

The argument, however, has not been based so much on the facts of this particular case as on general principles, and in my opinion it cannot be said that the interim attachment of certain property, and a notice calling on a person who may be prosecuted for an offence in relation to the property to show cause why the attachment order should not be made absolute, in any way compel him to be a witness against himself, and even if a person in this position has for the purpose of securing the release of the property from attachment to reveal incidentally the whole or part of what his answer to the charge against him will be, I still do not consider that the provisions of article 20(3) of the Constitution are violated. The result is that I would dismiss the petition but leave the parties to bear their own costs.

Cl. L. Salwan
v.
The Union of
India and
another

Falshaw, J.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

Mst. VIRAN BAI,—Appellant.

versus

JAISA RAM AND OTHERS,—Respondents.

Regular Second Appeal No. 150-P of 1954.

Administration of Evacuee Property Act (XXXI of 1950)—Section 10—Allotment made by Custodian under—Whether can be challenged in a civil court—S. 46 (d)—Jurisdiction of the Civil or revenue court—How far barred—Suit for declaration that plaintiff, and not defendants, is entitled to allotment of land falling to the share of the deceased in lieu of land left by him in Pakistan as his heir—Whether competent—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 9—Whether bars such a suit Scope of—Whether covers the case of agricultural land.

1959

Nov., 12th

Held, that under section 10 of the Administration of Evacuee Property Act, 1950, the Custodian was empowered to transfer the evacuee land in any manner he liked, notwithstanding any law or agreement to the contrary, and clause (d) of section 46 barred the jurisdiction of civil or revenue Court in respect of any matter which the Custodian was empowered by or under the Act to determine. Where, however, the allotment made by the Custodian is not challenged but a suit is filed for a declaration that the plaintiff is entitled to the land which belonged to the deceased landholder by virtue of the will left by him and that the defendants to whom the allotment has been made are not entitled to it, such a suit is triable by the civil courts as it raises a dispute with regard to the title of the rival claimants. Such a suit also does not fall under section 9 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, as it does not cover a claim relating to agricultural land which has been wholly or partly satisfied by allotment of land.

Second appeal from the decree of the Court of Shri Kul Bhushan, District Judge, Bhatinda, dated the 9th day of April, 1954, reversing that of Shri Udham Singh, Sub-Judge, 2nd Class, Mansa, dated the 8th May, 1953 and rejecting the plaint, under Order 7, Rule 11, Civil Procedure Code.

ATMA RAM, for Appellant.

PURAN CHAND, for Respondents.

JUDGMENT

The Judgment of the Court was delivered by—

Gosain, J.

GOSAN, J.—Three brothers Karam Chand, Basu Ram and Khushi Ram owned certain agricultural property in equal shares in District Multan prior to the partition of the country. On the death of Khushi Ram, his three sons, defendants in the case out of which the present appeal has arisen, succeeded to the share of their father. Thereafter Basu Ram died on 16th November, 1945, leaving a will dated the 28th of April, 1941, by which he bequeathed his share of the property in favour of

Mst. Viran Bai, plaintiff, daughter of his brother Karam Chand. It appears that the revenue authorities mutated the land belonging to the share of Basu Ram in favour of sons of Khushi Ram one-half, and Karam Chand one-half. As a result of the partition of the country the parties migrated to India leaving behind their agricultural land, and in accordance with the policy of the Indian Government allotment was made on quasi-permanent basis to the various persons who were recorded in the Jamabandis received from West Pakistan. As already stated, in the Jamabandi only the names of Karam Chand and sons of Khushi Ram, existed. Consequently allotment in lieu of the land held by them was made to the defendants Jaisa Ram and others, sons of Khushi Ram, and to Karam Chand. The postcard, Exhibit P.B., dated the 8th August, 1951, sent by the Rehabilitation Authorities to Mst. Viran Bai indicates that she had made an application to the Department urging her claim, but the same was rejected and she was referred to a civil Court for getting a decision with regard to her right and title. The suit out of which the present appeal has arisen was thereafter filed by Mst. Viran Bai seeking a declaration to the effect that the plaintiff was the legal heir of Basu Ram deceased and was consequently the owner of the land situated in Multan District which was originally in the name of Basu Ram, and she sought possession of the land allotted to the defendants in lieu of the land which was so held by Basu Ram and which belonged to the plaintiff. The suit was resisted on a number of grounds, but it was found by the trial Court that Basu Ram had left the will by which the property belonging to him was bequeathed to Mst. Viran Bai. The other objections raised on behalf of the defendants, including that of jurisdiction of the Civil Court to go into this matter, were negatived by the trial Court and as

Mst. Viran Bai
v.
Jaisa Ram
and others
Gosain, J.

Mst. Viran Bai
v.
Jaisa Ram
and others

Gosain, J.

a result of these findings, the plaintiff's suit was decreed.

On appeal filed by the defendants, the learned District Judge, Bhatinda, did not decide other issues and accepted the appeal on the ground that civil Court had no jurisdiction to try the suit in view of section 46 of the Administration of Evacuee Property Act, 1950, because the allotment was made under section 10 of the said Act. Mst. Viran Bai has come up in second appeal.

