

PETITIONER:
CUSTODIAN OF EVACUEE PROPERTY PUNJAB & ORS.

Vs.

RESPONDENT:
JAFRAN BEGUM

DATE OF JUDGMENT:
20/04/1967

BENCH:
WANCHOO, K.N. (CJ)
BENCH:
WANCHOO, K.N. (CJ)
BHARGAVA, VISHISHTHA
MITTER, G.K.

CITATION:
1968 AIR 169 1967 SCR (3) 736
CITATOR INFO :
R 1978 SC1217 (2,5,34,35)
R 1980 SC1206 (9,27,28)
F 1983 SC 259 (20)

ACT:
Administration of Evacuee Property Act (31 of 1950), S. 46-
Decision by Custodian that property was evacuee property-
Suit in Civil Court challenging decision-If maintainable.

HEADNOTE:

A person who was in possession of a house in India, migrated to Pakistan. Notice was issued to his son under s. 7 of the Administration of Evacuee Property Act, 1950, and after hearing him the Deputy Custodian declared the house to be evacuee property. The respondent, who was the wife of the evacuee and on whom the notice under s. 7 of the Act was not served, started proceedings before the Custodian, claiming that the owner of the house had executed a will bequeathing the property to her and so the property could not be declared evacuee property. When she failed before the authorities constituted under the Act, she filed a suit in the civil court basing her case on the will and prayed for a permanent injunction restraining the authorities under the Act from evicting her from the house.

On the question whether the suit in the civil court was maintainable, the High Court held that the question whether a certain person had or had not become an evacuee was determinable only by the authorities under the Act, but the determination of a complicated question of law relating to title by such authorities, if such a question arose, was not final and could be reopened in the civil court; that the suit in the present case did raise such a question and therefore, the civil court had jurisdiction to entertain it. In appeal to this Court,

HELD : Two questions will arise in every case where the authority has to declare under s. 7 of the Act whether a property is evacuee property, namely, (i) whether a particular person has or has not become an evacuee, and (ii) whether the property in dispute belongs to him. There is nothing in the section which shows that the authority under the Act (being a quasi judicial authority) cannot enter into

all questions, whether of fact or law, simple or complicated, in deciding whether certain property belongs to an evacuee; nor does his jurisdiction depend upon a correct finding on a collateral fact. The power to decide all these questions could not be denied on the ground that 'the authority under s. 7 may not be an experienced judicial officer, because, his decision is not final and is open to appeal under s. 24 and to revision under s. 27 by authorities who are experienced judicial officers. Having thus provided a complete machinery for adjudication of all claims with respect to evacuee property, under ss. 7, 24 and 27, the Act, by s. 28, gives finality to the order of the authorities mentioned therein and lays down that such orders shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding. The Legislature has gone further and expressly barred the jurisdiction of the civil and revenue courts under s. 46 to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property. Further, s. 4(1) of the Act provides that

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the Act overrides other laws and would thus override s. 9 of the Civil Procedure Code. In these circumstances, s. 46 is a complete bar to the jurisdiction of the Civil Court to entertain the suit or adjudicate upon the question whether the property in dispute or right to or interest therein is or is not evacuee property. But ss. 28 and 46 cannot bar the jurisdiction of the High Court under Art. 226 for, that is a power conferred by the Constitution. [740 G-E; 742 A, E, F-G; 743 A-B, D-G, 744 A, B-F]

S. M. Zaki v. The State of Bihar, A.I.R. 1953 Pat. 112 and Khalil' Ahmad Khan v. Malka Meher Nigar Begum, A.I.R. All. 362, approved.

Observation at page 934 in Namazi v. Deputy Custodian Evacuee Property, A.I.R. 1951 Mad. 930, disapproved.

[The question whether the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, not decided.] [745 D-E]

Abdul Majid Haji Mohmed v. P. R. Nayak, A.I.R. 1950 Bom. 440, . referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 772 of 1964. Appeal by special leave from the judgment and order dated May 28, 1962 of the Punjab High Court in Regular Second Appeal No. 1819 of 1959.

