

## APPELLATE CIVIL

Before Bhandari, C.J., and Khosla, J.

LAKHMI CHAND,—Plaintiff-Appellant

versus

PUNJAB STATE,—Defendant-Respondent

Second Appeal from Order No. 19 of 1952

*Displaced Persons (Institution of Suits) Act (XLVII of 1948)—Section 4—Suit against Indian Government—Cause of action arising wholly in Pakistan—Suit against Government on the basis of that cause of action, whether maintainable in India.*

1953

August 4th

*Indian Independence (Rights, Property and Liabilities) Order, 1947, Para 10—Cause of action to a displaced person to sue Government arising before partition in territories now forming part of Pakistan—Suit filed after partition in Jullundur now forming Part of India—Jurisdiction of Jullundur Courts to entertain such suit.*

*Held*, that a displaced person can take advantage of the provisions of the Displaced Persons (Institution of Suits) Act if he satisfies the conditions mentioned in section 4 including the condition that the defendant carries on business or personally works for gain in India. The work carried on by Government in governing the country cannot be regarded as business carried on by Government. As one of the conditions mentioned in section 4 has not been satisfied the help of the Act cannot be invoked, and the Jullundur Courts had no jurisdiction to entertain the suit.

*Held further*, that in view of clause 10 of Indian Independence (Rights, Property and Liabilities) Order, 1947, as the Government omitted to restore goods to the plaintiff

in pursuance of the order of 9th August 1947, the original liability must be deemed to be of the Governor-General in Council and as the cause of action arose wholly within the territories now forming part of the Dominion of Pakistan, the plaintiff's action can be only against the Government of Pakistan and not against the Government of India or the Government of Punjab (India), and his suit had rightly been dismissed.

*Second appeal from the order of Shri Sham Lal, Senior Sub-Judge, Jullundur, with enhanced appellate powers, dated the 31st May 1952, affirming that of Shri Inderjit Pipat, Sub-Judge, IV Class, Jullundur, dated the 6th March 1952, ordering that the plaint be returned to the plaintiff for presentation to the proper Court having jurisdiction in the matter.*

K. S. THAPAR, for Appellant.

S. M. SIKRI, Advocate-General, for Respondent.

#### JUDGMENT

Bhandari, C. J. BHANDARI, C. J. The short point for decision in the present case is whether the civil Courts at Jullundur have jurisdiction to entertain a suit brought by a displaced person from Pakistan against the Government of the Punjab (I) in respect of a cause of action which arose wholly within the territories of Pakistan.

The appellant in this case is a displaced person from Pakistan. He was convicted for having contravened the provisions of a certain Ordinance in a part of the United Punjab, which is now a part of Pakistan and certain articles belonging to him were confiscated to the Crown. He was acquitted on appeal on the 9th August 1947 and the goods which were confiscated to the Crown were ordered to be restored to him. When the country was partitioned on the 15th August 1947, the appellant migrated to India and took up his residence in Jullundur. On the 7th May 1951, he brought an action against the Punjab (I) Government in the Court of a Subordinate Judge at Jullundur, for the recovery of a sum of Rs. 900 on account of the price of those goods. The Punjab Government raised a preliminary objection that the Courts in Jullundur had no jurisdiction to deal with this case and this objection was upheld both by the trial Court and the Senior Subordinate Judge. When the second appeal came up for hearing

before this Court, a learned Single Judge expressed the view that it is inequitable that although a person displaced from Pakistan may have a perfectly legitimate claim against the Government of this country, he should not be able to enforce that claim because the cause of action had arisen in a part of the country which is now a part of Pakistan. As this appears to be an unsatisfactory state of affairs, he has referred this case to a Division Bench for decision.

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The suit out of which this appeal has arisen was instituted under section 4 of the Displaced Persons (Institution of Suits) Act, 1948. The relevant portion of this section runs as follows:—

“A displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if—

- (i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person;
- (ii) the cause of action, wholly or in part, arises or has arisen in a place now situate within the territories of Pakistan;
- (iii) the Court in which the suit is instituted is otherwise competent to try it; and
- (iv) the suit does not relate to immovable property.”

A displaced person can take advantage of the provisions of this Act if he satisfies the conditions mentioned in section 4 including the condition that the defendant carries on business or personally works for gain in India. It has been held repeatedly that the work carried on by a Government in governing the country cannot be regarded as business carried on by Government,—*vide*

Lakhmi Chand *Subbaraya Mudali v. The Government* (1), *Doyanarain Tewary v. The Secretary of State for India in Council* (2), *Rodricks v. Secretary of State for India* (3), *R. J. Wyllie and Co. v. Secretary of State* (4), and *Dominion of India v. M/s. R. C. K. C. Nath and Co., Khulna* (5). As the present suit has been brought against the Punjab Government and as one of the conditions mentioned in section 4 has not been satisfied, the help of the Act of 1948 cannot be invoked.

Assuming for the sake of argument that the Courts in Jullundur had jurisdiction to deal with the case, the question arises whether the plaintiff has a good legal claim against the Punjab Government. When the Indian Independence Act was enacted by the British Parliament on the advice of the principal political parties in India, Parliament conferred power on the Governor-General to make certain Orders, and in exercise of the power so conferred the Governor-General promulgated the Indian Independence (Rights, Property and Liabilities), Order, 1947, for the initial distribution of rights, property and liabilities consequential on the setting up of the Dominions of India and Pakistan. Paragraph 10 of the said Order declares that where immediately before the 15th day of August 1947, the Governor-General in Council is subject to any liability in respect of an actionable wrong other than breach of contract, that liability shall, where the cause of action arose wholly within the territories which, as from the said 15th day of August 1947, are the territories of the Dominion of Pakistan, be a liability of that Dominion. As Government in the present case omitted to restore the goods to the plaintiff in pursuance of the order of the 9th August 1947, the original liability must be deemed to be that of the Governor-General in Council and as the cause of action arose wholly within the limits of the Sheikhpura District, which now forms part of the Dominion of Pakis-

(1) (1862-63) 1 Mad. H.C.R. 286

(2) I.L.R. 14 Cal. 256

(3) I.L.R. 40 Cal. 308

(4) A.I.R. 1930 Lah. 818

(5) A.I.R. 1950 Cal. 207

tan, the plaintiff's action can lie only against the Lakhmi Chand  
Government of Pakistan and not against the v.  
Government of India or the Government of the Punjab State  
Punjab (I). The Government of Pakistan has not  
been impleaded as a defendant. Even if it had Bhandari, C. J.  
been impleaded and even if a decree had been  
passed against it, the decree would have been of  
no consequence for the Courts of this country  
have no power to enforce decrees against Govern-  
ments of foreign countries.

For these reasons, I would uphold the order  
of the Courts below and dismiss the appeal. There  
will be no order as to costs.

KHOSLA, J.—I agree.

Khosla, J.