

Shrimati Om
Prabha Jain
v.
Gian Chand
and another

Dulat, J.

Representation of the People Act, 1951, it appears to me that the returning officer did not act improperly when he accepted the appellant's nomination paper, and the Election Tribunal was, not justified in holding to the contrary.

As an alternative argument it was contended that the appellant's nomination ought to have been rejected on the ground that her nomination paper did not contain her electoral roll number and there was thus failure to comply with the provisions of the Representation of the People Act, 1951. It is, however, obvious that the appellant could not possibly have mentioned her electoral roll number at the time of filing the nomination paper, and, if the view be correct that she was entitled to stand for election because by the date of the scrutiny her name had been included in the electoral roll, then the omission of the electoral roll number from the nomination paper would in no sense be a substantial defect. The alternative arguments is thus pointless.

For these reasons, I would allow this appeal and set aside the order of the Election Tribunal and dismiss the respondent's election petition, but, considering all the circumstances, leave the parties to their own costs throughout.

DUA, J.— I agree.

Dua J.

B.R.T.

APPELLATE CIVIL

Before G. D. Khosla, C. J., and Tek Chand, J.

CUSTODIAN, EVACUEE PROPERTY AND OTHERS,—
Appellants.

versus

FIRM DHARAM PAUL-ASU RAM AND OTHERS,—
Respondents.

Execution Second Appeal No. 258 of 1955.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 4 and 17(2)—Whether bar the pleas of res judicata and limitation in execution proceedings.

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Held, that section 4 of the Administration of Evacuee Property Act, 1950, was merely intended to deal with those matters upon which a distinct conflict between the evacuee law and the ordinary law of the land was anticipated. It could not have been intended to give the Custodian a right to reargue the matter over and over again after it had been decided against him. The principle of *res judicata* is a rule of justice and applies to execution proceedings. In the present case the Custodian filed objections and these objections were dismissed. The matter went up to the highest Court in the State and was decided against him. A second objection petition met the same fate. The Custodian cannot now say that because section 17 gives him the right to apply, within three months of the promulgation of the Ordinance, for setting aside the sale, he can set at naught all that happened before.

Held, that section 17(2) of the Administration of Evacuee Property Act, 1950, is intended to deal with fresh cases and not revive old disputes which have been settled and disposed of. There is no conflict between section 17(2) of the said Act on the one hand and the law of limitation and the principle of *res judicata* on the other. The provisions of section 4, therefore, do not come into play and it cannot be argued that section 17 abrogates the law of limitation in execution proceedings or that it abrogates the principle of *res judicata*.

Execution Second Appeal from the order of Shri B. D. Mehra, District Judge, Jullundur, dated the 28th December, 1954; reversing that of Shri Jasmer Singh, Sub-Judge, 1st Class, Jullundur, dated the 7th June, 1954, and dismissing the objections filed by the Custodian and leaving the parties to bear their own costs.

K. S. CHAWLA, for Appellants.

H. L. SARIN and MR. LALIT MOHAN SURI, for Respondents.

JUDGMENT

KHOSLA, C.J.—This matter arising out of an order made in execution proceedings came up in

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the first instance before Bishan Narain, J., who has referred it to a larger Bench for the reason that the point is frequently occurring and is of some importance. The matter relates to the interpretation of section 17(2) of the Administration of Evacuee Property Ordinance (Ordinance No. XXVII of 1949), which is in the following terms :—

“Save as otherwise expressly provided in this Ordinance, any attachment or injunction subsisting on the commencement of this Ordinance in respect of any evacuee property 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 14th day of August, 1947, shall be set aside, if an application is made to such Court or authority by or at the instance of the Custodian within three months from the commencement of this Ordinance.”

The matter arose in the following way : In January, 1948, the firm Dharam Pal-Assu Ram instituted a suit against Bashir Ahmad and Walli Mohd for the recovery of a sum of money. This suit was decreed on 21st April, 1948; and shortly afterwards the house of the judgment-debtors was put up to sale in execution proceedings and sold for Rs 1,850. The house was bought by Ganpat Mal and Harbans Lal who is the minor son of the decree-holder Assu Ram. The Custodian, on coming to know of this sale, now stepped in and filed objections under Order 21, rule 58, Civil Procedure Code, and also under the evacuee law claiming that the sale was void and liable to be set aside. These objections were filed by him on 17th July, 1948, and a few days later, they were dismissed and

the sale was confirmed on the ground that the auction-purchaser had not been made a party by the Custodian. The Custodian filed an appeal, and the District Judge dismissed it on 29th April, 1949. A second appeal brought to this Court met the same fate on 15th March, 1951. The Custodian had, in the meantime, put in another objection petition on 27th October, 1948, under section 8(2) of Act XIV of 1947. On this occasion, too, he did not make the auction-purchaser a party, and on this ground his objections were dismissed on 11th May, 1949. Then on 10th August, 1949, the Custodian filed a third application under section 15(2) of the East Punjab Evacuee Property (Administration) Ordinance (Ordinance No. IX of 1949). A fourth application was filed on 6th January, 1950, under section 17(2) of Ordinance No. XXVII of 1949. The third and the fourth objection petitions were heard together, and on the 7th of June, 1954, the executing Court allowed these objections and set aside the sale. The District Judge on appeal reversed the decision and dismissed the Custodian's objections. It is against this order of the District Judge that the present appeal has been brought to this Court by the Custodian, and it has been urged on his behalf that the sale is liable to be set aside under the provisions of section 17(2) quoted above.

