

Ramsharan Vs. Mahipatrao

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Court : Madhya Pradesh

Decided On : Aug-22-1986

Reported in : AIR1987MP29

Judge : T.N. Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 100. Order 1, Rule 10; Administration of Enacuee Property Act, 1950 - Sections 2, 7, 28 and 46

Appeal No. : Second Appeal No. 15 of 1979

Appellant : Ramsharan

Respondent : Mahipatrao

Advocate for Def. : Arun Mishra, Adv.

Advocate for Pet/Ap. : Swamisharan, Adv.

Disposition : Appeal dismissed

Judgement :

T.N. Singh, J.

1. Two short but substantial questions of law are agitated in this appeal and I must commend Shri Swami Saran's honest endeavour to steer clear of the bar of Section 100, C.P.C. realising that concurrent findings of two Courts against the

appellant/defendant offer him only a limited option.

2. It is not disputed that the respondent/plaintiff based his suit on title for recovery of possession of the property in question which, according to Shri Swami Saran, had been duly declared 'evacuee property' under Section 7 of the Administration of Evacuee Property Act, for short, the Act. Counsel's contention is that the Courts below erred in law in not holding the suit to be barred by the Act and he drew my attention to Sections 28 and 46 of the Act to buttress his submission. Counsel has also drawn my attention to Ex. D3, which is a copy of the order passed in the year 1957 under Section 7 of the Act, by the Assistant Custodian of Evacuee Property, Gwalior. Counsel's second contention is that because the Custodian hasnot been impleaded in the suit though he was a necessary party, the suit was liable to be dismissed on that ground itself. Unfortunately, in my opinion, both contentions merit a single answer that they are meritless, for reasons to follow.

3. Respondent's counsel, Shri Arun Mishra, has rightly drawn my attention to the concurrent findings of the two Courts below to stress that the order passed under Ex. D-3 ought to be treated as nullity and that the plaintiff having not challenged the order, which the defendant rather pleaded in his defence as a shield, the suit could not be dismissed on the ground that the Assistant Custodian of the Evacuee Property, who had passed the order, has not been impleaded in the case. Counsel has also drawn my attention to Ex. P-2, which is a copy of an order passed by the Deputy Custodian refusing to declare the same property to be 'evacuee property'. It is clearly manifested on the face of the order that upon hearing plaintiff's father, Sripat Rao, his case that the property belonged to him and not to evacuee (Karima) was accepted. Shri Mishra, therefore, rightly contended that because the plaintiff was not aware of the subsequent proceedings of 1957, the same having been initiated without notice to him, the order passed therein, purporting to nullify the earlier order passed in 1953 (as Ex. P-2), was itself a nullity. Counsel contends, therefore, that the Courts below have rightly held that there was no legal bar which prohibited the Court from declaring plaintiffs title to the suit property on the evidence on record.

4. The core provision of Section 7, in its relevant part, bears extraction : --

'7. Notification of evacuee property.--(1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.'

There can be no doubt that it clearly and explicitly envisages the requirement of prior notice being served to persons interested in the property before holding an enquiry and passing an order declaring any property to be an 'evacuee property'. According to me, should there be non-compliance with any of the conditions precedent for exercise of jurisdiction thereunder by the authority concerned, any order rendered in exercise of the powers conferred under the said provisions must be deemed to be without jurisdiction and, therefore, nothing but nullity. I have no doubt that such an order would be still-born and ineffective and it could not be treated as a valid and effective order to be resurrected with the aid of Section 28 to be used even as a shield in any proceeding in a Civil Court. True, Shri Swami Saran rightly laid greater emphasis on the word 'final' occurring in Section 28, which contemplates that any order passed by the Custodian-General and other named officers 'shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.' Counsel has also drawn my attention to Sections 25 and 26 of the Act which contain provisions for appeal, review and revision, to submit that the plaintiff not having pursued those remedies, the bar of Section 28 would spring into action and kill his right to agitate the matter in civil suit.

5. Learned counsel has cited the decision in Custodian, Evacuee Property, Punjab v. Jafram Begum, AIR 1968 SC 169 wherein it was held that the Act was a complete code in itself in matters concerning evacuee properties. Although their Lordships dealt in that case in detail with the scope and ambit of Sections 7, 28 and 46 of the Act, the decision evidently is not applicable to the facts of the instant case for the simple reason that the issue which is very much germane, live and crucial to the decision of the instant appeal was not agitated before them. When the Custodian passed any order in violation of the express mandate of Section 7

itself, what would be the position and what would be effect of his order, are really the moot questions with which I am confronted in this appeal. What was the ambit of the jurisdiction of the Custodian acting under and in accordance with Section 7 of the Act was the question with which their Lordships were concerned in that case. What would be the effect of the Custodian's exercising jurisdiction in violation of express requirement thereof This question never came up for consideration of their Lordships. Nor indeed the moot question, if a civil suit based on title would lie on the footing that the property in question was not 'evacuee property' as the owner thereof was admittedly not an evacuee. Counsel has also relied on a Bench decision of this Court in *Amtabai v. Daudbhai*, AIR 1959 Madh Pra 13. But I do not read even in that case any thing which lends assurance to counsel's contentions. It was held that the Custodian had power to adjudicate upon the question whether the property is or is not an evacuee property and in the course of the enquiry under Section 7 it had jurisdiction to deal and determine all incidental as also material questions as to execution, validity and effectiveness of an instrument under which the evacuee claimed title to the property. But very significantly their Lordships took care to say also that such an enquiry must be held only after due 'notice' to parties. Indeed, my view is also that when a proper enquiry is made, conforming to the requirement of Section 7, not only the decision rendered in such enquiry would be legal and valid challengeable only in the manner prescribed in the Act (under Sections 25 and 26) but the jurisdiction of the Civil Court to entertain challenge to such an order would also be ousted under Section 28 of the Act.

