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which is paid without the taxable territories by the Government to a citizen of India for rendering service without the taxable territories shall be deemed to accrue or arise in the taxable territories.”

“17(1A). Notwithstanding anything contained in sub-section (1), where a citizen of India, not resident in the taxable territories; is in receipt of salary from the Government for rendering service without the taxable territories, the tax, including super-tax, payable by him on his total income for the assessment years commencing with the assessment year 1960-61 shall be determined with reference to his total world income in the manner specified in the first proviso to sub-section (1).”

(9) No similar provision exists with regard to the family members of a Government servant. The above-mentioned provisions apply only to the case of a Government servant. Thus from the aforesaid provision of the statute, the only irresistible conclusion that can be arrived at is that Smt. Sharda Ajmani was not a resident in the taxable territories during the assessment years 1960-61 and 1961-62 and could not be taxed on that basis. Accordingly, the answer to the question posed by the Tribunal is in the negative. In the circumstances of the case, we make no order as to the costs.

K. S. K.

LETTERS PATENT APPEAL.

*Before Prem Chand Pandit and S. S. Sandhawalia, JJ.*

CHANDGI RAM AND ANOTHER,—Appellants

*versus*

MOONGA AND OTHERS,—Respondents.

Letters Patent Appeal No. 210 of 1970.

August 20, 1970.

*Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 90 and 92—Sale of evacuee property by public auction—Application for setting aside of—Whether lies only under Rule 92—Such sale—When can be set aside.*

*Held*, that a combined reading of rule 92 and relevant part of rule 90 of Displaced Persons (Compensation and Rehabilitation) Rules, 1955, shows that

under rule 90, there is no provision for an aggrieved person to make an application to the Settlement Commissioner asking him not to give his approval to the bid, which was accepted by the officer conducting the auction sale after the initial deposit had been made by the highest bidder. Under rule 92(2) (a), however, he can make an application, where the sale is made by public auction, within seven days from the date of the acceptance of the bid for setting aside the sale. The procedure for giving such an application is given in rule 92 only. (Para 4)

*Held*, that under rule 92(3) of the Rules, the Settlement Commissioner has to be satisfied about two matters before he can set aside the sale, namely, (i) that material irregularity or fraud has been committed in the publication or the conduct of the sale; and (ii) that the applicant has sustained substantial injury by reason of the said irregularity or fraud. These two findings have to be recorded by the Settlement Commissioner before he can set aside the sale. (Para 6)

*Letters Patent Appeal under Clause 10 of the Letters Patent against the Judgment dated 10th February, 1970, passed by the Hon'ble Mr. Justice P. C. Jain, in Civil Writ No. 3660 of 1968, 'entitled Moonga, etc. v. The State of Haryana, etc.*

P. D. SHAKIR, ADVOCATE, for the appellants.

BALDEV KAPUR AND RAJINDER JAIN, ADVOCATES, for respondent No. 1.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA, AND C. B. KAUSHIK, ADVOCATES, for the State of Haryana.

#### JUDGMENT

P. C. PANDIT, J.—This order will dispose of four connected Letters Patent Appeals Nos. 210 to 213 of 1970, as common questions of law and fact arise in them. It is agreed by the counsel for the parties that the decision in one of them will govern the others as well. I will give the facts in Letters Patent Appeal No. 210 of 1970.

(2) There were some evacuee lands in village Kalar Bhaini, District Hissar, and in order to give the same to landless Harijans, the Department of Rehabilitation auctioned it on 19th July, 1968. Moonga and his brother Shishu Ram, respondents 1 and 2, gave the highest bid for land measuring 24-Kanals. They also paid Rs. 400 as initial deposit on the spot to the Naib-Tahsildar (Sales), who conducted the auction and obtained a receipt from him. Their bid was, consequently, accepted on that very day. After the expiry of seven days from the acceptance of the bid, Chandgi Ram and Mahla Ram, appellants, made an application for setting aside the sale in favour of respondents 1 and 2. This application, though addressed to the Settlement

