Before Mr. Justice Macpherson and Mr. Justice Hill.

JIAULLAH SHEIKH (PLAINTIFF) *v.* INU KHAN AND OTHERS (DEFENDANTS.) * 1896 *April* 9.

Specific Relief Act (I of 1877), section 9—Decree for possession—Subsequent suit "inter partes" for mesne profits—Admissibility in evidence of former decree.

A decree for possession made by a Court under section 9 of the Specific Relief Act (I of 1877) in a suit beyond the pecuniary limits of that Court's jurisdiction, although not *res judicata*, is some evidence of dispossession by the defendants in a subsequent suit against the same defendants to recover mesne profits.

Gujju Lall v. *Fatteh Lal* (1), *Brojo Behari Mitter* v. *Kedar Nath Mozumdar* (2), *Surendra Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry* (3), and *Radha Churn Ghuttuck* v. *Zumutroonissa Khatoon* (4), distinguished. *Run Bahadur Singh* v. *Lucho Koer* (5), referred to.

THE plaintiff obtained against the defendants (ten in number) a decree in the Munsif's Court for possession of 22 plots of land. He afterwards instituted a suit against the defendants in the Court of the Subordinate Judge for mesne profits for the period during which he was out of possession. Only three of the defendants contested the suit, denying the dispossession of the plaintiff from any part of the land. Defendant No. 9 asserted a title to plots 15 to 19, and said that he was in possession during the period for which the plaintiff claimed mesne profits. None of the other defendants set up any title to the remaining 17 plots.

The Subordinate Judge decreed the suit as against all the defendants, holding that the possessory decree was conclusive evidence of dispossession, and that the plaintiff's possession was *primâ facie* evidence of title which the defendants had failed to rebut.

On appeal the District Judge reversed this decree, holding that the decree under the Specific Relief Act was no evidence of

* Appeal from Appellate Decree No. 1197 of 1894, against the decree of H. H. Harding, Esq., District Judge of Mymensing, dated the 16th April 1894, reversing the decree of Babu Radha Krishna Sen, Subordinate Judge of that District, dated the 28th June 1893.

(1) I. L. R., 6 Calc., 171. (2) I. L. R., 12 Calc., 580.
(3) I. L. R., 13 Calc., 352. (4) 11 W. R., 83.
(5) I. L. R., 11 Calc., 301.

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dispossession, as it was passed by a Munsif who had no jurisdiction to try this suit; and that the plaintiff, having failed to prove either wrongful dispossession or a title, must fail in his suit as regards plots 15 to 19.

The plaintiff appealed to the High Court.

Babu *Dwarkanath Chuckerbutty* (with him Babu *Sarat Chandra Khan*) for the appellant.—The Munsif's decree is admissible in evidence, because it is a matter relevant to the issue, although it may not operate as *res judicata*. *Run Bahadur Singh* v. *Lucho Koer* (1), *Ram Ranjan Chakerbati* v. *Ram Narain Singh* (2). It is sufficient *primâ facie* evidence of the plaintiff's title as against everybody, who cannot show a better title. *Radha Churn Ghuttuck* v. *Zumuroonissa Khatoon* (3), *Lep Singh Khasia* v. *Nimar Khasia* (4), *Ismail Ariff* v. *Mahomed Ghous* (5). As to some plots, the District Judge finds the title in the plaintiff; as to the rest he finds the defendants have no title.

Babu *Srinath Dass* (with him Babu *Jogesh Chundra Roy* and Babu *Haran Chandra Bannerjee*) for the respondents.—The judgment in the possessory suit is not admissible in evidence. A judgment is admissible only when it operates as *res judicata*, or decides some public right or custom, or when the existence of the judgment is relevant, *Gujju Lal* v. *Fatteh Lall* (6), *Ram Narain Rai* v. *Ram Coomar Chunder Poddar* (7), *Mahendra Lal Khan* v. *Rosomoyi Dasi* (8), *Surendra Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry* (9). The cases of *Run Bahadur Singh* v. *Lucho Koer* (1) and *Ram Ranjan Chakerbati* v. *Ram Narain Singh* (2) neither overrule nor refer to *Gujja Lal's* case (6).

