1910
August 11.

FULL BENCH.

Before Mr. Justice Sir George Knox, Mr. Justice Banerji and Mr. Justice Karamat Husain.

LACHHMAN (PLAINTIFF) *v.* SHAMBHU NARAIN AND OTHERS (DEFENDANTS).*

Act No. I *of* 1877 *(Specific Relief Act), sections* 8 *and* 9—*Suit for ejectment based on title—Court not competent in such a suit to grant a decree on the basis merely of previous possession.*

Where a plaintiff sues for possession on the basis of title and fails to establish his title, he cannot be granted a decree for possession under the first paragraph of section 9 of the Specific Relief Act. *Ram Harakh Rai* v. *Sheodihal Joti* (1) and *Mousi* v. *Kashi* (2) overruled. *Ramasami Chetti* v. *Paraman Chetti* (3) followed. *Wajid Ali* v. *Ram Saran* (4) and *Chuthan Rai* v. *Sheo Ghulam Rai* (5) referred to.

THE facts out of which this appeal arose were as follows:—

The plaintiff alleged that he was the owner of the grove which he and his ancestors held rent-free; that the defendants Nos. 3 to 11 were his co-sharers; that the first two defendants, who are the land-holders of the village wrongfully dispossessed him in July, 1906, and let it to the 13th defendant, and that he, plaintiff, as one of the owners of the grove, was entitled to be restored to possession. He accordingly brought the suit out of which this appeal has arisen, on the 7th of January, 1907, for ejectment of the defendants Nos. 1, 2 and 13 and for recovery of possession of the grove. The court of first instance found that the plaintiff was the tenant of the defendants Nos. 1 and 2 in respect of the grove and not the owner of it and that he had been dispossessed within six months preceding the date of the institution of the suit. It made a decree in the plaintiff's favour for possession as tenant. On appeal by the defendants the lower appellate court held that the plaintiff had forfeited his right as tenant by denying his landlord's title, that the trees now existing in the grove were of spontaneous growth and were not planted by the plaintiff or his predecessors in title, and that he was not entitled to recover possession. The suit was accordingly dismissed.

*Second Appeal No. 1038 of 1908, from a decree of Prem Bihari Lal, Subordinate Judge of Farrukhabad, dated the 25th of August, 1908, reversing a decree of Suraj Narain Majju, Munsif of Kanauj, dated the 24th of July, 1907.

(1) (1893) I. L. R., 15 All., 384. (3) (1901) I. L. R., 25 Mad., 448.
(2) Weekly Notes, 1897, p. 145. (4) Weekly Notes, 1884, p. 89.
(5) Weekly Notes, 1889, p. 89.

The plaintiff appealed to the High Court. On the appeal coming up for hearing before their Lordships KNOX and KARAMAT HUSAIN, JJ., it was referred to the Chief Justice for the constitution of a larger Bench in view of the fact that the rulings of the Court on the point raised in it appeared to be in conflict. The order of reference was as follows:—

"The suit out of which this second appeal arises was a suit brought by the appellant, who was plaintiff in the court of first instance, for possession of a grove, which he claimed as forming part of a rent-free tenure which had been since the settlement made under Regulation IX of 1833 in the possession of Mansa Ram, ancestor of the plaintiff, and of his descendants. He alleged forcible dispossession by the respondents in July, 1906. In January, 1907, therefore he brought the present suit for recovery of possession.

"The court of first instance gave him a decree. The lower appellate court reversed this decree on the ground that as the plaintiff had denied the relationship of landlord and tenant and raised a question of proprietary title which he had not proved his suit should be, and it was, dismissed.

"In second appeal the plaintiff contends that as the respondents forcibly dispossessed him and as his suit has been brought within six months from the date of dispossession, he is entitled, in any case, to a decree for possession under section 9 of the Specific Relief Act.

"The question then raised is whether in a suit for ejectment a plaintiff, who bases his claim upon proprietary title, is entitled to a decree under section 9 of the Specific Relief Act, in any event, if he sues within six months from the date of dispossession and independently of whether he makes good the title under which he professes to sue.

"On this point the rulings of this Court would appear to be in conflict.

