

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

RSA No.1779 of 1990 (O&M)

Date of decision : 02.02.2018

Jit Khan and others

...Appellants

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate for the appellants.

Mr. Arun Gosain, Advocate for respondent No.1.

Mr. Umesh Aggarwal, Advocate for respondent Nos.4 to 6.

ANIL KSHETARPAL, J.

The plaintiff-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs had filed a suit for declaration claiming that predecessor of the plaintiffs alongwith Nizru, Khairati, Paltu and Chhutmal were co-sharers in the agricultural land measuring 53 kanals and 15 marlas situated in Village Silokho. It was further pleaded that Nizru, Khairati, Paltu and Chhutmal had left the Village and abandoned all their rights in the suit land. Hence, the plaintiffs claimed that they had become owners by way of adverse possession. The plaintiffs also claimed that the revenue entries showing the land to be evacuee is illegal, null and void. It is further pleaded

that Nizru, Khairati, Paltu and Chhutmal have not migrated to Pakistan and hence the property has not become evacuee.

The suit was filed against the Union of India, Haryana State and its official and the private respondents. The defendants had filed the written statement and claimed that the co-sharers keeping faith in the muslim religion namely Nizru, Khairati, Paltu and Chhutmal had migrated to Pakistan and their rights and interests in the land have vested in the custodian as per Section 4 of the East Punjab Evacuee (Administration of Property) Act, 1947. It was further pleaded that with the enforcement of the Administration of Evacuee Property Act, 1950, all interests of the evacuees which had vested in the custodian under the Act of 1947 automatically came to be vested in the custodian. Hence, it was pleaded that the plaintiffs have no right.

Learned trial Court on appreciation of the evidence available on the file, dismissed the suit filed by the plaintiffs. The first appeal filed by the plaintiffs was also dismissed after re-appreciation of the evidence available on the file.

This Court has carefully heard the arguments of the learned counsel for the parties and with their able assistance gone through the judgments passed by both the Courts below.

It is not in dispute that the suit for declaration claiming that the plaintiffs have become owners by way of adverse possession is not maintainable, as held by the Hon'ble Supreme Court in (2014) 1 SCC 669, *Gurudwara Sahib Vs. Gram Panchayat, Village Sirthala and another*.

Learned counsel for the appellants has submitted that even if

the suit for declaration is not maintainable, still the plaintiffs have become owners as Nizru, Khairati, Paltu and Chhutmal had abandoned the land.

In the considered opinion of this Court, the plea of abandonment would also lead to the plea of adverse possession. By abandonment, no one loses right but a person in possession can claim to have perfected his title by way of adverse possession. Hence, the suit filed by the plaintiffs is not maintainable.

Learned counsel for the appellants has further submitted that the Courts have erred in declaring the property to be evacuee property. Para No.8 of the judgment of the First Appellate Court, where this point has been thoroughly examined is extracted as under:-

“8. Finally is the 4th question as to whether the suit land belonging to Nijru etc. had been rightly declared as evacuee property, and had been validly allotted by defendants 1 to 3 to defendants 4 to 6. The legal position has been lucidly discussed in Sham Singh & Anr vs the Custodian General, New Delhi & Ors, 1961 PLR 420 that u/s 4 of the EPEvacuees (Administration of Property) Act No.14 of 1947, the property of an evacuee became automatically vested in the custodian and any enquiry as to the claims or as to the character of the property followed the vestment. Holding of an enquiry into claims to an evacuee property or the assumption of possession of or control over the property was not a condition precedent to the vesting of the evacuee property in the custodian. For purposes of vesting it was not necessary that there must be something tangible or objective which the custodian should have done... S7 of the Administration of Evacuee Property Act does not apply to the property which had already

vested under the State Law. S7A is in the nature of a proviso to S7 placing limitation on its operation. The said authority clearly distinguishable the provisions of the Act of 1947 and those of the Act of 1950. In case the property already stood vested under the State law, S7 of the Act of 1950 did not apply to such property which required giving of notice before the custodian could pass an order declaring any property to be evacuee property. S. 2(b) & (c) of the State Act define evacuee and evacuee property. Evacuee means a person who leaves or has since the first day of March, 1947, left the territories of India for a place outside India. S8(2) of the Act of 1950 which is the Central Act lays down that procedure u/s 7 need not be followed in respect of the property continued to be vested in the Custodian u/s 8(2) of the said Act. S.7 of the said Act does not affect vesting of the property which had taken place by virtue of general notifications under State Evacuee Property Act or ordinance and S8(2) vesting which had taken place before the Act would not suffer from any lacuna and the evacuee property would be deemed to have been declared as such within the meaning of the Act. Further S8 (2A) of the said Act creates a deeming provision by laying down that all the properties which under the repealed law purports to have vested in any State shall notwithstanding any defect in such law be deemed for all purposes to have validly vested in that person. Azimunnissan & Ors Vs. The Deputy Custodian Evacuee Properties Distt. Deoria & Ors AIR 1961 SC 365 & Asstt. Custodian E.P. & Ors v. B.K. Aggarwal & Ors. AIR 1974 SC 2325 may also be read in this connection.

