APPELLATE CIVIL

Before Tek Chand and Prem Chand Pandit, JJ.

LT. GURBACHAN SINGH AND ANOTHER,—*Appellants.*

versus

GUR IQBAL SINGH,—*Respondent.*

Regular First Appeal No 151 of 1955

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 2(e), 9 and 36—Suit for a declaration of the plaintiffs' share in the land allotted to their father—Whether cognisable by a Civil Court—Pleadings—Superfluous prayer—Whether can be ignored—Its inclusion in the plaint—Whether affects the maintainability of the suit—Words and Phrases—Claim—meaning of.

1960

Sept., 26th.

Held, that section 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. creates a bar of jurisdiction as against Civil Courts, in respect of matters, with which. the Central Government. or, and officer or authority appointed under this Act is empowered to determine. The important question is, whether by reading sections 9 and 36 together, it can be said, that the subject-matter of controversy in the suit is justiciable by the Settlement Officer or the Settlement Commissioner as the case may be. or, by a Civil Court. It is true, that it is a dispute between successors-in-interest of Risaldar Gujjar Singh deceased, who was a claimant to compensation. The present controversy also relates to apportionment of compensation among persons entitled thereto, namely, sons of the deceased. But the language of clauses (a) and (b) of section 9. when carefully examined, shows that the power conferred on the Settlement Officer or Settlement Commissioner is in respect of a verified claim which means a claim "which has not been satisfied wholly or partially by the allomeni of any evacuee land" (s. 2 (e)). Where, therefore, the claim has already been satisfied by the allotment of evacuee land, a suit for a declaration of the plaintiff's particular share in the allotted land is cognisable by a Civil Court when a dispute between the successors-in-interest of a deceased allottee of evacuee land has arisen. Such a dispute is not justiciable by the Central Government or by any officer or authority appointed in this behalf and is, therefore. cognisable by a civil Court. Exclusion of a civil Court's jurisdiction cannot be spelled out in the absence of clear language of the statute.

Held, that it is a rule of wide amplitude, especially in relation to pleading, that matter which is mere surplusage may be disregarded, and its inclusion does not vitiate the pleading. the maxim being *surplusagium non nocet*—surplusage causes not injury. This is a rule both of pleading and of conveyancing. The surplusage can be passed over and disregarded. Inclusion of something which is immaterial does not vitiate that which is valid and i is said. that *utile per inutile non vitiatur*, which means that what is useful, is not rendered invalid by that which is useless. If, therefore, the main declaratory relief as to the plaintiff's ownership can be granted by a civil Court, the plaintiffs cannot be non-suited on the plea, that the other prayer, which the plaintiffs are willing to abandon, is outside the Court's competence. The superfluous prayer can be given up at any stage and the surplusage can be taken *pro non scripta* as not having been mentioned. In such a case. the latter relief shall be deemed abadoned and the plaint will be read as if the surplusage was non-existent.

Held, that in its primary sense, 'claim' indicates the assertion of an existing right, though in secondary meaning it may indicate the right itself. I so far as 'claim' is an assertion or admission, it is in the nature of an unadjudicated obligation. After the adjudication, whether the claim is accepted or rejected, the obligation ceases.

First Appeal from the decree of the Court of Shri Dev Raj Saini, Sub-Judge, Ist Class, Batala, dated the 25th day of August, 1955, rejecting the plaint under Order 7. Rule 11(d), Civil Procedure Code, 1908, and leaving the parties to bear their own costs. .. ..

F. C. MITAL AND PREM CHAND JAIN, ADVOCATES, *for the Appellants.*

H. R. MAHAJAN AND AMRIT SAGAR MAHAJAN, ADVOCATES, *for the Respondent.*

JUDGMENT

TEK CHAND, J.—The parties to this appeal are brothers being sons of Resaldar Gujjar Singh, who died in 1947. The plaintiffs are two elder Tek Chand, J.

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brothers and the defendants is the youngest. Resaldar Gujjar Singh, father of the parties, was owner in West Punjab of 128 acres and 5 *kanals* of agricultural land in District Montgomery and also in Basao Kot in tehsil Shakargarh, now, in Pakistan. After the partition of the country 52 standard acres and 12½ units of land were allotted to Resaldar Gujjar Singh in village Sarchur in lieu of the above mentioned land left in Pakistan. This has subsequently been revalued at 104 standard acres and 4½ units.