K. S. Chawla and R. N. Sachthey, for the appellants.

The respondent did not appear.

The Judgment of the Court was delivered by

Wanchoo, C.J. In this appeal by special leave the only question that arises is the interpretation of S. 46 of the Administration of Evacuee Property Act, No. 31 of 1950, (hereinafter referred to as the Act). Brief facts necessary in that connection are these. The house in dispute is situate in Malerkotla and belonged to one Muradbux who died Sometime in 1922. In 1947, the house was in possession of Muradbux's son, Mohd. Rafiq and Muradbux's widow, Jafran Begum. Sometime after partition. Mohd. Rafiq migrated to Pakistan. Thereafter notice was issued under S. 7 of the Act to Dildar son of Mohd. Rafiq to show cause why the

house be not declared as evacuee property. No notice was however issued to respondent Jafran Begum. It seems that Dildar appeared before the Deputy Custodian and admitted that his father had migrated to Pakistan. So on June 7, 1952, the house was declared to be evacuee property. No appeal was taken against this order which thus became final. However, on March 2 1954, the respondent filed an application before the Custodian claiming that by virtue of a will made in her favour by Muradbux in 1918 he had bequeathed the house to her and therefore she was the owner of the entire property. On July 3, 1954, the Custodian

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held that under Mohammedan law a person could not will away more than one-third of his property and as it had not been proved that the house willed away by Muradbux was one-third of his entire property or less, the will could not be acted upon. In consequence the application was dismissed. It seems that thereafter the respondent made some representations to the then Government of PEPSU but it is not known what happened thereto. On September 10, 1956, the respondent applied for review of the order of the Custodian dated July 3, 1954. That review application was dismissed on April 5, 1957 mainly on the ground that it was belated. The respondent then went in revision to the Deputy Custodian General but her revision was dismissed on September 27, 1957. Thereafter on December 3, 1958, the Deputy Custodian General suo motu reviewed the order of September 27, 1957 holding that the respondent as the widow was entitled to one-eighth share under Mohammedan law. He therefore held that only seven-eighths share of the house became evacuee property and one-eighth share of the respondent was not evacuee property.

In the meantime, the suit out of which the present appeal has arisen was filed by the respondent on March 3, 1958.

She based her case on the will of Muradbux already referred to and prayed for a permanent injunction against the Custodian Evacuee Property Punjab and others barring them from evicting her from the house in dispute. The suit was dismissed on December 31, 1958 by the trial court holding that the civil court had no jurisdiction to decide the matter in the face of S. 46 of the Act. The trial court decided the other issues also but we are not concerned with them as in the present appeal only the question of jurisdiction of civil courts to entertain the suit has been raised.

The respondent then went in appeal to the Additional District Judge. The Additional District Judge held relying on certain decisions of the Punjab High Court that civil courts had no jurisdiction to entertain a suit of this nature and therefore dismissed the appeal. He also decided other points but we are not concerned with them.

The respondent then went in second appeal to the High Court. The learned Single Judge who first heard the appeal referred it for decision to a larger Bench. The matter then went before a Division Bench which noticed that there was some conflict between certain decisions of the Punjab High Court and therefore referred the matter to a larger Bench. In consequence a Bench, of three Judges was constituted to decide whether civil courts had jurisdiction in such a case. The learned Judges were of the view that when a question arose whether any property was or was not, evacuee property, two matters had to be decided namely-(i) whether the particular person had or had not become evacuee and

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(ii) whether the property in dispute belonged to him. On the first question they were of the view that the matter could

only be determined by the Custodian and civil courts had nothing to do with it. On the second question they were of the view that it might involve a simple question of fact or a complicated question of law i.e. a question of title. They finally decided that the question whether certain person was or was not evacuee was determinable by the Custodian, but the determination of the Custodian on a question of title if such question arose was not final and the question of title could be reopened in the civil court and was to be finally determined by such court. The limited the above decision by observing that a mere assertion of claim to any property did not raise a question of title for such assertion might rest on a simple allegation of fact which could be finally determined by the Custodian and that the question whether in a particular case a question of title did or did not properly arise had to be decided on the facts of each case and no general rule about it could be usefully laid down. On this view of the law they held that in the particular case before them a complicated question of law arose and therefore the suit was competent and the civil courts had jurisdiction to entertain it. Thereupon the appellant obtained special leave from this Court and that is how the matter has come before us.

