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SooperKanoon Citation : sooperkanoon.com/751097

Court : Rajasthan

Decided On : Jul-25-1963

Reported in : AIR1964Raj48

Judge : Jagat Narayan, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 55(6); Administration of Evacuee Property Act - Sections 2 and 46; Administration of Evacuee Property (Central) Rules, 1950 - Rule 22

Appeal No. : Second Appeal No. 501 of 1960

Appellant : indersingh and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Raj Narain, Deputy Government Adv.

Advocate for Pet/Ap. : Dalpat Singh, Adv.

Disposition : Appeal allowed

Judgement :

Jagat Narayan, J.

1. This is an appeal by Inder Singh and Sham Singh whose suit for the grant of various reliefs was dismissed by the courts below, on the ground that the civil

court had no jurisdiction to try it.

2. The relevant facts are these: Two brothers Abdul Aziz and Faiz Mohammad were owners of 30 Bighas 1 Biswa agricultural land situated in Chak No. 49 GGA Tehsil Karanpur District Ganganagar. They mortgaged 8 Bighas 13 Biswas out of this land on 29-4-1947 usufructually in favour of the plaintiffs by means of a registered mortgage deed. They also executed an agreement of sale on 21-7-1947 in favour of the plaintiffs agreeing to sell their entire land for a sum of Rs. 8,000/-, They admitted the receipt of this consideration in full and promise to execute a sale deed within a year. But after the partition of the country they left their village. : They were declared to be evacuees and their land amounting to 30 Bighas J Biswa was declared to be evacuee property under order dated 7-6-1955 passed by the Assistant Custodian of Evacuee Property Sriganganagar. Inder Singh and Sham Singh then filed an application under the Evacuee Interest (Separation) Act in respect of the contract of sale. The Competent Officer was of the opinion that although they were entitled to a charge on the land belonging to the evacuees to the extent of Rs. 8,000/- prepaid purchase price he had no power to grant relief to them under the aforesaid Act as a charge did not fall within the definition of claim given in Section 2(b). He however held that they were entitled to a sum of Rs. 1406/8A in respect, of their rights as usufructuary mortgagees over 8 Bighas 13 Biswas of the land if the Custodian wanted to redeem the property.

3. The plaintiffs thereupon instituted suit No. 228 of 1957 in the Court of the Civil Judge Ganganagar on 9-10-1957 against the Custodian of Evacuee Property, the State of Rajasthan, the Competent Officer and one Wazir Singh for a declaration of their charge on 30 Bighas 1 Biswa land belonging to the evacuees and for other appropriate reliefs. It may be mentioned here that part of the property was auctioned in favour of Wazir Singh by the Custodian before the institution of this suit. That suit is still pending.

4. Subsequently 22 Bighas 8 Biswas out of the land of the evacuees was allotted by the Government of India to Bhola Singh and Waryam Singh under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The present suit was then instituted against the Union of India, the Managing Officer of Acquired

Evacuee. Agricultural Property and Settlement Officer, Sriganganagar, Waryam Singh and Bholu Singh in the court of the Civil Judge Ganganagar for the grant of substantially the same reliefs as were sought in the earlier suit. The suit was contested inter alia on the ground that the jurisdiction of the civil court was barred. A preliminary issue was framed on the point which was decided against the plaintiffs by the trial court as well as by the lower appellate court. Against that decision the present appeal has been preferred.

5. It was not disputed before me by the learned Deputy Government Advocate that under the provisions of Section 55(6)(b) of the Transfer of Property Act the buyer has a charge on the property as against the seller and all persons claiming under him for the amount of any purchase money paid by the buyer in consideration of the execution of a formal deed of sale and of delivery of property. Irrespective therefore of the fact as to whether or not the property in suit was delivered to the plaintiffs they would have a charge to the extent of Rs. 8,000/- on the property of the evacuees if they succeed in establishing that consideration to this extent was paid either in cash or by adjustment of previous debts on the date of the execution of the contract of sale on which they rely or at an earlier date.

6. The only question which therefore arises for determination in the present appeal is whether the trial of a suit for a declaration of such charge is barred in a civil court under any provision of law. Taking the Administration of Evacuee Property Act first, Section 46 of it which bars the jurisdiction of civil courts in certain matters runs as follows:--

'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 under this Act; or

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

7. The subject matter of the present dispute does not fall under any of the clauses of Section 46. Section 10 of the above Act enumerates the powers and duties of the Custodian. Section 56 confers a rule-making power on the Central Government. This power is however limited to making rules to carry out the purposes of the Act. The Administration of Evacuee Property (Central) Rules, 1950 were framed under Section 56. The learned Deputy Government Advocate relies on Rule 22 as barring the jurisdiction of the civil court. This Rule runs as follows:

'22. Claims by third parties:- (1) Any person claiming the right to receive any payment from any evacuee or from the property of such evacuee, whether in repayment of any loan advanced or otherwise, may present petition to the Custodian for registration of his claim. Such application shall be signed and verified by the claimant in the same manner as a plaint is required to be signed and Verified under the Code of Civil Procedure 1908.

