

the case under section 182, be satisfied beyond doubt that Mathura Prasad had no reasonable ground at all for believing that an attempt had been made upon his property and that the whole story was an invention.

*Rule made absolute. Conviction quashed.*

## REVISIONAL CIVIL.

*Before Mr. Justice Piggott.*

BODLU RHONJA AND OTHERS (PLAINTIFFS) v. MOHAN SINGH AND ANOTHER (DEFENDANTS) \*

1917  
EMPEROR  
v.  
MATHURA  
PRASAD.

1917  
July, 4.

*Civil Procedure Code (1908), section 11--Res judicata--Act No. I of 1877 (Specific Relief Act), section 9--Suit for possession in Munsif's court--Subsequent suit for damages in Court of Small Causes.*

The plaintiffs filed a suit under section 9 of the Specific Relief Act, 1877, in the Court of a Munsif, and obtained a decree on the finding that they had in fact been wrongfully dispossessed by the defendants. They then sued in a Court of Small Causes for damages on account of the same wrongful dispossession. *Held* that the finding of the Munsif that the plaintiffs had in fact been dispossessed was a *res judicata* in respect of the subsequent suit in the Court of Small Causes. *Ghulappa bin Balappa v. Raghavendra Swamirao (1)* and *Baja Simhadri Appa Row v. Ramachandrudu (2)* followed.

THE plaintiffs alleged that they were in possession of certain property from which the defendants wrongfully dispossessed them on the 29th of June, 1915; that thereupon the plaintiffs brought a suit for restoration of possession under section 9 of the Specific Relief Act, that in that suit it was clearly found, by the court's judgement, dated the 11th of May, 1916, that the defendants had wrongfully dispossessed the plaintiffs; and that on the strength of that judgement the plaintiffs recovered possession. They then brought the present suit in the Court of the Small Causes for the recovery of damages by way of mesne profits for the period of the dispossession. The Judge of the Small Cause Court framed one general issue and decided the suit as follows:—"The evidence produced on the plaintiffs' behalf is absolutely worthless and false. I decide the issue against the plaintiffs and dismiss the claim." The plaintiffs applied in revision to the High Court.

\* Civil Revision No. 91 of 1917.

(1) (1904) I. L. R., 28 Bom., 338. (2) (1902) I. L. R., 27 Mad., 69.

1917

BODLU  
BHOJJA  
v.  
MOHAN  
SINGH.

Maulvi *Iqbal Ahmad*, for the applicants:—

The suit has not been properly tried. In view of the clear finding which was arrived at in the suit under section 9 of the Specific Relief Act there could be no denial of the fact of the wrongful dispossession by the defendants, and the Small Cause Court was bound to find that there had been such dispossession. The matter was *res judicata*; *Ghulappa bin Balappa v. Raghavendra Swamirao* (1) and *Raja Simhadri Appa Row v. Ramachandrudu* (2). The point decided in the case of *Avanasi Gounden v. Nachammal* (3) was different, and the ruling in *Raja Simhadri Appa Row v. Ramachandrudu* (2) was not overruled in so far as the present point is concerned.

Maulvi *Mukhtar Ahmad*, for the opposite party, contended that, whatever might be the findings arrived at in the former litigation there was no actual decree for possession, and supported the decision of the Small Cause Court on the merits and circumstances of the case.

Maulvi *Iqbal Ahmad*, was not heard in reply.

PIGGOTT, J.—This is an application by certain plaintiffs whose suit for damages has been dismissed by a Court of Small Causes. The plaintiffs alleged that they were dispossessed from certain land by the defendants on a certain date and claimed damages therefor. The pleadings raised three distinct issues, (1) whether the plaintiffs had been dispossessed by the defendants? (2) how long this dispossession had lasted? (3) what damages the plaintiffs had thereby suffered? The court framed a composite issue and recorded a single finding, to the effect that the evidence produced by the plaintiffs was false and that the issue is decided against the plaintiffs. In my opinion the case has not been properly tried; and as there is a question of principle involved, the court below may be required to try the case again upon proper lines. There had been a previous suit between the parties on the regular side in which the plaintiffs recovered possession of this land from the defendants under section 9 of the Specific Relief Act, upon a clear finding that they had been dispossessed therefrom

(1) (1904) I. L. R., 28 Bom., 338. (2) (1902) I. L. R., 27 Mad., 63.

(3) (190 I. L. R., 29 Mad., 195.

by the defendants. This finding was *res judicata* between the parties in the present suit and should have been recognized as such, *vide Ghulappa bin Balappa v. Raghavendra Swamirao* (1) *Raja Simhadri Appa Row v. Ramachandrudu* (2). In this connection I may note that the latter of these two decisions was not overruled by a Full Bench of the same Court in I. L. R., 29 Mad., 195, on the specific point on which the decision proceeds. I think there can be no doubt that the Munsif who decided the suit for possession under the Specific Relief Act was competent to try the present suit for damages within the meaning of section 11 of the Code of Civil Procedure. What the court below had to do in the present case was to treat the finding in the previous suit as decisive in favour of the plaintiffs so far as it went. If it had done this, and had then found against the plaintiffs on the other questions involved, I should not have felt inclined to interfere. As it is, I accept this application, set aside the decree of the court below, and order the record to be returned to that court with directions to re-admit the suit on to its file of pending suits and dispose of it with due regard to the above observations. Costs of this application will abide the result.

*Application allowed.*

## APPELLATE CIVIL.

*Before Mr. Justice Piggott and Mr. Justice Walsh.*

FAKIR CHAND (PLAINTIFF) v. BABU LAL AND OTHERS (DEFENDANTS).<sup>\*</sup>  
*Act No. IV of 1882 (Transfer of Property Act), sections 83 and 84—Mortgage—Redemption—Right of owner of a share in property mortgaged to redeem the entire mortgage.*

The owner of a portion only of the equity of redemption is competent to maintain a suit for redemption of the entire mortgage even against the will of the mortgagee

*Norender Narain Singh v. Dwarka Lal Mundur* (3), *Huihasanan Nambudri v. Parameswaran Nambudri* (4), *Velayadain Chetty v. Alangaran Chetty* (5) and *Mustafa Khan v. Shadi Lall* (6) referred to. *Girish Chunder Dey v. Juramoni De* (7) dissented from.

<sup>\*</sup> Second Appeal No. 293 of 1916, from a decree of H. E. Holmes, District Judge of Aligarh, dated the 29th of September, 1915, confirming a decree of Zorawar Singh, Munsif of Kasganj, dated the 14th of June, 1915.

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| (1) (1904) I. L. R., 28 Bom., 338. | (4) (1898) I. L. R., 22 Mad., 209. |
| (2) (1902) I. L. R., 27 Mad., 63.  | (5) (1912) 15 Indian Cases, 605.   |
| (3) (1877) L. R., 5 I. A., 18.     | (6) (1907) 10 Oudh Cases, 81.      |

(7) (1900) 5 C. W. N., 83.

1917

BODLU  
 BHONJA  
 v.  
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 SINGH.

1917  
 July, 16.