

Before Alok Singh, J.

HARI DEVI,—Appellants/Plaintiffs

versus

SALWANT SINGH AND OTHERS,—Respondents/Defendants

R.S.A. No. 137 of 1988

13th May, 2010

Code of Civil Procedure, 1908-Evacuee Interest (Separation Act) 1951-Ss.10, 14 & 18—Competent Officer under section 10 of 1951 Act issuing sale certificate of property under mortgage in favour of father of plaintiffs-Defendants failing to file appeal u/s 14 of 1951 Act—No right to challenge validity of sale certificate in civil Court—Appeal allowed with costs while setting aside judgment & decree passed by 1st Appellate Court.

Held, that from the perusal of Sections 10, 14 and 18 of the Evacuee Interest (Separation Act) 1951, I find that competent officer may alienate the evacuee property under mortgage by exercising power under Section 10 of the Act. That order of the competent officer passed under Section 10 of the Act is appealable order under Section 14 of the Act. In view of Section 18 of the Act, any order made by the Appellate Officer under Section 14 of the Act or by the competent officer under Section 10 of the Act as the case may be, shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution. Undisputedly, sale certificate Ex. P-1 was issued in favour of the father of the plaintiffs/appellants and the defendants/respondents had not filed any appeal under Section 14 of the Act. In view of Section 18 of the Act, defendants cannot challenge the validity of the sale certificate Ex.P1. Since, sale certificate was issued in favour of the father of the plaintiffs/appellants way back on 11th May, 1957, hence, father of the plaintiffs became owner pursuant to the sale certificate and after the death of father of the plaintiffs, either on the basis of alleged Will having been executed by the father of the plaintiffs in favour of the plaintiffs or otherwise being natural heirs of Lakshmi Chand, plaintiffs have inherited the property of Lakshmi Chand.

(Paras 10 & 11)

Indian Evidence Act, 1872—Ss.57, 77 & 114—Evacuee Interest (Separation Act) 1951—Ss.10, 14 & 18—Alienation of land made under 1951 Act—Sale certificate issued in favour of transferee—Competent Officer keeping original sale certificate in record and issuing certified copy thereof—Plaintiffs filing certified copy—Whether certified copy issued by competent officer is required to be proved u/s 67 of 1872 Act—Held, No—When a public document or certified copy thereof is produced then S.67 of 1872 Act has no application.

Held, that when any alienation is made under the Evacuee Interest (Separation Act) 1951, sale certificate is issued in favour of the transferee. Original sale certificate is kept in the original record of the competent officer and certified copy thereof is issued in favour of the transferee. Plaintiffs have filed the original certified copy issued by the competent officer under Section 10 of the Act. Section 67 of the Indian Evidence Act comes into force when a private document is produced before the Court as evidence. However, if a public document or certified copy thereof is produced then it itself is a proof of the transaction mentioned therein and Section 67 of the Indian Evidence Act has no application. Moreover, any official act done shall be presumed having been done as per the law procedure as provided under Section 114 of the Indian Evidence Act. In view of the above, sale certificate was produced before the Court as Ex.P1 need no further evidence for the purpose of formal proof thereof.

(Para 13)

O.P. Goyal, Sr. Advocate, with Parbjot Singh Puri, Advocate, *for the appellants.*

Ramesh Sharma, Advocate, for A.S. Kalra, Advocate, *for the respondents.*

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(1) The plaintiffs (herein appellants) have filed present appeal impugning the judgment and decree dated 1st October, 1987 passed by Addl. District Judge, Jalandhar in Civil Appeal No. 27 of 1986, thereby allowing the appeal of the defendants (herein respondents) and dismissing the suit of the plaintiffs/appellants.

