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Court : Delhi

Decided On : May-14-1980

Reported in : 18(1980)DLT454

Judge : Rajindar Sachar and; S.N. Kumar, JJ.

Acts : East Punjab Evacuee (Administration of Property) Act, 1947 - Sections 2;
East Punjab Evacuee Property Act, 1947 - Sections 9

Appeal No. : Letter Patent Appeal No. 109 of 1980

Appellant : Ramesh Suri

Respondent : Custodian General of Evacuee Property and anr.

Advocate for Pet/Ap. : A.K. Parikh and; Arun Kumar, Advs

Judgement :

Rajindar Sachar, J.

(1) This is Letters Patent Appeal against the order of the learned single judge by which he dismissed the writ petition and held that the right to receive royalty vested in the Custodian on the migration of the evacuee.

(2) The predecessor in interest of the appellant, by an agreement between him and one Shri D. D. Dhawan and Sheikh Mohd. Abdula who were the co-authors of

a book called 'New Method metriculation Geometry' excuted in 1937 was given the publishing and selling rights of the book. The publisher also agreed to pay royalty at 2l/o on the first issue and 25% on the subsequent editions of the book. The agreement was signed in Lahore where one of the coauthors Shri D.D. Dhawan was residing. Sheikh Mohd. Abdula was residing in Delhi. It is a common case that Sheikh. Mohd. Abdula left Delhi as a result of partition in 1947 and is undoubtedly an evacuee, 10th Edition of the book was published in Lahore in May, 1949.

(3) On 13.2.1960 the Assistant Custodian passed an order calling upon the appellant to pay Rs. 20,000.00 as share of the royalty due to Sheikh Mohd. Abdula in the said book. This order was admittedly passed without notice and without hearing the appellant Aggrieved against this order an appeal was filed before the Deputy Custodian General who dismissed the same on 17.5.1960 wherein it was held that the right of Sheikh Mohd. Abdula to receive royalty on the book automatically vested in the Custodian on migration of Sheikh Mohd. Abdula to Pakistan. The appellant filed a writ petition which failed and he has now come up in appeal.

(4) Counsel for the appellant, Mr. Parikh has raised challenge to the above finding on the ground that appellants' right to receive royalty is not property which could vest in the Custodian. In the alternative it was also urged that even if the right to receive royalty is property it could not be covered by the East Punjab Evacuees' (Administration of Property) Act, 1947 (hereinafter to be called 1947 Act) as the said Act was passed by the Punjab Legislature which could not legislate with reference to the Moveable property, as being outside its legislative competency.

(5) In 1947 the U.K. Copy Right Act, 1911 was applicable to India by virtue of Indian Copy Right Act, 1914. Admittedly Sheikh Mohd. Abduh was the co-author of the book. Sub-section (2) of Section 1 of the 1911 Act states that 'copyright' means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever to perform . ..the work or any substantial part thereof in public, ..and shall include the sole right:

(A)to produce, reproduce, perform or publish any translation of the work.

(6) Section 5(2) of 1911 Act provides that owner of the copyright in any work may assign the right either wholly or partially and either generally or subject to limitation. That under the Act there can be partial assignment in the sense that any of the various rights that form part of the copyright of a work can be assigned. One of these is the right to publish and sell copies of a particular book. That the agreement was of this type of partial assignment was so held in litigation between the appellant and the co-author Sh. D. D. Dhawan in R. F. A. 164/51 decided on 8th July, 1953.

(7) In order to decide question in controversy two things have to be decided; (a) Is the claim by which the copyright which belongs to an evacuee is deemed to be vested in the Custodian under the 1947 Act, valid. This question would necessarily depend on the answer to the second question as to what is the nature of the right of copyright, as to whether it is property and also whether it is moveable and what are the incidence of these rights.

(8) The claim of the respondents to seek payment of royalty amounting Rs. 20,000.00 due to Sheikh Mohd. Abdula is based on the provisions of 1947 Act. The said Act it is common case, was extended to Delhi which was then Chief Commissioner's Province, 1947 Act defines the 'evacuee' to mean a person ordinarily resident in East Punjab or who on account of...or the partition of the country leaves or has since the first day of March, 1947 left the said territory for a place outside India. That Sheikh Mohd. Abdula is an evacuee is not in dispute. 'Evacuee Property' is defined in Section (2)c to include all property in which an evacuee has any right or interest but does not include any moveable property in his immediate physical possession. Section 2 (e) defines 'Property' to include any right or interest in moveable and immoveable property in any shop etc. or any debt or actionable claim other than a mere right to sue but does not include cash deposits in banks. Section 4 of 1947 Act lays down that all evacuee property situated within the Province shall vest in the Custodian for the purpose of this Act and shall continue to be so vested until the Provincial Government by notification or otherwise directs. Thus if copyright is property under 1947 Act (subject to its validity) it would vest in the custodian. Now copyright is rightfully called property vide Article 3 of Copyright by Copinger and Skonejames 11th Edition. Copyright is

transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property and upon the death of the proprietor it will pass to his personal representative for the benefit of the person to whom he has bequeathed, vide Act- 342 (ante.) (Copyright is transmissible by assignment, by testamentary disposition, or by the operation of law as personal or movable property) and other interests in copyright may also be created, Halsbury's Laws of England, Vol. 9; 4th Edition Para 865. Copyright is a right of property and the owner is entitled to come to the court for the protection of that property even though he does not show or prove actual damage, vide Article 411 (ante).

