

Jammu & Kashmir High Court

Karan Singh vs Sushila Rajput on 27 November, 1996

Equivalent citations: AIR 1997 J K 112

Author: A Mir

Bench: A Mir

ORDER A.M. Mir, J.

1. This revision petition is directed against an order passed by the City Judge Jammu on 24-3-1995. The order impugned decides five legal issues on preliminary basis. These issues are as under:--

1. Whether this Court has no jurisdiction to try the suit? OPD
2. Whether the suit cannot proceed since the matter is already subjudice before the Custodian Jammu? OPD
3. Whether the suit is bad for non-joinder of necessary parties? OPD
4. Whether the suit property is not properly described if so, what is its effect on the suit? OPD
5. Whether the suit is not properly valued for the purpose of Court-fees and jurisdiction? OPD

2. As is clear from the text of the issues, issues Nos. 1 and 2 are of foremost importance in the matter as these relate to the jurisdiction of the Court. Both these issues have been decided in favour of the plaintiff and against the defendant. Issues 3 to 5, being inconsequential for purpose of this petition, learned counsel for the petitioner has not laid ; stress on his challenge to the order impugned in so far the same relates to these issues.

3. The first question that must always arise in the mind of a Civil Court, while entertaining a suit, is the question of jurisdiction. Section 9 of the Code of Civil Procedure (hereinafter called the Code), lays down the law with regard to jurisdiction. This provision of law enables the Civil Courts to try all suits of civil nature but to this general rule, the suits, cognizance of which is expressly or impliedly barred, form a categorical exception, Section 9 reads as under:--

"9. Courts to try all civil suits unless barred. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.-- A suit in which the right to property or to an office is contested is a suit of civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II.-- For the purpose of this section it is immaterial whether or not any fees are attached to the office referred to in explanation I or whether or not such office is attached to a particular place."

4. What Section 9, at its first glance, eloquently reveals, is that the Courts should, in the first instance, find out and make sure that the suits coming before them are not barred either expressly or impliedly. The bar is express when any statute places in clear terms an embargo upon trial of a suit. The bar on the other hand is implied when a statute, although does not lay a bar in express terms yet brings into existence a parallel machinery which can try the same cause as reflected in the plaint.

5. The object of creating a special statutes is to shorten the procedure laid down in the Code and to provide for an alternative machinery to resolve the conflicting questions arising between the contestants at a quicker speed. The scheme of such acts sets up a special forum for adjudication of rights and liabilities arising out of those statutes. In some of the special statutes an express bar may be laid down for maintenance of a civil suit while in some statutes the legislature in their wisdom may not choose to lay that express bar. Even then by providing a machinery and a forum, it can be safely presumed that the intention of the legislature is to create an implied bar. The word 'implied' used in Section 9 can never be held to be a useless term. Once the legislature used this term the Courts have a duty to take notice of the same term.

6. It is not for the first time that the expression 'impliedly' is being taken note of. Punjab and Haryana High Court in case, Harchand Singh v. Khjala Kalan Agriculture Service Society Ltd., reported in AIR 1983 Punj & Har 19, while dealing with a case, for adjudication of a matter, for determination of which Co-operative Societies Act laid an alternative forum and also a fulfilled machinery, held that a civil suit would not lie as the statute created an implied bar. It is noteworthy that there was no express bar laid down by the statute for trial of that suit.

7. The Supreme Court in Jitendra Nath Biswas v. M/s. Empire of India and Ceylone Tea Company, reported in AIR 1990 SC 255, reaffirmed this position of law. In this case the relief sought by a workman before the Civil Court was that of reinstatement and back-wages. The relief was available under Industrial Disputes Act. The Supreme Court held that such a relief cannot be granted by a Civil Court. This may be noted that Industrial Disputes Act did not expressly bar the maintainability of a civil suit but the bar was held to be implied, and thus excludes the relief from a Civil Court. A Bench of this Court, while drawing support from this judgment in Satpa! v. Chanak Ram, reported in 1993 Rash LJ 230, applied this ratio in a case where the relief could be granted in terms of Evacuee (Administration of Property) Act. Therefore, the jurisdiction of the Civil Court was held to be non-existent.

