

APPELLATE CIVIL.

Before *Mr. Justice Sankaran Nair and Mr. Justice Krishnaswami Ayyar.*

1910.
January 10,
19.

RATHNASABAPATHI PILLAI AND OTHERS (FIRST, THIRD,
SEVENTH AND EIGHTH DEFENDANTS), APPELLANTS,

v.

RAMASAMI AIYAR (PLAINTIFFS), RESPONDENTS.*

Specific Relief Act I of 1877, ss. 9, 42—Trustee of temple—Wrongful dismissal and dispossession by co-trustees—Suit for declaration, invalidity of dismissal and injunction—Consequential relief—No claim to recover possession—Suit so framed not maintainable—Landlord—Possession by receipt of rent—Dispossession—Interest capable of delivery and possession.

When A, the trustee of a temple who had been ousted from possession by his co-trustees sued for a declaration that his dismissal from the trusteeship was invalid and for an injunction restraining his co-trustees and the temple committee from interfering with the exercise of his rights as trustee, there being no prayer for consequential relief in the nature of possession against his co-trustees :

Held, that the suit was not maintainable.

That possession should have been sued for and not a mere declaration.

An injunction is a discretionary relief and cannot be claimed by a plaintiff out of possession when he does not ask for possession against defendants who are actually in possession :

Kunj Bihari v. Keshavlal Hiratal [(1904) I.L.R., 28 Bom., 537], *dissented from.*

Jagadindra Nath Roy v. Hemantra Kumari Debi [(1905) I.L.R., 32 Calc., 129 (P.C.)], *referred to :*

Held further, that notwithstanding the lands belonging to the temple were in the physical possession of tenants, yet the plaintiff's right to receive rents was capable of possession which if disturbed entitled him to bring a suit for possession under section 9, Specific Relief Act.

Jagannatha Churry v. Rama Rayer, [(1905) I.L.R., 28 Mad., 238], *followed.*

Abdul Kadir v. Mohamed, [(1892) I.L.R., 15 Mad., 15], *followed.*

Narayana v. Shankunni, [(1892) I.L.R., 15 Mad., 255], *followed.*

SECOND APPEAL against the decree of F. Du P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 518 of 1906, presented against the decree of J. S. Gnaniyar Nadar, District Munsif of Tiruvalur, in Original Suit No. 95 of 1905.

* Second Appeal No. 667 of 1907.

Suit by the plaintiff, a trustee of a temple seeking a declaration that his dismissal from the trusteeship by his co-trustees and the temple committee was invalid; for an injunction restraining the co-trustees from interfering with the exercise of his rights as a trustee and for damages against the devastaniam committee. The plaintiff alleged that he had been ousted from possession of the temple lands by the eighth and ninth defendants. The eighth and ninth defendants *inter alia* contended that the temple and its properties were in their possession and management; that the plaintiff had been out of possession since 7th September 1904; and that the plaintiff had no right to the declaration and injunction sought for in the plaint.

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The contentions of the remaining defendants are immaterial for the purposes of this report.

The District Munsif framed the following material issue:—

“Whether the plaintiff was in possession of the temple properties, and if not, whether he was entitled to bring this suit for an injunction only?”

The District Munsif held that the removal of the plaintiff was valid, and that as the plaintiff was not in possession of the temple properties, after the appointment of the eighth and ninth defendants, co-trustees, the suit for a mere injunction and declaration was not maintainable.

On appeal by the plaintiff, the District Judge reversed the Munsif's decree and allowed the plaintiff's claim. No objection was taken on appeal before the District Court that the District Munsif's finding that the plaintiff was out of possession was erroneous.

The portion of the District Judge's judgment dealing with the maintainability of the suit was as follows:

“The lower Court held that plaintiff should have asked for such possession as it was possible for a trustee to obtain. *Narayana v. Shankunni* (15 Mad., 255) is relied on for two purposes. As in the present suit there was a prayer for a declaration that a document, corresponding to the order of dismissal here, was not binding, and there was then a prayer for a declaration of title without a prayer for possession. It was held that the facts that the properties were in the immediate possession of third parties, tenants, and next that the right of which declaration was claimed was a joint right with some of the defendants, did not make the