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(2) In nutshell, facts of the present case are that plaintiffs filed the original suit i.e. Civil Suit No. 397 of 1984, in the Court of Sub-Judge. 2nd Class, Phillaur for possession with the contention that Sh. Lakshmi Chand, father of the plaintiffs, was the owner in possession of the property in dispute; property in dispute was under the mortgage and thereafter under Section 10 of the Evacuee Interest (Separation Act) 1951 property in dispute was transferred in favour of Lakshmi Chand by the competent officer and the sale certificate was duly issued in favour of Lakshmi Chand, father of the plaintiffs, on 11th May, 1957; as per the plaintiffs, defendants have encroached upon the land of the plaintiffs almost one month before the filing of the suit, hence, plaintiffs are entitled for possession from the defendants.

(3) Defendants by way of filing written statement contested the suit, filed by the plaintiffs, and took the defence that in fact Dalip Singh and Puran Singh were the owners in possession of the property in dispute; Munshi had purchased the same land from Dalip Singh and Puran Singh and thereafter Munshi, defendant No. 6, had put the defendant No. 1 in possession with the assurance that he would execute the sale deed in favour of defendant No. 1; sale certificate dated 11th May, 1957 does not confer any title in favour of father of the plaintiffs; sale certificate is illegal and without jurisdiction.

(4) Learned trial Court decreed the suit of the plaintiffs/appellants *vide* judgment and decree dated 12th August, 1986. Learned trial Court has observed in its judgment that competent officer had alienated the property in favour of the father of the plaintiffs, and had issued the sale certificate EX. P—1 in favour of Lakshmi Chand, father of the plaintiffs on 11th May, 1957. Learned trial Court further observed that defendants could not prove that Dalip Singh and Puran Singh were the owners and thereafter Munshi had purchased the property from Dalip Singh and had put defendant No. 1 in possession with the assurance, to execute the sale deed in favour of defendant No. 1.

(5) Feeling aggrieved from the judgment and decree passed by learned trial Court, defendants preferred first appeal in the Court of District Judge, Jalandhar, which was subsequently heard and decided by Additional District Judge, Jalandhar *vide* impugned judgment and decree dated 1st October, 1987.

(6) Feeling aggrieved from the judgment and decree passed by the first Appellate Court reversing the judgment and decree dated 12th August, 1996 passed by learned trial Court. plaintiffs/appellants preferred present appeal under Section 100 of the Code of Civil Procedure.

(7) I have heard learned Counsel for the parties and carefully perused the record.

(8) Having heard learned Counsel for the parties, following substantial questions of law arise for just and fair adjudication of the lis between the parties :—

- (i) As to whether defendants can challenge sale certificate issued under Section 10 of the Evacuee Interest (Separation Act) 1951 in view of Section 18 of the Evacuee Interest (Separation Act) 1951 ?
- (ii) As to whether a public document is required to be proved as per Section 67 of the Indian Evidence Act as observed by the first Appellate Court ?

(9) **Substantial Question of Law No. (I)** :—Sections 10, 14 and 18 of the Evacuee Interest (Separation Act) 1951 are being reproduced here as under :—

“10. Separation of the interests of evacuees from those of claimants in composite property : Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular may,—

- (a) in the case of any claim of a co-sharer or partner,—
 - (i) direct the Custodian to pay to the claimant the amount of money assessed in respect of his share in the composite property or deposit the same in a Civil Court having jurisdiction over such property

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- and deliver possession of the property to the Custodian and the claimant may withdraw the amount in deposit in the Civil Court ; or
- (ii) transfer the property to the claimant on payment by him of the amount of money assessed in respect of the share of the evacuee in the property ; or
 - (iii) sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property ; or
 - (iv) partition the property according to shares of the evacuee and the claimant and deliver possession of the shares allotted to the evacuee and the claimant to the Custodian and the claimant respectively ;
- (b) in the case of any claim of a mortgagor or a mortgagee,—
- (i) pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the mortgaged property ; or
 - (ii) sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof ; or
 - (iii) partition the property between the mortgagor and the mortgagee having regard to the share to which the mortgagee would be entitled in lieu of his claim ;
- (c) adopt a combination of all or some of the aforesaid measures :

Provided that before taking any measure under this section, the competent officer shall take into account the order of preference filed by the claimant under clause (f) of subsection (2) of section 7 ; and in any case where the claimant

is a mortgagor and tenders the amount due, the competent officer shall accept the same in full satisfaction of the mortgage debt.

