

be allotted to the petitioners and the payment of the first instalment of compensation assessed by the State in respect of the land cannot confer any title on the petitioners.

I thus find no force in this petition and would dismiss the same with costs.

SHAMSHER BAHADUR, J.— I agree.

R.S.

REVISIONAL CIVIL

Before Mehar Singh, J.

JAMNA DEVI,—*Petitioner*

versus

GHIAS-UD-DIN AHMED KHAN AND OTHERS,—*Respondents*

Civil Revision No. 17-D of 1965.

Evacuee Interest (Separation) Act (LXIV of 1951)—S. 20(2)—Mortgage suit stayed pending proceedings under S. 20—Whether revived after proceedings before the competent authority are terminated.

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May, 18th

Held, that sub-section (2) of section 20 of the Evacuee Interest (Separation) Act, 1951, provides that all suits and proceedings pending before a Civil or Revenue Court at the commencement of the Act, in so far as they relate to any claim filed before a Competent Officer under section 7, are to be stayed, but that stay is only 'during the pendency of any such proceeding under this Act, it is obvious, therefore, that the stay made operative by sub-section (2) of section 20 ceases as soon as the proceedings under the Act cease to be pending. No formal application for the revival of the suit is necessary. An application can, however, be made to the Court to inform it that the stay operative under sub-section (2) of section 20 has ceased to exist and the suit is available for further trial. On being so informed the trial Court has no option but to recall the suit to its file and then proceed to dispose it of on merits, even if it has only to pass a final decree.

Revision petition under section 115 C.P.C. against the order of Shri D. R. Khanna, Sub-Judge 1st Class, Delhi, dated 16th September, 1964, refusing to revive the suit of the plaintiff-petitioner in respect of her claim for the balance of the mortgage amount due from the respondents.

S. L. SETHI AND J. K. SETHI, ADVOCATES, for the Petitioner.

T. C. B. M. LAL, ADVOCATE, for the Respondents.

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ORDER

Mehar Singh, J. MEHAR SINGH, J.—The petitioner is the plaintiff. She was a mortgagee of the property in dispute from Muslims. One of the mortgagors became an evacuee. His share in the property was $\frac{2}{5}$ th. The remaining mortgagors remained on this side and have thus been non-evacuees, their share being $\frac{3}{5}$ th. The petitioner instituted a suit on August 21, 1951, to enforce the mortgage by sale of the mortgaged property. While that suit was pending, on October 31, 1951, came into force the Evacuee Interest (Separation) Act, 1951. (Act 64 of 1951), under the provisions of which the Competent Officer has been given jurisdiction to separate the evacuee interest from the non-evacuee interest in a property in which an evacuee has left title. In a case like the present the separation obviously would be one of the interest of the evacuee mortgagor from the interest of the non-evacuee mortgagors and two, of the interest of the evacuee mortgagor from the interest of the non-evacuee mortgagee. In such circumstances a co-sharer and a mortgagee can make an application under section 7 of the Act for separation of the evacuee's interest from his interest in the property. Accordingly the non-evacuee mortgagors as also the mortgagee, the present petitioner, made applications under section 7. At this stage it is sufficient to say that, after prolonged litigation what has happened is that $\frac{2}{5}$ th share of the evacuee mortgagor has been sold by the Competent Officer and it has been purchased by the non-evacuee mortgagors. The mortgage charge on that $\frac{2}{5}$ th share of the mortgaged property has been discharged by payment of the rateable mortgage money to the mortgagee, the petitioner, but with this difference that interest on the mortgage money to the extent of this share has been calculated at the rate of 5 per cent per annum according to section 9 of the Act, and that rate of interest is less than the contractual rate under the mortgage. The remaining $\frac{3}{5}$ th share of the non-evacuee mortgagors has also been redeemed by their paying the remaining $\frac{3}{5}$ th of the mortgage money, with interest calculated at the rate of $7\frac{1}{2}$ per cent according to the Punjab Relief of Indebtedness Act and also according to the agreement between the parties but the petitioner as mortgagee made a claim to recoup herself for the loss of $2\frac{1}{2}$ per cent of interest on the $\frac{2}{5}$ th share of the evacuee mortgagor from the non-evacuee mortgagors and neither the Competent

Officer nor the Appellate Officer decided this claim, making their orders subject to this claim of the petitioner leaving her to fight it out in an ordinary civil litigation.

While the claim proceedings were pending before the Competent Officer, the mortgage suit of the petitioner remained stayed under section 20 of the Act, which section reads—

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“(1) Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Competent Officer in respect of the composite property shall be granted by any Civil Court or other authority.

(2) All suits and proceedings pending before a Civil or Revenue Court at the commencement of this Act shall, in so far as they relate to any claim filed before a competent officer under section 7, be stayed during the pendency of any proceeding under this Act.

(3) Nothing in sub-section (1) shall prevent any Civil or Revenue Court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred”.

