

declaration of status in a suit under section 92 without paying the appropriate fees in respect of such relief. I am clearly of the opinion, that the addition of Kishan Das is almost certain to alter the cause of action, to alter the nature of the suit and to enlarge the scope of the litigation.

Ch. Kidar  
Nath Datt  
and others  
v.  
Kishan Das  
Bairagi  
and others

For these reasons I would accept the petition, Bhandari, C. J. set aside the order of the trial Court and direct that the name of Kishan Das be removed from the list of defendants. The plaintiffs will be entitled to the costs of this Court.

The parties have been directed to appear before the trial Court on the 29th January, 1957.

CIVIL WRIT

*Before Falshaw, J.*

MAQBOOL AHMAD AND ANOTHER,—*Petitioners*

*versus*

THE CUSTODIAN OF EVACUEE PROPERTY, NEW  
DELHI,—*Respondent*

Civil Writ No. 33D/56.

*Administration of Evacuee Property (Amendment) Act (XLII of 1954)—Section 7A and 10—Effect of—Power of the Assistant Custodian to issue notices under section 7 of the Administration of Evacuee Property Act (XXXI of 1950) after 7th November, 1954, whether taken away.*

1957

Jan., 14th

*Held*, that the fact that section 10 of the Amendment Act makes section 4 of the Amendment Act retrospective does not change the date of the commencement of the Amendment Act. The reason why section 4 was made specifically retrospective was to cover those cases where property might have been declared evacuee property after 7th May, 1954, but before the Amendment Act came into force even though the case might not be covered by the two provisos.

*Application under Article 226 of the Constitution of India praying that the record of the Custodian General*

*and that of the Custodian be called, and a Writ of Certiorari or other appropriate Writ or order be issued under Article 226 of the Constitution quashing the order of the Deputy Custodian General.*

SULTAN YAR KHAN, for Petitioner.

K. K. RAIZADA, for Respondent.

#### ORDER

Falshaw, J.

FALSHAW, J. The facts giving rise to these five connected Petitions (Civil Writs Nos. 33-D to 37-D of 1956), under Article 226 of the Constitution filed by Maqbul Ahmad and Firdos Ahmad are as follows. One Manzur Ahmad was the owner of a half share of five separate pieces of land situated at the village of Pimbora in the district of Muzaffarnagar (U.P.), and on the 5th of December, 1954, five notices were issued under section 7 of the Administration of Evacuee Property Act by the Additional Assistant Custodian (Rural), Muzaffarnagar, for declaring Manzur Ahmad's shares in these properties to be evacuee property on the ground that he had migrated to Pakistan. The notices were contested by Maqbul Ahmad, the brother and Firdos Ahmad, the son of Manzur Ahmad on the ground that Manzur Ahmad had not migrated to Pakistan but had been killed in the disturbances at Patiala in 1947.

The cases were decided together by the Additional Assistant Custodian, Muzaffarnagar, by his order, dated the 12th of January, 1955. Apparently no efforts had been made in the meantime by the father and brother of the alleged evacuee to have any mutation effected in the revenue records regarding his share of the property, and the evidence produced by them in an effort to prove that Manzur Ahmad had been killed in Patiala in 1947, was not believed, and Manzur Ahmad was accordingly

declared to be an evacuee and his shares in the properties to be evacuee property. The petitioners' appeal against this order was dismissed by the Custodian, Uttar Pradesh, and their revision petition was dismissed by the Deputy Custodian-General at Delhi on the 24th of November, 1955. The orders are challenged in the present writ petitions.

Maqbool  
Ahmad and  
another  
v.  
The Custodian  
of Evacuee  
Property, New  
Delhi

Falshaw, J.

It is obviously not open to this Court to go into the facts, and the petitions must be decided on the basis that the findings that Manzur Ahmad had not been killed in 1947, and was an evacuee are correct. The chief legal argument addressed to me on behalf of the petitioners was that the Assistant Custodian had no power in December, 1954, to issue notices under Section 7 of the Act. Reliance was placed on the provisions of sections 4 and 10 of the Administration of Evacuee Property (Amendment) Act, 42 of 1954, which for general purposes came into force on the 8th of October, 1954. Section 4 reads—

“After section 7 of the principal Act, the following section shall be inserted, namely:—

7-A. *Property not to be declared evacuee property on or after 7th May, 1954.* Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954, provided that nothing contained in this section shall apply to—

- (a) any property in respect of which proceedings are pending on the 7th day of May, 1954, for declaring such property to be evacuee property; and

Maqbool  
Ahmad and  
another  
v.  
The Custodian  
of Evacuee  
Property, New  
Delhi  

---

Falshaw, J.