The plaintiffs were in service—Lt. Gurbachan Singh being in the Army and Gurbhajan Singh was a Veterinary doctor. The defendant used to work on the land along with his father. In 1945 Resaldar Gujjar Singh gave to his youngest son land measuring 219 *kanals* and 1 *marla* in Chak No. 25/2. L. in Okara and the mutation was sanctioned on 13th January, 1947, after enquiry by the Revenue Officers. A copy of this mutation is placed on the record as Exhibit P. 3. It is alleged in the plaint, that the two plaintiffs were also given agricultural land in Chak Nos. 55/E.B. and 57/E.B. near Arifwala. They were given more land and their share came to 84 acres 7 *kanals* and 8 *marlas*. In other words 381 *kanals* fell to the share of each of the plaintiffs. Their father had kept with himself the remaining land which was situated in Chak No. 25/2.L. and Chak No. 54/2.L. in Okara and the entire land in village Basao Kot. The land which was given to the plaintiffs was not entered in the revenue records as no mutation had been effected.

After the partition of the country the defendant had been separately allotted land in lieu of the land given to him by his father as per mutation, dated 13th January, 1947 (Exhibit P. 3) and

this area is not in dispute. The controversy forming the subject-matter of this suit relates to the land which had been allotted in the name of Risaldar Gujjar Singh, parties' father. This area represented land in Chak No. 55/EB and Chak No. 57/EB, measuring 84 acres 7 *kanals* and 8 *marlas*, which, according to the plaintiffs, had been given to them by their father and also the remaining land which was retained by Risaldar Gujjar Singh.

In the present suit the plaintiffs pray as under:—

> "That a declaratory decree may be passed in favour of the plaintiffs against the defendant with costs of the suit to the effect that the plaintiffs are owners of 5195/6674 share of the land, measuring 52 standard acres and 12½ units, allotted to Risaldar Gujjar Singh, the plaintiffs' father, according to Allotment Order G/2, 305/2, in village Sarchur, tehsil Batala, as given in the above heading of the petition of plaint, and are owners of 2/3 share, out of the remaining 1479/6674 share and that the above-mentioned allotment order in favour of Risaldar Gujjar Singh, the plaintiffs' father is against the facts and law to the extent of the plaintiffs' 5195/6674 share, and it is null and void and ineffective as against the rights of the plaintiffs and is not binding on the plaintiffs or any other relief, which is deemed just, according to the facts, may be awarded."

The defendant in his written statement admitted that Risaldar Gujjar Singh had given to him out of his self-acquired land certain area in

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the year 1945, but he denied that anything was given to the plaintiffs. He now lays claim to 1/3 share in the suit land measuring 84 acres 7 *kanals* and 8 *marlas,* as also to 1/3 share in the land retained by the father.

On the death of the father, the parties took possession of the entire land in suit. On the above pleadings the following issues were framed:—

(1) Did Risaldar Gujjar Singh, relinquish his rights of ownership in favour of the plaintiffs regarding his land situated in Chak No. 55/E.B., Chak No. 57/E.B. ? O.P.

(2) If issue No. 1 is proved, what is the share of the plaintiffs in the land in suit ? O.P.

(3) Relief.

Later on an additional issue was framed by the trial Court:—

2-A. Has this Court jurisdiction to hear the suit ? O.P.

On the additional issue it was held that Civil Court had no jurisdition in view of section 46(d) of the Administration of Evacuee Property Act, 1950.

On issue No. 1, it was held that Risaldar Gujjar Singh had given land in Chak No. 55/E.B. and Chak No. 57/E.B. to the plaintiffs and had relinquished his rights of ownership in their favour.

On issue No. 2 it was held that the plaintiffs were entitled to the share as claimed by them in the plaint.

In view of his finding on issue 2-A, the Sub-Judge rejected the plaint under Order 7, rule 11(d), Civil Procedure Code, but left the parties to bear their own costs.

The plaintiffs' learned counsel in support of the appeal has argued that the jurisdiction of the Civil Court was not barred under section 46(c) as the legality of any action taken by the Custodian under the Administration of Evacuee Property Act, 1950, was not being questioned. He has also said that there was no encroachment upon the powers of the Custodian. The trial Court has not accepted the above contention in view of second prayer made in the plaint, which is to the effect—

> "That the allotment order in favour of Risaldar Gujjar Singh, the plaintiffs' father is against the facts and law to the extent of the plaintiffs' 5195/6674 share, and it is null and void and ineffective as against the rights of the plaintiffs and is not binding on the plaintiffs."