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Officer (Sales), respondents No. 5, was made to Shrimati Om Prabha Jain, the then Revenue Minister, Haryana. It is alleged by respondents 1 and 2, that Chandgi Ram was the son of the real uncle of Shri Dalbir Singh, Member of Parliament. On 29th July, 1968, Shrimati Om Prabha Jain directed the Settlement Officer to make a thorough enquiry into the said application before confirming the auction in favour of respondents 1 and 2. It was further directed that if need be, the land be re-auctioned. On 11th September, 1968, respondent No. 5 accepted that application and set aside the sale. A direction was also issued that the land be re-auctioned. Against that decision, respondents 1 and 2 went in appeal before the Authorised Chief Settlement Commissioner, respondent No. 4 who, on 12th November, 1968, dismissed the same. Soon thereafter, respondents 1 and 2 filed a writ petition in this Court and it was accepted by Jain, J. on 10th February, 1970. The learned Judge came to the conclusion that respondent No. 4 had not given any definite finding to the effect that there was any material irregularity or fraud in the conduct of sale as required by rule 92 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, hereinafter called the Rules. It was also held that there was no finding by respondent No. 4 that any substantial injury had resulted to the appellants by reason of the alleged irregularity or fraud. In the absence of these two findings, according to the learned Judge, the sale could not be set aside under rule 92. An argument was raised by the counsel for the appellants before the learned judge that rule 92 had no application to the present case and the sale was not set aside by respondent No. 4 under that rule. According to the counsel, respondent No. 5 had not confirmed the sale, which he was required to do under rule 90. This argument was repelled by the learned judge, who was of the opinion that the proceedings were started under rule 92 and respondent No. 5 had specifically mentioned in his order dated 11th September, 1968, that the sale was set aside. There was no other rule under which a sale could be set aside or the objections for setting aside the sale could be entertained. As a result, the learned Judge quashed the orders made by respondents 4 and 5 holding them to be without jurisdiction. Chandgi Ram and Mahla Ram have filed the present Letters Patent Appeal against that decision.

(3) Under rule 90(8), the person declared to be highest bidder for the property at the public auction has to pay a deposit not exceeding 25 per cent of the amount of his bid to the Officer conducting the

sale. If he commits a default in making this deposit, the property auctioned would be re-sold. According to rule 90(9)(B), where the highest bidder, whose bid has been provisionally accepted, resiles from the bid before its approval is communicated to him, 5 per cent of the amount deposited by him under rule 90(8) would be forfeited to the Government. Under rule 90(10), the bid, in respect of which the initial deposit has been accepted, would be subject to the approval of the Settlement Commissioner or any officer appointed by him for the purpose. According to the proviso to this sub-rule, no bid would be approved until after the expiry of a period of seven days of the auction. Under rule 90(11), the intimation of the approval or rejection of the bid would be given to the highest bidder, and if the bid is approved, the auction purchaser would deposit the balance of the purchase money within a specified time. According to rule 90(14), if the auction purchaser fails to deposit the balance of the purchase money within the period specified, the initial deposit made by him would be liable to forfeiture. Under rule 90(15), when the purchase money has been realised in full from the auction purchaser, the Managing Officer would issue to him a sale certificate. It would be noticed that according to the proviso to rule 90(10), the highest bid, in respect of which the initial deposit has been accepted, would not be approved before the expiry of seven days from the date of the auction. During the said period, a person who complains of some irregularity or fraud in the conduct of the sale, is allowed to make an application under rule 92(1), to the Settlement Commissioner or any officer, authorised by him in that behalf to approve the acceptance of the bid, for setting aside the sale. If the sale is made by public auction and not by inviting tenders, then that application has to be made within seven days from the acceptance of the bid under rule 92(2) (a). Rule 92 reads—

*“Procedure for setting aside a sale.—*Where a person desires that the sale of any property under rule 90 or 91 should be set aside because of any alleged irregularity or fraud in the conduct of sale (including in the case of a sale by public auction in the notice of the sale) he may make an application to that effect to the Settlement Commissioner or any officer authorised by him in this behalf to approve the acceptance of the bid or tender, as the case may be.

