

tainable on any terms whatever, but that it was necessary that before a suit is brought other remedies should be exhausted—See *Lalit Coomar Bose v. Ishan Chunder Chuckerbutty* (1). WILSON and BEVERLEY, JJ., in their judgment, considered that that case was not in point as the purchaser had not perfected his title.

In this particular case the same remark applies, but, speaking for myself, I should like to say that in any decision which limits the jurisdiction of these Courts, unless the jurisdiction is expressly taken away, I do not agree; and that in my opinion whether the remedy under s. 318 has or has not been put in force, the plaintiff, who has purchased the property and has been refused possession of it, has a right to come to the Civil Court and obtain possession of that property. We have examined the cases bearing on this matter, and we find the balance in favor of that view. Therefore we do not refer this case to the Full Bench.

So far, therefore, as the action for the land is concerned, the suit can be maintained and this suit must be decreed, there being no other defence but this technical one.

The result is that the appeal will be dismissed as far as regards the house, and it will be decreed as far as the land is concerned.

Under the circumstances of this case, and in order to save the trouble of taxation, we think that each party should pay his own costs of this appeal.

T. A. P.

Decree varied.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF TARINI MOHUN MOZUMDAR.

TARINI MOHUN MOZUMDAR *v.* GUNGA PROSAD CHUCKERBUTTY *alias* TINCOWRIE CHUCKERBUTTY.*

Specific Relief Act, I of 1877, s. 9—Possessory Suit—Constructive possession by receipt of rents.

The mere discontinuance of payment of rent by tenants does not constitute a dispossession within the meaning of s. 9 of the Specific Relief Act.

* Civil Rule No. 717 of 1887, against the order of Baboo Jogendra Nath Mukerjee, Munsiff of Gailandha, dated the 19th of April, 1887.

(1) 10 C. L. R., 258.

1887

KISHORI
MOHUN ROY
CHOWDHRY
v.
CHUNDER
NATH PAL.

1887

June 15.

1887

TARINI
MOHUN
MOZUMDAR
v.
GUNGA
PROSAD
CHUCKER-
BUTTY.

The object of that section is to provide a speedy remedy for that class of cases where a person in physical possession of property is forcibly dispossessed from it against his will and consent.

THIS was a suit under s. 9 of the Specific Relief Act.

The plaintiff alleged that he was in constructive possession of certain lands by receipt of rent from tenants, and that he had been dispossessed therefrom against his consent by the defendant, who had realised rent from some of such tenants and had prevented others from paying rents to him.

The defendant contended that the suit was not maintainable under s. 9, and raised various questions of title, relying upon certain facts justifying his collection of rent from the tenants.

The Munsiff dismissed the suit on the ground that it was not maintainable under the Specific Relief Act, stating that the plaintiff did not seek to recover tangible possession of the lands in dispute, but merely sought to get rents from the tenants in occupation of the land; that the point for decision was really one involving a question of priority of the plaintiff's or the defendant's right to receive rents; and that such a question could not be determined in a suit brought under s. 9 of the Specific Relief Act.

The plaintiff moved the High Court, and obtained a rule calling upon the defendant to show cause why the decision of the Munsiff should not be set aside.

Baboo *Chandra Kant Sen* to show cause.

Baboo *Ishwar Chunder Chuckeravati*, in support of the rule, cited *In re Sutherland* (1) as showing that a person is not in actual possession where the rents are paid by the actual occupier, not to him, but to an intermediate holder; and that in accordance with that decision he was out of possession, and could sue under the Specific Relief Act.

The order of the Court (PETHERAM, C.J., and GHOSE, J.) was delivered by

GHOSE, J.—The facts of this case, so far as they are necessary to be mentioned for the purposes of the rule before us, are these: There is a certain property which is occupied by a number of

ryots. The plaintiff alleges that he was in constructive possession of this property by receipt of rent from the ryots, but that, on a certain day, the defendant induced them to discontinue paying their rent to the plaintiff and to pay it instead to him, the defendant. The plaintiff, thereupon, brought the present action under s. 9 of the Specific Relief Act for the purpose of recovering possession of the said property from the defendant.

The Munsiff has held that this suit does not fall within the scope of s. 9 of that Act, and has accordingly dismissed it. That section runs thus: "If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit."

The learned Vakil for the petitioner contends that his client was the party in possession of this property, and that the only mode in which that possession could, in the circumstances, be enjoyed was by receipt of rent, and that, when the ryots discontinued paying him rent and paid the same to the defendant, he was practically dispossessed within the meaning of s. 9, and that he was, therefore, entitled to maintain the present suit; and he relied upon certain remarks made by Sir Richard Couch in the case of *In re Sutherland* (1).