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prayer for possession unnecessary. As regards the first it is not clear to what class of tenancy those in question belonged; demises granted by the defendants are mentioned in the judgment, which presumably rebutted the presumption that the tenants held with occupancy right; there is nothing similar here, and, if the trustee's right is simply to collect rents, and there is nothing to the contrary, a declaration of plaintiff's right, as between him and defendants, would enable him to do so. The case in question is no authority for the view that plaintiff should have sued the tenants in the present suit, or need sue the eighth and ninth defendants, the existing trustees, when they are not alleged to have created the tenancies. As regards the question of joint right, the case must be distinguished from the present; plaintiff has reserved his contention that eighth and ninth defendants are not proper trustees, and the effect of his doing so can be considered, when he sues on it for their removal, or a declaration regarding their character. At present his contention is simply that they are enjoying rights and performing duties, in which he is entitled, as a trustee, to share. In the case relied on the plaintiff as against third defendant, at least, claimed that his possession should be ended, and their own substituted, and against first, and, apparently, second defendants claimed what the Court described as a possession distinct from that which these defendants had. It has not been shown in what the possession possible for a trustee, a suit for which the lower Court suggested, could consist, or what properties it could actually affect, or in what manner. As was asked in *Kunj Bihari v. Keshavlal* (28 Bom., 567) "how would practical effect be given to an award of possession of an office otherwise than by preventing interference with the rights of which it is made up"? *Vengun v. Chinnu* (14 M.L.J., 290) relied on by defendants, does not relate to the duties of a trustee or the claim to a declaration regarding them, but to the immediate possession of property usurped, it appears, by a trespasser; it is therefore not in point. In these circumstances it has not been shown that plaintiff's suit is wrongly framed."

The first, third, seventh and eighth defendants appealed to the High Court.

T. V. Gopalaswami Mudaliar for appellants.

G. S. Ramachandra Aiyar for respondent.

JUDGMENT.—The suit is by a dismissed trustee for a declaration of the invalidity of his dismissal and an injunction restraining

the co-trustees and the temple committee from interference with his exercise of the rights of a trustee. The District Munsif dismissed the suit holding that the removal of the trustee was valid and that as the plaintiff was out of possession the suit for a mere declaration and injunction was not maintainable. On appeal the District Judge reversed the Munsif's decree and allowed the plaintiff's claim. He held that the plaintiff's dismissal was irregular and that he was entitled to sue for the declaration and injunction. No ground was taken before him on appeal that the Munsif's finding as to the plaintiff being out of possession was erroneous. He rests his judgment on the authority of the decision in *Kunj Bihari v. Keshavlal Hivalal*(1) and distinguishes the decision in *Narayana v. Shankunni*(2) and the remarks of Subrahmanya Ayyar, J., in *Vengan Poosari v. Patchamuthu*(3). We are unable to agree with his view. No doubt the Bombay case referred to appears to support the District Judge; but in the face of the decisions of this Court we are unable to agree with him. The present case being clearly one of plaintiff having been ousted from possession it is open to him to sue for joint possession with defendants Nos. 8 and 9 who are admittedly the other trustees of the temple. It is said that the lands of the temple are in the physical possession of the tenants and that the plaintiff cannot have such possession himself. Besides the lands, there are the temple itself and moveable properties belonging to the temple. And even as regards the landlord's right to receive rents it is certainly capable of possession. It has been well pointed out in *The Zemindar of Vizianagram v. Behara Suryanarayana Patrudu*(4) that the interest of the landlord which may consist in the mere receipt of the rents is capable of delivery and possession and sections 264 and 319 of the Code of 1882 have been framed on that supposition. It has been held under section 9 of the Specific Relief Act, by this Court that possession by receipt of rents may be disturbed and the person dispossessed may bring a suit for possession under that section within six months of such dispossession (see *Jagannatha Charry v. Rama Rayer*(5)). In *Abdulkadar v. Mahomed*(6) and in *Narayana v. Shankunni*(2), it appears that there were

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(1) (1904) I.L.R., 28 Bom., 507.

(2) (1892) I.L.R., 15 Mad., 255.

(3) (1903) 14 M.L.J., 290.

(4) (1902) I.L.R., 25 Mad., 587 at pp. 591, 592.

(5) (1904) I.L.R., 28 Mad., 238.

(6) (1892) I.L.R., 15 Mad., 15.

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tenants in actual possession of the property. It was held by this Court, notwithstanding that circumstance, that a suit for possession should have been brought against the rival claimants to possession by receipt of rents. If the observations in *Subramanyan v. Paramaswaran*(1) are at variance with the view expressed in the above cases, we cannot accept them as correct. We must therefore hold that property in the actual possession of the tenants is capable of possession by the landlord (see also *Suryanarayunamurthi v. Tammanna*(2)) and one person claiming to be landlord ousted by another cannot content himself with suing for a mere declaration but must sue for consequential relief in the nature of possession against his rival claimants. And if the rival claimants are entitled to joint possession with the plaintiff, the plaintiff must sue for joint possession with them. It is however contended on the authority of the Bombay case, first, that section 42 of the Specific Relief Act does not require the whole consequential relief to be claimed and that injunction is a sufficient relief consequent on the declaration and secondly, that the rule requiring a plaintiff to seek for possession as consequential relief where he asks for a mere declaration is not applicable to trustees of temples. As regards the first position assuming that section 42 of the Specific Relief Act is to be understood as not requiring the whole consequential relief to be claimed, we think a plaintiff out of possession is not entitled to ask for an injunction merely against the person in possession. This question has been fully discussed to the judgment of Subrahmaniam Ayyar, J., in *Vengun Poosari v. Patchamuttu*(3), though his actual decision in the case was not upheld on appeal on another ground. Upon a review of the English cases the learned Judge came to the conclusion that injunction is not the appropriate relief where the plaintiff is entitled to claim possession against the defendants. Kerr on Injunctions (4th edition) states at page 82 "the result of the cases apart from the alteration made by the Judicature Act of 1873 was that where the plaintiff was out of possession the Court would refuse to interfere by granting an injunction unless there was fraud or collusion or unless the acts perpetrated or threatened were so injurious as to tend to the destruction of the estate." Again at page