Babu *Dwarkanath Chuckerbutty* in reply.

The judgment of the Court (MACPHERSON and HILL, JJ.) was delivered by

(1) I. L. R., 11 Calc., 301. (2) I. L. R., 22 Calc., 533.
(3) 11 W. R., 83. (4) I. L. R., 21 Calc., 244.
(5) I. L. R., 20 Calc., 834; L. R., 20 I. A., 99.
(6) I. L. R., 6 Calc., 171. (7) I. L. R., 11 Calc., 562.
(8) I. L. R., 12 Calc., 207. (9) I. L. R., 13 Calc., 352.

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MACPHERSON, J.—The plaintiff having obtained against the ten defendants a decree under section 9 of the Specific Relief Act for the possession of 22 plots, comprising 1 khada 14 pakhis of land, which he claims to hold under a *jote* right, brought this suit to obtain from them a sum of Rs. 2,200 as *wasilat* for the period during which they kept him out of possession. The decree was obtained in the Court of the Munsif of Pingua on the 19th June 1891, and it is said to have been executed by delivery of possession on the 15th February 1892, corresponding to the 4th Phalgun 1298. The alleged dispossession was in Sraban and Kartik 1297.

Defendants 3, 4 and 9, who alone contested this suit, put in a joint written statement denying the dispossession of the plaintiff from any portion of the land. The third defendant asserted a title to plots 15 to 19, and said that he was in possession of them during the period for which *wasilat* is claimed. No title was set up by any of the defendants to the remaining 17 plots.

The Subordinate Judge gave the plaintiff a decree against all the defendants for the full amount claimed, holding in effect that the defendants were estopped by the possessory decree from denying the dispossession of the plaintiff, and that it was not necessary for the plaintiff to prove his *jote* right, as his possession was *primâ facie* evidence of title which the defendants had failed to rebut.

The District Judge on appeal by the contesting defendants reversed this decree and dismissed the whole suit. He held that the decree under the Specific Relief Act, having been passed by a Munsif who had no jurisdiction to try this suit, was not conclusive evidence or evidence at all of the fact that any of the defendants wrongfully dispossessed the plaintiff of the land; and that as the plaintiff had failed to prove either a wrongful dispossession or a title to plots 15 to 19, his suit must fail, although his title to the remaining plots was in a manner admitted by the defendants' witnesses. The District Judge says that the evidence of a wrongful dispossession is almost *nil*. Neither party, it seems, attempted to prove the particular title set up.

It is contended before us that the Judge was, under any circumstances, wrong in reversing the decree against the non-appealing defendants; that the decree under the Specific Relief Act was, if not conclusive evidence of the plaintiff's previous possession

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and dispossession, sufficient evidence of those facts to support the decree; and that he has misplaced the burden of proof as to title. Although the question of the plaintiff's prior possession and dispossession by the defendants was raised and determined in the suit under the Specific Relief Act, and is again raised in this suit, the decree in the former suit is not conclusive on the matter for this (if for no other) reason, that the Munsif who passed it was not competent to try this suit which is beyond the pecuniary limit of his jurisdiction. The case of *Radha Churn Ghuttuck* v. *Zumroonissa Khatoon* (1) is probably distinguishable in this respect, as it may be gathered from the judgment of Peacock, C. J., that the Courts, if not the same, were of concurrent jurisdiction. All that appears, however, is that the decree was held to be evidence of the plaintiff's possession and dispossession. Nothing is said about conclusive evidence.

A decree under section 9 of the Specific Relief Act is final to the extent to which it goes, and the effect of it is, rightly or wrongly, to put the plaintiff in possession, and to put upon the defendant, in any proceedings which he took, the burden of proving his title. The plaintiff in the present case is not, however, satisfied with what the decree gave him. He wants something more, and something which the Court which passed the decree could not have given him. It would certainly be very unfair, if the decree against which no appeal lay prevented the defendants in their defence to the subsequent suit from questioning the correctness of the grounds on which it was made, although they could not question the decree itself to which full effect had already been given. The decree, by putting the plaintiff in possession, puts him in a position to maintain a suit for damages for the alleged trespass; but, if the Court which made the decree had no jurisdiction to entertain the suit for damages, the decree could not be conclusive on the question of trespass, otherwise the superior Court dealing with the subsequent suit would in many cases merely have to determine the amount of the damages, and an effect would be given to the possessory decree which it was never intended to have. It is unnecessary to consider what the effect of the decree would be, if the Courts were the same or

(1) 11 W. R., 83.