On the basis of this prayer the Sub-Judge thought that in a Civil Court, the allotment order of the Custodian was being questioned, and that this was outside its competence in view of sections 12 and 28 of the Administration of Evacuee Property Act. The former section gives power to the Custodian, to vary or cancel allotment of evacuee property, and the latter provision gives finality to every order of the Custodian and expressly provides that it cannot be called in question in any Court.

This reasoning of the trial Court is met by the appellants' learned counsel in this manner.

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He says, that in the main what is prayed is, that a declaratory decree may be passed to the effect, that the plaintiffs be declared to be owners of 5195/6674 share of the land allotted to Risaldar Gujjar Singh, and that the plaintiffs will be satisfied with that declaration, without seeking a further relief that the allotment was null and void. On a perusal of the plaint, and in particular of para 12, which embodies the prayer clause, it does appear to me that the second relief is superfluous. The plaintiffs-appellants in this Court, by way of abundant caution, have sought amendment of the plaint by omitting the prayer to which exception has been taken. I do not think that any amendment of the plaint is required as the original plaint does not suffer from any serious infirmity; and the superfluous prayer can be given up at any stage and the surplusage can be taken *pro non scripta* as not having been mentioned.

It is a rule of wide amplitude, especially in relation to pleading, that matter which is mere surplusage may be disregarded, and its inclusion does not vitiate the pleading, the maxim being *surplusagium non-nocet*—surplusage causes not injury. This is a rule both of pleading and of conveyancing. The surplusage can be passed over and disregarded. Inclusion of something which is immaterial does not vitiate that which is valid and it is said, that *utile per inutile non vitiatur*, which means that what is useful, is not rendered invalid by that which is useless. If, therefore, the main declaratory relief as to the plaintiffs' ownership can be granted by a civil Court, the plaintiffs cannot be non-suited on the plea, that the other prayer, which the plaintiffs are willing to abandon, is outside the Court's competence. In such a case, the latter relief shall be deemed abandoned and the plaint will be read as if the surplusage

was non-existent. The ground on which the trial Court rejected the plaint is, therefore, untenable.

The plaintiffs, however, are not yet out of the wood. Their major prayer is that they are 'owners of 5195/6674 share, of the land measuring 52 standard acres and 12½ units, allotted to Risaldar Gujjar Singh, plaintiffs' father, according to Allotment Order No. G 2/305/2'. As a matter of fact, the plaintiffs are not owners. Risaldar Gujjar Singh, their father, was an allottee of these areas; and neither he during his lifetime, nor his sons later on became owners. As allottees their status is merely that of licensees. The allottees, though not owners of the allotted area, nevertheless have fair expectation of becoming owners and their interest as allottees is, therefore, very valuable. It will nevertheless be not possible to place them at par with owners. Rule 72, sub-rule (2) of the Displaced Persons (Compnsation and Rehabilitation) Rules, 1955, no doubt, provides, that if the Settlement Officer is satisfied, that the allotment is in accordance with the quasi-permanent allotment scheme, he may pass an order transferring the land allotted to the allottee in permanent ownership as compensation, and shall also issue to him a *sanad* in the specified form. This *sanad* has not yet been issued to either of the parties and their status therefore, has not been raised to that of owners. The prayer in the plaint contemplates a declaration to which the plaintiffs not being owners, are not entitled. It is perhaps true that quasi permanent allotment is an embryonic state, nevertheless, it has all the potentialities of developing into a full fledged ownership. The learned counsel for the appellants urges that

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plaintiffs should be granted relief by way of declaration that they are owners of certain shares in such rights as were possessed by their father. That may be so, but the language of the plaint is not susceptible of such a construction. But this, to my mind, is an impediment, which can be overcome, as, it is always open to the Court to grant lesser relief where it is not possible to grant relief, as prayed, in its entirety.

There is, however, another hurdle in the way of the plaintiffs placed by sections 9 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which read as under:—

[His Lordship read Section 9 and 36 and continued].

