

# THE INDIAN LAW REPORTS

## PUNJAB SERIES

### APPELLATE CIVIL

*Before Falshaw and Dulat, JJ.*

PARKASH CHAND AND OTHERS,—*Plaintiffs-Appellants.*

*versus*

CUSTODIAN EVACUEE PROPERTY, JULLUNDUR AND  
MAL SINGH,—*Defendant-Respondents.*

**Regular Second Appeal No. 549 of 1951.**

*Administration of Evacuee Property Act (XXXI of 1950)—Section 46—Jurisdiction of Civil Courts to determine whether certain Muslims had or had not become evacuees and whether their properties were or were not evacuee property—Whether barred—Custodian—Whether can be said to be a judge in his own cause where he is called upon to decide whether the disputed property is or is not evacuee property.*

1958  
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*Held*, that in view of the plain meaning of section 46 of the Administration of Evacuee Property Act, 1950, it is not competent for the Civil Courts to go into and decide whether certain Muslims had or had not become evacuees and whether their properties were or were not evacuee property.

*Held*, that there is no force in the argument that in case a dispute arises between the Custodian and another party, the custodian cannot be allowed to determine the matter whether the disputed property is or is not evacuee property, because that would make the Custodian a Judge in his own cause. The custodian as such has no interest in the property entrusted to his charge by the Administration of Evacuee Property Act, and it is futile to contend

that he cannot be allowed to decide whether certain property is or is not evacuee property.

*Case referred by Hon'ble Mr. Justice Bishan Narain on 15th December, 1954, to a Division Bench for an authoritative decision and later on decided by a D.B. consisting of Hon'ble Mr. Justice D. Falshaw, and Hon'ble Mr. Justice S. S. Dulat on 31st July, 1958.*

*Regular Second Appeal from the decree of the Court of Shri. Sunder Lal, Senior Sub-Judge, with Enhanced Appellate Powers, Ferozepore, dated the 11th day of May, 1951, reversing that of Shri Om Nath Vohra, Sub-Judge, IV Class, Ferozepore, dated the 15th January, 1951, and dismissing the plaintiffs' suit with costs throughout.*

D. K. MAHAJAN, RAJ KUMAR, K. L. JAGGA and N. N. GOSWAMY, for Appellants.

A. M. SURI, for Respondent.

Dulat, J.

## JUDGMENT

Dulat, J.—In June, 1950, Parkash Chand and others filed two suits in the Court of a Subordinate Judge at Ferozepore—one against the Custodian of Evacuee Property and Mal Singh, and the other against the Custodian of Evacuee Property and Tahl Singh. Both suits concerned landed property and the allegations in both were somewhat similar. In the suit against Tahl Singh and the Custodian, it was alleged that the land in suit had belonged to one Sharajuddin who had in July, 1947 sold it to plaintiff No. 5 and Babu Ram, the father of the plaintiffs 1 to 4; that Sharajuddin had died in India and never gone away to Pakistan; and that the plaintiffs had entered into possession but subsequently the Custodian of Evacuee Property had allotted the land to Tahl Singh defendant who had taken possession. The plaintiffs' claim in the suit thus was for the possession of the land on the

ground that it was their property and their predecessor-in-title had never become an evacuee. In the second suit against Mal Singh and the Custodian it was alleged that the property had belonged to two Muslims—Himmat and Mst. Viro—and Himmat had mortgaged his share with Mal Singh on the 30th of July, 1947 and subsequently he as well as Mst. Viro sold their respective shares to plaintiffs No. 5 and Babu Ram, the father of plaintiffs Nos. 1 to 4.; that the Muslim owners had died in India and never gone to Pakistan; and that the Custodian of Evacuee Property had, therefore, no right to interfere with the property. This particular suit was for a declaration of title in favour of the plaintiffs and for an injunction to restrain the Custodian of Evacuee Property from interfering with it. Both the suits were resisted on behalf of the Custodian mainly on the ground that the civil Court had no jurisdiction to go into the question whether the property in each case was or was not evacuee property or into the question whether the original owners of the property had or had not become evacuees. The trial Court did not accept this objection and went into the evidence and held in each case that the original owners of the property had died in India and not migrated to Pakistan and that the plaintiffs had acquired valid title to the property which was not evacuee property. In the result the two suits were decreed. The Custodian of Evacuee Property appealed against the decrees and the learned Senior Subordinate Judge, Ferozepore, who heard the appeals, came to the conclusion that the civil Courts were debarred from deciding the question whether the disputed property in each case was or was not evacuee property, and on this view the learned Judge allowed the appeals and dismissed both the

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suits with costs throughout. Two second appeals were thereupon filed in this Court and were placed before a Single Judge for disposal but the learned Single Judge formed the opinion that the questions raised in the appeals required consideration by a larger Bench, and the two appeals—Regular Second Appeals Nos. 549 and 550 of 1951—were referred to this Bench.

The short question arising in these appeals is whether on the facts of these cases it is open to the civil Courts to determine whether the disputed property in each case is or is not evacuee property which, of course, turns on the question whether the Muslim owners of the property in each case had or had not become evacuees. Section 46 of the Administration of Evacuee Property Act, 1950, runs thus:—

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

- (a) 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; or
- (b) \* \* \*
- (c) to question the legality of any action taken by the Custodian under this Act; or
- (d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.”