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- (2) Every application for setting aside a sale under this rule shall be made—
- (a) Where the sale is made by public auction, within seven days from the date of acceptance of the bid;
  - (b) Where the sale is made by inviting tenders, within seven days from the date when the tenders were opened.
- (3) If after consideration of the facts alleged, the officer to whom the application is made under this rule is satisfied that any material irregularity or fraud has been committed in the publication of the conduct of the sale, he may make an order that the property be reauctioned or be resold by inviting fresh tenders, as the case may be :

Provided that no sale can be set aside under this rule unless upon the facts proved such officer is satisfied that the applicant has sustained substantial injury by reason of the irregularity or fraud, as the case may be.

- (4) Notwithstanding anything contained in this rule, the Settlement Commissioner may, of his own motion, set aside any sale under this chapter if he is satisfied that any material irregularity or fraud which has resulted in a substantial injury to any person has been committed in the conduct of the sale."

(4) A combined reading of rule 92 and the relevant part of rule 90 would show that under rule 90, there is no provision for an aggrieved person to make an application to the Settlement Commissioner asking him not to give his approval to the bid, which was accepted by the officer conducting the auction-sale after the initial deposit has been made by the highest bidder. Under rule 92(2) (a), however, he can make an application, where the sale is made by public auction, within seven days from the date of the acceptance of the bid for setting aside the sale. It was contended by the learned counsel for the appellants that the sale in the instant case was not set aside under rule 92, but it was not confirmed by the Settlement Commissioner under rule 90 and, therefore, the sale in fact did not take place. This argument proceeds on the reasoning after the highest

bid has been provisionally accepted, that has to be approved by the Settlement Commissioner. When the same is approved, the balance of the purchase price has to be paid by the auction-purchaser and thereafter a sale certificate will be issued in his favour. It is only after the issuance of the sale certificate that the sale would be deemed to be complete in all respects. If this argument were to be accepted then the appellants could not make the application for setting aside the sale in the instant case, because at that time when they moved the application, the acceptance of the bid had not been approved by the Settlement Commissioner and neither the balance of the purchase price had been paid by the auction purchaser nor a sale certificate had been issued in his favour. Their application should then have been rejected on that ground alone. The appellants undoubtedly made an application for setting aside the sale and the procedure for doing so is given in rule 92 only and when the sale is made by public auction, such an application has to be made within seven days from the date of the acceptance of the bid and not from its approval. If the application under rule 92 succeeded, the sale would be set aside and the question of giving approval to the bid would not arise. If, on the other hand, no application was made under rule 92, within a period of seven days, or such an application rejected, then the bid would be approved by the Settlement Commissioner, of course, after the expiry of seven days from the date of the auction. In the present case, both respondents 4 and 5 treated the application of the appellants for setting aside the sale as one under rule 92 and the sale was set aside by them after that application was accepted. Under these circumstances, it is idle to suggest that the application of the appellants has not to be treated as one under rule 92.

(5) This apart, it is significant to mention that neither the appellants nor respondents 4 and 5 ever took up the position that in the instant case, there was no question of setting aside the sale, because under the conditions of sale all sales were subject to confirmation by the Settlement Commissioner, who could refuse to confirm the sale without giving any reason and, in the present case, he refused to do so with the result that no sale took place. If that was the position of the appellants, they need not have filed an application for setting aside the sale and there was no necessity for respondents 4 and 5 to come to the conclusion that the Officer did not reach the place for conducting the sale at the prescribed time and as a result the bidders went away. There was also no occasion for respondents 4 and 5 to cancel the sale.

Such a position was never taken by the appellants or respondents 4 and 5. The appellants or the counsel for the State cannot be permitted to adopt this position now for the first time in Letters Patent Appeal.

(6) Under rule 92 (3), the Settlement Commissioner has to be satisfied about two matters before he can set aside the sale, namely, (i) that material irregularity or fraud has been committed in the publication or the conduct of the sale; and (ii) that the applicant has sustained substantial injury by reason of the said irregularity or fraud. These two findings have to be recorded by the Settlement Commissioner. In the impugned orders, respondents 4 and 5 have not given these findings and it is on that ground that the learned Single Judge quashed their orders.

