

LETTERS PATENT APPEAL.

Before Kapur and Soni JJ.

BUDH SINGH.—Defendant-Appellant.

versus

Mst. JIWI,—Plaintiff-Respondent.

Letters Patent Appeal No. 96 of 1948.

1952

July 23rd

Punjab Alienation of Land Act (XIII of 1900)—Section 3-A—Deputy Commissioner's jurisdiction under—Whether Court of general jurisdiction can decide if the conditions requisite for the exercise of jurisdiction by the Deputy Commissioner have arisen or not—Constitution of India—Article 226—Jurisdiction of the High Court under.

Held, that three things seem to be necessary to give to the Deputy Commissioner the jurisdiction to decide the matter under Section 3-A of the Act. There should be a debtor, a creditor and the effect of the transaction should be to pass the beneficial interest to such creditor. If these three things do not exist the jurisdiction of the Deputy Commissioner does not arise. In any case it is for the courts of general jurisdiction to decide as to whether the conditions for giving jurisdiction to the Deputy Commissioner have arisen or not.

Held, that the High Court has jurisdiction under Article 226 of the Constitution to quash orders passed by judicial or quasi-judicial bodies which are contrary to law and even if the Deputy Commissioner were to decide, as counsel for the appellant submits he should, the matter would be subject to the jurisdiction of this court and no amount of taking away the jurisdiction of civil courts can deprive this Court of its jurisdiction under the Constitution which was framed by the Constituent Assembly representing the people of this country.

Letters Patent Appeal under Clause 10 of the Letters Patent from the decree of the Hon'ble Mr Justice Falshaw, dated the 8th day of October 1948, of the High Court of Judicature for the State of Punjab at Simla, affirming that of Shri Tek Chand, Senior Subordinate Judge, with enhanced appellate powers, Jullundur, dated the 15th October 1947, which affirmed that of Mohd. Ayub Khan, Sub-Judge, 2nd Class, Phillaur, dated the 14th October 1946, granting the plaintiff a decree for possession of the suit land against the defendant.

S. D. BAHRI, for Appellant.

C. L. AGGARWAL, for Respondent.

JUDGMENT

KAPUR, J. This is an appeal against a judgment of Falshaw, J., dated the 8th October 1948, affirming the judgment and decree of the Senior Subordinate Judge who had confirmed the decree of the trial Court decreeing the plaintiff's suit.

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Budh Singh had mortgaged his land in dispute to Fauja Singh for Rs 800 and the interest on this mortgage amount was Rs 1-4-0 per cent per mensem. Budh Singh also owed Rs 160 to Karnail Singh to whom also the land in dispute was mortgaged. On the 13th of July 1943, Budh Singh sold the land in dispute to Mst. Jiwi, mother of Fauja Singh, for a sum of Rs 1,500. The consideration was as follows—

	Rs
1. Due to Fauja Singh, previous mortgagee	.. 962
2. Due to Karnail Singh	... 160
3. For the deed of sale and other registration expenses	... 50
4. To be received at the time of registration	... 328

Rs 328 were paid before the Registrar.

Mutation of this sale was rejected by the Assistant Collector on the 18th May 1944, on the ground that the alienee was creditor within the meaning of section 3-A of the Land Alienation Act and the transaction was a contravention of that section. Before the Assistant Collector Fauja Singh and Khemi, mother of Budh Singh, both agreed that the mutation be rejected. An appeal was taken to the Collector but on the 28th of August 1944, it was dismissed on the ground that both parties had agreed to the rejection of the mutation.

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Mst. Jiwi brought a suit for possession on the 25th February 1945 and the defence was that the transaction was in contravention of section 3-A of the Punjab Land Alienation Act, hereinafter termed the Act, that the civil Court had no jurisdiction because the Revenue Officer had already decided the matter and that the matter was exclusively within the jurisdiction of the Deputy Commissioner under section 21 of the Act. A third point was also taken that the sale was without consideration but this matter does not seem to have been put in issue. The trial Court and the Senior Subordinate Judge both held that the transaction was not in contravention of section 3-A of the Act and this matter was upheld by Falshaw, J., who held that section 3-A did not apply because Fauja Singh was not a creditor within the meaning of this section but he did not decide the other question which was raised that the Revenue Officer when he was acting at the time of mutation was a Deputy Commissioner within the meaning of section 2(8) of the Act.