"In *Wali Ahmad Khan* v. *Ajudhia Kandu* (1) it was held by the majority of the court that section 9 of the Specific Relief Act is intended to provide a special summary remedy for a person who being, whatever his title, in possession of immovable property is ousted therefrom. In *Ram Harakh Rai* v. *Sheodihal Joti* (2) a similar view was taken, and it was held that a court should in all cases in which it applies give effect to the provisions of the first paragraph of section 9 of the Specific Relief Act, 1877, whether that section be expressly pleaded or not. In *Mousi* v. *Kashi* (3) one of us followed, but with reluctance, the law laid down in *Ram Harakh Rai* v. *Sheodihal Joti*. These rulings were followed in *Parbhu Lal* v. *Ram Charan* (4).

"On the other hand, this Court in *Wajid Ali* v. *Ram Saran Sahai* (5), in *Chuthan Rai* v. *Sheo Ghulam Rai* (6) and in *Baldeo Das* v. *Mangni Ram* (7) held that section 9 of the Specific Relief Act referred only to cases in which no title was set up, but only the fact of dispossession established, and not to cases in which the plaintiff sought a declaration of title.

(1) (1891) I. L. R., 13 All., 537.
(2) (1893) I. L. R., 15 All., 384.
(3) Weekly Notes, 1897, p. 115.
(4) Weekly Notes, 1907, p. 244.
(5) Weekly Notes, 1881, p. 39
(6) Weekly Notes, 1889, p. 83.
(7) Weekly Notes, 1900, p. 7.

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"Our attention has moreover been called to the cases of *Rama Sami Chetti* v. *Paraman Chetti* (1), in which the Madras High Court declined to follow the case *Ram Harakh Rai* v. *Sheodihal Joti* and held that where a suit had not been brought under the special provisions of the Specific Relief Act, but was based on plaintiff's superior title, a claim to title being also set up in defence, the issue concerning title should have been tried.

"We think the question is one which calls for consideration by a Full Bench of this Court and direct that with the approval of the learned Chief Justice, the question raised in this case may be so referred."

The case then came on for hearing before a Full Bench, consisting of KNOX, BANERJI, and KARAMAT HUSAIN, JJ.

Dr. *Satish Chandra Banerji* (Munshi *Jang Bahadur Lal* with him), for the appellant:—

The sole question for decision in this appeal is whether a plaintiff who brings a suit for possession of immovable property by ejectment of the defendant on the basis of his own title, but fails to prove that title, would nevertheless be entitled to a decree for possession of the property if he can prove possession over that property within six months anterior to the date of his dispossession, under the provisions of section 9 of the Specific Relief Act, 1877, even if that section be not expressly pleaded. This question was answered in the affirmative by a Division Bench of this Court in *Ram Harakh Rai* v. *Sheodihal Joti* (2), and this ruling was followed in *Mousi* v. *Kashi* (3) and *Parbhu Lal, Ram Charan* (4). The court of first instance has found in this case that the plaintiff's suit was instituted within six months of the date of his dispossession, and that finding has not been disturbed by the lower appellate court. In view, therefore, of the above rulings of this Court, the plaintiff is entitled to a decree for possession of the property in suit, although he claimed on the basis of his title, and endeavoured to prove it, but failed.

There is nothing in section 9 of the Specific Relief Act to show that the plaintiff is precluded from bringing a suit upon his title and at the same time claiming the benefit of that section. The authorities are clear that the section need not be specifically pleaded. Possession may be a source or root of title, and in any case deserves to be protected. When a person out of possession therefore sues for possession, if he proves his title, there can be

(1) (1901) I. L. R., 25 Mad., 448.
(2) (1893) I. L. R., 15 All., 384.
(3) Weekly Notes, 1897, p. 145.
(4) Weekly Notes, 1907, p. 244

no further question, but if he cannot, the mere fact of his anterior possession will entitle him to a decree for possession, provided only that his suit is brought within six months of the date of his illegal dispossession. There is nothing in the language of sections 8 and 9 of the Act to indicate that the remedies are alternative. The plaintiff has the option either to bring a suit upon his title or to bring merely what is called a possessory suit. The beneficial object of section 9, as explained in *Wali Ahmad Khan* v. *Ajudia Kandu* (1), ought not to be lost sight of. There are old rulings of this Court which uphold the contrary view, but no reasons are given: *Wajid Ali* v. *Ram Saran Sahai* (2), *Chuthan Rai* v. *Sheo Ghulam Rai* (3), *Baldeo Das* v. *Mangni Ram* (4). The Madras High Court in *Ramasami Chetti* v. *Parman Chetti* (5) declined to follow the ruling in *Ram Harakh Rai* v. *Sheodihal Joti* (6).