(7) We repeatedly asked the learned counsel for the appellants and the State to point out from the impugned orders if respondents 4 and 5 have given the findings mentioned above, but they were unable to do so. All they said was that respondent 4 had stated in his order that the auction purchasers could not substantiate their assertions that the Tahsildar, who conducted the sale, reached the village at 9.00 a.m., that all the objectors were present and all of them excepting the appellants, offered bids at the sale. According to respondent No. 4, only a small number of persons, other than the objectors, offered bids at the auction and there was, in fact, no competition between the purchasers. From these observations of respondent No. 4 learned counsel for the appellants wanted to infer that an implied finding was given that there was material irregularity in the conduct of the sale. Even if we were to accept his contention on this point, there is no further finding given by respondent No. 4 that the appellants had sustained substantial injury by reason of this irregularity. It cannot be said that simply because the appellants did not bid, it should be assumed that they had sustained substantial injury. If one were to accept that contention, then in every case where there has been an irregularity in the conduct of sale, the other finding envisaged by the proviso to rule 92(3) need not be given, because it has to be assumed. This could not be the intention of the rule making authority. The learned Single Judge has held—

“From the bare reading of the two impugned orders, it is clear that no definite finding has been given by the appropriate authorities to the effect that there was irregularity or fraud

in the conduct of sale. The original record of the case has been made available by Mr. Jaswant Jain, learned counsel for the State, and from it I find that there is absolutely no evidence to hold that the conduct of the sale suffered from any irregularity or fraud."

The learned Judge, after going through the entire statement of Chandgi Ram, appellant, observed—

"I have read the statement of Chandgi Ram as a whole and find that there is not a single word to show that any allegations about the irregularity or fraud in the conduct of sale has been made."

The learned Judge also held :

"From the perusal of the impugned orders, I find that there is no finding that any substantial injury has resulted to respondent 5 and 6 (appellants) who had moved for setting aside the sale. The main ground urged before the Settlement Officer was that the objectors were prepared to purchase the property at a higher price. This hardly could be a ground for setting aside the sale".

(8) Counsel for the appellants could not point out that these findings of the learned Single Judge were in any way erroneous.

(9) Before parting with this case, it may be observed that the auction purchasers had also raised another objection before respondent No. 4 to the effect that the objection application filed by the appellants was barred by limitation. This is what respondent No. 4 said about this objection :

"Rule 92, no doubt, prescribes the limitation of seven days for the filing of objection petitions but under the instructions issued by the Department, objections can be raised within 10 days of the date of sale. Without, however, entering into controversy regarding the conflict between the rules and the instructions, I hold that the Settlement Officer (Sales) was within his rights to go into the regularity or illegality of the sales even after the period of seven days on an application or *suo motu* and confirm or refuse to confirm the sales under condition 5 referred to above."

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(10) It may be stated that the Settlement Officer was not taking any action *suo motu* in this case. It was only on the objection application of the appellants that respondents 4 and 5 had passed the impugned orders. That application should have been filed within seven days from the date of the acceptance of the bid under rule 92(2)(a), which was not done. The application deserved to be dismissed on that ground alone.

(11) In view of what I have said above, this appeal fails and is dismissed, but with no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

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K. S. K.

APPELLATE CIVIL.

Before H. R. Sodhi, J.

MOHINDER SINGH,—Appellant.

*versus*

SHIV DAS SINGH,—Respondent.

**Regular Second Appeal No. 1005 of 1960.**

August 21, 1970.

*Code of Civil Procedure (V of 1908)—Order 22 Rule 4—Suit for dissolution of partnership and rendition of accounts—One of the partners dying during the pendency of the suit—Legal representative not brought on record—Such suit—Whether abates.*

*Held*, that a suit for rendition of accounts of a partnership cannot be maintained against some of the partners only. Every partner of the firm is a necessary party in such a suit, because the shares of all the partners in the matter of their profits and losses have to be determined. It is neither possible nor correct to decide the extent of rights and liabilities of a partner in his absence. Where, however, two or more partners sue in the name of a firm and any of such partners dies, it is not necessary to join the legal representatives of the deceased as a party to the suit under order 22 Rule 4 of Code of Civil Procedure. But this provision has no application when the suit is not in the name of the firm. Hence in a suit for accounts of a dissolved partnership filed by one partner in his individual capacity against another, if one of the partners dies, the right to sue cannot survive against the others and the legal representatives of the deceased have to be impleaded as a party otherwise the suit abates.

(Para 5)