

## APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

1915.

November  
19 and 22.

TIRUVENGADA KONAN (PLAINTIFF), APPELLANT,

v.

30M.L.7250 VENKATACHALA KONAN AND FOUR OTHERS (DEFENDANTS),  
RESPONDENTS.\*

*Lessor and lessee—Lease for a term—Dispossession of lessee, within term by trespassers—Right of suit of lessor, for actual possession—Lessee joined as defendant—Decree—Declaration of title—If formal possession can be given.*

A lessor whose lessee is dispossessed by a stranger can maintain a suit against the stranger during the term of the lease and obtain a decree not only declaring his title to the reversion, but also awarding him "formal" possession of the land as provided by Order XXI, rule 36, Civil Procedure Code.

*Bissessuri Dabeea v. Baroda Kanta Roy Chowdry* (1884) I.L.R., 10 Calc., 1076 and *Sita Ram v. Ram Lal* (1896) I.L.R., 18 All., 440 (F.B.), followed.

SECOND APPEAL against the decree of P. C. TIRUVENKATA ACHARIYAR, the acting Subordinate Judge of Tanjore, in Appeal No. 455 of 1913 preferred against the decree of C. VIRASWAMI REDDI, the District Munsif of Tirutturaippundi, in Original Suit No. 68 of 1912.

The plaintiff, who was the owner of the suit lands, leased them to the third defendant for a term of three years under a lease deed, dated 9th November 1911, and put the lessee in possession of the same on the same date. Subsequently when the first year's crops were ready for harvest, defendants Nos. 1 and 2 trespassed upon the lands, carried away the crops and remained in possession of the lands. The third defendant immediately gave intimation by a notice to the plaintiff about the trespass of the first and second defendants, and also informed him that he (the third defendant) would not be liable for the rent, but did not surrender the lease before the expiry of the term. The plaintiff brought the suit on the 18th March 1912 to eject the first and second defendants from the possession of the lands. These defendants contended *inter alia* that the plaintiff was

\* Second Appeal No. 1932 of 1914.

not competent to maintain the suit for possession against them, as the lease in favour of the third defendant (which was for three years) was subsisting and the plaintiff was not entitled to sue for possession during the currency of the lease. The District Munsif passed a decree for the delivery of possession of the lands by the first and second defendants to the plaintiff. On appeal the lower Appellate Court reversed the decree and dismissed the suit. The plaintiff preferred a Second Appeal.

*C. V. Anantakrishna Ayyar* for the appellant.

*T. R. Venkatarama Sastriar* for the respondent.

SADASIVA AYYAR, J.—Mr. Justice HANNAY and myself held in *Souri Ammal v. Vellaya Sethurayan*(1) that where a landlord (A) is under an obligation to put his tenant (B) into khas possession of the leased land he (A) is entitled to succeed in a suit in ejectment brought against a trespasser even if the suit was brought during the term of his tenancy.

In this case, however, the plaintiff had put his tenant (the third defendant) into possession and hence had discharged his obligation as landlord to let the third defendant into actual possession. But the plaintiff has a reversion in the plaint lands and he might be said to have been dispossessed of that reversion when the defendants Nos. 1 and 2 took possession of the lands not only adversely to the tenant (the third defendant) but claiming adversely to the plaintiff's reversion.

In such a case, *Sita Ram v. Ram Lal*(2) decides that the landlord can be put in possession of his reversion by the passing of a decree against the trespassers in the form indicated in section 264 of the old Civil Procedure Code corresponding to Order XXI, rule 36 of the new Civil Procedure Code. I do not think it is necessary to adopt the rather too broad a view indicated in certain passages of the judgment of SUNDARA AYYAR, J., in *Ambalavana Chetty v. Singaravelu Udayar*(3) that the landlord even in such a case is entitled to khas possession from the trespassers. [*Sita Ram v. Ram Lal*(2) is not referred to by SUNDARA AYYAR, J., in his judgment.] Mr. Venkatarama Sastriar for the contesting respondents (defendants Nos. 1 and 2) argues that the landlord is entitled only to a declaratory decree and

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(1) (1915) 29 M.L.J., 233.

(2) (1896) L.L.R., 18 All., 440 (F.B.).

(3) (1912) M.W.N., 669.

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that a decree granting possession of the reversion in the form indicated in Order XXI, rule 36, Civil Procedure Code, is nothing more than a decree declaratory of the title of the plaintiff to his reversion which decree he argues should not be given to him at this stage. I think that, though the distinction between a decree declaring the landlord's right to his reversion and a decree giving him possession of his reversionary right in the lands might be fine [see *Ghulam Husain v. Muhammad Husain*(1) where the existence of the distinction seems to be ignored], the said distinction is a real one, for it may be argued that a mere declaratory decree against a trespasser will not prevent the limitation period from running on. Whereas a decree for possession of the reversion, properly executed, will nullify the effect of the adverse possession of that reversionary right by the trespasser during that period (at least) which elapsed before the possession of the reversion was so obtained in execution.

I think that on the facts found in this case the plaintiff's suit should not have been dismissed wholly though he sued for khas possession which he was not entitled to get during the period of the third defendant's lease.

Relying on *Bissessuri Dabeea v. Baroda Kanta Roy Chowdry*(2) and *Sita Ram v. Ram Lal*(3), I would give a decree declaring the plaintiff's title to the lands as against the defendants Nos. 1 and 2 and giving him what is called "formal" possession of the land by the proclamation of his reversionary right (namely, the right to obtain khas possession of the lands at the end of the term and to be obtaining rents from the third defendant during the term of the lease). The claim for mesne profits will be disallowed.

The parties will bear their respective costs throughout.

NAPIER, J.

NAPIER, J.—I agree.

K.R.

(1) (1909) I.L.R., 31 All., 271.

(2) (1884) I.L.R., 10 Cal., 1076.

(3) (1896) I.L.R., 18 All., 410 (F.B.).