

Bharat Nidhi Bank Ltd.,  
Khanna

feel that the Bank is entitled to a decree against the guarantee brokers for this amount.

v.  
Firm M/s Raj Kumar and Co.,  
Jullundur City,  
and others

For the reason given below, we accept this appeal and grant a decree to the plaintiff for Rs. 22,500 against Messrs Raj Kumar and Company with proportionate costs throughout.

Harbans Singh,  
J.

B.R.T.

APPELLATE CIVIL.

Before D. K. Mahajan, J.

FAQIR SINGH AND OTHERS,—Appellants.

*versus*

Mst. GURBACHAN KAUR AND ANOTHER,—Respondents.

Regular Second Appeal No. 514 of 1954.

1959  
May, 19th.

*Administration of Evacuee Property Act (XXXI of 1950)—Sections 10(2)(0) and 46—Jurisdiction of the Civil Courts—How far barred—Dispute between two claimants to property allotted—Civil Court—Whether can determine—Jurisdiction of Special Tribunals—Extent of—How to be determined.*

*Held*, that where the dispute is between two rival sets of heirs to the property, the allotment of which has taken place and is not in dispute, it does not fall for decision by the Custodian under either of the provisions of the Administration of Evacuee Property Act, 1950 and the jurisdiction of the Civil Courts is not excluded. The jurisdiction of the civil Court is excluded only to the extent that it will not entertain a suit respecting any matter which the Custodian-General or the Custodian is empowered by or under the Act to determine and it is within the jurisdiction of the civil Court to determine whether the matter involved in the suit falls to be determined by the Custodian-General or the Custodian under the Act or not.

*Held*, further that it is well-settled proposition of law that when any special Tribunals or Courts are created, the

Courts must look to the statute creating them to find out as to what matters have been entrusted to them for decision and their authority to decide the same must be specifically found within the four corners of their charter.

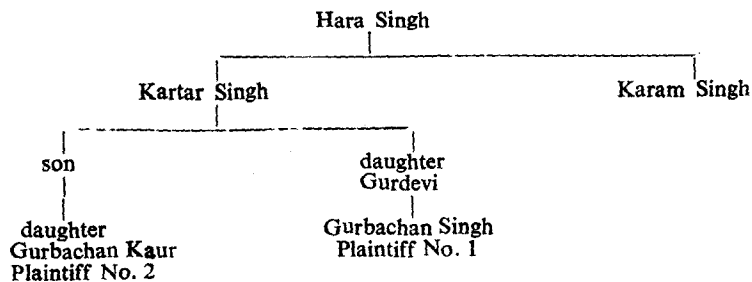
*Regular Second Appeal from the decree of the Court of Sh. Ram Lal, Additional District Judge, Ambala, dated the 22nd day of February, 1954, modifying that of Sh. Rajinder Lal Saigal, Sub-Judge Ist Class, Jagadhri, dated the 21st December, 1953, dismissing the plaintiff No. 1's (Gurbachan Singh) suit and leaving the parties to bear their own costs but decreeing the plaintiff No. 2's (Gurbachan Kaur) suit for possession of the suit land against the defendants with costs) to the extent of dismissing the plaintiff No. 2's (Gurbachan Kaur) suit with regard to possession of one half of the property in dispute, i.e., Gurbachan Kaur would be entitled to possession of one half share in the land in suit as a preferential heir and leaving the parties to bear their own costs.*

MOTI RAM AGGARWAL & H. L. SARIN, for Appellants.

K. C. NAYAR, for Respondent.

#### JUDGMENT

MAHAJAN, J.—In order to appreciate the facts involved in this case it is necessary to set down a short pedigree-table. Mahajan, J.



Kartar Singh and Karam Singh owned land in West Pakistan and on the partition of the country and during the communal riots that followed Kartar Singh, his son and Karam Singh were murdered. The only persons who survived

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were Gurdevi, her son Gurbachan Singh, plaintiff No. 1 and Kartar Singh's grand-daughter Mst. Gurbachan Kaur, plaintiff No. 2.

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In India after the partition the persons who had left land in West Pakistan were allotted lands left by the Muslims in lieu of the lands left by them. The land which was left by Kartar Singh and Karam Singh in Pakistan was allotted to the fourth degree collaterals of Karam Singh who are appellants before me.

The present suit has been filed by the plaintiffs Nos. 1 and 2, for possession of the land allotted to the collaterals of Kartar Singh and Karam Singh on the ground that they are better heirs to the same than the collaterals inasmuch as the allotted land is non-ancestral as the land in lieu of which it is allotted was non-ancestral. The trial Court granted a decree in favour of plaintiff No. 2 and dismissed the suit of plaintiff No. 1. It held that the property was non-ancestral and that plaintiff No. 1 was a preferential heir than the fourth degree collaterals of Karam Singh. An appeal was taken to the Additional District Judge by the collaterals who on the 19th of January, 1954, allowed the appeal to the extent of one half of the land on the ground that it was not known as to whether Karam Singh died before Kartar Singh or after him because in case Karam Singh died after Kartar Singh then his property could not be inherited by either of the plaintiffs as they were not in the line of heirs and would go to the collaterals. Against this decision the collaterals have come up in further appeal to this Court. The plaintiffs, however, have not preferred any appeal nor have they filed cross objections.

