

LETTERS PATENT APPEAL*Before Harnam Singh and Soni, JJ.*

THE CUSTODIAN, EVACUEE PROPERTY,—Appellant,

*versus*THE SIMLA BANKING AND INDUSTRIAL COMPANY,—
Respondent.

1951

April 26

Letters Patent Appeal No. 39 of 1950

Evacuee Property Act (XXXI of 1950) Sections 13 and 30 and Civil Procedure Code (Act V of 1908)—Section 51 and Order 40—inconsistent with each other—Civil Courts—Whether have jurisdiction to appoint Receiver for realization of rents and profits of Evacuee property.

Held, that the provisions of sections 13 and 30 of the Evacuee Property Act, 1950, are inconsistent with the provisions of Section 50 and Order XL of the Code of Civil Procedure and therefore in execution proceeding the Civil Courts have no jurisdiction to appoint a Receiver for the realization of rents and profits of evacuee property for payment to the decree-holder.

Kutner v. Phillips (1), Clyde Engineering Co., Ltd., v. Cowburn (2), referred to.

Letters Patent Appeal under clause 10 of the Letters Patent Act, against the judgment of Hon'ble Mr. Justice Kapur, of the High Court, dated the 29th May 1950, passed in Execution First Appeal No. 135 of 1949 (Simla Banking and Industrial Co., Ltd. v. Abdul Ghafoor, etc.) reversing that of Shri J. N. Kapur, Senior Sub-Judge, Simla, dated the 25th March 1949 and ordering that a Receiver be appointed for the realization of rents and profits of the two houses mentioned in the application and on their realization the monies should be paid to the decree-holder, and further directing the parties to appear in the court of the Senior Sub-Judge, Simla, on the 12th June 1950.

H. L. SARIN, for Appellant. (1).

I. D. DUA, for Respondent. (2)

(1) (1891) 2 Q.B. 267.

(2) (1925-26) 37 C.W.L.R. 466.

JUDGMENT

HARNAM SINGH, J. The question raised in Letters Patent Appeal No. 39 of 1950, is whether in execution proceedings Civil Courts have jurisdiction to appoint a Receiver for the realization of rents and profits of evacuee property for payment to the decree-holder.

In Civil Suit No. 18 of 1924, the trial Court passed a preliminary decree for Rs 30,764-11-5 in favour of the Simla Banking and Industrial Company, Ltd., hereinafter referred to as the company, against Khan Bahadur Khwaja Abdul Ahad defendant on the 9th of July 1924, and on the 3rd of March 1925, a final decree was passed. Khan Bahadur Abdul Ahad having died on the 12th of May 1928, a personal decree was passed against the legal representatives of the judgment-debtor to the extent of the estate of the deceased in their possession.

In the execution proceedings arising out of the application for execution of the decree made on the 1st of March 1937, the Company applied on the 29th of March 1941, for the appointment of a Receiver. The application failed in the executing Court and the order of the executing Court was upheld by Din Mohammad, J., on the 11th of June 1944. From the judgment of Din Mohammad, J., passed on the 11th of July 1944, the company appealed under clause 10 of the Letters Patent. On the 17th of April 1945, a Division Bench of the High Court of Judicature at Lahore allowed the Letters Patent Appeal, set aside the judgment of the Single Judge and directed the executing Court to appoint a Receiver as prayed.

Proceedings for the appointment of a receiver were pending in the executing Court when the Punjab Province was divided under section 4 of the Indian Independence Act, 1947.

On the 25th of March 1949, the executing Court dismissed the application of the company for the appointment of the Receiver. In dismissing the application the executing Court said :—

“ I feel that I cannot proceed with the execution application and the only remedy for

The Custodian,
Evacuee
Property
v.
The Simla
Banking and
Industrial
Company

Harnam
Singh J.

The Custodian,
Evacuee
Property
v.
The Simla
Banking and
Industrial
Company
—
Harnam Singh
J.

the decree-holder is as suggested by me that he should take a certificate of non-satisfaction from this Court and give it to the Custodian, Himachal Pradesh, and realize the money from him. Certainly it is a very hard case for the decree-holder but I cannot help it if circumstances go against the decree-holder."

From the order passed by the executing Court on the 25th of March 1949, the Company came up in appeal in this Court and on the 29th of May 1950, Kapur, J., allowed the appeal with costs throughout.

In deciding Execution First Appeal No. 133 of 1940, Kapur, J., said :—

"Under section 51 of the Civil Procedure Code a Court has the power to enforce execution by five different methods and sub-clause (d) provided by appointment of a Receiver. Attachment and sale are dealt with in sub-clause (b). I cannot agree in spite of a judgment of the Full Bench in *Surendra Prosad Singh and another v. Tekail Singh and others* (1), that execution by appointment of a Receiver amounts to equitable attachment. Their Lordships of the Privy Council in *Lal Rajindra Narain Singh v. Mst. Sundar Bibi* (2), a case under section 60 of the Code of Civil Procedure, where the right of maintenance was the subject-matter of dispute held that the proper remedy lies, in a fitting case, in the appointment of a Receiver for realising the rents and profits of the property paying out of the same a sufficient and adequate sum for the maintenance of the judgment-debtor, and his family, and applying the balance, if any, to the liquidation of the judgment-debtor's debt. In cases under section 18

(1) 1929 A.I.R. (Pat.) 700.

