

Basawa Singh
v.
 Santa Singh
 and another
 Khanna, J.

We are, therefore, of the view that the plaintiff-appellant is entitled to decree for possession by pre-emption of land comprised in Khewat No. 18 on payment of that amount which represents the market value of the land comprised in that Khewat. As there is no material on the present record to indicate as to what is the market value of that land, we remand the case under Order 41, Rule 25 of the Code of Civil Procedure to the trial Court with a direction to find out the market value of the land measuring 8 Kanals 17 Marlas comprised in Khewat No. 18. As the matter is old, every effort should be made to make a report in this behalf to this Court within three months. The parties are directed to appear in the trial Court on 29th November, 1965.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

ABHAY CHAND,—*Petitioner.*

versus

RAM CHAND AND OTHERS,—*Respondents.*

Civil Revision No. 543 of 1964.

1965

November, 5th

Specific Relief Act (XLVII of 1963)—S. 34—Suit for declaration by son against father that the land in respect of which compensation has been deposited by the occupancy tenants under S. 4 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (VIII of 1953) is Joint Hindu Family Property and he has one-half share therein—Whether maintainable.

Held, that section 10 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, does not bar a civil Court from settling a civil dispute in the shape of a question with regard to the right to property. Where the occupancy tenants have deposited the amount of compensation payable by them under section 4 of the said Act, a suit by the son against his father for a declaration alone that the land belonged to joint Hindu family and he is entitled to one-half of the amount of compensation is maintainable under section 34 of the Specific Relief Act, 1963 as the consequential relief will be sought by him under sub-section (3) of section 4 of the said Act from the Collector.

Petition under Section 115 of Act V of 1908 and Section 44 of the Punjab Courts Act for revision of the order of Shri Mukhtar Singh Gill, Subordinate Judge 1st Class, Hoshiarpur, dated the 14th April, 1964 holding that the suit for mere declaration was not maintainable and deciding issue No. 2 in favour of defendant No. 1. The plaintiff was however given an opportunity to amend his plaint so as to include the prayer of consequential relief in the form of the recovery of the amount in the suit up to 28th April, 1964 as prayed for by the learned counsel for the plaintiff.

K. C. NAYAR, ADVOCATE, for the Petitioner.

D. N. AGGARWAL, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, J.—The applicant Abhay Chand is the son of Ram Chand, respondent No. 1, who was the landlord of respondents 2 to 100, the last-mentioned respondents were holding occupancy tenancy rights in the land under respondent 1 as the landlord. The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Punjab Act 8 of 1953), hereinafter to be referred as 'the Act', abolished occupancy tenancies from June, 15, 1952. So respondents 2 to 100 became owners of the occupancy tenancies with them. Under section 4 of the Act, respondent 1 was left with a claim for compensation. Mehar Singh, J.

The compensation amount having been determined by the Collector under the provisions of the Act, the same has been deposited by the tenants-respondents. The applicant filed a suit in the Court of a Subordinate Judge at Hoshiarpur, for a declaration that he is entitled to half of the amount of compensation. The ground upon which the suit was based is that the applicant and respondent 1 form a joint Hindu family, that the occupancy tenancies were the property of the joint Hindu family, and that the compensation amount in lieu of the land is also the property of the joint Hindu family. The tenants-respondents have, of course, not been interested in this litigation between the son and the father. The suit was contested by the father, respondent 1.

The learned trial Judge has by his order, dated April 14, 1964, which is sought to be revised, directed the applicant to amend his suit to add consequential relief in the shape of a claim for a money decree for half the amount

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of compensation. It obviously means that the applicant will have to pay court-fee on that amount. The learned trial Judge has been of the opinion that a suit for mere declaration, in the circumstances, is not competent under section 42 of the Specific Relief Act, when consequential relief in the shape of a money-decree for half the amount of compensation is available to the applicant. In this respect the learned Judge has relied upon *Natesa Ayyar v. Mangalathammal* (1) in which Walsh, J., held that the case of money collected by a Court executing a decree is entirely different from the case of property in the possession of a receiver and the custody of the Court is entirely on behalf of the decree-holder and there is no other owner. A suit therefore, by the daughter-in-law of the decree-holder for a mere declaration that the money really was the self-acquired property of her husband and not joint family property with decree-holder as manager without asking for consequential relief of the recovery of the money from the decree-holder is not maintainable.