It is for the custodian to decide whether on the information in his possession to issue a notice u/s 7 of the 1950 Act or not? It is not for the court to determine

whether the information in his possession was adequate or inadequate to decide the issuance of or non issuance of the notice. U/S 6 of the Administration of Evacuee Property Rules, 1950, the notice u/s 7 is to be served on the person claiming title to the property or interest or any other person or persons whom the custodian considers to be interested in the property. A notice to a person is not at all necessary if he has no title to the property nor any interest therein. As for the notice to be issued to any other person, whom the custodian considers to be interested in the property, that is, in the custodian's discretion. In 1977 Mah, L,J, 433 (Book not available-therefore, title not mentioned) notice to tenant was held not necessary. Again in Begum Noorbanu & ors. Vs. Deputy Custodian General of Evacuees Property, AIR 1965 SC 1937 notice to a person who had been declared evacuee was held not necessary. It is thus clear that person who had not migrated to Pakistan and who claimed interest in the evacuee property is alone entitled to notice. It is incomprehensible as to how the plaintiffs claimed that they were entitled to notice. They were not the owners of the land. Nijra etc. the owners of the land had migrated to Pakistan in 1947. Had they migrated to Pakistan after 1947 their villagers would have deposed to the fact that they had migrated to Pakistan thereafter, Record is maintained by the govt. in regard to the persons who had migrated to Pakistan in or after 1948. Before that the record of the persons who migrated to Pakistan could not be maintained as they had left India in convoys.

Ex.D1 is the copy of jamabandi for the year 1942-43 of the land situated in V. Madha wherein Nijra, Khairati, Chuttan & Paltu are recorded as non-occupancy tenants. Ex.D2 is the copy of jamabandi for the year 54-55

in respect of the land situate in V. Madha wherein Nijra etc. are recorded as non-occupancy tenants through Harish Chand, Mangu Ram, Dharam Chand, Ishwar Dass, Dhanna Ram displaced persons. It is of real note that there is no entry in the copy of jamabandi that Harish Chand etc. displaced persons had entered into an agreement with Nijra etc. vide which they were obliged to pay any share of produce or rent to them. Ex.D3 is the copy of jamabandi for the year 1962-63 in respect of the land situate in V. Madha wherein Ishwar Dass, Dharam Chand etc. are recorded as allottees. These documents speak volumes against the plaintiffs for giving the holding that Nijra etc. had migrated to Pakistan in 1947 as was the case set up by the defendant 1 to 6.

Thus, I hold that Nijra etc. were the evacuees and the suit land left by them was the evacuee property which had been rightly allotted to defendants 4 to 6 by defendants 1 to 3.”

Although, the learned counsel for the appellants while challenging the aforesaid finding has submitted that the property cannot be declared to have become evacuee property as Nizru, Khairati, Paltu and Chhutmal have never shifted to Pakistan, however, learned counsel for the appellants could not point out any material available on the record to substantiate such plea. It is the case of the plaintiffs that whereabouts of Nizru, Khairati, Paltu and Chhutmal are not known for the last 200 years. It is the case of the plaintiffs that Nizru, Khairati, Paltu and Chhutmal had shifted to State of Rajasthan, however, the evidence produced by the defendants namely copies of the jamabandi Ex.D1 to Ex.D5 and statement of Ram Kirpal Patwari, DW1 and Prithvi Ram Patwari, DW2 clearly proves

that they have never seen Nizru, Khairati, Paltu and Chhutmal in that village situated in State of Rajasthan.

The defendants have also examined DW3 Nanag Ram, resident of Village Madha, Rajasthan who has specifically deposed that Nizru, Khairati, Paltu and Chhutmal had shifted to Pakistan in the year 1947. In these circumstances, the finding of the learned First Appellate Court while holding that the property has become evacuee and vested in the State cannot be faulted with.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in terms of the abovesaid judgment.

02.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No