(9) Copyright may be assigned by operation of law by vesting of the property in a custodian under legislation designed to prevent the payment of money to enemies and to preserve enemy property during war and the vesting of property on bankruptcy; vide paragraph 762 Halsbury's Laws of England, 3rd Edition, Vol. 8. On the bankruptcy of an owner of copyright the copyright will vest in the official receiver and will pass to the trustee of the bankrupt's estate as assets for distribution amongst creditors, vide para 875 of Halsbury's Laws of England, Vol. 4th Edition. Copyright passing on death is subject to estate duty vide para 908 of Halsbury's Laws of England Vol. 9th, 4th Edition. Thus when 1947 Act provides for vesting of evacuee property in the Custodian it cannot be doubted that the right of Sheikh Mohd. Abdula in the copyright would vest in the Custodian. That vesting of said rights of copyright in the Custodian is not an unusual phenomena as has been noticed above where the vesting of the copyright takes place in the hand of trustees of the bankrupt owner or in the Custodian under the legislation dealing with the enemy property. In *Noveilow and Co. Ltd. v. Hinrichsen* [1951] 2 Ch.D. 457 the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939, permitted the Controller to grant license in the copyright belonging to an enemy who is subject to restrictions imposed under Trading with the Enemy Act, 1939. Dealing with the purpose of legislation it was stated by Sir Evershed, M.R. that the Act was designed to put into the Controller's hands a power to see that these copyright could be used in the public interest although the person who alone could give the right to use them was prevented from doing so by his enemy status. Broadly the same purpose to preserve the property of the evacuee who had migrated in the extra ordinary circumstances prevailing in the

year 1947 was the reasons of vesting the evacuee property in the Custodian, Only under 1947 Act total rights of the Evacuee vest in the Custodian, who though no doubt holds for the benefit of the evacuee. Had Sheikh Mohd. Abdula made no partial assignment of copyright in the book in favor of the appellant to publish, and sell the book he would have been the owner of the copyright. In that case it would not be open to doubt that the rights of Sheikh Mohd. Abdula as the owner of copyright being an evacuee property would vest in the Custodian. Counsel for the appellant had sought to urge that it would be a strange phenomena that the evacuee should be deprived to enjoy fruit of his property. But what is forgotten is that 1947 Act did restrict the right of evacuee owner to enjoy his properties because his interests are to vest it in the Custodian. Thus an evacuee would have his moveable and immoveable properties vest in the Custodian. There can thus be no logic on what basis the claim to exclude the vesting to copyright which is also moveable property from being vested in the Custodian can be urged. Now there Was partial assignment only for the right to publish and sell the book to the assignee. But this assignment was subject to the right of the evacuee (the author) to be paid the royalty. Where the property of a bankrupt comprises the copyright in any works or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share in the profits in respect of the work, the trustee is not entitled to sell, or authorise the sale of, any copies of the work or to perform or authorise the performance of the work except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt. Vide para 875 of Halsbury's Laws of England Vol. 9th; 4th Edition. But the right to receive royalty subject to which the author has assigned his rights in the copyrights to the appellant would because of 1947 Act vest in the Custodian because though he had partially assigned the right to publish and sell the book, this copyright was subject to the author's right to receive the royalties on the sale. This was not an outright assignment of authory's rights for an agreed amount--rather the assignment was subject to payment of royalties as and when sales took place. This continued interest of evacuee in copyright would thus vest in the Custodian. Now the agreement by clause 2 provided for payment to the author royalty at 20/o on the first edition and 25% on subsequent edition. Royalty was to be paid on all copies sold by the end of each calendar year. This clause provided

for submission of accounts to authors for verification. This would show that the assignment to the appellant is subject to the obligation towards the author to account for his share of royalty. The arrangement thus was, as noticed in *Werderman v. Societe Generale Delectricite* (1881) Xix Gh. D. 246 at 253 that the owners of patent (in this case the copyright) would work it to the best advantage, to keep proper accounts and to pay a share of profits to the owner. Thus if no royalty has been paid to Sheikh Mohd. Abdula he would have an interest in actionable claim and could have sued the appellant. That interest in actionable claim now vests in the Custodian and hence he rightly demanded the account and payment of amount of royalty. This interpretation is necessary for a beneficent legislation like the evacuee Property Act. The purpose of this legislation is to safeguard the interest of evacuees who because of peculiar circumstances were not able to look after their properties. This distance, time and surrounding atmosphere was such that it was not possible for an evacuee to take any action and pursue his remedy. It was necessary therefore that the rights and liabilities be safe-guarded and concentrated in the hands of the Custodian who will make equitable distribution of the rights and liabilities of the Evacuees as the circumstances and the law require.

