Mst. Chanan Kaur
v.
Mst. Taro and others

Chopra, J.

number of daughters of the deceased. The share of the plaintiff's thus comes to 5/6th of the property in dispute.

There is yet another factor in support of the plaintiffs' case. In the previous litigation between the parties, the predeceased daughter's sons were also joined as plaintiffs, and they, too, obtained a decree in their favour. Chanan Kaur appellant did not challenge their *locus standi* to file the suit on the ground that they being sons of predeceased daughters had no right to succeed. The defendant, in a way, admitted their right to inherit equally with the daughters who were alive.

In the result, the appeal fails and is dismissed. In view of the facts of the case we would leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL.

Before Falshaw and Mehar Singh, JJ.

SUNNI MAJLAS-E-WAQF OF DELHI,—*Petitioner.*

versus

CUSTODIAN OF EVACUEE PROPERTY,—*Respondents.*

Regular First Appeal No. 122-D of 1955.

1957

Dec. 5th

Administration of Evacuee Property Act (XXXI of 1950)—Section 4, Overriding effect—Whether prevails over the provisions of Delhi Muslim Wakfs Act (XIII of 1943)—Act XXXI of 1950—Sections 2(f) and 11—Jurisdiction of the Custodian to determine, whether property is or is not trust property—Whether exclusive.

Held, that section 4 of the Administration of Evacuee Property Act, 1950, gives overriding effect to the provisions of this Act over the provisions of any other law and thereby takes away, in so far as the question of evacuee property is concerned, the jurisdiction of any other court or Tribunal under any other statute which includes Delhi Muslim

Wakfs Act (XIII of 1943) and the provisions of Act No. XXXI of 1950, must prevail over the provisions of Act No. XIII of 1943, the former being the later Act.

Held, that the definition of the expression "evacuee property" clearly and unmistakably shows that when deciding the nature of property the Custodian is to decide not only whether the property is the property of an evacuee but also in what capacity it was his property or what right or title he had in it. The question of the capacity in which the evacuee held the property and the question of the nature of the right and title of the evacuee in the property are questions that are part of the definition of "evacuee property", and in giving decision whether or not a property is evacuee property the Custodian has to give decision according to the definitions of "evacuee property" and it is not clear how he is to ignore one part of the definition while confining his decision to the other part of the definition. It is, thus, the jurisdiction of the Custodian alone to decide whether or not a property is an evacuee property and in so deciding he is further to decide in what capacity or under what right and title it was the property of the evacuee.

Regular First Appeal from the decree of Shri S. B. Capoor, I.C.S., District Judge, Delhi, dated 8th June; 1955; dismissing the suit with costs.

D. D. CHAWLA, for Petitioner.

CHARAN SINGH and VIDYA DHAR MAHAJAN, for Respondent.

JUDGMENT

MEHAR SINGH, J.—This is an appeal by the plaintiff, Sunni Majlis-E-Waqf, from the order, dated June 8, 1955, of the District Judge of Delhi, dismissing its application, with costs, under sections 33 and 36 of the Delhi Muslim Wakfs Act, 1943 (Act No. XIII of 1943). Mehar Singh, J.

On December 11, 1930, by a deed, registered on January 2, 1931, Haji Shahabuddin created a *waqf* of his immovable property and business for public charitable purposes stated in the deed. He appointed himself the first *Mutawalli* and provided

Sunni Majlas-E-Waqf of Delhi
v.
Custodian of Evacuee Property

Mehar Singh, J.

that after him, his grandsons, respondents Nos. 2 and 3, shall be joint *Mutawallis*. Haji Shahabuddin died some time about February 27, 1954. His two grandsons, respondents Nos. 2 and 3, being domiciled in Pakistan are, according to the averments in the application, incapable of managing the *waqf* property and carrying out the objects and purposes of the *waqf*. The property has been declared to be evacuee property by defendant No. 1, the Custodian of Evacuee Property, but the case of the applicant is that respondent No. 1 has not accepted that the property is a *waqf* property and has refused to hand over its management to it. The applicant claimed various reliefs, including a declaration that the property in question is *waqf* property and it should be appointed its *Mutawalli* by the removal of respondents Nos. 2 and 3.

The application has been resisted by respondent No. 1, for respondents Nos. 2 and 3 are not in this country. One of the pleas urged on behalf of respondent No. 1, which has found favour with the learned district Judge, is that the jurisdiction of the civil Court is barred to decide the nature of the property once it has been declared to be evacuee property by him as has been done in this case.

The question whether any property is or is not property belonging to a *waqf* is for the decision of the District Judge under section 33 of Act No. XIII of 1943. Section 68 of this Act says:—

> "Section 68. Provisions to have effect notwithstanding any other law:—
>
> The provisions of this Act shall have effect notwithstanding anything contained in any other law or anything having the force of law; and

anything in any such law or anything having the force of law, which is inconsistent with any of the provisions of this Act, shall, to the extent of such inconsistency, be deemed to be of no effect".

However, the question whether or not a property is evacuee property is only for the Custodian to decide under section 7 of the Administration of Evacuee Property Act, 1950 (Act, No. XXXI of 1950), and under section 28 of this Act, save as otherwise expressly provided in Chapter V of this Act, the order of the Custodian is final. Section 46, clause (a), bars the jurisdiction of a civil Court to entertain or adjudicate upon any question whether any property or any right to or any interest in any property is or is not evacuee property. It is an admitted fact that the property in question has been declared to be an evacuee property by the Custodian.

Act No. XIII of 1943, gives jurisdiction to the District Judge to decide whether or not a property is *waqf* property and that jurisdiction is to have effect in spite of any other law dealing with the matter. Act No. XXXI of 1950, gives exclusive jurisdiction to the custodian with regard to evacuee property and the Custodian has declared the property in question to be evacuee property. The jurisdiction of a civil Court is barred to question the decision of the Custodian as to the nature of such property.