The mandate contained in this provision of law is clear enough, but Mr. Mahajan in support of the

appeals contends that there is judicial authority in support of his view that the civil Courts' jurisdiction is not completely ousted in such matters. Reference is first made to a decision of this Court in *Custodian Evacuee Property, Punjab v. Gujar Singh and others* (1). The judgment, however, shows that Weston, C.J., who decided that case, was clearly of the opinion that a civil Court was debarred from determining whether a particular property was or was not evacuee property, and the only observation in the judgment seemingly in favour of Mr. Mahajan's argument is that although the civil Court is thus debarred it can satisfy itself whether the property has been determined to be evacuee property and the Court is not precluded from proceeding with other matters pending such determination by the Custodian. In that particular case objection had been taken to certain execution proceedings pending in a civil Court and the application made on behalf of the Custodian was that certain orders made by the civil Court should be set aside. Weston, C.J., found that the question whether the property was or was not evacuee property had never been determined and there was, therefore, no occasion to interfere with the execution. This decision thus does not support Mr. Mahajan's case. Our attention has been drawn to another decision of this Court reported as *Mohd Saddiq Barry v. Mohd. Ashfaq and others* (2), where Harnam Singh, J., held that the trial by the civil Court of the question whether the property in suit is or is not evacuee property is barred. Reference was also made to a Division Bench of this Court, *Firm Sahib Dayal-Bakshi Ram v. The Assistant Custodian of Evacuees' Property* (3), but in that case the real

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(1) 1953 P.L.R. 94  
(2) 55 P.L.R. 448  
(3) 54 P.L.R. 318

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question concerned the meaning of section 48 of the Administration of Evacuee Property Act and not section 46. Mr. Mahajan finally referred to a Full Bench decision of the Allahabad High Court in support of his submission, being *Khalil Ahamad Khan v. Malka Mehar Nigar Begum and others* (1). The facts of that case were, however, so vastly different from the present that it can be of no assistance to learned counsel's argument. What happened there was that one Sohani Begum created a *wakf* in respect of her property and named her daughter Malka Mehar Nigar Begum as the next *mutwalli*. This was on the 23rd of March, 1929. Subsequently, however, in November, 1938 Sohani Begum changed her mind and executed another document cancelling the first nomination. On Sohani Begum's death in December, 1943 disputes arose between Malka Mehar Nigar Begum and Khalil Ahmad in respect of the *wakf* property and this led to a suit by Malka Mehar Nigar Begum to establish that she was the duly appointed *mutwalli*. This suit was decreed in her favour in October, 1944 and an appeal to the High Court was filed on the 14th of December, 1944. A second suit was also brought by Malka Mehar Nigar Begum for the possession of the same property on the 13th of February, 1945 and it was decreed on the 28th of May, 1945 and an appeal was filed in the High Court on the 2nd of October, 1945. While the appeals were pending Malka Mehar Nigar Begum went away to Pakistan and the Deputy Custodian of Evacuee Property was substituted in her place. When the appeals were argued in the High Court, a preliminary objection was raised on behalf of the Deputy Custodian that the appeals could not be heard as the civil Courts were debarred from deciding whether any property was or was not

(1) A.I.R. 1954 All. 362 F.B.

evacuee property. The objection was overruled and quite obviously it had to be overruled because the litigation had nothing to do with the question whether any property was or was not evacuee property and was concerned with wholly different matters, namely, whether Malka Mehar Nigar Begum or the defendants in the suits were entitled to act as *mutwalli*, and as far the Custodian was concerned, he merely represented the interest of Malka Mehar Nigar Begum. I do not see how this decision of the Allahabad High Court can be of any help in the present case.

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It is quite clear that the present suits pointedly invited the civil Courts to decide whether certain Muslims had or had not become evacuees and whether their properties were or were not evacuee property, and in view of the plain meaning of section 46 of the Administration of Evacuee Property Act, it is impossible to agree that the civil Courts could go into and decide these questions. Mr. Mahajan contended that in case a dispute arises between the Custodian and another party the Custodian cannot be allowed to determine the matter whether the disputed property is or is not evacuee property, because that would make the Custodian a judge in his own cause. I see no force in this argument. The Custodian as such has no interest in the property entrusted to his charge by the Administration of Evacuee Property Act, and it is futile to contend that he cannot be allowed to decide whether certain property is or is not evacuee property.

For these reasons neither on principle nor on authority am I able to agree that the civil Courts could decide the substantial questions in dispute in these cases and holding, therefore, that the lower appellate Court was right in dismissing the

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two suits, I would uphold the order in each case and dismiss both the appeals but leave the parties to their own costs in this Court.

Falshaw, J.

Falshaw, J.—I agree.

B. R. T.

APPELLATE CIVIL

*Before Falshaw and Dua, JJ.*

SHRI GIAN CHAND,—Appellant.

*versus*

SHRIMATI OM PRABHA JAIN, WIFE OF SHRI KAILASH  
CHAND JAIN,—Respondents.

First appeal from Order No. 183 of 1957.

1958

August, 12h

*The Representation of the People Act (XLIII of 1951)—Section 98—Order dismissing the election petition on the ground of non-compliance with the provisions of Section 117—of the Act—Whether appealable—Section 117—Security deposit made on account of the election petition and on behalf of the Secretary to the Election Commission—Whether sufficient compliance with the provisions of section 117—Dismissal of election petitions on hyper-technical grounds—Whether justified.*

*Held*, that an order, dismissing an election petition on the ground that the provisions of section 117 of the Representation of the People Act, 1951. had not been complied with, must be held to have been passed "at the conclusion of the trial of the election petition" and it clearly falls within the purview of section 98 of the said Act, with the result that the appeal against that order must be held to be competent.

*Held*, that where the Government treasury receipt enclosed with the petition clearly shows that the petitioner had deposited Rs. 1,000 on account of the election petition and the amount was deposited on behalf of the Secretary to the Election Commission, Delhi and the proper head of