(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of Civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident in Pakistan :

Provided further that no notice under section 7 for declaring any property to be evacuee property with reference to clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954."

Section 10 reads—

"The amendments made in the principal Act by section 4 and section 8 of this Act shall be deemed to have come into force on the 7th day of May, 1954".

It is argued that the clear meaning of the new section 7-A read with section 10 of the amending Act is that no notice under section 7 could be issued after six months from the 7th of May, 1954, i.e., after the 7th of November, 1954, and, therefore, the present notices issued in December, 1954, were invalid.

On the other hand this interpretation would appear to indicate that the Legislature intended to give with one hand and take away with the other, since "six months from the commencement of the Act" mentioned in the proviso inserted in

section 7A would become whittled down to one month from the 8th of October, 1954, when the Act received the assent of the President, and in spite of the wording of section 10 of the amending Act, such an interpretation appears to be repugnant to common sense and to the ordinary principles of interpreting statutes.

Maqbool  
Ahmad and  
another  
v.  
The Custodian  
of Evacuee  
Property, New  
Delhi

Falshaw, J.

As a matter of fact this very point has been independently considered by Division Benches of the Hyderabad High Court, Mohd. Ansari and Jaganmohan Reddy, JJ., and the Rajasthan High Court, Wanchoo, C.J., and Bapna, J., in *Begum Noor Banoo and others v. Custodian, Evacuee Property, Hyderabad* (1) and *Satya Dev Cheema v. Additional Deputy Custodian, Evacuee Property Bharatpur*. (2). These cases related to notices issued in January and February, 1955, and in both cases it was held that the words "from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954" must mean "from the date when the Act came into force on the 8th of October, 1954". Wanchoo, C. J., has put the matter thus—

"The fact that section 10 of the Amendment Act makes section 4 of the Amendment Act retrospective does not change the date of the commencement of the Amendment Act. The reason why section 4 was made specifically retrospective was to cover those cases where property might have been declared evacuee property after 7th May, 1954, but before the Amendment Act came into force even though the case might not be covered by the two provisos."

(1) A.I.R. 1956 Hyderabad 56.

(2) A.I.R. 1956 Rajasthan 193.

With this view, I am in respectful agreement, and I, therefore, consider that there is no ground for interference in these petitions. I accordingly dismiss them but leave the parties to bear their own costs.

APPELLATE CIVIL

Before Passey and Tek Chand, JJ.

DR. HARMINDAR SINGH,—Plaintiff-Appellant

versus

DR. BALBIR SINGH AND OTHERS,—Defendants-Respondents

Civil Regular First Appeal No. 31 of 1950.

Code of Civil Procedure (V of 1908)—Sections 16 and 17—Territorial Jurisdiction—Properties situated in Pakistan—Suit for partition of, whether triable in a Court in India—Maxim "Equity acts in personam"—Scope of—Doctrine of submission to foreign jurisdiction—Whether applies to actions in rem—Scope of the doctrine stated.

1957  
Jan., 16th

Held, that it is a general principle of jurisdiction that title to land is to be directly determined not merely according to the law of the country where the land is situate but by the Courts of that country. No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions. Courts in India, therefore, have no jurisdiction to try a suit for partition of properties situated in Pakistan.

Held, that the scope of the maxim "equity acts in personam" is restricted and has been confined to cases of contracts, fraud and trusts relating to immovables. It may be that this enumeration of matters in which jurisdiction in *personam* has been exercised is not exhaustive but illustrative and disputes involving a personal obligation may possibly fall within the rule of equity but that rule cannot be stretched so as to cover the relief sought in this case which affects movable and immovable properties in Pakistan. There cannot be the slightest doubt that the decree of an Indian Court will be nothing short of *brutum fulmen*, an empty thunder, in the foreign courts of Pakistan especially when there is no reciprocity between the two countries as contemplated in section 44A of the Code of Civil Procedure.

Held, that it is doubtful whether the doctrine of submission to foreign jurisdiction applies over actions in rem.