Explanation.- An application under this sub-rule shall lie in respect of a claim for refund of money paid as consideration for the transfer by an evacuee of any property, where such transfer is not confirmed by the Custodian under Section 40 of the Act.

(2) (a) Where a claim made under Sub-rule (1) is supported by--

(i) a decree of a competent court; or

(ii) a registered deed executed and registered before the 14th August, 1947; or

(iii) a registered deed executed and registered on or after the 14th August, 1947 and the transaction, in respect of which the deed was so executed and registered has been confirmed by the Custodian; or

(iv) an acknowledgement in writing executed by the evacuee himself before the 1st March, 1947; or

(b) where such claim is of the nature referred to in the Explanation to Sub-rule (1) and the Custodian holds that the transfer of the property in respect of which the claim is made was a bona fide transaction, the custodian may register the claim or such part thereof as has not been satisfied:

Provided that in the case of a claim of the nature referred to in the Explanation to Sub-rule (1), the claim shall be registered only for that amount of money which is proved to have been paid as consideration for the transfer of the property.

(2A) In any case which does not fall under Sub-rule (2), the Custodian shall direct the claimant! to establish, his claim in a civil court.

(3) The mere registration of a claim shall not entitle the claimant to payment and the Custodian may for reasons to be recorded refuse payment

(4) No debt incurred by the evacuee before the property vested in the Custodian shall be paid without the sanction of the Central Government or Custodian General.

Explanation-- Nothing in this rule shall debar the Custodian from meeting the day to day expenses incurred in the management of evacuee property and such expenses may be paid without sanction. Sanction of the Central Government or the Custodian General is also not required to the discharge by the Custodian of the legitimate obligations and liabilities incurred in the ordinary course of business of a trading concern carried on by the Custodian whether such liabilities and obligations are incurred before or after the vesting of the business in the Custodian.'

It is contended by the learned Deputy Government Advocate that as this rule provides for the filing of claim by third parties before the Custodian it should be inferred that the Custodian has a right to determine all claims by third parties against the property of the evacuee and it should further be inferred that the jurisdiction of the civil court is barred. I am unable to accept this contention. This rule is to be read in the light of the provisions of the Act. Under the Act, it is only the interest of the evacuee in any property which is termed as evacuee property

under Section 2(f). It is this interest of the evacuee in the property that vests in the Custodian and the Custodian has power to administer this interest. If there is a charge in favour of a non-evacuee on property belonging to a evacuee then the interest of the evacuee is only the property subject to the charge and the charge on the property belongs to the non-evacuee which does not vest in the Custodian. Nor has the Custodian any power under the Administration of Evacuee Property Act to determine the charge in favour of a non-evacuee on evacuee property. There is thus nothing in the Administration of Evacuee Property Act to bar the jurisdiction of the civil court in the present suit.

7a. In this connection, the following decisions may be referred to:--

Mohammad Ramzan v. The Asstt. Custodian Cum Managing Officer, ILR (1961) 11 Raj 523; Ram Gopal v. Banca Singh, AIR 1958 Punj 384.

8. The next Act to be considered in this connection is the Evacuee Interest (Separation) Act, Section 20 of which debars the civil courts from entertaining any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by the Act to decide. Claim is defined in Section 2(b) as follows:

'2. (b) 'claim' means the assertion by any person, not being an evacuee, or any right, title and interest in any property--

(i) as a co-sharer or partner of an evacuee in the property; or

(ii) as a mortgagee of the interest of an evacuee in the property; or

(iii) as a mortgagor having mortgaged the property or any interest therein in favour of as evacuee;

and includes any other interest which such person may have jointly with an evacuee and which is notified in this behalf by the Central Government in the Official Gazette.'

9. It has not been alleged that the Central Government has issued any notification including a charge in the category of claims which the Competent Officer can

entertain. The present suit is therefore not barred by any provision contained in the Evacuee Interest (Separation) Act.

10. The only other Act to be considered is the Displaced Persons (Compensation and Rehabilitation) Act, Section 36 of which bars the jurisdiction of the civil courts in respect of any matter which the Central Government or any officer or authority appointed under the Act is empowered by the Act to determine. There is no provision in this Act for determining whether or not the property of the evacuee is subject to a charge.

11. I accordingly hold that the civil court is competent to decide the present suit. I, therefore, allow the appeal, set aside the decree of the lower appellate court and remand the suit to the trial court for decision in accordance with law. The appellants are entitled to recover the costs of both the appeals from the contesting respondents.

12. Let the record be sent to the trial court at an early date with the direction that the suit should be disposed of expeditiously.