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been paid." These remarks make the case of *Ajudhia v. Kunjal* (1) fully applicable to this case. The facts of the present case and those of *Ajudhia v. Kunjal* are almost parallel.

The case of *Chandan Singh v. Bidhya Dhar* (2) is also distinguishable from the present case. Mr. Justice CHAMIER distinguished the case before him from the case of *Ajudhia v. Kunjal* (1), upon the ground that the bond before him provided that in default of payment of any instalment, the debtor was bound to pay the whole amount at once. He held that that circumstance distinguished the case from *Ajudhia v. Kunjal* (1). The same reasoning is equally applicable in this case. In my opinion the learned Judge of the court below did not correctly appreciate the terms of the bond in suit. The suit was within time and it ought not to have been dismissed as being barred by time. I allow this application, set aside the judgment and decree of the court below and remand the case to that court to be restored to its original number on the file and to be disposed of on the merits. The costs to abide the event.

Appeal allowed and cause remanded.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

MUNNA SINGH (PLAINTIFF) v. AUSAN SINGH AND OTHERS
(DEFENDANTS).*

Act No. I of 1877 (Specific Relief Act), section 9—Possessory suit—Decree given for land and crops thereon—Crops removed before execution—Subsequent suit for price of crops—Defendants not competent to raise question of plaintiff's title to the land.

The plaintiff brought a suit under section 9 of the Specific Relief Act for the possession of certain land with crops standing thereon and obtained a decree. Before, however, he could obtain possession of the land the defendants cut and removed the crops. The plaintiff then brought the present suit for recovery of the value of the crops. The defendants denied his title to the land.

* First appeal No. 50 of 1918, from an order of Banke Behari Lal, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Cawnpore, dated the 5th of February, 1918.

(1) (1903) I. L. R., 30 All., 123. (2) (1912) 15 Indian Cases, 856.

Held that, the defendants could not, by cutting and removing the crops, annul the effect of the possessory decree, and have the question of the plaintiff's title to the land decided in that suit.

THE facts of this case were as follows :—

The plaintiff and the defendants were co-sharers in zamindari property. The plaintiff, alleging that he had been in exclusive possession of certain plots of land as his *khudkasht*, and that the defendants had dispossessed him, brought a suit under section 9 of the Specific Relief Act, for possession of those plots together with the standing crops. The court, finding the fact of dispossession as alleged by the plaintiff, decreed the suit in full. In execution of his decree the plaintiff obtained possession of the land, but not of the crops, as they had in the meantime been cut and removed by the defendants. He then brought a suit for damages, on the ground that he was entitled to the crops which had been wrongfully removed by the defendants. One of the pleas raised in defence was a denial of the plaintiff's title to the land and, consequently, to the crops thereon. The court of first instance held that, as the decree in the suit under section 9 of the Specific Relief Act had awarded possession of the crops to the plaintiff, the court could not go behind that decree and determine the question of title raised by the defendants. The suit was decreed for a part of the sum claimed. On appeal by the defendants the lower appellate court held that the defendants were entitled to raise and have determined the question of title. The suit was, accordingly, remanded for a decision on the merits. The plaintiff appealed to the High Court against the order of remand.

Babu *Piari Lal Banerji*, for the appellant :—

No doubt, in the suit under section 9 of the Specific Relief Act the question of title to the land was not gone into; but whether the land belonged to the plaintiff or not, he was entitled to the particular crops under the decree; and the defendants who had cut and removed them were liable to pay their price. Although in the present suit the plaintiff set forth his title to the land on the ground of its being his *khudkasht*, yet, so far as the crops were concerned, the decree in the former suit awarding the crops to him was a sufficient title, and the defendants could not go behind it.

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The Hon'ble Munshi *Narayan Prasad Ashthana*, for the respondents :—

In the suit under section 9 the defendants were not, under the law, allowed to open the question of title, but in the present suit, which is not one under section 9, they should be allowed to do so. It was open to the plaintiff to treat the act of the defendants as a fresh dispossession, and to bring another suit under section 9, but he did not do so. Having elected to base his suit on the ground of title to the land he is bound to prove his title. The suit is not one for the price of the crops, but is framed as a suit for damages for dispossession. Further, the result of not allowing the question of title to be gone into in this suit would be to drive the defendants to another suit for possession and means profits, and multiplicity of suits should be avoided.

Babu Piarí Lal Banerji, was not heard in reply.

RICHARDS, C. J., and TUDBALL, J. :—This and the connected appeal arise under the following circumstances. The plaintiff brought a suit against the defendants alleging that he was in separate possession of certain land situate in a mahal in which both he and the defendants were co-sharers; that there was a crop growing on the land which belonged to him, and that he had been dispossessed by the defendants. He claimed possession of the land with the crops growing. His suit was under section 9 of the Specific Relief Act. The court, finding that the plaintiff was in possession, granted him a decree under that section granting him possession of both the crops and land. Before the decree could be executed the defendants took possession of the crops and cut and removed them. Thereupon the plaintiff brought the suit out of which this and the connected appeal arise. In this he claimed that he was entitled to damages for the crops. It seems to us to make no difference whether he called it damages or asked for the price of the crops which had been taken and removed as he alleged. The court of first instance granted the plaintiff a decree, giving him Rs. 396 instead of Rs. 700 odd which he claimed. The first court was of opinion that it could not go behind the possessory decree given in the previous litigation, and this applied both to the crops and the land. Both parties

appealed, the plaintiff contending that he should have got the amount claimed in respect of the crops, and the defendants that he should not get a decree at all, and raising *inter alia* the question of title to the land. The lower appellate court remanded the case to the court of first instance, being of opinion that the defendant was entitled to have the question of title tried. We think that this view was entirely wrong. We are clearly of opinion that the defendants could not by cutting and removing the crops annul the effect of the possessory decree. If the defendants are entitled to the land, they should assert that right by proper legal proceedings. It appears that some of the defendants actually did so, but did not press their claim. The plaintiff, sooner than prolong the litigation, is ready to waive his right to have his appeal against the amount decreed him disposed of by the court below. We have read from the judgment of the court of first instance the manner in which it arrived at the conclusion as to the value of the crops and we are inclined to think that the first court took a very moderate view of the amount to which the plaintiff was entitled. We allow the appeal set aside the order of the court below and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

Before Mr. Justice Piggott and Mr. Justice Wulsh.

ROSHAN LAL AND OTHERS (DEFENDANTS) v. KANHAIYA LAL AND OTHERS (PLAINTIFFS).*

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August, 10.

Act No. IX of 1908 (Indian Limitation Act), section 20—Mortgage—Suit for sale—Limitation—Payment of interest as such—Effect of such payment as against purchaser of part of mortgaged property.

A payment made on account of interest as such due on a mortgage debt takes effect under section 20 of the Indian Limitation Act, 1908, as much against a person interested in the mortgage as a purchaser of part of the mortgaged property as against the mortgagor himself who makes the payment. *Krishna Chandra Saha v. Bhairab Chandra Saha* (1) and *Domi Lal Sahu v. Roshan Dobay* (2) referred to. *Surjiram Marwari v. Barhamdeo Peesad* (3) distinguished.

* Second Appeal No. 1652 of 1916, from a decree of D. R. Lyle, District Judge of Agra, dated the 2nd of June, 1916, modifying a decree of Muhammad Shanif, Additional Subordinate Judge of Muttra, dated the 14th of March, 1916.

(1) (1905) I. L. R., 32 Calc., 1077. (2) (1906) I. L. R., 33 Calc., 1278.

(3) (1905) I. C. L. J., 357.