

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 3406 of 2002 (O&M)

Date of decision: 02.12.2015

Umra and another

... Appellant

versus

Fakira and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Som Nath Saini, Advocate for the appellant.

K.Kannan, J.

The appeal is brought at the instance of the plaintiff who filed a suit against the defendants for declaration of the title of the property and for recovery of possession from them. The Union contended that they were all allottees of property from the Union Government but no written statement was filed by allottees themselves. The suit was contested by the Union contending that the property was an evacuee property that vested in the Government and that they made an allotment to the defendant Nos. 1 to 13 and put them in possession of the property. There was a contention that the suit itself is not competent and the suit was barred by the provisions of The Administration of Evacuee Property Act, 1950 (in short the 'Act').

Since the contention raised by the plaintiff was that it was

his own property and the property had not been vested with the Central Government, it became necessary to examine whether the plaintiff had proved its title to the property. All that the plaintiff could show was that there had been a revenue entry only in the year 1955-56 entering his name as an owner and the court reasoned that this entry could not help the plaintiff to show his ownership but on the other hand, accepted the plea of the Central Government that the property had become vested with Central Government by virtue of the fact that the property had been evacuated by a person who had migrated to Pakistan leaving the property vacant and allowing for a statutory vesting to take place by making reference to Section 8 (2A) of the Act. The suit was dismissed holding that the plaintiff's suit cannot be initiated for recovery in the hands of the defendant for beyond the statutory period and the Court also found that the suit itself was not competent before the Civil Court. This judgment was affirmed in appeal.

Learned counsel would argue that when the Court found that the Civil Court did not have jurisdiction to entertain the suit, it should have only returned the plaint which would have enabled the plaintiff to resort to an application under Section 16 for restoration of possession of evacuee property and that right cannot be defeated by the court holding that the plaintiff had no right to the property. According to him there had been a serious error of procedure that caused substantial prejudice to him.

Since the appeal had been admitted in the year 2003 without

framing any substantial question of law, I framed the questions for the benefit of the appellant on 18.11.2015 and posted it today for arguments. The questions framed are reproduced for clarity since the questions already framed contain some topographical errors and the matter is better reflected by reframing the questions as below, but without modifying their purport as under:-

1. Whether the plaintiff had title to the property for recovery of possession by referring to any document that can vouch for the plaintiff's assertion of right?
2. Whether the property did not vest with the Central Government under the administration of Evacuee Property Act, 1950 or in any event by virtue of the operation of provisions of Section 8 (2) of the said Act even before its commencement?
3. Whether the courts below were in error in applying 8 (2A) of the Evacuee Property Act, 1950, failing to note that the said provision was introduced only in the year 1960 and the said provision was not retrospective in operation?
4. Whether in any event, if vesting had not taken but the Central Government had allowed allotments to be made, the suit for recovery of possession in the year 1979 where admittedly plaintiff had not been in possession for all the time since partition, within time?
5. Whether the civil court had jurisdiction to entertain the suit

when the property was admittedly treated as evacuee property and dealt with as such by the Central Government?

6. Whether the courts below are justified in recording the findings on merits, after it found that the RSA No. 3406 of 2002 -2- civil court, did not have jurisdiction to entertain the suit itself?

I asked the counsel first to address the argument on whether he had any document of title in relation to the property to contend that the revenue entry that was found in the year 1955-56 was correct. I also posed a direct question of whether there was any document showing even his possession for any time before the partition of the country in the year 1947. The counsel would say that there existed no such document and he would place reliance on the sole entry in the *jamabandi* for the year 1955-56 as the only source title. This directly answers the question No.1 raised, that the plaintiff had no document of title and it is laid down too well that the revenue entry cannot itself be a source title and when the suit itself is by a person who is not in possession of the property, then the entry cannot really be of any assistance to determine title for recovery of possession.

The counsel refers me to the fact that on the date of the commencement of the Act, the property had not been notified as evacuee under the Act. The Act that defines evacuee property under 2(g) states as follows:

2(g)The Administration Of Evacuee Property Act, 1950.