14. **Appeals :** (1) Any person aggrieved by an order of the competent officer made under section 8 or section 10 may, within sixty days from the date of the order, prefer an appeal to the appellate officer in such form and manner as may be prescribed :

Provided that the appellate officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (2) The appellate officer may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such orders as he deems fit.

18. **Finality of orders :** Save as otherwise expressly provided in this Act, every order made by any appellate officer or competent officer shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceedings."

(10) From the perusal of Sections 10, 14 and 18 of the Evacuee Interest (Separation Act) 1951 (herein referred as 'the Act'), I find that competent officer may alienate the evacuee property under mortgage by exercising power under Section 10 of the Evacuee Interest (Separation Act) 1951. I further find that order of the competent officer passed under Section 10 of the Act is appealable order under Section 14 of the Act. I further find in view of Section 18 of the Act, any order made by the Appellate Officer under Section 14 of the Act or by the competent officer under Section 10 of the Act, as the case may be shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution. Undisputedly, sale certificate Ex. P-1 was issued in favour of the father of the plaintiffs/appellants and the defendants/respondents had not filed any appeal under Section 14 of the Act. Now, in the present suit, in view of Section 18 of the Act, defendants cannot challenge the validity of the sale certificate Ex. P-1.

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(11) Since, sale certificate was issued in favour of the father of the plaintiffs/appellants way back in 11th May, 1957, hence, father of the plaintiffs became owner pursuant to the sale certificate and after the death of father of the plaintiffs, either on the basis of alleged Will having been executed by the father of the plaintiffs in favour of the plaintiffs or otherwise being natural heirs of Lakshmi Chand, plaintiffs have inherited the property of Lakshmi Chand. Substantial question of law No. (i) is answered accordingly in favour of the plaintiffs/appellants.

(12) **Substantial Question of Law No. (ii):**—In view of the finding recorded by me today while answering the substantial question of law No. (i), present substantial question of law No. (ii) becomes academic. However, to reply the substantial question of law No. (ii), I feel it necessary to reproduce Sections 67, 77 and 114 of the Indian Evidence Act, 1872 :—

“67. Proof of signature and handwriting of person alleged to have signed or written document produced :—If a document is alleged to be signed or to have been written wholly or in part by any person, the signatures or the handwriting of so much of the document as is alleged to be in that person’s handwriting must be proved to be in his handwriting.

77. Proof of documents by production of certified copies :—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

114. Court may presume existence of certain facts :—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

(13) Undisputedly, when any alienation is made under the Evacuee Interest (Separation Act) 1951, sale certificate is issued in favour of the transferee. Original sale certificate is kept in the original record of the competent officer and certified copy thereof is issued in favour of the transferee. Plaintiffs have filed the original certified copy issued by the competent officer under Section 10 of the Act. Section 67 of the Indian Evidence Act comes into force when a private document is produced before the Court as evidence. However, if a public document or certified copy

thereof is produced then it itself is a proof of the transaction mentioned therein and Section 67 of the Indian Evidence Act has no application. Moreover, any official act done shall be presumed having been done as per the law procedure as provided under Section 114 of the Indian Evidence Act. In view of the above, I am of the opinion that sale certificate which was produced before the Court as Ex. P-1 need no further evidence for the purpose of formal proof thereof. Substantial question of law No. (ii) is answered accordingly in favour of the plaintiffs/appellants.

(14) In view of the findings recorded by me against substantial questions of law Nos.(i) and (ii), observation made by the first Appellate Court that sale certificate was not proved as per Section 67 of the Indian Evidence Act cannot be sustained. View taken by learned First Appellate Court is not correct. In view of the above, present second appeal is liable to be allowed.

(15) Appeal is allowed with costs throughout setting aside the judgment and decree dated 1st October, 1987 passed by Addl. District Judge, Jalandhar in R.C.A. No. 27 of 1986. Judgment and decree dated 12th August, 1986 passed by learned trial Court/Sub Judge, 2nd Class, Phillaur in Civil Suit No. 397 of 1984 is restored.
