

1893

DAULETA
KUARI
c.
MEGHU
TIWARI.

widow became unchaste after her husband's death and was leading an immoral life at or about the date of the suit, she was not entitled to maintenance. The judgment in that case, in which I freely concur, disposes of the second point. The appeal therefore fails on all sides and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

RAM HARAKH RAI (DEFENDANT) v. SHEODIHAL JOTI (PLAINTIFF).*

*Act I of 1877, s. 9—Suit for possession of land by person wrongfully ejected—
Joinder of other claims.*

A Court should in all cases in which it applies give effect to the provisions of the first paragraph of s. 9 of the Specific Relief Act, 1877, whether that section is expressly pleaded or not.

There is nothing to prevent a claim for damages and a claim for establishment of title being joined with a claim for the relief provided for by the above mentioned section.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Jogindro Nath Chaudhri* for the appellant.

EDGE, C.J., and AIKMAN, J.—This appeal raises a question not free from difficulty. The plaintiff is mortgagee of an occupancy-holding not held at a fixed rate. He got into possession and had been in possession for many years. The defendant, who alleges that the right of occupancy devolved upon him under s. 9 of Act XII of 1881, dispossessed the plaintiff otherwise than in due course of law and without the consent of the plaintiff. At the time of the dispossession the plaintiff had crops growing upon the holding. These crops the defendant seized and disposed of to his own use. The suit out of which this appeal has arisen was brought within six

* Second Appeal No. 210 of 1891 from a decree of J. J. McLean, Esq., Officiating District Judge of Azamgarh, dated the 24th December 1890, confirming a decree of Maulvi Ahmad Husain, Subordinate Judge of Azamgarh, dated the 19th May 1890.

1893

May 30.

months from the date of dispossession. The plaintiff claimed to be put in possession under his mortgage-deed, which was dated the 4th of February, 1876, and also to recover damages for the interference with and conversion of his crops. The first Court decreed the claim. On appeal the lower appellate Court confirmed the decree of the first Court, and the defendant has brought this appeal. Mr. *Jogindro Nath*, for the defendant, contends that the plaintiff had no title, as the transfer by mortgage with possession to the plaintiff was in contravention of s. 9 of Act XII of 1881. He also contends that this suit cannot, as to any part of it, be regarded as a suit under the first paragraph of s. 9 of Act No. I of 1877 (the Specific Relief Act of 1877); and further that, as the plaintiff had no legal title to the land, his client, the defendant, is not liable in damages for taking and removing the crops. It appears to us that the first paragraph of s. 9 of Act No. I of 1877 had a most salutary object in view, *viz.*, to discourage persons forcibly, or otherwise than in due process of law, turning persons in possession of property out of possession thereof, and that Courts should give effect to the first paragraph of s. 9 of Act No. I of 1877 in all cases to which it applies. Undoubtedly there was a dispossession here otherwise than in due course of law, and a dispossession without the consent of the plaintiff. His suit was brought within six months from the date of that dispossession. He consequently was entitled to a decree for possession, no matter what title might be shown against him, and no matter how infirm might be his own title to possession, so long as he had actually held possession. The fact that the plaintiff, in addition to alleging and proving the facts which would entitle him to a decree under the first paragraph of s. 9, claimed a title as mortgagee, would not disentitle him to a decree under the first paragraph of s. 9. The decree under the first paragraph of s. 9 is not a decree which decides any question of title whatever. So far as the decree of the first Court, which was affirmed below, is a decree for possession to the plaintiff, it must be treated as a decree in a suit passed under the first paragraph of s. 9 of Act No. I of 1877, and not as a decree deciding any question of title.

1883

 RAM HA-
 RAKH RAI
 v.
 SHEODIHAR
 JOHI.

1893

RAM HA-
RAKH RAI
v.
SHRODDHAL
JOTI.

So far as the decree of the first Court or of the Court of appeal might be regarded as a decree establishing the plaintiff's title to possession as mortgagee of the occupancy-holding, we set it aside, as the plaintiff failed to make out a good title as mortgagee. The decree so far as it went to establish his title as mortgagee was appealable, notwithstanding the last paragraph of s. 9 of Act No. I of 1877; and so also would be that portion of the decree which went to the question of damages, as the suit under the first paragraph of s. 9 of Act No. I of 1877, the decree in which is not appealable, does not comprise a claim for damages. We see no reason why a claim for damages and a claim for establishment of title may not be combined with a claim based on the first paragraph of s. 9 of Act No. I of 1877. As to the claim for damages we are of opinion that the decree below is right. The crops were sown by a person in possession and who had been in possession for many years. The defendant illegally turned that man out of possession, illegally, in the sense that he did not employ the assistance of a Civil Court or a Court of Revenue, but seized and dealt with the crop as if it was his own. The result is that, so far as the decree is merely for possession, the decree of the first Court must stand, as there is no appeal from that decree allowed by law. So far as the decree is one for damages, no case is made out here for our setting it aside, but, so far as it may be treated as a decree establishing the plaintiff's title, we set it aside and we dismiss the plaintiff's suit so far as it is a suit asking for the establishment of title. There will be no costs allowed to either side in this Court. To the above extent, *i.e.*, on the question of title the appeal is allowed.

Decree modified.