The only point argued by Mr. Sarin, learned counsel for the collaterals, is that civil Courts have

no jurisdiction to try the suit. With regard to the other findings, it is admitted that the decision of the Courts below is correct.

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Reference in this connection has been made to section 46 and section 10(2)(0) of the Administration of Evacuee Property Act (XXXI of 1950), Section 46(d) runs as under :—

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“Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction—

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) in respect of any matter which the Custodian-General or Custodian is empowered by or under this Act, to determine.”

Section 10(2)(0) reads as under :—

“(0) transfer in any manner whatsoever any evacuee property, notwithstanding anything to the contrary contained in any law or agreement relating thereto :

Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian-General.”

In the present case, the dispute is between two rival sets of heirs to the property, which has been allotted in lieu of property left in West Pakistan.

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This dispute, in my opinion, does not fall for decision by the Custodian under either of the provisions and if the dispute does not fall within the exclusive jurisdiction of the Custodian then the jurisdiction of the civil Courts is not excluded. It is well settled proposition of law that when any special Tribunals or Courts are created we must look to the statute creating them to find out as to what matters have been entrusted to them for decision and their authority to decide the same must be specifically found within the four corners of their charter. In this connection reference may be made to a Division Bench decision of the Lahore High Court, *Laxmi Chand v. Jamadar Aulia Khan and others* (1), wherein the following observations are made :—

“When a special jurisdiction is conferred, it must be taken as strictly limited to the terms in which it is created and cannot be extended to cover matters to which no express reference has been made or which do not have to be decided in order to carry out the purpose for which the special jurisdiction has been created.”

The same proposition was enunciated by Mr. Justice Mukherjea (as he then was) in *Mohesh Chander Shaha v. Abdul Gafur* (2).

As I have already stated this is a dispute between two rival sets of heirs to property the allotment of which has taken place and is not in dispute. This matter clearly falls for decision by the civil Courts. It has not the remotest connection with matters which the authorities under the Administration of Evacuee Property Act are called upon to decide. It will be profitable to refer to the

(1) A.I.R. 1941 Lah. 225 at p. 227  
(2) A.I.R. 1946 Cal, 435

observations of Mr. Justice Gosain in *Sat Narain v. Custodian of Evacuee Property, Jullundur* (1)—

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“Clause (d) of section 46 bars the jurisdiction of the civil Court to a very limited extent. The only bar created by this clause is that a civil Court will not entertain a suit respecting any matter which the Custodian-General or the Custodian is empowered by or under the Act to determine. The words “under this Act” as used in this clause can again be interpreted only as meaning ‘sanctioned or authorised by this Act’. The civil Court can obviously examine whether the matter over which it is asked to adjudicate is the one which the Custodian-General or the Custodian is empowered by or under the Administration of Evacuee Property Act to determine. Once the civil Court comes to the conclusion that the matter is of the type stated above, the civil Court would have no jurisdiction to adjudicate on the said matter. But if the civil Court is of the opinion that the Custodian-General or the Custodian are not empowered by or under the Act to determine that matter, it would have jurisdiction to adjudicate on the matter. The mere fact that the Custodian-General or the Custodian think that they are empowered by or under the Act to determine the matter will not, in any case, stand in the way of the civil Court exercising jurisdiction in respect of the same.”

I am in respectful agreement with these observations. I am clearly of the view that the civil Courts had jurisdiction to decide the matter.

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(1) 1959 P.L.R. 451 at p. 453

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For the reasons given above, this appeal fails and is rejected. I, however, make no order as to costs in this Court.

B.R.T.

## APPELLATE CIVIL.

Before A. N. Bhandari, C. J.

SULTANI MAL, *Petitioner.*

*versus*

KALWANT RAI, *Respondent.*

**Civil Revision No. 289 of 1958.**

1959  
\_\_\_\_\_  
May, 25th

*Patiala & East Punjab States Union Urban Rent Restriction Ordinance (VIII of 2006 Bk.)—Section 13(4)—“Does not himself occupy it for a continuous period of twelve months”—Meaning of.*

*Held*, that the expression “does not himself occupy it for a continuous period of twelve months” in sub-section (4) of section 3 of the Patiala & East Punjab States Union Urban Rent Restriction Ordinance, 2006 Bk. means “fails to occupy it for a continuous period of twelve months”. It could not have been the intention of the Legislature that a landlord who has secured an order for the eviction of his tenant should enter into possession of the property as soon as he is put in possession thereof. On the other hand, the Legislature appears to have contemplated that the landlord should remain in possession of the property until and unless the tenant is able to satisfy the Court that the landlord has not occupied the property for a continuous period of twelve months from the date of obtaining possession thereof.

*Petition under Article 227 of the Constitution of India for revision of the order of Sh. Ranjit Singh Sarkaria, Appellate Authority, Barnala, dated 30th April, 1958, affirming that of Sh. Kahan Chand Kalra, Rent Controller, Malerkotla, dated 31st January, 1958, ordering that the respondent be put in possession of the shop in dispute within 30 days from the date of the order.*