

## APPELLATE CIVIL

Before Kapur, J.

TEHLA RAM,—Appellant

*versus*

SARDAR PRITHI NANDAN SINGH,—Respondent.

First Appeal from Order No. 116 of 1950

1953

*Displaced Persons (Debts Adjustment) Act, LXX of 1951—Section 10—“Actually and voluntarily resides”—meaning of.*

August 13th.

On 11th October 1946, P.N.S. made two mortgages of land now in West Pakistan, without possession, one in favour of T. R. and the other to G. and others. After partition mortgagees came to what is now India and on 1st May 1952, mortgagees made applications under section 10 of the Displaced Persons (Debts Adjustment) Act praying for a decree and a charge being made on land allotted to the original opposite party. The ground that Gurdaspur Tribunal had jurisdiction to deal with the applications was that P.N.S. was a displaced person within the meaning of section 2(10) of the Act and was actually and voluntarily residing within the jurisdiction as land and a house had been allotted to P.N.S. in Gurdaspur District. Tribunal held that P.N.S. did not actually and voluntarily reside within the jurisdiction as he was employed as I. G., Police, in Kashmir where he is residing and his occasional visits to Gurdaspur were of no consequence, and the petition under section 10 of the Act was rejected. The mortgagees appealed to the High Court.

*Held*, that P.N.S. cannot be said to be actually or voluntarily residing in Gurdaspur District merely because he has had land allotted to him or a house appurtenant to these lands. A man's residence is where he habitually sleeps or dwells permanently for a considerable time in one's settled or usual abode.

*First appeal from the order of Shri. A. N. Bhanot, Sub-Judge, 1st Class, Gurdaspur, dated the 15th November 1952, ordering that his court has no jurisdiction to*

try the application and so it should be returned to be presented to a competent Court, and further ordering that the applicant shall pay Rs. 50 as costs for proceedings in his court.

H. L. SIBAL, for Appellant.

H. R. MAHAJAN and M. R. GUPTA, for Respondent.

### JUDGMENT

KAPUR, J. This judgment will dispose of two appeals, F.A.O. 116 of 1952 and F.A.O. 117 of 1952. These appeals have been brought by the petitioners against orders made by Mr. A. N. Bhanot, Sub-Judge, 1st Class, Gurdaspur, acting as a Tribunal under Act LXX of 1951. The petitions were ordered to be returned to the petitioners on the ground of want of jurisdiction of the Tribunal at Gurdaspur.

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On the 11th of October 1946, Pirthi Nandan Singh made two mortgages—one in favour of Tehla Ram for Rs. 12,500 and the other in favour of Gopal and others for a similar amount. The mortgages were of land in Chak No. 112 in Lyallpur District, without possession and carried interest at eight annas per cent per mensem. After the partition of India the mortgagees came to what is now India and on the 1st of May 1952, both the set of mortgagees made applications under section 10 of Act LXX of 1951, praying for a decree and a charge being made on the land which was allotted to the original opposite party. The Tribunal stated several issues and gave its findings, but the one with which we are concerned affects the question of jurisdiction and if this question is decided against the appellants all the other findings of the trial Court are *coram non judice*.

The mortgagees allege that the original opposite party, Pirthi Nandan Singh, fell within the definition of the words 'displaced person' as defined in section 2(10) of the Displaced Persons (Debts Adjustment) Act, 1951, and was actually and voluntarily residing within the jurisdiction of Gurdaspur Court and, therefore, the applications

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were competent. The Tribunal has held against the petitioners on this point and they have come up in appeal to this Court.

It is not necessary to define the words 'displaced person'. In section 10 of Displaced Persons (Debts Adjustment) Act, it is provided—

*"Claims by creditors against displaced debtors.—Any displaced person having a claim against a displaced debtor may make an application, in such form as may be prescribed, for the determination thereof to the Tribunal within the local limits of whose jurisdiction the displaced debtor actually and voluntarily resides, or carries on business, or personally works for gain, together with a statement of the debts owed to the creditor with full particulars thereof".*

