

Mohammad Abdul Latif and anr. Vs. Mohammad Abdul Rashid and ors.

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Court : Madhya Pradesh

Decided On : Jun-30-1959

Reported in : AIR1959MP399

Judge : G.P. Bhutt, C.J. and ;T.C. Shrivastava, J.

Acts : [Administration of Evacuee Property Act, 1950](#) - Sections 7 and 46; Evacuee Interest (Separation) Act, 1951 - Sections 6 and 20

Appeal No. : First Appeal No. 1 of 1956

Appellant : Mohammad Abdul Latif and anr.

Respondent : Mohammad Abdul Rashid and ors.

Advocate for Def. : S.C. Upadhyaya, Adv. for Respondent No. 6

Advocate for Pet/Ap. : S.L. Golcha, Adv.

Disposition : Appeal allowed

Judgement :

Bhutt, C.J.

1. This appeal is directed against the decree in civil suit No. 17A of 1951 of the Court of First Additional District Judge, Jabalpur, by which the claim of the plaintiff Mst. Jaibunnissa for administration of her husband's estate was dismissed in

limine. She died during the pendency of the appeal and is now represented by her son and daughter.

2. Mst. Jaibunnissa was the widow of Khan Sahib Mohammad Abdus Sattar, who died on 11-2-1951. He left behind two houses in the city of Jabalpur. The present appellant's Mohammad Abdul Latif and Mst. Akhtarunnisa are her son and daughter. The respondents Mohammad Abdul Rashid Mohammad Abdul Rauf, and Mohammad Abdul Samad are her step-sons. They migrated to Pakistan,

Accordingly the Assistant Custodian of Evacuee Property acting under Section 7 of the [Administration of Evacuee Property Act, 1950](#), declared the houses left by Khan Sahib Mohammad Abdus Sattar as evacuee property to the extent of their 7/12 share therein. This order is dated 31-7-1952. The present suit was instituted during the proceedings under Section 7 of the Administration of Evacuee Property Act, to which the Custodian of Evacuee Property, Madhya Pradesh, was made a party.

3. Mst. Jaibunnissa filed the suit for the administration of the estate of her deceased husband for realization of her claim to dower debt amounting to Rs. 15,000. Alternatively, she claimed that if the sale proceeds were not sufficient to satisfy her dower debt the houses should be allotted to her in satisfaction thereof. An objection was raised to the maintainability of the suit by the Custodian of Evacuee Property, Madhya Pradesh, on the ground that it was barred under Section 20 of the Evacuee Interest (Separation) Act, 1951. This contention was upheld by the lower Court and the suit was dismissed as untenable. Hence this appeal.

4. During the proceedings under Section 7 of the Administration of Evacuee Property Act, Mst. Jaibunnissa had preferred a claim to her dower debt, for which she claimed a lien on the two houses left by her husband. Her claim was rejected by the Assistant Custodian, Jabalpur, on the ground that she had not obtained any order or decree of a civil Court in respect of her dower debt. So far as Section 7 of the Administration of Evacuee Property Act is concerned, all that the Custodian has to consider is whether any property is evacuee property. When he declares that the property is evacuee property, it vests in the Custodian under Section 8.

When this happens and the property is in the possession of any person he is under Sub-section (4) of Section 8 deemed to be holding it on behalf of the Custodian and is required on demand to surrender possession thereof to the Custodian or to any other person duly authorized by him in that respect. An enquiry under Section 7, however, is confined to the question whether the property is evacuee property, i. e., whether it is property in which an evacuee has any right or interest: see Section 2(f). No enquiry is contemplated by Section 7 as regards any claim by a third person against what is evacuee property. All that Section 46 provides in this respect is that the civil Courts shall not 'entertain Or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property. The question whether Mst. Jaibunnissa had a claim to dower debt and whether she had any lien on the property of her late husband in respect of that debt was not, therefore, a matter which was covered by Section 7 or section 46 of the Administration of Evacuee Property Act.

5. This leads us to the question whether the suit was barred under the Evacuee Interest (Separation) Act. Section 20(1) of this provides:

'Save as otherwise expressly provided in this Act, no civil or revenue court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide. . . That the houses left by Khan Sahib Mohammad Abdus Sattar constitute composite property within the meaning of the Evacuee Interest (Separation) Act was not disputed before us. Section 5 gives jurisdiction to a competent officer to decide any claim relating to any composite property situate within the limits of the local area of this jurisdiction. The procedure, however, by which he can exercise this jurisdiction is laid down in Section 6, which is in these terms:

'(1) For the purpose of determining or separating the evacuee interest in a composite property any competent officer having jurisdiction over such property may, either on information received in this behalf from the Custodian or on an application from a claimant, issue, in such form and manner as may be prescribed:

(a) a general notice requiring all persons who claim interest in such property, and

(b) also a notice on every person who, in the opinion of the competent officer, may have a claim in such property, to submit claims, if any, in respect of that property.

(2) An application under Sub-section (1) shall be in such form and manner as may be prescribed.' It is only after the date of issue of the general notice or service of individual notice aforesaid that any person claiming any interest in a composite property is required within 60 days thereof to submit a statement of his claim in writing. The matter has then to be decided by the competent officer in accordance with Section 8. From these provisions it is clear that the competent officer can assume jurisdiction only when he first issues a general or individual notice under Section 6 Custodian of Evacuee Property, Punjab v. Firm Bihari Lal Parkash Chand, AIR 1953 Punj 221. There is nothing on record to indicate that such a notice was issued by the competent officer in respect of the evacuee property in suit.

If that has since been done, the matter can be taken up before the lower Court by amendment of the pleadings. That, however, is a separate matter. Since the competent officer, on the pleadings as they stand, was not alleged to have taken any proceeding under Section 6 of the Evacuee Interest (Separation) Act, Section 20 could not be held to operate as a bar to the tenability of the suit.

6. The result is that the appeal is allowed, the decree passed by the lower Court is set aside, and the suit is remitted to it for taking further proceedings in accordance with law. Costs of this appeal shall abide the result.