There have been a large number of cases in the Punjab High Court on this question. We do not however propose to go into them in detail, for it appears to us that the view taken in some of them conflicts with the view taken in others. That is the reason why a Bench of three Judges was constituted to go into the matter and we have already set out their decision. These cases are : F. Sahib Dayal v. Assistant Custodian of Evacuee Property(2); Firm Pariteshah Sadashiv v. Assistant Custodian Evacuee Property (2); Duni Chand v. Ibrahim (s); Kailash Chand v. A ddl. Custodian General (4) ; Narendra Kumar v. Custodian General(5); Custodian General v. Harnam Singh (6) ; Ram Gopal v. Banta Singh(7); Parkash Chand v. Custodian Evacuee Property(8); Gurparshad v. Asst. Custodian General(9); and Custodian General in the High Court. A distinction must be made between jurisdiction of the High Court under Art. 226 of the Constitution and jurisdiction of civil courts about entertaining civil suits in matters, of, this kind. Whatever may be the interpretation of s. 46 to which we shall, address ourselves presently, the jurisdiction. of the, High Court under Art. 226 of the Constitution is not and cannot be

(1) (1952) 54 Punj. L.R. 318.

(3) (1954) 56 Punj. L.R. 257.

(5) A.I.R. 1956 Punj. 163.

(7) (1958) 60 Punj L.R. 307.

(9) (1959) 61 Punj. L.R. 137.

(2) (1952) 54 Punj. L. R. 468.

(4) (1955) 57 Punj. L.R. 440.

(6) A.I.R. 1957 Punj. 58.

(8) (1958) 60 Punj. L.R. 592.

(In) (1959) 61 Punj. L.R. 915.

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affected thereby. Other cases arose out of suits and two views seem to have prevailed in the High Court, one holding that suits of this nature were barred while the other view was that where a question of title arose, jurisdiction of civil courts was not barred under S. 46 of the Act.

It is necessary to consider the scheme of the Act before we actually decide the question posed before us. As is well known the Act had to be passed in order to deal with the enormous problem which arose on the division of the Punjab

and large scale migration that took place from one side of the Punjab as it was before 1947 to the other side. Large numbers of Muslims migrated to that part of the Punjab which is now in Pakistan leaving their properties in that part of the Punjab which is now in India. It was to deal with this problem that the Act was passed, though we may add that there were earlier laws dealing with the same matter, which were all repealed by the Act, wherever it was extended. The Act defines "an evacuee" and also "evacuee property". "Evacuee property" is defined as meaning 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 definition also includes certain properties and excludes certain other properties, but we are not concerned with that. Section 4 of the Act which is important provides that "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". Sections 5 and 6 provide for appointment of Custodian-General, Deputy Custodian General, and Assistant Custodian-General, Custodian, Additional Custodian, Deputy Custodian and Assistant Custodian whose duty it is to administer the Act. Section 7 empowers the Custodian to give notice, where he is of opinion that certain property is evacuee property, to the person interested and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property. It is clear in view of the definition of "evacuee property" to which we have already referred, that two questions will arise in every case where the Custodian has to declare whether a property is evacuee property. These two questions are : (i) whether a particular person has or has not become an evacuee, and (ii) whether the property in dispute belongs to him. Both these questions have to be decided under s. 7 of the Act by the Custodian. Under S. 8 any property declared to be evacuee property under s. 7 vests in the Custodian from certain dates with which we are not concerned. Section 9 gives power to the Custodian to take possession of evacuee property vested in him. Section 10 provides for powers and duties of the Custodian generally. Then follow certain sec-