The jurisdiction of the Tribunal is grounded on the actual and voluntary residence of a displaced debtor. Tehla Ram, A.W. 2, made a statement that Prithi Nandan Singh was actually residing within the jurisdiction of Gurdaspur Court. In the application Prithi Nandan Singh is described as resident of Bhangwan, now serving as Inspector-General of Police in Jammu and Kashmir. He also stated that in the original mortgage deed, Ex. A. I., the debtor, Prithi Nandan Singh, had described himself as resident of Chak No. 112-Gogera Branch of the Jaranwala Tahsil in District Lyallpur. Evidence was led on behalf of Prithi Nandan Singh stating that he was employed in Kashmir and occasionally comes to Gurdaspur. It is true that Prithi Nandan Singh has got some lands allotted to him in Bhangwan and has also got a house allotted to him which is appurtenant to the land, but the question which is still to be decided is whether he falls within the definition of the words "actually and voluntarily resides". The evidence does not show any actual or voluntary residence within Gurdaspur District. On the other hand he is the Inspector-General of Police in Kashmir, and

presumably he is residing there. His witnesses, R.W. 1 states that he is not residing in Gurdaspur and R.W. 2 also makes a similar statement, so also R.W. 3. These statements were not challenged in cross-examination excepting that these witnesses were asked as to where the respondent was born and whether there was a house belonging to this Pirthi Nandan Singh in Gurdaspur or not. In any case there is no proof on the record showing that Prithi Nandan Singh is actually or voluntarily residing within the jurisdiction of Gurdaspur Court.

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The words "actually and voluntarily resides" seem to have been taken bodily from section 20, Civil Procedure Code, and in Mulla's Civil Procedure Code at page 117, it is stated that there is little distinction between the meaning of the word 'resides' as used in this section and the word 'dwells' in clause 12 of the Letters Patent of the Presidency High Courts and it has been held in several cases that dwelling or residence must be of a more or less permanent character. The word 'actually' excludes domicile or constructive residence. "It must be of a nature to show that the High Court in which a defendant is sued is his natural forum". The word 'dwell' was interpreted by a Division Bench of the Bombay High Court in *Goswami Shri Girdhariji v. Shri Govardhanlal Ji* (1), and it was held that the mere fact that the defendant purchased a house in Bombay which was occupied during a temporary visit to Bombay afforded no inference of an intention to dwell there. In *Uggar Chand v. Suraj Mal* (2), a person was living and carrying on business in Bombay for twenty years and occasionally visited Ahmedabad where he had a family house. In such a case it was held that Ahmedabad could not be said to be one of the places of his residence. In a case almost similar to the one before me *Guranditta v. Ram Das* (3), the place where business was being carried on by the defendant, i.e., Peshawar, was held to be the place of residence and not Nurpur, where

(1) I.L.R. 18 Bom. 290

(2) 2 Bom. L.R. 605

(3) 12 P.R. 1916

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the family house and ancestral lands were situated. There are a large number of cases which need not be referred to where it had been held that a person in order to be brought within this definition must have something more than mere temporary residence. The latest case to which my attention has been drawn is *Bhagat Singh Bugga v. Dewan Jagbir Sawhney* (1), where Bugga originally belonged to Wazirabad but was carrying on business in Calcutta. In certain deeds he had described himself as belonging to Wazirabad. He was also on the list of voters in Wazirabad. It was held under circumstances such as these that residence is not identical with ownership and, therefore, Wazirabad Courts had no jurisdiction on the ground of residence. It means the place where a person eats, drinks and sleeps or where his family or his servants eat, drink and sleep. *Animus revertendi* was held not to be sufficient. In *Kumud Nath Roy Chowdhury v. Jatindra Nath Chowdhury* (2), also the same definition of the word 'residence' was given and it was held to mean "dwelling permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place" a definition taken from Oxford Dictionary. Substantially the same definition was given in *R. v. North Curry* (3), by Mr. Justice Bayley. To the same effect are the observations of Blackburn, J., in *re Oldham* (4).

"A man's residence is where he habitually sleeps". The contention that the word is interchangeable with ownership of a house was negatived by Givson, J., in *R. v. Fermanagh* (5), where residence was held to be the dwelling and hence where he is supposed usually to live and sleep but a permanent absentee is not resident in a place merely by virtue of ownership and this view was affirmed by Holmes, L. J., in *R. v. Tyrone* (6).

Relying on these cases I am of the opinion that Prithi Nandan Singh cannot be said to be

(1) I.L.R. (1941) I Cal. 490

(2) I.L.R. 38 Cal. 394

(3) 107 E.R. 1313

(4) (1870) 1 M. and Ha. 158

(5) (1897) 2 I.R. 559, 561

(6) (1901) 2 I.R. 497, 510

actually or voluntarily residing in Gurdaspur District, merely because he has had land allotted to him or a house appurtenant to these lands. The learned Subordinate Judge acting as the Tribunal has in my view rightly held that he had no jurisdiction. I would, therefore, dismiss these appeals but make no order as to costs.

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