to the provisions of section 18 of the Hindu Adoption and Maintenance Act (No. 78 of 1956) or file a suit on the basis of the compromise, which resulted in the decree for restitution of conjugal rights.

There is no merit in this submission also, because when the Act provides her with a particular remedy, she cannot be debarred from availing of the same, even though other remedies might be open to her. There is nothing in the provisions of this Section to compel her to seek redress, in the first instance, under some other provisions of law.

No other point was urged before me.

The result is that this appeal fails and is dismissed with costs.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

CHHITTAR KHAN AND OTHERS,—*Appellants*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 1285 of 1989.

1962

Dec. 13th

Administration of Evacuee Property Act (XXXI of 1950)—S. 16—Administration of Evacuee Property (Central Rules), 1950—Rule 15-B—Application by an heir of a person, who never migrated to Pakistan but whose property was declared evacuee, to restore the property to him—Whether maintainable—Rejection of such application by the Central Government—Whether affords cause of action for a suit to establish his title—Limitation for such a suit—Allottees of such property—Whether necessary parties to the suit.

Held, that a perusal of Rule 15-B of the Administration of Evacuee Property (Central Rules), 1950, shows that a person, who never migrated to Pakistan but whose property has been declared as evacuee property, can make an application under section 16 of the Administration of Evacuee Property Act, 1950, for the restoration of the property, which had been wrongly declared to be evacuee property, to him. A similar application can also be made by his heirs after his death. The rejection of such an application by the Central Government affords the cause of action to the applicant to file a suit for a declaration of his title to such property under the Proviso to sub-section (2) of section 16 of the Act and a suit filed within six years of the date of the order of rejection will be within time.

Held, that the allottees of such property are only proper, but not necessary, parties to the suit and in their absence the suit cannot be dismissed.

Second Appeal from the decree of the Court of Shri P. N. Thukral, Additional District Judge, Rohtak, at Gurgaon, dated the 18th April, 1959, affirming that of Shri Basant Lal Malhotra, Senior Sub-Judge, Gurgaon, dated the 10th December, 1958, dismissing the plaintiff's suit with costs.

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

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—One Yasin, minor, a Meo of village Agaon in district Gurgaon, was the last male holder of the property in dispute. In 1947 during the communal disturbances, he along with his mother, Mst. Jummi, left his village for migration to Pakistan. During the journey, they stayed at Najafgarh Camp, where he died of smallpox. Mst. Jummi, however, left for Pakistan, but returned to India after short time. In her absence, the Custodian assumed control of the land in dispute, thinking that Yasin had gone to Pakistan.

Mst. Jummi, on her return to India, made an application under section 16(1) of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Act), for the restoration of the land belonging to her deceased son, Yasin. On 17th May, 1951 this application was dismissed by the Deputy Custodian, Gurgaon, on the ground that the death of Yasin in the Indian Union had not been established. Later on Mst. Jummi contracted *karewa* with one Kanhaya, who was one of the collaterals of her husband. She, however, died on 16th March, 1955. On 3rd October, 1955, Chhittar Khan and others, claiming themselves as the only surviving collaterals of Yasin and, therefore, entitled to inherit his land, made an application under section 16 of the Act for the revision of the order, dated 17th May, 1951, passed on Mst. Jummi's application and for the restoration of this land to them. On 18th March, 1956 it was decided by the Assistant Custodian that Yasin had died in the Indian Union and that the applicants were his collaterals in the 15th or 16th degree. Since he was doubtful if these collaterals so distantly related to the deceased, could, in law, inherit the land left by him, he observed that the matter should be decided by a civil Court. He, however, forwarded the file of the case to the Additional Custodian, Evacuee Property, Punjab, Jullundur, for necessary orders recommending that the applicants were entitled to the restoration of the property of Yasin, deceased, in case, they could get their title established in a civil Court. On 17th June, 1957 the Under-Secretary to the Government of India, Ministry of Rehabilitation, informed the applicants that their application, dated 3rd October, 1955 made under sub-section (1) of section 16 of the Act had been rejected by the Central Government on the ground that the property claimed by them was not their property.