Mr. Bahri has taken two points before us and both of them seem to be highly ingenious but without substance. The first argument is that the civil Court has no jurisdiction to decide this matter because under section 3-A the determination of the question whether the alienation has been made by the debtor to a person other than the creditor so as to pass a beneficial interest to the creditor is for the Deputy Commissioner to decide. The second point which he has taken is that if it is held that the order of the 28th August 1944, is not a decision of the Deputy Commissioner this Court should not decide the matter and should leave it to the Deputy Commissioner to adjudicate upon the point. I will take both these points separately.

Section 3-A of the Act provides as follows—

“3-A. Except with the sanction of the Deputy Commissioner as provided for in this Act no member of an agricultural tribe shall make an alienation of his land to a member of the same tribe or of a tribe in

the same group who being a creditor has advanced to such person any loan, until such loan has been repaid or settled in full by the debtor and a period of three years has elapsed since repayment or settlement; provided that if the Deputy Commissioner after making such enquiries from the parties concerned as may be prescribed in this behalf by the Provincial Government, finds that an alienation has been made by a debtor to a person other than his creditor the effect of which is to pass the beneficial interest to such creditor in evasion of the provisions of this section, he shall, after recording his reasons by order in writing, declare the alienation void and shall eject any person in occupation of the land by virtue of such alienation and shall place the alienor in possession thereof.

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Explanation (2). The term 'creditor' means a person or a firm carrying on the business of advancing loans and shall include the legal representative and the successor-in-interest whether by inheritance, assignment, or otherwise, of such person or firm."

Three things seem to be necessary to give to the Deputy Commissioner the jurisdiction. There should be—

- (1) a debtor,
- (2) a creditor, and
- (3) that the effect of the transaction should be to pass the beneficial interest to such creditor.

It has been held by all the Courts that Fauja Singh was not a creditor within the meaning of Explanation 2 of section 3-A of the Act and nothing has been said by Mr. Bahri which will convince us that the finding of the three Courts is wrong on this

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point and there is nothing to show that any beneficial interest has passed to Fauja Singh. Lord Eshar, M.R., in *Reg. v. Commissioner of Income-tax* (1) has pointed out the distinction in the two cases when a Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depends and when it cannot. He has also pointed out that the formula which is enunciated in regard to jurisdiction of courts of limited jurisdiction is quite plain but its application is often misleading. The learned Master of the Rolls has observed as follows on this point—

“When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.”

These observations of the Master of the Rolls have been quoted with approval by Mahajan, J., in *Ebrahim Aboobakar v. The Custodian General of Evacuee Property* (2), decided by Their Lordships of the Supreme Court, on the 16th May 1952. In the Lahore High Court this question was decided by a Full Bench in *Lachhman Singh v. Natha Singh* (3), where the question to be decided was the jurisdiction of the Debt Conciliation Board and it was held that when it assumed jurisdiction in regard to usufructuary mortgages which

(1) 21 Q.B.D. 313

(2) 1952 S.C.R. 696=A.I.R. 1952 S.C. 319

(3) I.L.R. 1941 Lah. 71

were not debts within the meaning of the word as used in section 7 of the Punjab Relief of Indebtedness Act it acted without any jurisdiction. A similar rule was laid down by another Full Bench in *K. L. Gauba v. The Punjab Cotton Press Company, Limited* (1). In this case before the Deputy Commissioner can give a decision it has to be determined whether the three conditions which I have mentioned above have been fulfilled and if they are not fulfilled in my opinion the jurisdiction of the Deputy Commissioner does not arise, and in any case it is for the Courts of general jurisdiction to decide as to whether the conditions for giving jurisdiction to the Deputy Commissioner have arisen or not.

In any case this Court has jurisdiction under Article 226 of the Constitution to quash orders passed by judicial or quasi-judicial bodies which are contrary to law and even if the Deputy Commissioner were to decide as counsel for the appellant admits he should, the matter would be subject to the jurisdiction of this Court and no amount of taking away the jurisdiction of civil Courts can deprive this Court of its jurisdiction under the Constitution which was framed by the Constituent Assembly representing the people of this country.

The next point taken by Mr Bahri is that even if it be held that the matter has not so far been decided by the Deputy Commissioner and that the Collector acting on appeal was not a Deputy Commissioner within the meaning of the Act the matter should be left to him. The Act has now been repealed by Presidential order. There is no Deputy Commissioner within the Act at the present moment and therefore there is no officer who can decide within the provisions of the Act and therefore this argument is wholly without force.

In my opinion the learned single Judge has come to a right conclusion and I would therefore affirm the judgment and dismiss this appeal with costs of the Letters Patent Appeal.

SONI, J.—I agree.

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(1) I.L.R. 1941 Lah. 524.