

Mr. N. M.
Kewalramani,
and another

v.

Mr. J. D.
Tytler

Bishan
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of accident that on that particular date the plaintiffs did not approach the Copying Department for copies. The delivery of these copies was taken on the 26th October, i.e., on the reopening day which was Thursday. Thereafter four days were taken in filing the appeal on Monday the 30th October. Mr. Bedi states that he took all this time in studying the case. It is not necessary to go minutely into the matter and hold whether the merits of the case required four days' study or not because I am of the opinion that this time cannot be considered to be unreasonable and that it does not show that there was any want of diligence on the part of the plaintiffs or their counsel in preferring the appeal. The copies were obtained on Thursday, 28th was a last Saturday and 29th being a Sunday was a holiday and the appeal was filed on Monday. In these circumstances I hold that the plaintiffs have succeeded in proving that they had sufficient cause for not preferring the appeal within the period of limitation.

For the reasons given above, I accept this appeal, set aside the judgment and decree of the Senior Sub-Judge and remand the appeal for decision in accordance with law. The parties have been directed to appear before the Senior Sub-Judge on the 14th March, 1955. The parties will bear their own costs in this Court.

REVISIONAL CIVIL.

Before Kapur and Bishan Narain, JJ.

THE CUSTODIAN OF EVACUEE PROPERTY, NEW

DELHI,—*Petitioner*

versus

SOLU MAL AND OTHERS—*Respondents.*

Civil Revision No. 194 of 1953

1955
February, 9th of 1950) Administration of Evacuee Property Act (Act XXXI
Section 17(1) and (2)—Sale of Evacuee Property
effected under a decree or order of a Court—Such sale

whether in contravention of Section 17 of the Act—Delay in proceeding under Section 17(2)—Effect of.

On the 30th November, 1948, a preliminary mortgage decree relating to evacuee property was passed which was made final on the 24th June, 1949. Application by Custodian of Evacuee Property under section 17 on the 9th December, 1950. This application was dismissed on the 8th January, 1951, on the ground that Section 17 only applied to orders and not decrees. On the 1st April, 1951, property was sold in execution and the sale was confirmed on the 12th May, 1951. On the 28th January, 1952, Custodian again took objections under Section 17(1) and (2) of the Act but these were dismissed on the 21st February, 1953. Against the order dated the 21st February, 1953, the Custodian moved the High Court in revision.

Held, that the court below was right in refusing to set aside the sale, particularly when an adverse decision on a previous application was not appealed against and the Custodian has asked for setting aside the sale long after the period given in sub-section (2) of Section 17 had elapsed.

Petition under section 44 of Act IX of 1919 for revision of the order of Shri Des Raj Dhameja, Sub-Judge, 1st Class, Delhi, dated the 21st February, 1953, rejecting the application.

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I. D. DUA for Petitioner.

BUDH DEV GUPTA for Respondents.

JUDGMENT

KAPUR, J. This is a rule obtained by the Custodian against an order passed by Mr. Des Raj Dhameja, Subordinate Judge 1st Class, Delhi, dated the 21st February, 1953, dismissing the objections filed by the Custodian under section 17 (1) and (2) of the Administration of Evacuee Property Act, Act XXXI of 1950.

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A preliminary mortgage decree was passed on the 30th November, 1948, which was made final on the 24th June, 1949. The Custodian made an application on the 9th December, 1950 under section 17 of the Evacuee Property Act as it then existed. This application was dismissed on the 8th January, 1951, on the ground that this Court had held that section 17 applied only to orders and not to decrees. The execution sale took place on the 1st April, 1951, and was confirmed on the 12th May, 1951. On the 28th January, 1952, objections were again taken by the Custodian under section 17 (1) and (2) of the Evacuee Property Act, but these were dismissed on the 21st February, 1953.

Previous to this on the 28th April, 1951, section 17 of the Evacuee Property Act was amended and by Act XXII of 1951, a new section was substituted in place of the old section 17. Against the decision of the Executing Court dated the 21st February, 1953, the Custodian has come up in revision to this Court.

A preliminary objection was taken that this is an appealable order and no revision should therefore be entertained but as Mr. Dua has pointed out the Custodian was not a party to the suit and section 47 is inapplicable, and at any rate, even if an appeal lay, this is a fit case where the revision could and should be entertained as an appeal.

The argument which has been raised before us is that a sale of evacuee property effected under a decree or order of a Court is ineffective as it is contrary to law because section 17 (1) expressly provides that no property which has vested in the Custodian under the provisions of the Evacuee Property Act is liable to be proceeded against in any manner whatsoever in execution, and in support of his argument Mr. Dua has taken us into the history of the legislation.