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tions which give special powers to the Custodian with respect to the management of the property to which it is unnecessary to refer. Section 16 provides for restoration of evacuee property by the Central Government. Section 24 inter alia gives a right to a person aggrieved by an order made under S. 7 by the Custodian to appeal. Section 27 gives power of revision to the Custodian-General either on his own motion or on application made to him to call for the record of, any proceeding in order, to satisfy himself as to the legality or propriety of any order passed therein and to pass such order in relation thereto as he thinks fit. Section 28 which is also important reads thus :

"Save as otherwise expressly provided in this Chapter every order made by the Custodian-General, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding."

Section 28 thus clearly bars the jurisdiction of any court to entertain an original suit with respect to an order passed by the authorities mentioned therein.

Section 46 with which we are particularly concerned is in these terms :

"Save as otherwise expressly provided in this Act, no civil or revenue court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

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

(d) in respect of any matter which the Custodian General or the Custodian is empowered by or under this Act to determine

A bare reading of s. 46 shows how widely it is worded and how, clearly it bars the jurisdiction of civil and revenue courts in matters specified 'therein'. A perusal of these provisions in our opinion shows that the Act is a complete code in itself in the matter of dealing with evacuee property. As observed by this Court in *Ram Gopal Reddy v. Additional Custodian(1)*, "the Act thus provides a complete machinery for a person interested in any property to put forward his claims before the authorities competent to deal with the question and to go in appeal and

(1) [1966] 3 S.C.R. 214.

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in revision if the person interested feels aggrieved. Having provided this complete machinery for adjudication of all claims with respect to evacuee property, the Act, by S. 46, bars the jurisdiction of civil or revenue courts to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property". It is true that the Act is concerned with the administration of evacuee property and a large number of its provisions deal with actual administration of such property. But before the authorities under the Act take on the duties of administration of evacuee property some one has to determine what properties are evacuee properties of which the authorities provided under the Act can take over administration. The Act itself provides a machinery for determining what properties are evacuee properties. Section 7 is that provision which gives power to the Custodian to determine what properties are evacuee properties. The Custodian determines that after notice to persons interested and after such enquiry as the circumstances of the case permit. It is thereafter that the Custodian declares certain property to be evacuee property and on such declaration the property vests in the Custodian under s. 8. Then we have the provision of appeal under s. 24 and revision under S. 27 of the Act so that any person aggrieved by the order of the Custodian has two forums open to him to ventilate his grievance. Clearly the Custodian under S. 7 acts as a quasijudicial authority and so does the authority hearing appeals under s. 24 and the Custodian-General hearing revisions under S. 27. Thus all persons interested get a hearing under S. 7 and all persons aggrieved have a right of appeal under s. 24 and can go in revision under s. 27. That is why s. 28 provides that every order made by the authorities indicated therein shall be final and shall not be called in question in any court by way of appeal, revision or in any original suit, application

or execution proceeding. The legislature was not however satisfied merely by giving finality to the orders of the authorities mentioned in S. 28; it went on to bar specifically the jurisdiction of civil and revenue courts in three matters indicated in s. 46. Under cl. (a) of S. 46, jurisdiction of civil and revenue courts is expressly barred and they are forbidden to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property.

