June, 1892, with the predecessors-in-interest of Kalu Ram and others who are the plaintiffs in the present proceedings. They and, prior to them, their predecessors-in-interest had been in possession of the land. In 1904, a further charge of Rs 50, was created on this land. Later on the property was partitioned between the parties. Some part of it was redeemed and now nearly one-half of the land, measuring 9 *kanals* 16 *marlas* as detailed in the plaint, is in dispute. After the passing of the Evacuee Interest (Separation) Act, 1951 (hereinafter referred to as the Act), apparently on the information given by the Custodian a notice was issued by the competent officer under section 6 of the Act to Kalu Ram and others asking them to submit their claim, if any, in the prescribed manner. Claim was submitted by Kalu Ram and others wherein they took up the position that in view of the fact that more than sixty years had expired from the date of the creation of the original mortgaged, the evacuee has been left with no interest and hence the property was not composite property. The original deeds were not produced before the competent officer but a statement was made by Kalu Ram and on the basis of that statement the competent officer held that the property was a composite property and in view of the provisions of sub-section (2) of section 9 of the Act, he declared the mortgage debt to have been extinguished by the expiry of period of more than twenty years. The present suit was brought by Kalu Ram and others for a declaration that the aforesaid order of the competent officer was without jurisdiction and *ultra vires* and of no effect, and as they had meanwhile been dispossessed they also sought for possession by amending the plaint. Apart from some preliminary issues, the issue now in dispute was—

Whether the order dated 12th of June, 1953, of the competent officer is illegal and *ultra vires* ?

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erty, Punjab,
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The trial Court held that in view of the fact that the notice was issued by the competent officer in April, 1953, the mortgagee rights of the plaintiffs had matured into proprietary rights by efflux of time and, therefore, the property was no longer a composite property and the order of the competent officer was without jurisdiction. In view of this, the suit was decreed. In appeal, however, the learned lower appellate Court held that the evacuee interest in the mortgaged land came to be vested in the custodian in the year 1948,—*vide* sub-sections (1), (2) and (4) of section 8 of the Administration of Evacuee Property Act, 1950, in view of the general notification issued on behalf of the custodian and that, in any case, the Evacuee Interest (Separation) Act having come into force, on 31st of October, 1951, on which date sixty years had not yet expired, the evacuee continued to have an interest in the property and, consequently, the same was a composite property. He further held that in view of the provisions of sections 18 and 20 of the Act, the proper remedy for the plaintiffs was to go in appeal from the order of the competent officer and that the question whether the property is composite property or not is within the jurisdiction of the competent officer and, consequently, section 20 is a bar to any suit in a civil Court. In view of this, the appeal was accepted and the suit of the plaintiffs dismissed. The plaintiffs have come up in second appeal.

As has been held in *R. L. Aggarwal v. Darshan Lal* (1), which was a Letters Patent Appeal from an order of a learned Single Judge reported as *Darshan Lal v. R. L. Aggarwal* (2), a mere general notification is not sufficient and is not equivalent to determination of the dispute whether the property is an evacuee property and, consequently, such a notification is not binding on the competent officer under sub-section (2) of section 8 of the Act and, consequently, it is for the competent officer to determine, if a dispute arises, whether a particular property is a composite property or not.

The sole question for determination, therefore, is whether in this case the competent officer was within

(1) 1960 P.L.R. 509.

(2) 1958 P.L.R. 669.

his jurisdiction when by his order, dated 12th of June, 1953, he treated the property as composite property and also treated the interest of the evacuee as still subsisting. The only point urged by the learned counsel for the appellants was that as admittedly the mortgage was created on 14th of June, 1892, and a notice was served on the plaintiffs in April, 1953, the mortgagee rights had ceased to exist due to efflux of time. This takes us to the question as to what is the *terminus a quo* for determining whether the mortgagee rights were subsisting or not. The relevant portion of section 6 of the Act is as follows:—

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“For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either on information received in this behalf from the custodian or on an application from a claimant, issue, in such form and manner as may be prescribed,—

- (a) a general notice requiring all persons who claim interest in such property, and
- (b) also a notice on every person who, in the opinion of the competent officer, may have a claim in such property, to submit claims, if any, in respect of that property.”

It was urged on behalf of the respondents that as soon as this Act came into force the evacuee, or the custodian as the successor-in-interest of the evacuee, was debarred from bringing a suit for redemption of the mortgage, and, therefore, the *terminus a quo* in determining whether the mortgage was subsisting is the date of the enforcement of the Act. In the alternative, the learned counsel urged that, in any case, when the custodian moved the competent officer he, as the representative of the evacuee, had done all that he could do and that the date on which the custodian had given the information should be treated as the *terminus a quo*.

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With regard to the first point he urged that it is for the competent officer to determine the amount due on a mortgage and this matter, in view of section 20, must be treated to be within his exclusive jurisdiction and no Court can go into the same. Sub-section (1) of section 20 runs as follows:—

“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.”

I feel that there is force in this argument. Sub-section (2) of section 20 even provides for the stay of the proceedings in these matters where the same are pending at the commencement of the Act. If the proceedings which are already pending on the date of the commencement of the Act are also to be stayed then a *fortiori* no proceedings can be taken after the enforcement of the Act for the determination of the interest of the evacuee in a composite property and, consequently, the date of the commencement of the Act can be treated as the *terminus a quo* for the determination of the question whether the mortgagee rights subsisted or not. In any case, the date on which the notice is served on the mortgagee cannot possibly be taken as the date for determining whether the mortgage is in existence or not. To take analogy, if a suit is brought by the mortgager for redemption of the mortgage and a notice of the suit is served on the mortgagee much later, the date for determining whether the mortgage is in existence or not would be the date on which the Court is moved by the mortgager and not the date on which the notice has been served on the mortgagee. In the present case, therefore, if it had been proved that the custodian had moved the competent officer under section 6 after 14th of June, 1952, the plaintiffs may have had some case to argue

that on the date when the custodian moved the competent officer, the mortgagee rights had ceased to exist. The plaintiffs had come to the Court with the allegation that the order of the competent officer is without jurisdiction and *ultra vires*. Normally speaking, as already indicated, nothing done by a competent officer under the Act is subject to challenge in a civil Court and the only ground of challenge can be if the action of the competent officer is without jurisdiction. The burden was, therefore, on the plaintiffs to establish that on the date on which the competent officer took cognizance of the matter, the mortgagee rights had ceased to exist and, consequently, the property was not a composite property and the competent officer had no jurisdiction. Admittedly there is nothing on the record to show that the custodian had moved the competent officer after 14th of June, 1952. In either view of the case, therefore, I feel that the plaintiffs have failed to show that the mortgagee rights had ceased to exist and, consequently, it cannot be held that the order of the competent officer dated 12th of June, 1953, is without jurisdiction or *ultra vires*.

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In view of the above, the order of the lower appellate Court, dismissing the suit has to be upheld though on slightly different grounds. This appeal is, consequently, dismissed. There will be no order as to costs

B.R.T.

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HARBANS SINGH AND OTHERS,—Appellants

versus

SMADH BAWA DARBAR PURI THROUGH MAHANT
SURJAN PURI AND OTHERS,—Respondents.

Regular Second Appeal No. 1252 of 1960.

East Punjab Utilization of Lands Act (XXXVIII of
1949)—Sections 3 and 14—Defect in the notice—Whether

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