As against this, it has been urged that the objections of the Custodian are barred by the principle of *res judicata* and also on the ground of limitation. It has been urged on behalf of the respondents that on two previous occasions the Custodian raised exactly similar objections and they were dismissed; he cannot now raise the same objections on the same grounds. It is further contended that the Custodian failed to make the auction-purchaser a party and he cannot now, after the lapse of the prescribed statutory period, raise similar objections.

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On behalf of the Custodian it is argued that section 17(2) makes no reference whatsoever to any period of limitation ; all that it requires is that (1) the order of sale must have been made after the 14th of August, 1947, and (2) the application by the Custodian to have the sale set aside must be made within three months of the commencement of the Ordinance (Ordinance No. XXVII of 1949). Both these conditions are fulfilled, because (a) the sale was made on the 16th of June, 1948, which was obviously after the 14th of August, 1947, and (b) the objections were made by the Custodian on 6th January, 1950, within three months of the date of promulgation of the Ordinance which is 18th October, 1949. Mr. Chawla has contended before us that the principle of *res judicata* does not apply to these proceedings and, therefore, the dismissal of the previous applications does not preclude the entertainment of the present objections. Reliance was placed upon a Division Bench decision of this Court in *The Custodian Evacuee Property v. The Simla Banking and Industrial Co.* (1), in which it was held that the provisions of section 51 and Order 40, Civil Procedure Code, are not consistent with sections 13 and 30, Administration of Evacuee Property Act, for the two laws cannot operate at the same time. The learned Judges took the view that the Administration of Evacuee Property Act was to have preference wherever it came in conflict with other laws because of the provisions of section 4 of the Administration of Evacuee Property Act. Section 4 of the Administration of Evacuee Property Act is similar to section 4 of the Ordinance which is in the following terms :—

“The provisions of this Ordinance and of the rules and orders made thereunder

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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."

Therefore, the argument of Mr. Chawla reduces itself to this that because of section 4 the principle of *res judicata* cannot be applied, nor can the law with regard to limitation have any effect on the provisions of section 17.

This, however, does not appear to have been the intention of the legislature. Section 4 was merely intended to deal with those matters upon which a distinct conflict between the evacuee law and the ordinary law of the land was anticipated. It could not have been intended to give the Custodian a right to reargue the matter over and over again after it had been decided against him. The principle of *res judicata* is a rule of justice and applies to execution proceedings. In the present case the Custodian filed objections and these objections were dismissed. The matter went up to the highest Court in the State and was decided against him. A second objection petition met the same fate. The Custodian cannot now say that because section 17 gives him the right to apply, within three months of the promulgation of the Ordinance, for setting aside the sale, he can set at naught all that happened before. In my view section 17(2) is intended to deal with fresh cases and not to revive old disputes which have been settled and disposed of. We may even apply the principle of Order 2, rule 2, Civil Procedure Code, to these proceedings. It was open to the Custodian to implead the auction-purchaser. His first petition was dismissed for his failure to do so. Even in the second petition he did not implead the auction-purchaser. His

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subsequent objection petition is clearly barred by time, and further it cannot be entertained on the ground that the matter has already been disposed of.

In this view of the matter, I do not find any conflict between section 17(2) on the one hand and the law of limitation and the principle of *res judicata* on the other. The provisions of section 4, therefore, do not come into play and it cannot be argued that section 17 abrogates the law of limitation in execution proceedings or that it abrogates the principle of *res judicata*. The objections of the Custodian were rightly dismissed by the learned District Judge and this appeal must fail. I would accordingly dismiss it with costs.

Tek Chand, J.

. TEK CHAND, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

HANS RAJ AND OTHERS,—Appellants

versus

SMT. BRAHMI DEVI,—Respondent

Regular Second Appeal No. 703 of 1955.

1960
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Punjab Tenancy Act (XVI of 1887)—Sections 42, 43, 44, 47, 49, 74 and 88—Landlord and tenant—Relation between—When terminated—Whether on the passing of the decree or order of ejection or on actual dispossession in execution of that decree or order—Tenant dispossessed in execution of the decree of ejection at a time outside the period prescribed in section 47—Whether legal—Delivery of possession to the landlord without assessing the standing crop—Whether legal—Symbolical possession—Effect of.

Held, that the relationship of landlord and tenant comes into being by contract or by statute and the landlord has an