

HAFIZ WASHI AHMED

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v.

KUTUBUDDIN AND ORS.

SEPTEMBER 24, 1996

[K. RAMASWAMY, K. VENKATASWAMI AND
G.B. PATTANAİK, JJ.]

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Administration of the Evacuee Property Act, 1950:

Ss. 28 and 46—Vesting of the property in the custodian of the evacuee property—Appellant claiming exclusive right in a portion of the land vested in the custodian of the evacuee property and the structure standing thereon on the basis of a gift—Suit for injunction by the appellant—Trial Court holding that the question whether the property was in exclusive possession of the appellant or was it not vested in the custodian of the evacuee property has to be adjudicated at the trial of the suit—In revision petition, High Court holding that by operation of ss. 28 and 46 of the Act the property in dispute stood vested in the custodian of the evacuee property and the suit is not maintainable—Held, trial court was right in its direction—Order of the High Court stands set aside and that of the trial court stands confirmed—Matter is remitted to the trial court for decision after adjudication of the question of fact whether the property exclusively belongs to the plaintiff-appellant as claimed by him.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1007 of 1980.

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From the Judgment and Order dated 7.11.74 of the Patna High Court in C.R. No. 300 of 1974.

Syed Ali Ahmed, Tanweer Ahmed and Mohan Pandey for the Appellant.

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D. Goburdhan for the State.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the High Court of Patna made on November 7, 1974 in C.R. No. 300/74. The

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- A appellant filed the suit for injunction restraining the respondent from interdicting with his possession and enjoyment of a portion of the property bearing plot No. 1323 and the structure standing thereon. The appellant claimed that though the plot No. 1499 bounded with Khata No. 246 in Touzi No. 3274 was declared as an evacuee property, the house in respect of which the appellant claimed is situated in a part of Khata No. 263 in
- B Plot No. 1499 and the same Touzi number, belongs to him. The learned Munsif had taken the view that it is required to have an adjudication at the trial of the suit whether the property bearing Khata No. 263, though situated in Plot No. 1499 of the same Touzi No. 3274 was his exclusive property or was not vested in the custodian of the evacuee property. The
- C objection raised by the respondent was rejected. In the revision, the High Court has taken the view that by operation of Sections 28 and 46 of the Administration of the Evacuee Property Act, 1950, the lands and the buildings stood vested in the custodian of the evacuee property and, therefore, the suit is not maintainable. When the matter had come up this
- D Court before grant of leave, the counsel were heard and it was stated that the house or structure on Plot No. 1499 was only a portion and there was no claim that it was evacuee property in respect portion of plot No. 1323 or any structure thereon. Therefore, this Court granted leave concerning the question of dispossession in respect of Plot No. 1499.
- E In view of fact that the appellant has claimed exclusive title in respect of the property in dispute, the Court is required to go into the question whether or not it is the part of the land which was declared as evacuee property and stood vested in the custodian of the evacuee property or is appellant's exclusive property on the basis of the alleged gift said to have
- F been given to the appellant. This is a question of fact to be adjudicated at the trial of the suit before considering whether the land vested in the custodian of the evacuee property. If the learned District Munsif would find that the suit property is the evacuee property necessarily it stands vested in the custodian of the evacuee property and thereby the civil suit is not maintainable. On the other hand, if the finding would be that it is
- G not part of the evacuee property, necessarily the injunction as claimed to be considered whether or not to be granted. All facts required to be investigated at the trial.

H We think that the trial Court was right in its direction. The appeal is accordingly allowed. The order of the High Court stands set aside an

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that of the trial Court stands confirmed. It is made clear that we have not expressed any opinion on merits. The issue is at large. The matter is remitted to trial Court. As the suit is pending for over two decades, the trial Court is directed to dispose of the suit within a period of six months from the date of the receipt of this order. No costs. A

R.P.

Appeal allowed. B