Babu *Jogindro Nath Chaudhri* (Munshi *Gulzari Lal* with him), for the respondent:—

Sections 8 and 9 of the Specific Relief Act provide for alternative remedies and they are mutually exclusive. From the language of sections 8 and 9 we find that an option has been given to the plaintiff. He may either bring a regular suit upon his title under section 8 of the Act, or he may elect to adopt the summary procedure provided by section 9 under which no question of title can be raised. The object of section 9 is clearly to discourage forcible and unlawful dispossession. In order to grant relief under this section the court will only see whether the plaintiff was wrongfully dispossessed within the six months of the date of the institution of the suit. No other question can be gone into in such a suit. Any option or privilege granted by this section can be waived by the party concerned. When, therefore, the plaintiff brings a suit upon his title, he does not avail himself of the privilege granted by section 9 of the Act. He clearly intends that the court should grant *him* relief as in a regular suit on the strength of his title. There is no warrant in law for the court after it has examined the question of title in detail and found it against the plaintiff, to give him

(1) (1891) I. L. R., 13 All., 537.
(2) Weekly Notes, 1884, p. 39.
(3) Weekly Notes, 1889, p. 89.
(4) Weekly Notes, 1900, p. 7.
(5) (1901) I. L. R., 25 Mad., 448.
(6) (1893) I. L. R., 15 All., 384.

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relief under the summary jurisdiction provided by section 9. And the plaintiff may for very good reason desire that the question should not be settled summarily and that a decision once for all should be given on the basis of his title. The evidence in support of his title, for instance, may not be available to him when the question of title is litigated subsequently. A suit under section 9 of the Specific Relief Act, again, it will be observed, is very limited in its scope. No appeal is allowed from any order or decree passed under this section; neither can such order or decree be reviewed. The plaintiff may, therefore, well choose his remedy under a suit on title and waive his right to a summary remedy. The right to both the remedies cannot therefore be combined in one and the same suit.

There is, again, I submit, a question of estoppel to be considered in such a case. By the frame of his suit and by his representations to the court the plaintiff induces and obliges the defendant to undergo an amount of trouble and expense to disprove the plaintiff's title and substantiate his own. The plaintiff cannot then be allowed at the last moment, when he fails to prove his title—the basis of his suit—to turn round and ask the court not to look upon all the evidence adduced, but to give him a relief only upon the basis of dispossession. If the court really finds upon evidence that the title is with the defendant and not with the plaintiff, it cannot be justified in granting any relief to the plaintiff and in ignoring the defendant's cause, thus driving him to useless litigation. This would be both inconvenient and anomalous. It is certainly open to the plaintiff to amend his plaint before the trial commences. But if he elects to go to trial upon the merits of his title, he must prove that title to obtain any relief in the suit.

Dr. *Satish Chandra Banerji*, was heard in reply.

KNOX, BANERJI, and KARAMAT HUSAIN, JJ.:—The sole question raised in this appeal is whether a plaintiff who sues for possession and for ejectment of the defendant on the basis of title and fails to prove his title is still entitled to a decree for possession under section 9 of the Specific Relief Act, 1877, if he can prove possession within six months anterior to the date of his

dispossession. As there are conflicting rulings in this Court on the point the case has been referred to this Bench.

The facts are these :—The plaintiff alleged that he was the owner of a grove which he and his ancestors held rent-free; that the defendants Nos. 3 to 11 were his co-sharers; that the first two defendants, who are the land-holders of the village, wrongfully dispossessed him in July, 1906, and let it to the 13th defendant, and that he, plaintiff, as one of the owners of the grove, was entitled to be restored to possession. He accordingly brought the suit out of which this appeal has arisen, on the 7th of January, 1907, for ejectment of the defendants Nos. 1, 2 and 13 and for recovery of possession of the grove. The court of first instance found that the plaintiff was the tenant of the defendants Nos. 1 and 2 in respect of the grove, and not the owner of it, and that he had been dispossessed within six months preceding the date of the institution of the suit. It made a decree in the plaintiff's favour for possession as tenant. On appeal by the defendants the lower appellate court held that the plaintiff had forfeited his right as tenant by denying his landlord's title, that the trees now existing in the grove were of spontaneous growth and were not planted by the plaintiff or his predecessors in title, and that he was not entitled to recover possession. The suit was accordingly dismissed.

