

PETITIONER:
VAMAN PRABHU MAHAMBRE

Vs.

RESPONDENT:
MARIA ALCINA DE MENEZES E GONSALVES AND OTHERS

DATE OF JUDGMENT 18/10/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SEN, S.C. (J)

CITATION:
1995 AIR 973 1995 SCC Supl. (2) 142
JT 1995 (1) 193 1994 SCALE (4) 669

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The appeal by special leave arises from the judgment of the Judicial Commissioner, Goa, Daman & Diu in First Civil Appeal No. 13 of 1972 dated July 27, 1976. The facts are as under:

Shri Timoteo Gonsalves, the husband of the first respondent, was the owner of the property. He, on October 23, 1954, hypothecated his house with a plot of land situated in Ribvander in Goa in favour of Fernando D. Aiala e Costa and his wife Maria Ema for a sum of RS. 22,500/-. He migrated to Portugal. As a consequence, his property was declared to be the evacuee property on December 22, 1966 under the Goa, Daman & Diu Administration of Evacuee Property Act, 1964.. Act No. 6/ 64 (for short the 'Act'), which came into force w.e.f. December 24, 1964. The property was put to sale at a public auction and the appellant had purchased it on February 27, 1968 and a sale certificate was given and was registered on October 14, 1969. The respondent Nos. 1-6 are the legal representatives of the mortgagee. They laid the suit on October 31, 1969 for the recovery of the debt from the evacuee with a charge on the hypotheca. The trial Court decreed the suit on March 1, 1972 which was confirmed by the Judicial Commissioner under the impugned judgment.

2. The learned counsel for the appellant has strenuously contended that by declaration of the evacuee property under s.2(c) of the Act, by conjoint operation of s.3 and s.8(2)(i) and 37 of the Act, the Civil Court has been divested of the jurisdiction to grant the decree. The mortgagees-respondents have only the remedy to proceed before the Custodian of the evacuee property by operation of the proviso to s.8(2)(i) of the Act, since s.3 has given over-riding effect over any other law including the Transfer of Property Act. The jurisdiction of the civil court has been thus divested by operation of s. 37. If any right or

liability exists against the property. the mortgagees only have a right to proceed against the Custodian of the evacuee property but not by way of a suit and that. therefore. the courts below have committed manifest error of law in granting the decree. Though the contention. *prima facie* is attractive on deeper probe, we find it difficult to accept the contention. Section 16 of the Act envisages that :-

"Section 16 Exemption of evacuee property from process of courts, etc. Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of the Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any court or authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of this Act, shall cease to have effect on such commencement and shall be deemed to be void".

Section 16 gives only over-riding effect over any other law so long as the evacuee property remains so vested in the Custodian-
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of the evacuee property and no court. or any other proceedings in any manner shall and whatsoever either in execution of any decree or order of any court or authority, and any attachment or injunction or order shall not be effective so long as the property remains vested in the Custodian. Section 16 of the Central Act, 1951, which is in pari-material has been interpreted by this Court in *Raja Bhanupratap Singh v. Assistant Custodian Evacuee Property*. U.P., 1966 (1) SCR 304 at 308A, thus:-

"The second pan of the sub-section deals with avoidance of attachment, or injunction or order for the appointment of a receiver in respect of any evacuee property - subsisting on the date of the commencement of the Act of 1951, and the first pan interdicts recourse to the evacuee property so long as it remains vested in the Custodian, by process of any court or authority for obtaining satisfaction of any claim against the property."

3. It is true as contended for the appellants that the latter part of the judgment clearly indicates that the Custodian is also duty-bound to discharge the liability attached to the property and that the claimant is entitled to lay claim before the Custodian. The proviso to s.8(2)(i), brought by way of an Amendment Act 14/70 with effect from November 18, 1970 given the proviso retrospective effect from the date of the Act came into force, gives power and authority to the Custodian to discharge the liability attached to the property to the third party. But by the date of the Amendment Act, the mortgagees have already filed the suit for recovery of the suit amount and the suit was pending and the Custodian stood divested of the administration of the evacuee property. The right to proceed against the property has not been expressly divested by operation of any of the provisions of the Act. No doubt, the mortgagees have a right to lay claim before the Custodian of the evacuee property by proviso to s.8(2)(i). But that would be so long as the property remained vested in the Custodian and was under his

possession and its administration. It is seen that the property has already been sold to the appellant and the appellant was given possession of the property on October 14, 1969, the date on which the property stood registered. Thereby the Custodian has been divested of the administration of evacuee property by conferment of title on the appellant through the sale conducted by him. Under s.56 of the Transfer of Property Act, the mortgage debt is charge on the property and, therefore, the charge remains subsisting on the property so long as it has not been duly discharged. Admittedly, the suit is within limitation and, therefore, the mortgagees-respondents are entitled to proceed against the property for the recovery of the debt due. The decree is of joint and several liability against the appellant and the Custodian of evacuee property. Under these circumstances, we do not find any illegality in the decree for recovery of the amount as decreed by the civil court against the appellant and the suit hypotheca.

4. The appeal is accordingly dismissed, but in the circumstances without costs.