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of concurrent jurisdiction. The decree which directs that the plaintiff be put into possession is certainly evidence of his possession and of his right to possession, apart from any question of title, as against the defendant. It is also, I think, some evidence, but not conclusive evidence, of his dispossession by them prior to the decree, as that was a matter in issue, and which had to be determined in the suit. It was, indeed, the sole ground on which the plaintiff asked for and obtained relief.

It is argued for the respondent, on the authority of *Gujju Lall* v. *Futteh Lall* (1), *Brojo Behari Mitter* v. *Kedar Nath Mozumdar* (2), and *Surendra Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry* (3) that the decree, if not conclusive evidence, is not evidence at all; but the decrees which it was sought to put in evidence in those cases were not *inter partes*. In *Modhusudun Shaha Mundul* v. *Brae* (4) the Full Court held that an *ex-parte* decree for arrears of rent did not operate so as to render the question of the rate of rent *res judicata*, but the question whether it was evidence at all did not arise.

The case of *Run Bahadur Singh* v. *Lucho Koer* (5) shews that a judgment, although not conclusive evidence, may be some evidence of the matter decided. There the survivor of two brothers, claiming in the whole estate by survivorship, brought a suit in the Court of the Subordinate Judge against the widow of the deceased brother, who claimed her husband's share as her separate estate, and the question was whether the brothers were joint or separate in estate. The decision of a Munsif in a rent suit between the same parties was put in to show that the brothers were separate. The Judicial Committee held that the judgment was not conclusive on the matter, but it was still treated as evidence to which some weight was attached.

This case has not been properly dealt with by either Court. The Subordinate Judge was wrong in treating the decree as conclusive evidence of the plaintiff's prior possession and dispossession by the defendants. The District Judge does not say that the decree is not some evidence on those points. He says it is not evidence of a wrongful dispossession, and again that the

(1) I. L. R., 6 Calc., 171.
(2) I. L. R., 12 Calc., 580.
(3) I. L. R., 13 Calc., 352.
(4) I. L. R., 16 Calc., 300.
(5) I. L. R., 11 Calc., 301.

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evidence of a wrongful dispossession is almost *nil*. There is here some confusion of ideas. If the plaintiff, when in peaceful possession of the land, was dispossessed therefrom by the defendants, the dispossession would be wrongful, unless the defendants could make out a better title than the plaintiffs to the land. Possession is a good title against all but the true owner, and if the plaintiff, being now in possession, proved a dispossession by the defendants, he could rest his case there, if he thought fit to do so, without proving any other title. It would be for the defendants to show that, the title being with them, the plaintiff was not wrongfully deprived of the profits of the land. (See the cases reported in W. R., XI, 83 ; I. L. R., XX Calc., 834 ; and I. L. R., XXI Calc., 244.) It is said that, apart from the decree, there is a good deal of evidence of dispossession by the defendants. If that is so, and the evidence is believed, it is difficult to see how the suit could be dismissed as regards at least that portion of the land to which no title is set up by them. It is for the plaintiff to prove that he is now in possession, and that he was dispossessed by the defendants from the whole or some portion of the land. If this is proved the defendants, or those of them who are found to have taken part in the dispossession, must, in order to defeat the claim for damages, prove that they were not wrongdoers and that the title was with them. If the plaintiff is found to be entitled to damages in respect of the whole or any portion of the land, the amount of the damages and the persons by whom it is to be paid must be determined. If the suit fails on any ground, common to all the defendants, or if any of the defendants prove a title to the land, or to any part of it, the suit would properly be dismissed as against all the defendants in respect to that portion of the land. The decree of the District Judge must be set aside, and the case remanded for a fresh decision. If the Judge considers that either party has been prejudiced by the way in which the case was tried in the first Court, or should be allowed an opportunity of adducing additional evidence, it will be for him to consider whether such opportunity should not be given.

The costs of this appeal will abide the result of the case.

H. W.