

must be construed to mean what it says, namely that *all* proceedings pending on the relevant date in any civil Court in respect of any debt to which the displaced debtor is subject shall be stayed and not only the proceedings in respect of debts which are specifically mentioned in the schedule attached to the application under section 5.

Firm Jagan
Nath-Ram
Sarup
v.
Firm Amin
Chand-Pearey
Lal, etc.,

For these reasons, I am of the opinion that it was the duty of the Court in which the case brought by the plaintiffs was pending to stay the proceedings in accordance with the provisions of section 15. I would accordingly accept the petition, set aside the order of the Court below and direct that the proceedings in the case be stayed and the records thereof transmitted to the Tribunal in which Ram Sarup's application under section 5 is pending. There will be no order as to costs.

Bhandari, C. J.

APPELLATE CIVIL

Before Harnam Singh, J.

MOHD SADDIQ BARRY,—Appellant

versus

MOHD. ASHFAQ AND OTHERS,—Respondents.

Civil Regular Second Appeal No. 438 of 1951

1953

Sept. 10th

Administration of Evacuee Property Act (Act XXXI of 1950)—Section 46—Suit for declaration qua property claimed to be evacuee property by the Custodian—Jurisdiction of civil Courts—Limits of—What order should be passed.

Held, that under section 46 of the Administration of Evacuee Property Act the trial by the civil Court of the question whether the property in suit is or is not evacuee property is barred. The proper order to be passed by the court was not to dismiss the suit but to direct the adjudication of the question specified in section 46(a) by the Custodian and to order that the disposal of the suit be stayed pending the adjudication of that question. On its adjudication the Court will proceed with the trial of the suit on the basis that the decision given by the Custodian is binding upon the Court.

Regular second appeal from the decree of Shri M. L. Vijn, II Additional District Judge, Delhi, dated the 4th May, 1951, affirming that of Shri Gobind Ram Budhiraja, Sub-Judge, 1st Class, Delhi, dated the 12th January 1951, rejecting the plaint.

H. L. SARIN, for Appellant

I. D. DUA, for Respondents.

JUDGMENT

Harnam Singh,
J.

HARNAM SINGH, J. On the 26th of January 1950, Mohammad Saddiq Barry instituted Civil Suit No. 77 of 1950 for declaration, that he was *mutwalli* of the property in suit. In that suit the Custodian, Evacuee Property, was impleaded to be a party.

In the written statement the Custodian pleaded that the property of which the plaintiff seeks to be a *mutwalli* was evacuee property.

Finding that civil Courts have no jurisdiction to entertain or adjudicate upon the question whether the property in the suit is or is not evacuee property the Court of first instance rejected the plaint under rule 11 of Order VII of the Code. From the decree passed by the Court of first instance the plaintiff appealed under section 96 of the Code.

In dismissing the appeal the Court has treated the decree passed by the Court of first instance to be a decree dismissing the suit.

From the decree passed on appeal Mohammad Saddiq Barry appeals under section 100 of the Civil Procedure Code.

Now, the relevant portion of section 46 of the Administration of Evacuee Property Act provides that save as otherwise expressly provided in the Act, no Civil Court shall have jurisdiction 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. Clearly,

the trial by the Civil Court of the question whether the property in suit is or is not evacuee property is barred. That being the position of matters, the proper order to be passed by the Court of first instance was to direct the adjudication of the question specified in section 46 (a) of Act No. XXXI of 1950 by the Custodian and to order the stay of the disposal of the suit pending the adjudication of that question by the Custodian.

Mohd. Saddiq
Barry
v.
Mohd. Ashfaq
and others
—
Harnam Singh,
J.

For the foregoing reasons, I set aside the judgments and the decrees passed by the subordinate Courts and remand the case to the Court of first instance under Order XLI, rule 23 of the Code of Civil Procedure.

In deciding the suit the Court will remit for adjudication to the Custodian the question whether the property in suit is or is not evacuee property. On the adjudication of that question by the Custodian, the Court will proceed with the trial of the suit on the basis that the decision given by the Custodian is binding upon the Court.

Parties are directed to appear before the Court of first instance on the 5th of October, 1953.

APPELLATE CIVIL

Before Kapur, J.

PURAN SINGH—*Plaintiff-Appellant*

versus

UDHAM SINGH AND ANOTHER,—*Defendants-Respondents.*

Regular Second Appeal No. 586 of 1949

Punjab Custom—Alienation—Necessity—Sale for payment of the mortgage debt, whether for necessity.

B.S. sold the land in dispute for Rs. 2,290. Out of this amount Rs. 1,520 was payable on two previous mortgages, one being for Rs. 1,400 with possession, and the interest was equalized by rents and profits. The other mortgage carried interest. A third degree collateral of the vendor brought a suit challenging the sale on the ground that it was without

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