

ibrahim Vs. Gulam Mohammad

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Court : Rajasthan

Decided On : Nov-16-1994

Reported in : AIR1995Raj117

Judge : P.P. Naolekar, J.

Acts : Enemy Properties Act, 1968 - Sections 8

Appeal No. : Civil Second Appeal No. 1 of 1978

Appellant : ibrahim

Respondent : Gulam Mohammad

Advocate for Def. : A.K. Acharya, Adv.

Advocate for Pet/Ap. : R.K. Thanvi, Adv.

Disposition : Appeal dismissed

Judgement :

P.P. Naolekar, J.

1. The appellant filed a suit for ejection on the ground of arrears of rent. Admittedly, the appellant is a citizen of Pakistan. The respondent filed a written statement and raised an objection that by virtue of Section 83 of the Civil Procedure Code, the suit, as it is filed by the plaintiff alien enemy without the

consent of the Central Government, is not maintainable. Both the courts below have upheld the objection raised by the respondent and dismissed the suit. The present appeal was admitted on the following substantial questions of law:

'(i) Whether the suit filed by the plaintiff was not maintainable on the ground that the plaintiff was declared as alien enemy during the pendency of the suit ?

(ii) Whether the prosecution of the suit by the plaintiff was barred under the provisions of the Enemy Property Act, 1968 after the declaration of Emergency by the Government of India during the pendency of the suit ?'

2. Under Section 83 of the Civil Procedure Code, an alien enemy residing in India with the permission of the Central Government can file a suit in any court, competent to try the same, as if they are citizens of India. The alien enemy, who is residing in India without the permission of the Central Government has been prohibited from instituting suit in the court.

3. An order has been passed exercising the powers under Rule 133(V)(1) of the Defence of India Rules, 1962 by the Central Government on 10-9-1965 which is as under: --

'In exercise of the powers conferred by Sub-rule (1) of Rule 133V of the Defence of India Rules, 1962, the Central Government hereby orders that all immovable property in India, belonging to or held by or managed on behalf of all Pakistan nationals, shall vest in the custodian of Enemy Property for India with immediate effect.

2. Nothing in this notification shall apply to any such property, belonging to or held by or managed on behalf of such of the Pakistan nationals as are employed in the different Missions of the Government of Pakistan in India.'

Under Rule 151(1) of the Defence and Internal Security of India Rules, 1971 the Central Government issued a notification No. 5511, which was published in the Central Gazette, Extra Ordinary Part II Section 3(2), page 3406 dated 18-12-1971, which reads as under:--

'In exercise of the powers conferred by Sub-rule(1) of Rule 151 of the Defence of India Rules, 1971, the Central Govt. hereby direct that all Enemy Property as defined in Clause(4) of Rule 138 of the said Rules, whether movable and immovables and belonging to or held by or managed on behalf of:

(i) an enemy as defined in Clause (2)(c) of Rule 130 of the said Rules, or

(ii) an enemy subject as defined in Clause(5) of Rule 138 of the said Rules, shall vest in Custodian of Enemy Property for India.'

By virtue of the order issued on 10-9-1965 all the immoveable properties in India belonging to or held or managed on behalf of all Pakistan Nationals vested in Custodian of an enemy property with immediate effect. Thus, after the issuance of the order, the property belonging to the plaintiff-appellant vested in the Custodian of the Enemy Property. The 'enemy property' is defined in Section 2(c) of the Enemy Properties Act, 1968, to be any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm. Section 8 provides for the powers of the Custodian in respect of enemy property vested in it. Section 8(1)(ii) gives him power to take action for recovery of any money due to the enemy and Clause (iv) authorises him to institute, defend or continue any suit or other legal proceedings, refer to any dispute for arbitration and compromise any debt claims or liability. Thus, the Custodian is a person, who is authorised to take any action for recovery of any money due to the enemy and also to institute, defend ,or continue any suit or legal proceedings. As soon as the property is vested with the Custodian, all the powers are vested in the Custodian to take an action for recovery of the money or to institute, defend or continue any suit. As the property of the plaintiff was vested in the Custodian, right to file any action for the recovery of the money or to institute a suit or continue any suit filed by him regarding his property, vests with the Custodian and does not remain with the plaintiff.

4. Virtually the plaintiff is divested of all his rights regarding the property in suit Section 18 of the Act contemplates that the Central Government may by general or special order direct that any enemy property vested in the Custodian under the Act is divested from Custodian and returned to the owner thereof or to such other

person, as may be specified in the directions and on issuance of such general or special order, the property shall cease to vest in the Custodian and shall revest in the owner or the other person. No order of the Central Government is brought to the notice of this Court directing revesting of the property in the plaintiff. In the absence of any order passed by the Central Government, the property remained vested with the Custodian and the plaintiff, who is an alien enemy, had no right to institute or continue with the suit. Once the property in suit vested in the Custodian, the plaintiff was not competent to institute suit for ejectment or for arrears of rent or to continue with it so long property in suit is not vested in him.

5. For the reasons aforesaid, second appeal is dismissed but without any cost.

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