

to arrange for counsel to appear, the court has stated in its order that it would have had the case postponed. But the appellant took the course which caused inconvenience to every one concerned.

We do not consider that there is any reason to interfere with the order of the court below refusing to restore the appeal under these circumstances.

We, therefore, dismiss this first appeal from order with costs.

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### REVISIONAL CIVIL

*Before Justice Sir Edward Bennet and Mr. Justice Verma*

BALLABH DAS (DEFENDANT) *v.* GAUR DAS (PLAINTIFF)\*

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December, 14

*Specific Relief Act (I of 1877), section 9—Applies to joint possession as well as to exclusive possession.*

The operation of section 9 of the Specific Relief Act is not confined to cases of exclusive possession only, but extends to cases of joint possession as well. A person who was in joint possession with another is entitled, upon dispossession by the other, to bring a suit under the section for restoration of the joint possession.

Dr. N. P. Asthana and Mr. S. C. Das, for the applicant.

Mr. Shiv Charan Lal, for the opposite party.

BENNET and VERMA, JJ.:—These are two cross petitions in revision and arise out of a suit for possession under section 9 of the Specific Relief Act. The plaintiffs in the suit were an idol, who was shown as plaintiff No. 1, and Gaur Das, who appeared as plaintiff No. 2, and purported to be the mahant of the temple. Defendant No. 1, Ballabh Das, on the other hand, claimed to be the mahant. The dispute is with regard to a building which is appurtenant to the temple. Each party denied the possession of the other over that building.

The learned Civil Judge has held that both Gaur Das and Ballabh Das were the managers of the temple and had been in possession of the property in dispute in

\*Civil Revision No. 333 of 1937.

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that capacity. He has also held that Ballabh Das's act, which was complained of by Gaur Das, did amount to dispossession of Gaur Das. On these findings of fact he has passed a decree in favour of Gaur Das for joint possession along with Ballabh Das.

The main contention raised on behalf of Ballabh Das is that the court below had no jurisdiction to pass a decree for joint possession in a suit instituted under section 9 of the Specific Relief Act. It has been argued that such a decree is not authorised by that section, and reliance has been placed on *Hari Nama Dass v. Sheikh Naju* (1) and *Koothan v. Kulla Vandu* (2). It seems to us, however, that the language of section 9 does not justify such an argument. The section lays down that "if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he . . . . may by suit recover possession thereof . . . ." We see no reason to hold that the words of the section refer to exclusive possession. On the contrary it seems to us that a person in joint possession of immovable property is as much in possession of that property as a person who is in exclusive possession, and if the person who was in joint possession is dispossessed, there is in our opinion no reason why he should not be entitled to bring a suit under the section to be restored to that possession which he enjoyed before he was dispossessed. The first case relied upon by learned counsel for Ballabh Das, namely, *Hari Nama Dass v. Sheikh Naju* (1) has been explained by the Calcutta Court in a later decision in *Atiman Bibi v. Sheikh Reasut* (3). It is significant that one of the learned Judges, CHATTERJEE, J., who was a party to the later decision was also a party to the earlier one. It has been observed in the judgment in *Atiman Bibi's* case that the remarks as to exclusive possession made in the judgment of the earlier case must be read in reference to the facts of that case and that they were

(1) (1912) 19 C.W.N. 120.

(2) (1914) 29 M.L.J. 760.

(3) (1915) 19 C.W.N. 1117.

not intended to stand in the way of that joint physical possession being restored which existed before the disturbance. The Madras case cited merely follows the case in *Hari Nama Dass v. Sheikh Naju* (1) and no reasons are given in the judgment for the view taken. The earlier Madras case, *Sabapathi Chetti v. Subraya Chetti* (2), which the learned Judges in *Koothan v. Kulla Vandu* (3) seek to distinguish, is also instructive. The view taken by us has also been held in the late court of the Judicial Commissioner at Nagpur, vide *Ghooti v. Sitku* (4) and *Ramchandra Fate v. Shridhar* (5). We agree with the view taken in these cases. In our opinion the court below was not wrong in passing a decree for joint possession.

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It has also been urged on behalf of Ballabh Das that the court below having found that the idol could not be said to have been dispossessed, no decree should have been passed. But, as the court below has pointed out, the dispute as to possession is between the two managers of the idol who have been found to have been in possession of the property. The possession of each of them is, of course, in his capacity as the manager of the idol. The question whether the idol has been shown to have been dispossessed or not is therefore irrelevant.

In Civil Revision No. 447 of 1937 it has been contended on behalf of Gaur Das that the court below has not found that Ballabh Das was also in possession of the property and that a decree for exclusive possession should therefore have been passed in favour of Gaur Das. We are unable to accept this argument. The whole judgment proceeds on the footing that Ballabh Das is in possession, and the only question which needed consideration was whether Gaur Das also had any sort of possession which entitled him to institute the suit. The very fact that the learned Judge came to

(1) (1912) 19 C.W.N. 120.

(2) (1881) I.L.R. 3 Mad. 250.

(3) (1914) 29 M.L.J. 760.

(4) (1917) 44 Indian Cases 557.

(5) (1917) 44 Indian Cases 557.

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the conclusion that Gaur Das was entitled only to joint possession shows clearly that the learned Judge, on the evidence before him, came to the conclusion that Ballabh Das was in possession along with Gaur Das. There is, therefore, no force in the revision filed on behalf of Gaur Das also.

For the foregoing reasons we dismiss both these petitions in revision with costs.

### FULL BENCH

*Before Sir John Thom, Chief Justice, Mr. Justice Rachhpal Singh and Mr. Justice Ganga Nath*

1939  
 December, 18

RAMDEO (PLAINTIFF) v. SADAYATAN PANDE AND OTHERS  
 (DEFENDANTS)\*

*U. P. Encumbered Estates Act (Local Act XXV of 1934), section 9(5)(b) and (c)—Joint debtors—Application by some of them under section 4 of the Act—Remedy of creditor against the non-applicant debtors—Suit instituted against the non-applicants before the addition of clause (c) in 1939—Procedure.*

Where some of the joint debtors have applied under section 4 of the U. P. Encumbered Estates Act but the others have not, then under section 9(5)(b) and (c), as amended by Local Act XI of 1939, the creditor must, in the matter of enforcing his claim against the non-applicant joint debtors, wait until the amount due by these debtors has been determined by the Special Judge, and thereafter he may apply to the civil court for a decree for that amount against them.

Where a suit against the non-applicant joint debtors was instituted by the creditor before the said amendment by the Act of 1939, the appropriate procedure would be to treat the suit as an application under section 9(5)(c) and to dispose of it accordingly.

Messrs. *Shiva Prasad Sinha, Muhammad Najm Uddin and B. C. Ganguli*, for the appellants.

Messrs. *N. Upadhiya and K. L. Misra*, for the respondents.

THOM, C. J., RACHHPAL SINGH and GANGA NATH, JJ.:—This is a plaintiff's appeal arising out of a suit in

\*First Appeal No. 406 of 1937, from a decree of M. M. Seth, Civil Judge of Mirzapur, dated the 25th of August, 1937.