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The applicants, thereupon, instituted the present suit against the Union of India and the Custodian on 1st March, 1958 for a declaration that they being the only surviving collaterals of Yasin were his lawful heirs and were legally entitled to the land left by him. It was alleged by them that the refusal by the Rehabilitation Authorities to restore the property to them under section 16 of the Act was illegal.

The suit was resisted by the defendants on a number of pleas, which gave rise to the following issues:—

(1) Are allottees, etc., necessary parties to this suit ? If so, what is the effect of non-joinder ?
(2) Has Civil Court no jurisdiction to try this suit ?
(3) Is the suit barred by *res judicata* ?
(4) Was a valid notice under section 80, Civil Procedure Code, given to the defendants ? If not, what is its effect ?
(5) Is the suit within limitation ?
(6) Are plaintiffs collaterals of Yasin and were entitled to succeed to him in respect of the property in dispute ?
(7) Had Yasin died ? If so, when ?
(8) Is the suit barred by the provisions of Evacuee Interest (Separation) Act and Displaced Persons (Compensation and Rehabilitation) Act ?
(9) Is the property not evacuee one ?

The trial Judge held that the allottees of the land in dispute were necessary parties to the suit and the omission on the part of the plaintiffs to implead them rendered the suit bad in law; that although the civil Court had the jurisdiction to

entertain and hear the present suit for the declaratory relief, nevertheless it had to be thrown out being incompetent by reason of the proviso to section 42 of the Specific Relief Act ; that the suit was not barred by the principles of *res judicata*; that a valid notice under section 80, Civil Procedure Code, was given to the defendants ; that the suit was barred by limitation : that the plaintiffs were the collaterals of Yasin in the 15th or 16th degree and they were, therefore, entitled to succeed him; and that it had been proved that Yasin had died in the Indian Union. As regards issue No. 9, it was held that the controversy relating to this issue could not be gone into by the civil Court by reason of the provisions of section 46 of the Act. On these findings, the plaintiffs' suit was dismissed.

Aggrieved by this decision, the plaintiffs filed an appeal before the learned Additional District Judge, Rohtak, who held that the suit was barred by limitation; that the allottees had a vested right in the land in dispute and they were necessary parties to the suit; and that the civil Court had no jurisdiction to decide this case. On these findings, the appeal was dismissed and the judgment of the trial Court was affirmed. Against this, the present second appeal has been filed by the plaintiffs.

Learned counsel for the appellants, in the first place, contended that the finding of the lower appellate Court on the question of limitation was incorrect.

After hearing the counsel for the parties, I find that there is merit in this contention. The learned Additional District Judge has held that since, according to the appellants, Yasin was not

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an evacuee and they were not claiming as heirs of an evacuee, they were not entitled to make an application under section 16 of the Act and, therefore, the dismissal of their application by the Ministry of Rehabilitation on 17th June, 1957 did not give them any cause of action to go to the civil Court and pray for a declaration regarding their title. According to the learned Judge, the right to claim this property accrued to the appellants immediately the Custodian assumed control of the same as evacuee property. Since this happened in 1947, the present suit, which was brought in March, 1958, was clearly barred by limitation, having been filed more than six years after 1947. The relevant portion of section 16 of the Act is as under :—

> "Section 16(1) Subject to such rules as may be made in this behalf, any evacuee or any person claiming to be an heir of an evacuee may apply to the Central Government or to any person authorised by the Central Government in this behalf (hereinafter in this section referred to as the authorised person) that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force may be restored to him.
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> (2) On receipt of an application under subsection (1), the Central Government or the authorised person, as the case may be, shall cause public notice thereof to be given in the prescribed manner, and after causing an enquiry into the

claim to be held in such manner as may be prescribed, shall—

"(a) if satisfied—

(i) that the conditions prescribed by rules made in this behalf have been satisfied;

(ii) that the evacuee property is the property of the applicant; and

(iii) that it is just or proper that the evacuee property should be restored to him;

make an order restoring the property to the applicant, or;

(b) if not so satisfied, reject the application:

Provided that where the application is rejected on the ground that the evacuee property is not the property of the applicant, the rejection of the application shall not prejudice the right of the applicant to establish his title to the property in a civil Court, or

(c) if there is any doubt with respect to the title of the applicant to the property, refer him to a civil Court for the determination of his title."