(2) 1923 A.I.R. (P.C.) 175.

of the Punjab Colonization of Government Lands Act, 1912, it was held that Receiver can be appointed under section 51, Civil Procedure Code, to liquidate a decree from the profits of the land by granting a lease, although the interest in the land of the judgment-debtor cannot be attached or sold by reason of section 18 of the Punjab Colonization of Government Lands Act (see *Karam Das v. Ram Asra Mal* (1), and *Mohammad Sharif v. Mrs. Boughton* (2)). I am, therefore, of the opinion that (1) in spite of section 17 of the Act execution under section 51 of the Civil Procedure Code by means of appointment of a Receiver is allowable and (2) the appointment of a receiver under section 51(d) of the Civil Procedure Code is not equitable attachment and is, therefore, not barred by section 17 of the Act. The submission that by virtue of section 4 of the Act section 51, Civil Procedure Code, stands repealed *pro tanto* is, in my opinion, devoid of any force.”

The Custodian,
Evacuee
Property
v.
The Simla
Banking and
Industrial
Company
—
Harnam
Singh J.

Finding that there was no inconsistency between section 17 of Act XXXI of 1950, hereinafter referred to as the Act, and section 51 (d) of the Code of Civil Procedure, Kapur, J., ordered :—

“I must order that a Receiver be appointed for the realization of rents and profits of the two houses mentioned in the application and on their realisation the monies should be paid to the decree-holder. The Receiver will be appointed by the learned Senior Subordinate Judge and I have no doubt that any order passed by the learned Judge or any lawful direction given will be obeyed by the respondent.”

(1) 1942 A.I.R. (Lah.) 126.
(2) 1938 A.I.R. (Lah.) 458.

**The Custodian,
Evacuee
Property
v.
The Simla
Banking and
Industrial
Company**

**Harnam
Singh J.**

As stated above the question raised in this appeal is whether in execution proceedings Civil Courts have jurisdiction to appoint a receiver for the realization of rents and profits of evacuee property.

Section 4 of the Act provides :—

“ 4. *Act to override other laws.* The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.”

The question that then arises for decision is whether the provisions of section 51 and Order XL of the Code of Civil Procedure are inconsistent with the provisions of the Act.

Now, it is settled law that the conditions required for a repeal by implication are stringent. The rule laid down in (*Kutner v. Phillips*) (1), was :—

“ A repeal by implication is only effected when the provisions of a later enactment are *so inconsistent with or repugnant to the provision of an earlier one that the two cannot stand together.* Unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied ; or unless there is a necessary inconsistency in the two Acts standing together.”

In *Clyde Engineering Co., Ltd., v. Cowburn* (2), Higgins, J., said :—

“ When is a law ‘inconsistent’ with another law ? Etymologically, I presume that

(1) (1891) 2 Q.B. 267.

(2) (1925-26) 37 C.W.L.R. 466.

things are inconsistent when they cannot stand together at the same time ; and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power of provision in the other.”

In 32 Commonwealth Law Reports 466 the opinion of the majority (Knox, C.J., and Gavan Duffy, J., with the concurrence of Isaac, J.,) was :—

The Custodian,
Evacuee
Property
v.
The Simla
Banking and
Industrial
Company
—
Harnam
Singh J.

“Two enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. Statutes may do more than impose duties, they may, for instance, confer rights ; and one statute is inconsistent with another when it takes away a right conferred by that other even though the right be one which might be waived or abandoned without disobeying the statute which conferred it.”

From what I have said it appears that the test of inconsistency is whether a proposed act is consistent with obedience to directions contained in two statutes.

Applying this test of inconsistency to the present case I have no doubt that the provisions of sections 13 and 30 of the Act are inconsistent with the provisions of section 51 and Order XL of the Code of Civil Procedure.

In the present case a Receiver has been appointed for the realization of rents and profits of the two houses mentioned in the application and on their realization the monies are to be paid to the decree-holder. Section 13 of the Act provides :—

“13 (1) Any amount due to any evacuee in respect of any property which has vested

The Custodian,
Evacuee
Property
v.
The Simla
Banking and
Industrial
Company
—
Harnam
Singh J.

in the Custodian or' in respect of any transaction entered into by the evacuee. shall be paid to the Custodian by the person liable to pay the same.

- (2) Any payment made otherwise than in accordance with subsection (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person."

Section 30 enacts :—

"Any person who pays to or receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

Clearly, the provisions of section 51 and Order XL of the Code of Civil Procedure are not consistent with sections 13 and 30 of the Act for the two laws cannot be obeyed at the same time. In this view of the matter it is unnecessary to examine any inconsistency between section 17 of the Act and section 51 and Order XL of the Code of Civil Procedure.

Finding as I do that the provisions of sections 13 and 30 of the Act are inconsistent with the provisions of section 50 and Order XL of the Code of Civil Procedure, I allow this appeal, set aside the order directing the appointment of the Receiver for the realization of rents and profits of the houses in question and the payment of the monies to the decree-holder. The Custodian will have his costs in proceedings in this Court as well as in the Court below.

Soni J.

SONI, J. I agree.