The sole question for decision in this appeal is whether the civil Court was competent to try the suit as framed. It was conceded before us that the plaintiff could not seek the consequential relief of possession as claimed by her in the suit and that she was entitled to claim only the relief of declaration. Once she gets the declaration in her favour, she can approach the authorities concerned for justice being done to her. The learned trial Court relied on a judgment of Bhandari, C.J., in *Shrimati Lila Vanti v. Mahant Chander Ishwar Gir* (1), decided on the 18th March, 1953. In that case, however, the land had been allotted in favour of Smt. Lila Vanti who claimed to be the widow of one Shri Raj Gir, who was the manager of a certain temple in Pakistan. Mahant Chander Ishwar Gir filed a suit for possession of the land so allotted to Smt. Lila Vanti claiming that he was the disciple of the deceased Mahant and was consequently entitled to the allotment and possession of the same. In that case, therefore, it was the allotment of the land that was being directly challenged and it was a suit for possession. Under section 10 of the Administration of Evacuee Property Act, 1950, the Custodian was empowered to transfer the evacuee land in

(1) C.R. 254 of 1952

any manner he liked, notwithstanding any law or agreement to the contrary, and clause (d) of section 46 barred the jurisdiction of civil or revenue Court in respect of any matter which the Custodian was empowered by or under the Act to determine. That case, however, is quite distinguishable from the present one. Here the allotment made by the Custodian is not being challenged. In fact the Custodian was bound to make the allotment to the persons who were shown as owners in the revenue records. The present suit, in effect, is for a declaration that Karam Chand, and Jaisa Ram, etc. defendants, were wrongly recorded as the owners of the share of Basu Ram and that in fact the plaintiff is the owner of the share which belonged to Basu Ram by virtue of the will left by him. This case really raises a dispute of title between Mst. Viran Bai on the one hand and Jaisa Ram, etc., on the other. Though this point was not specifically raised in the present case, yet it could have been argued that in view of the subsequent changes in law, the entire evacuee property has vested in the Central Government and proprietary rights have been transferred by the President to the various claimants, and that under section 9 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, as amended, the dispute "as to the person or persons who are entitled to the compensation (including any dispute as to who are the successors-in-interest of any deceased claimant to compensation)." shall be enquired into either by the Settlement Officer or by the State Government, as the case may be, according to the value of the *verified claim* unless these officers think it proper to refer any such dispute to the District Judge nominated in this behalf by the State Government. However, the present case does not fall even under section 9, which does not cover a claim relating to agricultural land which has been wholly or partly

Mst. Viran Bai

v.

Jaisa Ram
and others

Gosain, J.

Mst. Viran Bai
v.
Jaisa Ram
and others

Gosain, J.

satisfied by allotment of land. Section 10 lays down special procedure for payment of compensation in cases where any immovable property has been leased or allotted to a displaced person by the Custodian. Thus, section 9 deals only with the cases of verified claims other than cases where agricultural property has been allotted to a claimant. The definition of 'verified claim' as it existed prior to the amendment introduced by Act No. 86 of 1956, or even thereafter, specifically excludes the cases where claims with regard to agricultural land left in Pakistan have been "satisfied wholly or partially by the allotment of any evacuee land under the relevant notification specified in section 10 of the Act." This matter has been fully considered in *Charanji Lal, etc. v. Smt. Inder Devi, etc.* (1), decided on 25th May, 1959. After considering the provisions of sections 9, 10 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, as also the definition of 'verified claim' it was observed as follows :—

"The claims with regard to the agricultural land are not covered by this definition (of verified claim) and a dispute with regard to succession of the same does not, therefore, fall within the ambit of sections 9 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act. In my judgment, therefore, the civil Courts had jurisdiction to entertain the suit."

To the same effect is the earlier judgment given by Bishan Narain, J., in *Shrimati Inder Devi v. Chiranji Lal* (2), decided on the 15th October, 1956.

For the reasons given above, we feel that the learned District Judge was in error in accepting

(1) R.S.A. 1152 of 1957
(2) R.S.A. 1125 of 1954

the appeal on the ground that the civil Courts had no jurisdiction to entertain the suit. The suit is certainly entertainable to the extent of the declaration that is sought for by the plaintiff, and the suit shall be treated to be confined only to this relief. We, therefore, accept this appeal, set aside the decree of the learned District Judge and remand the case for decision on merits in the light of the observations given above. The counsel for the parties have been instructed to direct their clients to appear before the District Judge, Bhatinda, on the 24th December, 1959. As the decision of the case has already been considerably delayed, the learned District Judge will proceed with the appeal expeditiously. The costs in this Court will abide the event.

R.S.

APPELLATE CIVIL

Before D. Falshaw and G. L. Chopra, JJ.

MUNICIPAL CORPORATION, DELHI,—*Appellant.*

versus

SHRIMATI SUBAGWANTI, ETC.,—*Respondent.*

Regular First Appeal No. 69-D of 1953

Tort—Collapse of building—Onus to prove lack of negligence—On whom lies—Duty to look after the building once it has passed its normal age—Extent of—The Fatal Accidents Act (XIII of 1855)—S. I A—Quantum of damages to be awarded—Factors to be taken into consideration in the determination of.

Held, that in a case, where a building has unexpectedly collapsed it becomes the duty of the persons responsible for the maintenance of the building to show that the building was kept in a proper condition, and that its collapse was not due to any negligence, since the persons responsible for the maintenance of the building are the only persons who are in a position to reveal the true state of affairs.

Mst. Viran Bai
v.
Jaisa Ram
and others
Gosain, J.

1959
Nov., 27th