After the final decision of the claims under the provisions of Act 64 of 1951, the petitioner made an application on November 23, 1963, for revival of her mortgage suit and it is that application which was partly dismissed by the learned trial Judge on September 16, 1964. This revision petition by the petitioner is directed against that order. The learned trial Judge dismissed the prayer of the petitioner for revival of the suit except for one purpose, that

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is of the matter of determination of the costs of the suit. The learned trial Judge has discussed the merits of the claim of the petitioner with regard to $2\frac{1}{2}$ per cent interest on the mortgage amount of $\frac{2}{5}$ th share of the evacuee mortgagor. This claim, she has made against the non-evacuee mortgagors on the ground that the mortgage security being indivisible, the liability of each one of the mortgagors is joint and several, so that she can enforce her mortgage claim, or part of her mortgage claim, against any one of the mortgagors. This approach on the side of the petitioner has not been accepted by the learned trial Judge.

At this stage there is just one argument by the learned counsel for the petitioner and that is that the learned trial Judge should have decided the question of revival or non-revival of the suit of the petitioner without discussing the merits of the claim of the petitioner, which he should have discussed and decided if the suit was revived. The reply on behalf of the non-evacuee mortgagors is that in view of the provisions of section 20 of the Act and other provisions of the Act what has been decided by the Competent Officer and on appeal by the appellate Office has been made final, thus disposing of the matter of litigation concerning the mortgage between the parties finally of which the result then is that there is no jurisdiction left with the Civil Court to revive a stayed suit as that of the petitioner.

The arguments on the side of the parties have to be considered in the light of the provisions of section 20 of the Act. Sub-section (2) of that section is immediately in point. And what is of particular note is that all suits and proceedings pending before a Civil or Revenue Court at the commencement of the Act, in so far as they relate to any claim filed before a Competent Officer under section 7, have been stayed but that stay is only 'during the pendency of any such proceeding under this Act', and it is obvious that as soon as such proceedings under that Act no longer remain pending, the stay no longer remains in force. The learned counsel for the non-evacuee mortgagors refers to sub-sections (1) and (3) of this very section, but I do not see how those provisions advance the argument on the side of the non-evacuee mortgagors. No doubt sub-section

(1) of section 20 bars a Civil or a Revenue Court from entertaining any suit or proceeding in so far as it relates to any claim to composite property under the provisions of the Act, but sub-section (3) of this very section leaves the matter to be disposed of by an ordinary Civil Court, or a Revenue Court, as the case may be, when the question of dispute is between two rival claimants as in this case or between a claimant and a third party. These two sub-sections do not further the argument on the side of the non-evacuee mortgagors. The learned counsel for the non-evacuee mortgagors points out that this case has previously come to this Court and it is reported as *Nawab Zahir-ud-Din Ahmad Khan and others v. The Appellate Officer, etc.* (1), and on appeal as *Nawab Zahir-ud-Din Ahmad and another V. The Appellate Officer, Delhi Province, Delhi and others* (2), in which it has been held that because of the statutory provisions of Act 64 of 1951 in the present case the mortgage security has been split, and the learned counsel contends that once the mortgage security is so split by the statute, the claim of the petitioner as mortgagee for the remaining 2½ per cent interest, of which she has been deprived because of section 9 of the Act from the mortgage consideration of the 2/5th share of the evacuee mortgagor, is entirely without foundation. But that is an argument on merits and it may be that it will succeed when the suit is revived. It, however, cannot be considered on the question whether or not the stay operative under sub-section (2) of section 20 of the Act still continues even after the proceedings under Act 64 of 1951 are no longer pending and have come to an end. In my opinion, once the proceedings under that Act cease to be pending and are at an end, the stay which is made operative by sub-section (2) of section 20 ceases also. In other words, the suit of the petitioner no longer remains stayed under sub-section (2) of section 20. No formal application for revival of that suit was necessary. The application of the petitioner, out of which this revision petition has arisen, must be taken to be merely an application to draw attention of the Court that the stay operative under sub-section (2) of section 20 has ceased to exist in the circumstances of

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(1) 1959 P.L.R. 257.

(2) A.I.R. 1962 Punj. 53.

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the case and the suit is available for further trial. On being so informed the trial Court has no option, but to recall the suit to its file and then proceed to dispose it of. It may be that what the learned counsel for the non-evacuee mortgagors says may prevail and because of the finality of orders under Act 64 of 1951, nothing more would be required to be done in the suit except to pass a final decree disposing it of, but that will be a matter which will be decided by the Court itself. It is further clear that, even if the approach of the learned trial Judge is to be accepted, that application for revival of the suit was necessary, there was no question of a partial revival of the suit for the purposes of costs only. The suit either remains stayed and the stay in this case may be interpreted as dismissal of the suit as the learned counsel for the non-evacuee mortgagors has contended or it is no longer stayed, in which case it must be disposed of on merits. In my opinion, the latter is the case and the learned trial Judge was not right in ordering that the suit is only revived for the purposes of costs under the Act.

The result is that this revision petition succeeds and the suit of the petitioner as plaintiff no longer remains stayed. It is a suit which is now back on the file of the learned trial Judge to be disposed of and must be disposed of according to law. In the peculiar circumstances of this case the parties are left to their own costs.

R.S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

KHUSHAL SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 81 of 1965.

1965

 May, 24th

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—S. 15—Power of the State Government to make rules—Scope of—Punjab Minor Minerals Concession Rules (1964)—Rules 28, 33 and 61—Whether constitutional—Wajab-ul-arz—Value of—Interference by the Government with the property or property rights of the citizens in whose lands quarries or mines of minor minerals are found—How to be made.