Under s. 7 the Custodian has to determine whether certain property is or is not evacuee property. To determine that he is to find out whether a particular person is or is not an evacuee. Having found that, he is to find whether the property in dispute belongs to that person. If he comes to the conclusion that the property belongs to that person, he declares the property to be evacuee property. Now there is nothing in S. 7 which shows that

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the Custodian cannot enter into all questions whether of fact or of law in deciding whether certain property belongs to an evacuee. There is no reason to hold that under S. 7 the Custodian cannot decide what are called complicated questions of law or questions of title. It is difficult to see how the Custodian can avoid deciding a question of title if it is raised before him in proceedings under s. 7. Nor do we find it possible to make a distinction between questions of fact and questions of law that may arise before the Custodian under s. 7. If he has the power to decide questions of fact, which the learned Judges in the order under appeal seem to concede, we do not see why he should not have the power of deciding questions of law also. Further if the learned Judges in 'the order under appeal are correct in saying that if a question of title rests on a simple allegation of fact it can be finally determined by the Custodian, we cannot see on what reasoning, it can be said that where a question of title, depends on a question of law it cannot be finally decided under s. 7 by the Custodian. His power under s. 7 is to decide whether certain property is evacuee property or not and there is nothing in s. 7 which restricts that power to deciding only questions of fact. There can in our opinion be no escape from the conclusion that under s. 7 when deciding whether certain property is evacuee property or not, the Custodian has to decide all questions, whether of fact or law, whether simple or complicated, which arise therein. That power cannot be denied on the ground that the Custodian, which term for these purposes includes the Deputy Custodian or the Assistant Custodian may not be an experienced judicial officer and therefore may not be in a position to decide questions of title. His decision is not final and is open to appeal under s. 24 and to revision under s. 27. If he makes a mistake the two higher authorities who, we are told, have always been recruited from experienced judicial officers can correct him. It is after the matter has been decided under s. 7 and s. 24 if an appeal is filed and under s. 27 if a revision is filed, that s. 28 gives finality to orders of the authorities mentioned therein and lays down that such orders shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding. As we have already said, the legislature was not satisfied by merely conferring finality on such orders; it went further and expressly barred the jurisdiction of civil and revenue courts under s. 46 to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or

is not evacuee property. These words are very wide and clear and bar the courts from entertaining or-adjudicating upon any such question. Where therefore the question whether certain properties are evacuee properties has been decided under s. 7, etc., whether that decision is based on issues of fact or issues of law, the jurisdiction

L9 Sup. CL/67-4

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tion of courts is clearly barred under S. 46 (a). It is difficult to see how a distinction can be drawn between decisions under s. 7 based on questions of fact and decisions based on questions of law. The decision is made final whether based on issues of law or of fact by s. 28 and s. 46 bars the jurisdiction of civil and revenue courts in matters which are decided under s. 7 whatever may be the basis of decision, whether issues of fact or of law and whether simple or complicated.

It may be added that the only question to be decided under s. 7 is whether the property is evacuee property or not and the jurisdiction of the Custodian to decide this question does not depend upon any finding on a collateral fact. Therefore there is no scope for the application of that line of cases where it has been held that where the jurisdiction of a tribunal of limited jurisdiction depends upon first finding certain state of facts, it cannot give itself jurisdiction on a wrong finding of that state of fact. Here under s. 7 the Custodian has to decide whether certain property is or is not evacuee property and his jurisdiction does not depend upon any collateral fact being decided as a condition precedent to his assuming jurisdiction. In these circumstances, s. 46 is a complete bar to the jurisdiction of civil or revenue courts in any matter which can be decided under s. 7. This conclusion is reinforced by the provision contained in S. 4 (1) of the Act which provides that the Act overrides other laws and would thus override s. 9 of the Code of Civil Procedure on a combined reading of ss. 4, 28 and 46. But as we have said already, s. 46 or S. 28 cannot bar the jurisdiction of the High Court under Art. 226 of the Constitution, for that is a power conferred on the High Court under the Constitution.