Section 36 creates a bar of jurisdiction as against civil Courts, in respect of matters, with which, the Central Government, or, any officer or authority appointed under this Act is empowered to determine. The important question is, whether by reading sections 9 and 36 together, it can be said, that the subject-matter of controversy in he suit is justiciable by the Settlement Officer or the Settlement Commissioner, as the case may be, or, by a civil Court. It is true, that it is a dispute between successors-in-interest of Risaldar Gujjar Singh deceased, who was a claimant to compensation. The present controversy also relates to apportionment of compensation among persons entitled thereto, namely, sons of the deceased. But the language of clauses (a) and (b) of section 9, when carefully examined, shows that the power conferred on the Settlement Officer or Settlemnt Commissioner is in respect of a *verified*

claim. This expression is defined in section 2(e) as under:—

[His Lordship read Section 2(e) and continued:]

According to this definition a *verified claim* has to be a claim "which has not been satisfied wholly or partially by the allotment of any evacuee land....." In its primary sense, '*claim*' indicates the assertion of an existing right, though in secondary meaning it may indicate the right itself. In so far as '*claim*' is an assertion or admission, it is in the nature of an unadjudicated obligation. After the adjudication, whether the claim is accepted or rejected, the obligation ceases. In the instant case, such claim as the deceased had, had been satisfied wholly by the allotment of the land. Even if his claim had been satisfied partially by the allotment of evacuee land, it would not fall within the definition of 'verified claim'. The jurisdiction conferred on the Settlement Officer or the Settlement Commissioner relates to a 'verified claim', that is, a claim, which has not been satisfied, either in part or in entirety. The present dispute between the sons is long past the stage of a claim, as this claim had been wholly satisfied during the lifetime of Risaldar Gujjar Singh. Our attention has not been drawn to any other provision of the Act, which lends itself to a reasonable conclusion that a dispute between the successors-in-interest of a deceased allottee of evacuee land as to the apportionment of the compensation is justiciable by the Central Government or by any officer or authority appointed in this behalf, and not by a civil Court. Exclusion of a civil Court's jurisdiction cannot be spelled out in the absence of clear language of the statute.

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Reference in this connection may be made to the following observations in an unreported decision of a Bench of this Court in Letters Patent Appeal No. 277 of 1958 (*Narain Singh* v. *The Deputy Secretary, Rehabilitation and others*) decided on 23rd September, 1959, by Bhandari, C.J., and Falshaw, J.—

> "In his order, dated the 24th June, 1957, the Chief Settlement Commissioner came to the conclusion that the case is completely covered by the provisions of section 9 of the Act of 1954 and that it was within his competence to decide as to whether the daughters were or were not the rightful claimants of the property belonging to their father. This view appears to me to be wholly misconceived. The help of section 9 can be invoked only in cases in which a dispute arises in regard to verified claims and not in cases in which a dispute arises in regard to agricultural land. The dispute in the present case had not arisen in regard to a verified claim for the widow's claim had been fully satisfied by the allotment of evacuee property. The dispute related solely to agricultural land which was allotted to the widow of the deceased on quasi-permanent basis under Punjab Government notification of the 8th July, 1949. As the Chief Settlement Commissioner decided this case on the assumption that it was covered by the provisions of section 9, it seems to me that the order passed by him must be held to be wholly void and of no effect."

The above reasoning being *in pari materia*, is equally applicable to this case. The contention of the respondent that the civil Courts have no jurisdiction cannot succeed. For the reasons stated above, I am of the view that the civil Courts have jurisdiction and issue 2-A ought to have been decided in favour of the plaintiffs-appellants.

The next question is, whether Risaldar Gujjar Singh had relinquished his rights of ownership, in favour of the plaintiffs, regarding his land situated in Chak No. 55/E.B. and No. 57/E.B. The learned Sub-Judge in upholding the contention of the plaintiffs, discussed the oral evidence on the record. [His Lordship summarised the oral evidence and continued:]

The oral evidence on the record in no way rebuts the plaintiffs' case. In my view the trial Court came to a correct conclusion on issue No. 1. Issue No. 2, relating to the share of the plaintiffs in the land in suit raises no controversy.

On the above findings, the appeal instituted by the plaintiffs-appellants, deserves to succeed, and is allowed. In the result, the plaintiffs' suit is decreed, and the plaintiffs are entitled to the declaration, that the plaintiffs have 5195/6674 share in he land allotted to Risaldar Gujjar Singh, their father, according to Allotment Order No. G 2/305/2, in village Sarchur, tehsil Batala, and they have also 2/3 share out of the remaining 1479/6674, share of Risaldar Gujjar Singh.

For the above reasons the cross-objections of the respondent are dismissed. The parties are, however, left to bear their own costs.

PANDIT J.—I agree.

B.R.T.