8. Evacuee (Administration of Property) Act, 2006, (hereinafter called the Act) came into discussion in a case, Ramgopal Reddy v. Additional Custodian Evacuee Property, reported in AIR 1966 SC 1438. The Apex Court held that the Act is a complete Code in itself for dealing with disputes relating to evacuee properties. Same view was reiterated by the Apex Court in Custodian Evacuee Property Punjab v. Jafran Begum, reported in AIR 1968 SC 169. The proposition of law condensed in these two judgments of the Supreme Court is that the Act is a foolproof Code by itself and when the dispute raised by a suit falls within the ambit of powers of the authority of Custodian, then the Civil Courts have no jurisdiction to try the suit. The Apex Court did take into account the conditions laid down by a pre-partition judgment of Lahore High Court, delivered in Laxmi Chand v. Aulia Khan,

reported in AIR 1941 Lahore 225. The test laid down in this judgment was that the dispute, in respect of which Civil Courts are barred, must fall within the exclusive jurisdiction of the evacuee authorities.

9. A Division Bench of this Court is *Ali Naqqi v. Mst. Noor Ashraf*, reported in AIR 1968 J & K 79, did not agree with dismissal of the suit ordered by the District Judge because in that case, during the pendency of the suit, the Custodian was made a party in terms of notice under Section 35 of the Act. He filed a written statement and took objection that the Civil Court was not competent to hear that suit, as the owners of the property were evacuees. The property had not been declared to be evacuee property till that date. Neither was it determined as to whether the owners of the property had become evacuees nor as to whether that property did belong to them. This was during the early days of the partition. In that case, had the declaration of the property being evacuee property, been made things would have been altogether different. The ground taken by their lordships of the Division Bench was that the stand of the Custodian was only a statement from him and was not a decision or determination which would definitely oust the jurisdiction of the Civil Court.

10. In the present case, as suggested by the revision petition, the first question that is required to be answered, is as to whether the dispute raised in the suit falls within the domain of the powers of the Custodian. The suit is for permanent prohibitory injunction, restraining the defendant from interfering in her construction of stairs and a bathroom, being raised in house No. 1090-EP, situate in Gali Kumharan, Puranimandi, Jammu. The parties are brother and sister. The house they are living in is admittedly an evacuee property. After the death of their mother, parties came to be in possession of the house in two equal shares. Now the plaintiff wanted to raise a stair case and construct a bathroom in the ground floor of the house. On some alleged obstruction from the defendant, the suit was filed.

11. The powers of the Custodian are defined in Sections 9 and 9-A of the Act. Under Section 9(2)(d) the Custodian has the power to take all such measures as may be necessary to keep any evacuee property in good repair. In terms of S. 9(2)(ee) he has also the power to improve any evacuee property but can do so with the prior sanction of the Government. Power of incurring any expenditure also is exercisable by the Custodian in terms of Section 9(2)(j)- under Section 9-A, Sub-section (2)(vi) addition of rooms, buildings, out-houses or other structures comes within the definition of 'erection' or 're-erection'. Erection or re-erection, without the sanction in writing from the Custodian, are statutorily barred. The words "other structures" appearing in Section 2(vi) are note worthy. The addition of a staircase and a bathroom do fall within this expression. The plaint, in the present case, does not reveal that the plaintiff had ever procured any sanction for any alteration or addition from the Custodian. On the other hand the Custodian has stayed the construction sought to be raised by the plaintiff. The trial Court, while returning its finding in respect of issues Nos. 1 and 2 does not try to go to the root of the matter. It also ignored the attempts having been made by the Custodian to press into service the Act and its enabling provisions.

12. Section 31 of the Act lays down an express bar for the maintainability of a suit. It reads as under :--

"31. Jurisdiction of Civil Courts barred in certain matters:--

(1) Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction:--

(i) To entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property;

(ii) to question the legality of any action taken by the Custodian General or the Custodian under this Act;

(iii) In respect of any matter which the Custodian General or the Custodian is empowered by or under this Act to determine."

13. For our purpose Sub-section (in) of Section 31 is of extraordinary importance. It in specific terms lays down a bar in respect of a suit which raises any matter which the Custodian or Custodian General is empowered under the Act to determine. The powers regarding making alterations in the evacuee property or raising any structures are vested in the Custodian in terms of Section 9 of the Act. Therefore, a suit for the same relief is - expressly barred in terms of Section 31 (supra). Bar, by implication also, in terms of law laid down by the Supreme Court, is manifest.

14. I find that the trial Court totally ignored these provisions of law and has returned a finding which is inconsistent with law and suffers from lack of jurisdiction.

15. I, therefore, quash the order impugned and allow this revision petition, This has the effect" of dismissal of the suit. Interim directions, issued so far, both by the Civil Court and this Court, are vacated. Thus the Custodian Evacuee Property Jammu will be free to take appropriate action in terms of the Act.