It now remains to refer to certain cases of other courts in this connection. In *M. S. Namazi v. Deputy Custodian of E. P.(1)*, the Madras High Court was mainly considering the constitutional validity of the Act. At p. 934, however, Rajmanner C. J. made the following observations

"There is however one thing about which I am not quite clear. The Ordinance no doubt declares the order of the Custodian. declaring any property to be evacuee property as final. That might be so in one sense, i.e., if any property belongs to a person who has been declared to be an evacuee within the meaning of the definition in the Ordinance, then the Custodian's order would be final. But, does the finality amount to an adjudication on title in case there is any dispute? Take for instance the case where a property is declared to be evacuee property on the assumption that it belongs to A who is an evacuee. Does it mean that some

(1) A.I.R. 1951 Mad. 930.

one else cannot say that the property really. does not belong to the evacuee but, belongs to himself who is not an evacuee? I am inclined

to hold that the order of the Custodian or the notification under s. 7 of the Ordinance is not final, in case of disputed title."

These observations themselves show that the learned Chief Justice was not finally deciding the matter for the question did not directly arise before him. He does not seem to have considered the matter in the light of S. 4 and s. 46 of the Act. In any case in view of what we have said above these observations cannot be accepted as laying down correct law. In Abdul Majid Haji Mohmed v. P. R. Nayak,⁽¹⁾ the main question for consideration was again the constitutional validity of the Act. That was a case which arose on a writ petition. As we have already said, S. 46 cannot bar the jurisdiction of the High Court under Art. 226. But during the course of the judgment, Chagla C. J. referred to the decision of the Privy Council in *The Secretary of State v. Mask & Co.*⁽²⁾ and observed that it was well settled that "even if jurisdiction of courts is excluded, civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure". We do not think it necessary to go into that question in the present appeal, for no such facts have been alleged in the present suit which would bring it within the ratio of the decision in *Mask & Co.'s case*⁽¹⁾. Normally jurisdiction of civil courts to entertain or adjudicate upon such question relating to evacuee property would be barred under s. 46; the question whether in some extreme circumstances civil courts may have jurisdiction in spite of S. 46 need not be decided just now. However we may add that in *Firm of Illuri Subbayya Chetty v. State of Andhra Pradesh*⁽³⁾ this Court observed at p. 763 that the observations in *Mask & Co.'s case*⁽²⁾ were in some respects too widely stated.

The next case to which reference may be made is *S. M. Zaki v. The State of Bihar*⁽⁴⁾. There the question was whether the property was evacuee and the court held that the Act had provided adequate remedies and that s. 46 must be construed to mean that the jurisdiction of a civil or revenue court was ousted even if the Custodian had wrongly decided that any property was an evacuee property. The distinction between those cases where a collateral fact is to be decided before a tribunal of limited jurisdiction assumes jurisdiction and those cases where the tribunal has to decide the whole matter itself was referred to and

(1) A.I.R. 1951 Bom. 440.

(3) [1964] 1 S.C.R. 752.

(2) A.I.R. 194 P.C. 105.

(4) A.I.R. 1953 Pat. 112.

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Ramaswami J. (as he then was) rightly held that under S. 7 the whole matter has to be decided by the Custodian and there was no question of the decision of any collateral fact as a condition precedent to assumption of jurisdiction by the Custodian.

The last case to which reference may be made is *Khalil Ahamad Khan v. Malka Mehar Nigar Begum*⁽¹⁾. The question there was somewhat different, namely, whether S. 46 bars the jurisdiction of the civil court in a pending matter. The majority of the Judges in that case observed that in a case where a matter had been adjudicated upon in accordance with the provisions of the Act it might not be possible for courts to interfere by reason of the provisions of s. 46 of the Act. This case therefore to some extent is in line with the view we have taken.

On a careful consideration therefore of the authorities cited before us, we are of opinion that generally speaking the jurisdiction of the civil or revenue court is barred under s. 46 and no such court can entertain any suit or adjudicate upon any question whether a particular property or right to or interest therein is or is not evacuee property. We therefore allow the appeal and hold that in the view we have taken the suit was not maintainable in the civil court. The matter will now go back to the Single Judge of the High Court to pass order in conformity with the view we have expressed. As- the respondent has not appeared in this Court we pass no order as to costs.

V.P.S.

Appeal allowed.

(1) A.I.R. 1964 All. 362,
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