

(1957) 03 AHC CK 0020

Allahabad High Court

Case No: Civil Revision No. 1200 of 1952

Tilok Chand

APPELLANT

Vs

Mer Chand and Others

RESPONDENT

Date of Decision: March 22, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20
- Displaced Persons (Debts Adjustment) Act, 1951 - Section 10, 59
- Displaced Persons (Institution of Suits) Act, 1948 - Section 2, 4
- General Clauses Act, 1897 - Section 6

Citation: AIR 1957 All 547

Hon'ble Judges: Tandon, J; Mukerji, J

Bench: Division Bench

Advocate: Ish Narain Misra, for the Appellant;

Final Decision: Allowed

Judgement

Tandon, J.

One Tilok Chand filed an application under Order 33, Civil P. C., for permission to sue in forma pauperis against four persons, Mer Chand, Par Parmanand, Sita Ram and Har Dayal, in respect of a debt alleged to have been due to him upon a promissory note made in his favour on 23-3-1949.

2. Admittedly both the applicant and opposite parties are displaced persons from West Pakistan, The debt in question also was, according to the application, advanced at Dera Ismail Khan in West Pakistan, The applicant came to India from West Pakistan as a result of the disturbances in connection with the setting up of the two Dominions and settled down at Agra. On 29-5-1950 he made the application out of which this revision has arisen under Order 33, claiming that he was a pauper and was unable to pay the court-fee payable on the plaint.

This application came up for disposal before the learned Civil Judge Agra on 26-7-1952 when the learned Civil Judge rejected it on the preliminary ground that the application no longer lay in that Court.

3. When the application was made in May 1950 the Displaced Persons (Institution of Suits) Act, 1948 was in force, it is not contested that the applicant, as well as the opposite parties, are displaced persons within the meaning of Section 3 of this Act. Section 4 of the Act laid down that notwithstanding anything contained in Section 20, Civil P. C., 1908 or in any other law relating to the local limits of the jurisdiction of Courts, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he actually and voluntarily resides. This section also mentions other cases in which suits may be instituted in particular Courts but we are not concerned here with them. The applicant claimed that he was residing at Agra hence the Courts at that place had jurisdiction to entertain the application made by him.

4. There cannot be the least doubt that on 29-5-1950 when the application was filed the Civil Judge of Agra, where the applicant resided, had the necessary territorial jurisdiction to entertain the application. This Act originally provided that it shall remain in force for a period of three years which period, however, was subsequently extended upto 31-3-1952 and that upon the expiry of the said period Section 6, General Clauses Act, 1897 would apply as if the Act had then been repealed by a Central Act. In 1951 another Act known as the Displaced Persons (Debt Adjustment) Act, 1951 was passed by the, Central Legislature. This Act came into force in Uttar Pradesh sometime before December 1951, Section 59 of this Act said that :

"Save as otherwise provided in Section 36, the Displaced Persons (Institution of Suits) Act, 1948 shall cease to apply to displaced persons as defined in this Act (Displaced Persons (Debt Adjustment) Act, 1951)."

The definition of displaced persons contained in the Act of 1948 was wider than the one to be found in the Act of 1951 Inasmuch as the Act of 1951 made provision for displaced persons from West Pakistan alone. The Act of 1948, however, covered the case of all displaced persons irrespective of this distinction.

5. As a result of Section 59 of the Act of 1951 the Displaced Persons (Institution of Suits) Act, 1948, under which the application in this case was commenced, ceased to apply to the applicant. It was contended in the Court below that Section 59 aforesaid had had the effect of repeal and the moment the Displaced Persons (Institution of Suits) Act, 1948 was repealed the application made in pursuance of Section 4 of that Act ceased to be maintainable in that Court. This contention prevailed with the learned Civil Judge, who rejected the application without going into the merits of the matter. The applicant contests this decision. According to him the expiry of the Act of 1948 has, or even the fact that it ceased to apply to displaced persons from West Pakistan as a result of Section 59 of the Act of 1951 made no difference. The learned

Civil Judge, continued to have the power to decide the application made to him.

6. We have no doubt that the order passed by the Court below is wrong. Section 4 of the Act of 1948 made provision for the institution of suits by displaced persons in Courts within whose territory they resided. On that date, therefore, when the application was made, since the applicant was residing at Agra, it was properly instituted in the Court of the Civil Judge at Agra. There is nothing either in the Act of 1948 or, for the matter of that, in the Act of 1951 to say that any proceeding duly instituted under this section shall cease to continue upon the expiry of the Act or its repeal. On the other hand, Section 2 of the Act of 1948 laid down that the provisions of Section 6 of the General Clauses Act, 1897 shall apply upon its expiry as if it had been repealed by a Central Act. Section 6 of the General Clauses Act, 1897 makes clear provision that a proceeding commenced under a repealed Act will continue notwithstanding the repeal. The Legislature's intention was thus clear, namely, that any proceeding duly commenced u/s 4 will continue even "if the Act had ceased to be in operation subsequently.

7. Section 59 of the Act of 1951 simply said that the Act of 1948 shall cease to apply to displaced persons from West Pakistan. Section 10 of this Act, to which the Court below has referred, gave to displaced persons the right to make an application to the tribunal under that Act within the local limits of whose jurisdiction any displaced person resided for determination of his claim. Upon the coming into force of the Act of 1951 and its ceasing to apply to such displaced persons as are mentioned in the Act of 1948, the consequence was that the remedy available to a displaced person in future was to take recourse to Section 10.

There is nothing in Section 10 or in Section 59 itself to say that any proceeding already commenced under the Act of 1948 will cease to continue in the Court where it otherwise was properly instituted. The only effect to our mind of Section 59 of the Act of 1951 was that any application for determination of claims made afterwards by displaced persons from West Pakistan lay u/s 10 of that Act. Any application or suit duly commenced previously was not affected thereby and the plaintiff could continue it in the same Court in spite of this section.

8. The learned Civil Judge has obviously made a mistake in saying that the Act of 1948 had been repealed or that the application ceased to be maintainable in his Court as a result of Section 59 of the Act of 1951. His order was manifestly wrong and is liable to be set aside. 9. The application is accordingly allowed. As, however, the Court below has not Considered the application on merits the record will be sent back with directions to it to dispose of the application dated 29-9-1950 in accordance with law. No order as to costs.