The findings of the lower appellate court have not been questioned in the argument before us, but it is contended that as the court of first instance found that the plaintiff's suit had been instituted within six months of the date of his dispossession and this finding was not dissented from by the lower appellate court, the plaintiff was entitled to a decree under section 9 of the Specific Relief Act, although he failed to establish his title. In support of this contention we have been referred to the decision of this Court in *Ram Harakh Rai* v. *Sheodihal Joti* (1), which undoubtedly favours the contention. In that case it was held that "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 section 9, claimed a title as mortgagee, would not disentitle him to a decree under the first paragraph of section 9." The learned Judges further observed :—"We see no reason why

(1) (1898) I. L. R., 15 All., 384.

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a claim for damages and a claim for establishment of title may not be combined with a claim based on the first paragraph of section 9 of Act No. 1 of 877." With great respect we are unable to agree with this view. Section 8 of the Act provides that a person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure, that is to say, by a suit for ejectment on the basis of title. Section 9 gives a summary remedy to a person who has without his consent been dispossessed of immovable property, otherwise than in due course of law, for recovery of possession without establishing title, provided that his suit is brought within six months of the date of dispossession. The second paragraph of the section provides that the person against whom a decree may be passed under the first paragraph may, notwithstanding such decree, sue to establish his title and to recover possession. The two sections give alternative remedies and are in our opinion mutually exclusive. If a suit is brought under section 9 for recovery of possession, no question of title can be raised or determined. The object of the section is clearly to discourage forcible dispossession and to enable the person dispossessed to recover possession by merely proving previous possession and wrongful dispossession without proving title, but that is not his only remedy. He may, if he so chooses, bring a suit for possession on the basis of his title. But we do not think that he can combine both remedies in the same suit and that he can get a decree for possession even if he fails to prove title. Such a combination would, to say the least of it, result in anomaly and inconvenience. In a suit under section 9 no question of title is to be determined, but that question may be tried in another suit instituted after the decree in that suit. If a claim for establishment of title can be combined with a claim under section 9, the court will have to grant a decree for possession on dispossession being proved, in spite of its finding that the plaintiff had no title and that title was in the defendant. It could not surely be the intention of the legislature that the question of title could be litigated in another suit which under the second paragraph of section 9 the defendant would have the right to bring In the case relied on, the claim for establishment of the plaintiff's title and for damages was dismissed, but he was

granted a decree for possession. The defendant was entitled under section 9 to bring a suit for establishment of his title, and in such suit the decision in the former suit as to title would be conclusive between the parties. So that the defendant in the first suit had merely to file his plaint in order to entitle him to a decree, This would only lead to anomaly and would promote litigation. In our judgment, when a plaintiff sues for possession on the basis of title and fails to establish title he cannot be granted a decree for possession under the first paragraph of section 9 of the Specific Relief Act. Of course, in some instances previous possession may afford evidence of title and where the defendant is a trespasser and the plaintiff was in continuous and peaceful possession he would be entitled to retain such possession. But where, as in this case, it is found that the plaintiff has no title and that the principal defendants are entitled to the property, the plaintiff cannot obtain a decree for possession. Our view is supported by the ruling of the Madras High Court in *Ramasami Chetti* v. *Puraman Chetti* (1), and is in consonance with the decisions of this Court in *Wajid Ali* v. *Rama Saran* (2) and *Chuthan Rai* v. *Sheo Ghulam Rai* (3), which do not appear to have been considered in *Ram Harak Rai* v. *Sheodihal Joti*, referred to above. The case last mentioned was, no doubt, followed by one of us sitting singly in *Mousi* v. *Kashi* (4), but this was done with reluctance. The point, however, did not arise in that case, as the plaintiff's adverse possession for more than twelve years was established. For the reasons stated above we are of opinion that when a plaintiff brings a suit for possession on the basis of title and fails to establish title, he cannot be granted a decree under the first paragraph of section 9 of the Specific Relief Act, and that the case of *Ram Harakh Rai* v. *Sheodihal Joti* was not rightly decided. This appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1901) I. L. R., 25 Mad., 448.
(2) Weekly Notes, 1884, p. 39.
(3) Weekly Notes, 189, p. 89.
(4) Weekly Notes, 1897, p. 145.