

of the Judge is set aside and the case remanded to the Judge that he may pass orders *de novo*. The petitioner will recover the costs of this application from the counter-petitioner.

**NOTES**

[A similar view was taken in (1906) 30 Bom. 593=8 Bom. L.R. 671. See also 7 A.L.J. 119 .

---

APPELLATE CIVIL.

[3 Mad. 250.]

The 4th August 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE TARRANT

Sabapathi Chetti.....Plaintiff

*versus*

Subraya Chetti.....Defendant.\*

*Possessory suit—Specific Relief Act Section 9—Partial disturbance of possession.*

A possessory suit lies under Section 9 of the Specific Relief Act when plaintiff's possession has been partially as well as when it has been wholly disturbed.

THIS was a case stated under Section 617 of the *Civil Procedure Code* by the District Munsif of *Villupuram*.

The facts appear in the Judgment of the Court (TURNER, C.J., and TARRANT, J.).

The parties were not represented in the High Court.

**Judgment** :—The plaintiff sued, under Section 9 of the *Specific Relief Act*, for the possession of a house, well, &c., alleging that [251] his divided brother—the defendant—had trespassed upon the property on the 9th January 1881, and retained joint possession of it from that date. Plaintiff's pleader admitted that plaintiff continued to live in the house notwithstanding the trespass complained of on the part of the defendant.

The defendant objected that the suit could not be brought under Section 9 of the *Specific Relief Act*, and the Munsif, holding that the plaintiff was not ejected from the property in dispute altogether, and that his possession co-existed with that of the defendant, threw out the suit, subject, however, to our decision on the question—whether or not, under Section 9 of the Act above quoted, a suit would lie in the circumstances stated.

We are of opinion that a possessory suit lies under Section 9 as well when the plaintiff alleges his possession has been partially, as when he alleges it has been wholly, disturbed. He is dispossessed to the same extent as the alleged trespasser has obtained possession.

---

\* Referred Case No. 7 of 1881.