Exemption from attachment and sale of evacuee property vesting in the Custodian was provided for by section 8 of the East Punjab Act XIV of 1947. It will be noticed that it definitely stated that such property was exempt from attachment, distress or sale and such sales could be set aside if an application was made within the period specified in subsection (2) of section 8 of that Act.

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This Act of 1947 was replaced by the Central Ordinance XXVII of 1949 which came into force on the 18th October, 1949, and section 17 of that Act provided for exemption of property vesting in the Custodian from attachment, sale, etc. In the first part of this section such property was exempted from sale and in subsection (2) all transfers of evacuee property made under orders of the Court were to be set aside if an application were made to such Court within three months from the commencement of the Ordinance. The Ordinance in its turn was replaced by Act XXXI of 1950, where exemptions were provided for under section 17 and when quoted that section runs as under :—

“17 (1) Save as otherwise expressly provided in this Act, no property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a Court or of any other authority, and no injunction in respect of any such property shall be granted by any Court or other authority.

(2) Save as otherwise expressly provided in this Act, any attachment or injunction subsisting on the commencement of this Act in respect of any evacuee property

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which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of evacuee property under orders of a Court or any other authority made after the 1st day of March, 1947, shall be set aside, if an application is made to such Court or authority by or at the instance of the Custodian within six months from the commencement of this Act."

This section, it will be noticed, provided that no property which had vested in the Custodian was to be liable to attachment, distress or sale in execution of an order of a Court. In subsection (2) of this section if any sale had taken place of property after the 1st day of March, 1947, the sale could be set aside and was to become ineffective on an application made by the Custodian if the application was made within six months. This Court, as I have said, held that this section was inapplicable in the case of execution of decrees and it was amended by Act XXII of 1951 and the present section is as follows :—

"17. Exemption of evacuee property from processes of Court, etc.—Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any Court or other authority and any attachment or injunction or order for the appointment of a receiver in respect of

any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void.

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- (2) Where, after the 1st day of March, 1947, any evacuee property which has vested in the Custodian or is deemed to have vested in the Custodian under the provisions of this Act has been sold in execution of any decree or order of any Court or other authority, the sale shall be set aside if an application in that behalf has been made by the Custodian to such Court or authority on or before the 17th day of October 1950."

The submission of Mr. Dua is that the Evacuee Act is a beneficent Act the object of which is not merely to administer the evacuee property but also to provide relief to those persons who came from what is now Pakistan and may be compendiously called displaced persons and therefore such an interpretation should be put upon it which would subserve the object of the Act. It may be that the object of the Act may indirectly be to give help to the evacuee but there is no express provision in the Act which indicates that any properties or monies are to be earmarked for the benefit of the displaced persons.

In subsection (1) of the present section the legislature has provided that no property which is vested in the Custodian is liable to be proceeded against in any manner whatsoever in execution of any decree etc. but what the consequence of a Court continuing the proceedings in respect of an interdiction is circumscribed to attachment, injunction or order for the appointment of a receiver which becomes void. The word "sale" is

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not mentioned in this portion of the section and therefore as I would read the plain meaning of this section it only provides that these proceedings if taken in regard to property which is vested in the Custodian shall cease to have effect and be deemed to be void. Subsection (2) provides that the sale of any property vesting in the Custodian, if it is after the 1st day of March, 1947, shall be set aside if an application in this behalf is made by the Custodian, but unfortunately for Mr. Dua's client the legislature has put a limit to the date before which such an application can be made and that is the 17th October, 1950. The history of the legislation which I have given above in my opinion indicates that the legislature throughout wanted to place some kind of limitation on the period during which applications to set aside sales which had taken place could be made and the 17th October, 1950, also appears to be in pursuance of the same policy.

Mr. Dua's argument really comes to this that we should omit the words "on or before the 17th day of October, 1950." That, in my opinion, is not a proper way of interpreting statutes. It may be that there is a defect in the language used by the legislature or it may be that it is deliberate, but it is not for this Court to amend the Acts in the manner in which Mr. Dua submits that we should.

In my opinion the learned Judge has rightly refused to set aside the sale, particularly when an adverse decision in a previous application was not appealed against and the Custodian has asked for the setting aside of the sale long after the period given in subsection (2) had elapsed.

I would, therefore, dismiss this petition and discharge the rule, but there will be no order as to costs.

Bishan
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BISHAN NARAIN, J. I agree.