What Sir Richard Couch was called upon to determine in that case was as to the meaning of the word "possession" in s. 318 of Act XXV of 1861, and he held that if a person was in possession of a property through his servant, or if he was in possession through ryots paying rent to him directly, that would be a possession within the meaning of that section; and, if a dispute with regard to such possession arose before the Criminal Court, that Court would have jurisdiction to take cognisance of it.

But the question that we have to consider in the present case is a wholly different one. What we have to determine is whether the plaintiff has been dispossessed, without his consent,

1887

TARINI
MOHUN
MOZUMDAR
v.
GUNGA
PROHAD
CHUCKER-
BUTTY-

(1) 9 B. L. R., 229.

1887

 TARINI
 MOHUN
 MOZUMDAR
 v.
 GUNGA
 PRASAD
 CHUCKER-
 BUTTY.

of the property in dispute within the meaning of s. 9 of the Specific Relief Act.

According to the plaintiff's own case the actual possession of the property was with the ryots, and the only way in which possession was enjoyed by him was by receipt of rent from those ryots. Now, if he was in the receipt and enjoyment of the rents from the ryots, the mere discontinuance of the payment of that rent would not constitute a dispossession without his consent within the meaning of the Specific Relief Act, for he might very well bring a civil action against the ryots for the recovery of the rent; and the mere fact of the defendant having persuaded the ryots to pay to him the rent, said to be due to the plaintiff, would be no answer to the claim. Therefore it appears to us that the plaintiff was not dispossessed against his consent so as to entitle him to maintain the action.

It appears to us that the real object of the Legislature in engrafting this section into the Specific Relief Act was to provide a speedy remedy for that class of cases where a person in physical possession of property is forcibly dispossessed from it against his will and consent. It is not the plaintiff's case that the ryots have been dispossessed; his case is that the ryots are still in occupation of the property. If they had been dispossessed they might have maintained a suit for recovery of possession; and in certain circumstances he might himself bring such a suit. But they are in possession, and, as I said before, the mere non-payment of the rent by them cannot be taken to be a dispossession of the plaintiff without his consent.

Reference was made to ss. 2 and 4 of Act IV of 1840 and s. 15 of Act XIV of 1859. We have considered those enactments; and we observe that the language of s. 4, Act IV of 1840, is very different from that of s. 15, Act XIV of 1859, and of s. 9 of the Specific Relief Act, so far as the particular point before us is concerned. It seems to us that, notwithstanding what might have been laid down in s. 4 of Act IV of 1840, the Legislature, when it promulgated the Specific Relief Act, did not intend to provide that, where a person was not in actual possession of property, but only in constructive possession of it by receipt of rent from ryots, and those ryots

continued in occupation of that property, a suit by the landlord might be brought under the Specific Relief Act for recovery of possession by reason of discontinuance by the ryots to pay him rent.

For these reasons we think that this rule must be discharged with costs.

T. A. P.

Rule discharged.

1887
 TARINI
 MOHUN
 MOZUMDAR
 v.
 GUNGA
 PRASAD
 CHUCKER-
 BUTTY.

CRIMINAL MOTION.

Before Sir W. Comer Fetheram, Knight, Chief Justice, and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF ISWARCHUNDER GUHO AND
 OTHERS.*

1887
 June 30.

False evidence—Affidavit affirmed before a Deputy Magistrate—Prosecution on facts stated in an affidavit affirmed before a Deputy Magistrate—Penal Code, Act XLV of 1860, ss. 193, 199—Declaration by law receivable as evidence—Sanction to prosecute, Order for, quashed.

A Deputy Magistrate has no power to administer an oath to a person making a declaration in the shape of an affidavit; and such person cannot, on the facts stated in such declaration, be prosecuted for committing an offence either under s. 193 or s. 199 of the Penal Code.

THIS was a rule calling upon the District Magistrate of Mymensingh to show cause why an order passed by him sanctioning a prosecution under s. 199 of the Penal Code should not be quashed.

The sanction referred to was given under the following circumstances:—

One Dherai Duffadar, a cattle dealer, had preferred a complaint against Sarat Chunder Bhoomick and Gazi Shaik, charging them with wrongful restraint in having prevented his cattle from being taken to a certain mela. Baboo Shama Chunder Dass, a Deputy Magistrate of Jamalpur, referred the complaint to the police for investigation, and the police subsequently sent up the two accused with a report that the charge was true. On the appli-

* Criminal Motion No. 163 of 1887, against the order passed by E. G. Glazier, Esq., District Magistrate of Mymensingh, dated the 27th of April, 1887.