* * *

It is true that under sub-section (1) of this section, an evacuee or any person claiming to be an heir of an evacuee can make an application to the Central Government, but this sub-section is subject to such rules as may be made in this behalf. The relevant Rule, which has been made in this connection, is

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15-B of the Administration of Evacuee Property (Central Rules), 1950, which is in these terms :—

> "*Rule 15-B,* A certificate under section 16 may be granted to the following classes of persons, namely; (i) (a) any person who since the first day of March, 1947, has continued to reside in India and did not at any time migrate to Pakistan and whose property has been declared as evacuee property;
> * * *
> * * *"

A perusal of this Rule would show that Yasin could make an application under section 16 of the Act for the restoration of the property, which had been wrongly declared to be evacuee porperty, to him, since he did not go to Pakistan. If Yasin could file such an application, I do not see any reason why his heirs cannot do so after his death. They filed this application on 3rd October, 1955, but the same was dismissed by the Ministry of Rehabilitation on 17th June, 1957 on the ground that the property in dispute was not the property of the appellants. Therefore, the present suit, which was filed on 1st March, 1958, for a declaration of their title to this property under the proviso to sub-section (2) of section 16 of the Act, was well within time as the cause of action arose to the appellants on the date when their application under section 16 of the Act was dismissed by the Ministry of Rehabilitation.

Learned counsel then contended that the Additional District Judge erred in law in holding that the allottees of the property in dispute had a vested right in it and they were necessary parties to the suit.

There is force in this contention as well. The learned Additional District Judge gave this finding on the ground that the application by the appellants under section 16 of the Act was not competent. This ground has already been reversed by me as mentioned above. The appellants were claiming a declaration against the Union of India and the Custodian, Evacuee Property, only. They were not wanting any relief against the allottees of this land. It is true that the allottees are in possession of the property in dispute and it would have been better if they had also been impleaded as parties to the suit, but it cannot be said that they are necessary parties and in their absence the appellants' suit could not proceed. Under section 20-A of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, if the Central Government came to the conclusion that it was not expedient or practicable to restore the whole or any part of the property in dispute to the appellants by reason of the same being in occupation of a displaced person, then it could either transfer some other evacuee property out of the compensation pool to the appellants or pay cash compensation in lieu thereof. It is possible, therefore, that the allottees may not be affected at all. I am, consequently, of the opinion that they were only proper, but not necessary, parties to the suit. As such, in their absence the suit cannot be dismissed.

Lastly, it was submitted that the finding of the lower appellate Court that the civil Court had no jurisdiction to try this suit was wrong.

There is force in this submission also. Proviso to sub-section (2) of section 16 of the Act clearly gave jurisdiction to the civil Court to try the present suit filed by the appellants, because

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their application under section 16 of the Act had been rejected on the ground that the evacuee property did not belong to them.

In view of what I have said above, I would accept this appeal, set aside the judgment and decree of the Learned Additional District Judge and remit the case to him for giving a finding on the remaining issues and then deciding the appeal in accordance with law. In the circumstances of this case, however, the parties will bear their own costs throughout.

B.R.T.

FULL BENCH

Before S. S. Dulat, Tek Chand and D. K. Mahajan, JJ.

JOGINDER SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 127 of 1961:

1963

Jan. 9th

Punjab Municipal Act (III of 1911)—Ss. 14 and 16—Orders passed under, by State Government—Whether administrative or judicial or quasi-*judicial—"Flagrantly abused his position as a member of the Committee"—Meaning of—Abuse of position as President—Whether can form reason for removal from membership of Committee—Action of an Authority under an Act—Validity of—How to be examined.*

Held, that the orders passed by the State Government under sections 14 and 16 of the Punjab Municipal Act are administrative and not judicial or *quasi*-judicial.

Held, that section 14 of the Punjab Municipal Act, 1911, authorises the State Government to order a seat to be vacated "for any reason which it may deem to affect the public interests". There is nothing in the section requiring any notice or hearing. The omission is significant in view of a clear provision in section 16 of the same Act which does require that a member, before he is removed, must be given