(10) The next challenge is based on the decision in *Durga Parshad v. Custodian of Evacuee Property and others* holding that 1947 Act was valid legislation only with the regard to immoveable property as Punjab Legislature could not legislate with regard to moveable property. The court found that there was no provision to legislate with respect to the evacuee but the court interpreted Entry 21 in List II that is land and held that 1947 Act could be legislated with reference to immoveable property. It therefore chose to define the property in the Punjab Act only to mean the immoveable property. Mr. Parikh seeks to urge that as the Full Bench of Punjab High Court has held that 1947 Act was valid so far as immoveable property was concerned it cannot be invoked in the present because the copyright would be moveable property. If the question had arisen in the State of Punjab the matter would have had some validity. The learned single judge has observed that 1947 Act could be considered to have been validly passed under Entry 9 and 10 of the concurrent list, 7th Schedule of 1935 Act. I however do not wish to express any opinion on this aspect because frankly I have my reservations

whether the legislation could be covered under Entries 9 and 10 in List III. Howsoever broadly the entries may be interpreted it would, I feel, be rather hazardous to interpret Entry 9 (Trust and Trustees) and Entry 10 (Contracts, partnership) so as to cover legislation dealing with evacuees. This hesitation is strengthened because of Entry 17 in List I (Federal Legislative List) dealing with Admission into and emigration and expulsion from India... which entry could have permitted the Central Legislature to frame a law with regard to the rights and other incidental matters concerning those persons like evacuees who migrated from this country. This means that the Central Legislature could have framed legislation with regard to evacuees including their properties, both moveable and immoveable. Definition of Property in 1947 Act, if it was a Central Legislation could thus include moveable property including rights in copyright. Section 100 of the Government of India Act, 1935 empowered Federal Legislature to make law with respect to any of the matters enumerated in List I of the 7th Schedule. As the Central Legislature could pass a law with respect to Province of Delhi the limitation which a Provincial Legislature had with respect to evacuee property would not be applicable. Thus if the Central Legislature had therefore passed an Act for Delhi the same could not be objected to on the ground of legislative in- competency. The argument of Mr. Parikh is that as the 1947 Act has been extended to Delhi by a notification issued under. Delhi Laws Act, 1912 from 7.10.1948, 1947 Act could not cover moveable property even extended to Delhi. Now Delhi was Chief Commissioner's Province vide Section 94 of the Government of India Act, 1935. Section 100(A) empowered the Federal Legislature to make laws with respect to matters enumerated in Provincial Legislative list for .Delhi. Thus the powers of Federal Legislature to legislate for Delhi is undoubted. The effect of extending a Provincial Legislation to Part 'C' State like Delhi was considered in *Mithan Lal v. State of Delhi and other* : [1959]1SCR445 wherein it was laid down the limitation and distribution of power between the Centre and States has no applicability to Part 'C' states when a notification is issued by the appropriate. Government extending the law of a Part 'A' State to a part 'C' State and the law so extended; derives its force in the State to which it is extended from S. 2 of the Part 'C' States (Laws) Act enacted by Parliament. The result of a notification so issued is that the provisions of the law which is extended become incorporated by reference in the Act itself and

therefore a tax imposed there under is a tax' imposed by Parliament, In that case Bengal Finance (Sales Tax) Act was extended to Delhi. Now this being a provincial Legislation it could only legislate with regard to tax on supply of material in building contract. The question was whether when this Act was extended to Delhi by the Central Legislature the same restriction of Provincial Legislation will be read into it. It was held that as the extension was made by the Parliament it was within its competence to impose a tax on supply of material in building contract and impose it under the name of sales tax. On the same analogy even if the Provincial Legislature of Punjab was not competent to frame legislation with regard to moveable property that limitation and restriction will not be read in 1947 Act including the definition of moveable property when the said Act has been extended to Delhi province under powers given by Section 100(A) of the Government of India Act, 1935. The definition of the property will thus have to include both moveable and immovable property so far as its applicability in Delhi is concerned. The result therefore of the extension of 1947 Act to Delhi was as if the 1947 Act was passed by the Central Legislature and as the Central Legislature could undoubtedly have legislated with respect to the moveable property of evacuees the argument based on the competence of Punjab Legislature to pass such a legislation is extraneous to the present controversy.

(11) Mr. Parikh has sought to pose a dilemma that 1947 Act would mean' that property would not include moveable property in Punjab while it would in Delhi. It do not see any such anomaly. The reason is that the Punjab Act (1947) would not cover moveable property because it is passed by Provincial Legislature and it is beyond its competence to pass any legislation with respect to moveable, property. The said limitation and restriction would not apply when the 1947 Act is, extended to Delhi because there is no such limitation under the Central Legislation to pass a law with respect to moveable property.

(12) As a result I agree with the learned single Judge and would dismiss the appeal but without costs.