6. However, even *Ambabai* (supra), according to me, is not an authority for the proposition that a person who, admittedly, is not an evacuee, cannot maintain a civil suit for declaration of his title to his property. Indeed, *Jafram Begum* (supra), in my opinion, clearly envisages that the Act deals with an evateuee's property. Therefore, according to me, the bar of Section 28 would not be operative in case of a person who, admittedly, was not an evacuee. Indeed, the Custodian being invested with jurisdiction to declare any property only to be 'evacuee property' which Section 2(f) itself defines as 'property of an evacuee' and the term 'evacuee' being also defined in Section 2(d), any person not covered thereunder would be able to maintain a civil action to enforce his civil rights in respect of any property

owned by him, without in any manner being bound by Custodian's decision as the same, evidently, could not be determinative of his personal status. It is only in such cases where the property in question is owned by a person who admittedly is an 'evacuee', within the meaning of Section 2(d) of the Act that the Custodian's decision shall attract the bar of Section 28. I am also of the view that if Section 28 is read conjointly with Section 46, which indeed must be done to mollify the apparent rigour of Section 28, I stand confirmed in my conclusion. I extract below Section 46 in extenso wherein I have emphasised the expressions which vocally supports my view. -

' 46. Jurisdiction of Civil Courts barred in certain matters.-- Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction--(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b) * * * *

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the custodian is empowered by or under this Act to determine.'

7. There is ample and high Authority, however, for the proposition that a public functionary invested with power and] jurisdiction to deal with civil rights of any; person must act strictly in accordance with the requirements of the statutory provisions and any decision rendered by such Authority overlooking and ignoring the statutory requirement and requisite legal criteria would be void. See *Barium Chemicals*, AIR 1967 SC 295; *Rohtas Industries*, AIR 1969 SC 707; *Padfield*, (1968) 1 All ER 694 et.al. On the scope of a 'ouster clause' I may not only refer to the direct and dominant authority of *Anisminic*, (1969) 1 All ER 208, but also to *Pearlman*, (1978) 3 WLR 736; wherein the relevant statute expressly made the decision of the Tribunal 'final and conclusive' and yet the House of Lords' view in *Anisminic* (supra) was applied to hold that the decision, though normatively made 'final' by the statutory requirement, would not be so and it would be only a

'purported' decision, in a case in which it was established that the statutory requirement was ignored in any manner and; the legal mandate which circumscribed Tribunal's powers and jurisdiction was delated.

8. Respondent's counsel, Shri Arun Mishra, has pressed in service the decision of the Apex Court in Dhulabhai, 1969 MPLJ 1 : (AIR 1969 SC 78) wherein their Lordships held that the finality clause in a statute would not exclude Civil Courts' jurisdiction to grant relief in cases where the statutory Tribunal had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the statute itself had not been complied with. Privy Council's decision in the case of Mask and Co., AIR 1940 PC 105 is also cited by Shri Mishra wherein it was held that exclusion of jurisdiction of a Civil Court is not to be readily inferred and even if its jurisdiction is excluded, when the prescribed procedure has not been complied with by the statutory body or when it has not acted in conformity with fundamental principles of judicial procedure in any case, its decision shall lose finality.

9. I have, therefore, no hesitation to hold that despite the bars contemplated under Sections 28 and 46 of the Act, the Courts below had jurisdiction to look into and decide the question as to whether there was compliance by the Custodian with the requirement of Section 7 itself before passing the order thereunder. And, in the instant case, there is concurrent finding of two Courts below about non-compliance in the matter of service of notice on the plaintiff. The decision as such was not binding on the plaintiff who had earlier obtained an order in his favour from the same Tribunal. The decision must be held to be a nullity and the plaintiff was not debarred, therefore, from claiming a declaration of his title even with reference to the earlier order passed by the Custodian in 1953 wherein it was held that the suit property was not evacuee property. I have also no hesitation to hold that the Custodian of the Evacuee Property was not at all a necessary party in the facts and circumstances of the case, because the plaintiff himself did not challenge the order passed by the Custodian, in 1957, as per Ex. D-3, which the defendant had rather put up as a shield to non-suit the plaintiff. Law is well-settled that only such person is a necessary party who has any interest in the subject-matter of the suit and who is likely to be effected, by the decree. How could, therefore, the

Custodian (who acted merely in discharge of his statutory function) be a necessary party having no interest in the suit property and not being likely to be affected in any manner by the decree ?

10. At this stage Shri Swami Saran stands up to submit that the decision of the Courts below on evidence, upholding plaintiff's title to the suit property, may be examined by this Court. But, I am not authorised by law to do so and I must, therefore, refuse to oblige learned Counsel, because, there is concurrent findings of two Courts below of plaintiff's proving his title on the evidence on record and it is not open to me to reappreciate the evidence in Second Appeal to take a different view of the matter.

11. In the result the appeal fails and it is dismissed but in the facts and circumstances of the case I make no order as to costs.

12. Before parting with the records I still consider it necessary to make clear here, to allay the fears and anxiety of Shri Swami Saran, that the appellant may not be remediless after investing money in buying the property in auction, as alleged by him. I do not think if this decision would at all render the defendant destituted because it may be possible for him to enforce equity against any person who, by his default, may be answerable to the defendant in equity. Any right lawfully accrued to the defendant for reimbursement of his investment shall not be deemed lost as a result of the decision rendered in this appeal.