In this application the contention of the learned counsel for the applicant is that in view of the provisions of sub-section (3) of section 4 of the Act, a dispute with regard to a claim to compensation is to be settled by the Collector in the matter of apportionment and the money is not immediately available to respondent 1, should a dispute arise. So it cannot be said that the Collector holds the amount on behalf of respondent 1, just as an executing Court holds an amount recovered in the execution of a decree for and on behalf of the decree-holder. Sub-section (3) of section 4 of the Act says—"Where there is any dispute as to the person or persons, who are entitled to the compensation, the Collector shall decide such dispute and if the Collector finds that more than one person is entitled to compensation, he shall apportion the amount thereof amongst such persons". This provision at first glance indicates that such a dispute must go to the Collector alone. But while section 10 of the Act bars any Court or any officer or authority questioning any proceedings taken or order made under the Act and the orders made are declared to be final, jurisdiction of a Civil Court to settle a civil dispute in the shape of a question with regard to the right to property has not been barred. In the circumstances, the applicant can seek a decree from an ordinary civil court determining his right to part of the compensation

(1) A.I.R. 1933 Mad. 503(2).

amount. As the apportionment has to be done by the Collector under sub-section (3) of section 4 of the Act, the amount remains with the Collector under the statute until that stage arises, where a dispute with regard to the claim to compensation comes about. The situation is, therefore, not the same as when a Court realises in execution of a decree an amount for and on behalf of the decree-holder. In that case of course it holds the amount on behalf of the decree-holder. As much cannot immediately be said with regard to respondent 1, as dispute in regard to apportionment of the compensation is raised by the applicant, although not yet before the Collector, but before a civil court, so as to obtain declaration of his right to apportionment of that compensation. So that the Madras case does not completely cover the facts of the present case. As it is, in view of sub-section (3) of section 4 of the Act, I am disposed to the view that in this case under section 42 of the Specific Relief Act, a suit for declaration alone by the applicant is competent, for what is said to be consequential relief that will be sought by him under sub-section (3) of section 4 of the Act from the Collector. The learned counsel for respondent 1 refers to *Deokali Koer v. Kedar Nath (2)* and *Sheoparsan Singh v. Ramnandan Prasad Narayan Singh (3)* that before the applicant can maintain a suit under section 42 of the Specific Relief Act, he must claim some status or legal character or title to property. But that is exactly what he is doing in this case. The applicant is claiming title to property, that is to say, his share in the compensation amount lying with the Collector. So these cases are not helpful to respondent 1. The learned counsel for the applicant refers to *In re Chief Inspector of Stamps, U.P. v. Iqbal Bahadur (4)*. In that case the claim was to compensation due on account of the abolition of Zamindari under a local statute. The amount was with the Compensation Commissioner. The question was whether a suit for declaration for such a claim was competent under section 42 of the Specific Relief Act or whether it was necessary to claim further consequential relief in the shape of a decree for money for the amount in regard to which declaration was sought, and J. D. Sharma, J., held that the Compensation Commissioner had no personal interest in such property and he was in the position of a custodian of it. A decree for money obtained

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(2) I.L.R. (1912) 39 Cal. 704.

(3) A.I.R. 1916 P.C. 78.

(4) A.I.R. 1961 Allah. 555.

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would not be binding against him, and it was, therefore, not necessary in the suit to claim consequential relief in the shape of a money-decree. There a person, who was entitled under an agreement to half of the property for which compensation was being paid, was a person who had sought declaration that he was entitled to half of the amount. The learned Judge held that the suit for declaration alone was competent under section 42 of the Specific Relief Act. I, respectfully agree with the view of the learned Judge. In this approach, this revision application succeeds, the order of the learned trial Judge is reversed, and he is directed to proceed with the trial of the suit of the applicant according to law. There is no order in regard to costs. The parties, through their counsel, are directed to appear in the trial Court on November, 29, 1965.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh, J.

HARBANS SINGH,—Petitioner

versus

GURMEET KAUR AND ANOTHER,—Respondents.

Civil Revision No. 671 of 1963.

1965
 November, 5th.

Motor Vehicles Act (IV of 1939)—Ss. 110-A and 110-B—Claims Tribunal—Whether persona designata and not a Court—Limitation Act (IX of 1908)—Ss. 22 and 29(1)—Whether apply to applications made to the Tribunal under S. 110-A—Claims Tribunal—Whether can make award against the owner and negligent driver of the motor vehicle.

Held, that the Claims Tribunal constituted under section 110 of the Motor Vehicles Act, 1939, is a *persona designata*, and, although it has been given a jurisdiction which has been taken away from an ordinary civil Court and it has been given some of the powers of a civil Court and the rules may give some other of those powers, but it is in itself not a Court. The application made under section 110-A to the Tribunal is an application to a *persona designata* and not to a Court, and so sections 29(2) and 22(1) of the Limitation Act, 1908, are not applicable to such an application.

Held, that the Motor Accidents Claims Tribunal can make the award against the owner and negligent driver of the motor vehicle involved in the accidents as well as against its insurer in case the vehicle is insured. The words 'in making the award