(1) (1887) I.L.R., 11 Mad., 116 at p. 122. (2) (1901) I.L.R., 25 Mad., 504.

(3) (1903) 14 M.L.J., 290.

114 "if the trespass or damage is complete and the title is a pure legal title, the Court would not in general interfere by way of mandatory injunction, there being a full remedy at law by ejectment." The passages above cited are supported by a number of English cases some of which Mr. Justice Subramania Aiyar has referred to in his judgment in *Vengan Poosari v. Patchamuttu*(1). It is true that the language of section 25, sub-section 8 of the Judicature Act of 1873 is wider and allows an injunction whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise. But notwithstanding the generality of the language the principle laid down by Kindersley, Vice-Chancellor, in *Lowndes v. Bettle*(2), and approved of by the Court of Appeal in *Stanford v. Hurlstone*(3) has been re-affirmed, *vis.*, that while defendant is in possession and the plaintiff seeks an injunction without possession, his claim will not be upheld. See *Leeds and Liverpool Navigation Company v. Horsfall*(4). An injunction is a discretionary relief under section 52 of the Specific Relief Act and the considerations adverted to by Mr. Justice Subramania Aiyar in the case in *Vengan Poosari v. Pachamuttu*(1) against the grant of such relief in this country where the plaintiff is entitled to ask for possession against the defendant are entitled to full weight. If therefore the plaintiff in the present case cannot claim an injunction when he is out of possession and defendants Nos. 8 and 9 are in possession, the only other relief claimed in the plaint that remains is a mere declaration. It is thoroughly well established that the plaintiff cannot sue for a mere declaration when he is entitled to consequential relief. Speaking with all respect, it appears to us that the learned Chief Justice of Bombay has overlooked the fact that injunction is a discretionary relief and cannot be claimed by a plaintiff out of possession when he does not ask for possession against the defendant who is actually in possession.

Passing to the next point, *viz.*, that the plaintiff is only a trustee of the temple, we are unable to appreciate the distinction. It is said that the property is vested in the idol and that an injunction restraining interference secures to the plaintiff the rights he claims in the most complete manner. In the Bombay case the

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(1) (1903) 14 Mad. L.J., 290.

(3) (1873) L.R., 9 Ch., 116.

(2) 33 L.J., Ch. 451 at p. 454.

(4) 33 Solicitor's Journal, 183.

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plaintiff claimed the office of an Acharya but it included the management of a temple and of inams and other properties attached to it. It was not a mere performance of certain duties which might involve no possession of properties. Under those circumstances it is difficult to see that a mere restraint from interference is equivalent to the transfer of possession from the defendant to the plaintiff. The learned Chief Justice of Bombay asks "how would practical effect be given to an award of possession of an office otherwise than by preventing interference with the rights of which it is made up." Where tangible moveable and immoveable property is also attached to the office, the question as regards the property is easily answered. There are provisions in the Code for giving possession of immoveable property and the possession of such property is a great deal more than the prevention of other people's interference. But even where it is a mere office of which possession is claimed, article 124 of the Limitation Act explains the mode of possession which certainly is more than the mere restraint of another from interference. Possession is positive and connotes acts of dealing with the property and sometimes beneficial enjoyment while an injunction which restrains another from interference is negative. The fact of the idol being the owner and the plaintiff the trustee does not appear to us to affect the question. In *Jagadindra Nath Roy v. Hemanta Kumari Devi*(1), the Judicial Committee of the Privy Council while recognizing that an idol may be regarded as a judicial person capable as such of holding property, observed "Assuming the religious dedication to have been of the strictest character it still remains that the possession and management of the dedicated property belongs to the Sebait and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Sebait and not in the idol." It follows that the circumstance of a trustee suing is no answer to the objection that possession should have been sued for and not a mere declaration. For the foregoing reasons we hold that the present suit is not maintainable and in reversal of the decree of the District Judge we restore the decree of the District Munsif with costs in this and the lower Appellate Court.

(1) (1905) I.L.R., 32 Calc., 129.