

ARIVAVU
MOOPPAN
v.
SAWMINATHA
KAVUNDAN.

riparian tenement (*McCartney v. Londonderry and Lough Swilly Railway*(1).

If, therefore, the diversion made by the defendants conducts the water of the river beyond their riparian tenement or if the diversion is made at a spot other than where the defendants' riparian tenement is, it is not necessary for the plaintiff to prove any damage or diminution in the water flowing to his riparian tenement in order to sustain his right of action.

In this case it is not found whether the defendants are riparian owners at the place where the diversion is made or whether the diversion is throughout within their riparian tenement or if it is carried beyond their riparian tenement at any point—all of which are necessary findings for the purpose of arriving at a proper determination of the rights of the parties. We therefore reverse the decree of the District Judge and remand the case to the lower Appellate Court for disposal according to law with due regard to the above observations. The costs will abide and follow the event.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Sankaran Nair.

JAGANNATHA CHARRY (RESPONDENT), APPELLANT,

v.

RAMA RAYEE (PETITIONER), RESPONDENT.*

Specific Relief Act I of 1877, s. 9—Immoveable property—Actual and constructive possession—Landlord and tenant—Dispossession by third party—Suit by landlord—Maintainability.

A landlord holding possession through a tenant can bring a suit under section 9, Act I of 1877, to recover possession of property of which he has been dispossessed by the act of a third party.

Innasi Pillai v. Sivagnana Desikar, (C.E.P. No. 643 of 1903 unreported) followed.

LETTERS Patent appeal against the order passed by Davies, J., in the following terms:—

“There is no doubt to my mind that the only persons entitled to sue under section 9 of the Specific Relief Act are those in

(1) L.R., (1904) A.C., 301.

* Appeal No. 18 of 1904 under section 15 of the Letters Patent against the judgment of Mr. Justice Davies in Civil Revision Petition No. 424 of 1903.

actual physical possession of the land at the time of dispossession and not persons in merely constructive possession. No cases are cited to the contrary." The plaintiff had therefore no cause of action under section 9 of the Specific Relief Act, and his suit is dismissed with costs in both Courts.

JAGANNATHA
CHARRY
v.
RAMA RAYER.

T. V. Seshagiri Ayyar for appellant.

T. V. Vaidyanatha Ayyar for respondent.

On the appeal the Court delivered the following

JUDGMENT.—We think this appeal must be allowed. The case is practically concluded by the decision in *Innasi Pillai v. Sivagnana Desikar*(1) which was affirmed on appeal in Letters Patent Appeal No. 44 of 1894. In that case it was held that the right to collect rent was immoveable property and that an action could be brought under section 9 of the Specific Relief Act for dispossession of that right. Here the tenant in possession was dispossessed immediately before his tenancy terminated and at the time of the action his tenancy had ceased. At the time of the dispossession the plaintiff, the landlord, was in possession by his tenant, and the physical possession of the latter as well as the constructive possession of the former were both terminated by the defendant. The only person whose possession was affected was really the landlord, for the tenant's interest terminated with his lease. At the time of suit the tenancy had ended and the landlord alone was the person deprived of possession by the defendant's wrongful act. To hold that the landlord in those circumstances was not entitled to bring the action would be to take away the right given by section 9 of the Specific Relief Act, in every case where the interest or the inclination of the tenant led him to decline to bring the action.

We agree with the case above cited which does not appear to have been cited before the learned Judge, and we reverse his decree and restore that of the District Munsif with costs.

(1) C.R.P. No. 643 of 1893 (unreported).