The learned counsel for the appellant contends that having regard to section 68 of Act No. XIII of 1943, the provisions of this Act must prevail over any other inconsistent law like that in Act No. XXXI of 1950 on the subject-matter of

Sunni Majlas-E-Waqf of Delhi
v.
Custodian of Evacuee Property

Mehar Singh, J.

waqf property. But Act No. XXXI of 1950, is a subsequent legislation and its section 4 runs:—

> "Section 4. *Act to override other* laws.—The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law."

It is evident that the overriding effect of Act No. XXXI of 1950, takes away, in so far as the question of evacuee property is concerned, the jurisdiction of any other Court or Tribunal under any other statutue which includes Act No. XIII of 1943. The conclusion of the learned District Judge that the provisions of Act No. XXXI of 1950 must prevail over the provisions of Act No. XIII of 1943, the former being the latter Act, is sound and no adequate ground has been urged against it.

The learned counsel for the appellant has, however, placing reliance on section 11 of Act No. XXXI of 1950, contended that though the Custodian has the exclusive jurisdiction to decide whether or not a property is evacuee property, but the further question whether such property is also trust property subject to a trust for a public purpose of a religious or charitable nature is not a question for the decision of the Custodian, and it is a question for the decision of the Court under Act No. XIII of 1943 in the case of a *waqf*. Subsection (1) of section 11 of Act No. XXXI of 1950 provides:—

> "Section 11. (1) Where any evacuee porperty which has vested in the Custodian is property in trust for a public purpose of a religious or charitable nature, the

property shall remain vested in the Custodian only until such time as fresh trustees are appointed in the manner provided by law, and pending the appointment of fresh trustees the trust property and the income thereof shall be applied by Custodian for fulfilling, as far as possible, the purpose of the trust."

Subsection (2) of this section is not relevant in this case. It may, however, be pointed out that after the date of the application of the appellant by section 5 of the Administration of Evacuee Property (Amendment) Act, 1956 (Act No. 91 of 1956), which came into force on December 28, 1956, subsection (1) of section 11 of the principal Act has been substituted by another subsection, under which power has been taken by the Central Government to appoint trustees of evacuee property which is trust property for a public purpose of a religious or charitable nature. In so far as the present argument is concerned the only difference made by the amendment is that under the old subsection trustees were to be appointed in the manner provided by law, but under the substituted subsection power has been taken by the Central Government to appoint trustees, in other respects there is no change in the law. Subsection (1) of section 11, whether old or new, provides for the appointment of trustees for the management of the trust property, but it does not deal with the decision of the question whether or not an evacuee property is a trust property. The question of appointment of trustees comes afterwards, and the first question for decision is whether the property is or is not trust property. The learned counsel for the appellant, as already pointed out, argues that the decision whether the

Sunni Majlas-E-Waqf of Delhi
v.
Custodian of Evacuee Property

Mehar Singh, J.

property is or is not trust property is not for the Custodian to give. The reply on behalf of the respondent is that the definition of evacuee property provides a complete answer to this agrument and that it is the jurisdiction of the Custodian alone to decide which evacuee property is trust property and which is not so. In section 2(f) of Act No. XXXI of 1950, the definition of evacuee property is:—

> " 'evacuee property' means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), ... ".

The rest of the definition is not material for the present purpose. The definition of the expression "evacuee property" clearly and unmistakably shows that when deciding the nature of property the Custodian is to decide not only whether the property is the property of an evacuee but also in what capacity it was his property or what right or title he had in it. The question of the capacity in which the evacuee held the property and the question of the nature of the right and title of the evacuee in the property are questions that are part of the definition of "evacuee property", and in giving decision whether or not a property is evacuee property the Custodian has to give decision according to the definition of "evacuee property" and it is not clear how he is to ignore one part of the definition while confining his decision to the other part of the definition. The argument that has been advanced on behalf of the appellant seems to render a part of the definition of the expression "evacuee property" redundant and attempts to ignore it completely. This is an erroneous approach to what apparently is quite a simple question. It is the jurisdiction of the

Sunni Majlas-E-Waqf of Delhi
v.
Custodian of Evacuee Property

Mehar Singh, J.

Custodian alone to decide whether or not a property is an evacuee property and in so deciding he is further to decide in what capacity or under what right and tittle it was the property of the evacuee. In this view, the argument urged on behalf of the appellant is without substance and must be rejected.

In consequence, the appeal is dismissed with costs.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

CRIMINAL MISCELLANEOUS.

Before Bhandari, C. J.

DAULAT RAM,—*Petitioner.*

versus

RAM KISHAN AND OTHERS,—*Respondents.*

Criminal Miscellaneous 575 of 1957.

1957

Dec., 6th

Code of Criminal Procedure (Act V of 1898)—Section 247—Case tried as a warrant case on a complaint alleging offences punishable with imprisonment for more than a year—Charge framed under section 448, Indian Penal Code —Whether becomes a summons case—Complainant absent—Trial Court, whether bound to dismiss the complaint.

Held, that where a complaint is filed alleging offences under sections 417, 506 and 454, Indian Penal Code, which are punishable with imprisonment for a term exceeding one year, and the case is tried as a warrant case but the charge is framed only under section 448, Indian Penal Code, the case becomes a summons case, for an offence under section 448 is punishable with imprisonment for a period of one year, and is governed by the provisions of section 247 of the Code of Criminal Procedure, and not by the provisions of section 259. In such a case when the complainant fails to appear in the Court, the magistrate is under an obligation to dismiss the complaint unless he is of the opinion that the case should be adjourned to another date.