(f) 2 evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947 , by any mode of transfer which is not effective by reason of the provisions contained in section 40,] but does not include--

(i) any ornament and any wearing apparel, cooking vessels or other household effects in the immediate possession of an evacuee,

(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of August, 1947 , in any place now forming part of Pakistan and continues to be so situated after the said date;

The counsel for the appellant states that the properties are admittedly not notified under Section 7 and consequently, the property cannot be taken as evacuee property. Other provisions which have significance are Sections 8 and 9 which reads thus:

Vesting of evacuee property in the Custodian.

8(1) Any property declared to be evacuee property under section 7 shall be deemed to have vested in the Custodian for the State,--

(a) in the case of the property of an evacuee as defined in sub- clause (i) of clause (d) of section 2, from the date on which he leaves or left any place in a State for any place outside the territories now forming part of India;

(b) in the case of the property of an evacuee as defined in sub- clause (ii) of clause (d) of section 2, from the 15th day of August, 1947 ; and

(c) in the case of any other property, from the date of the notice given under sub- section (1) of section 7 in respect thereof.

(2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest:

Provided that where at the commencement of this Act there is pending before the High Court, the Custodian or any other authority for or in any State any proceeding under section 8

or section 30 of the Administration of Evacuee Property Ordinance, 1949 (12 of 1949), or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949 (27 of 1949), then notwithstanding anything contained in this Act or in any other law for the time being in force, such proceeding shall be disposed of as if the definitions of 'evacuee property' and 'evacuee' contained in section 2 of this Act had become applicable thereto.

(2A) Without prejudice to the generality of the provisions contained in sub- section (2), all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or

taken.

(3)

(4) Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

9. Power of Custodian to take possession of evacuee property vested in him.

If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorized by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

Reading these provisions together, it would seem that if it is property notified under Section 7, then there is no issue for consideration of whether it is an evacuee property or not, for, the

notification itself concludes the issue. If it is not notified then Section 8 (2) operates to vest the property in Central Government if it was vested in Central Government under Ordinance 1949. Even before coming into force of 1950 Act, there had been an ordinance which constituted the vesting of property with the Government. If the property was, therefore, evacuated by a Muslim fleeing to Pakistan and it was vacant after partition and continued as such at the time of Ordinance, the vesting takes place by virtue of the Ordinance. In such a situation, there is no requirement to resort to the notification under Section 7, Section 8 (2A) makes a specific reference to vesting before 1950 Act. Section 8 (2A) though enacted by Act 1 of 1960 specifically states that it is retrospective. In custodian General, Evacuee Property and others Vs. Shanti Sarup (XV) ILR Punjab 149, a DB of this Court held that “even in the absence of a notification contemplated by Section 7(1) of the Act, the property left by a Muslim, who has become an evacuee, must be deemed to be an evacuee property declared as such within the meaning of the Act, by virtue of the provisions of Section 8 of the Act”.

Counsel says that if the Court had found that the Civil Court had no jurisdiction because it was evacuee property, it could not have held whether the plaintiff's claim was justified or not. It amounted to rendering an adjudication on an issue which the Civil Court was not competent to do so. This argument is fallacious since the Court that finds that the character of property as evacuee cannot be expected to close its doors even when a party seeks for certain reliefs on the basis

that it is not evacuee property and that the properties in the hands of defendant Nos. 1 to 14 shall be delivered up to the plaintiff. Defendant Nos. 1 to 14 are admittedly persons who have secured allotments from the Custodian as representative of the Union Government. It was, therefore, imperative that the Court decided that the persons who were actually in possession could be directed to vacate the property if the plaintiff established his title. The Court which found that it had no jurisdiction to decide on the character of property as evacuee could not have abdicated its powers to render an adjudication on whether the plaintiff had any title to the property to direct an ejectment of the defendants from the respective possession.

The plaintiff had no document to rely upon that he was in ever in possession of the property at any time of partition of the country. His name finds entry for the first time in the year 1955-56 in the *Jamabandi* for the year 1955-56. It is trite law that a revenue entry cannot constitute a document of title. If there are documents proving title, revenue entries could afford corroborative value. Its efficacy cannot be extended as much as to source the person's title to the property.

In the ultimate analysis it would seem that the Courts below were justified in finding that the plaintiff had not proved its title, his claim for recovery of possession against the defendants who had secured allotments from the Union was unjustified.

The second appeal is consequently dismissed as devoid of

merits. All the substantial questions raised are answered as above and none helps the plaintiff/appellant to sustain the reliefs claimed.

(K.KANNAN)
JUDGE

02.12.2015

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