

1927  
 K. K. DEB  
*v.*  
 N. L. CHOW-  
 DHURY.  
 HEALD, J.

Courts simultaneously, I would hold that the lower Court was right in finding that even if the certificate required by section 41 was not sent to the District Court of Akyab by the Court of the First Subordinate Judge of Chittagong the District Court of Akyab, which was the Court which passed the decree, had jurisdiction to send the decree for execution to the Court of the Second Subordinate Judge of Chittagong.

I would therefore dismiss the appeal with costs. Advocate's fee to be ten gold mohurs.

CUNLIFFE, J.—I agree.

## APPELLATE CIVIL.

*Before Mr. Justice Das.*

EWIN SHAUK WA

*v.*

U PO NYUN.\*

*Specific Relief Act (1 of 1877), sections 54 and 55—Mandatory injunction whether obtainable against trespasser to remove trees planted and buildings put up—Breach of an obligation necessary for relief.*

The defendant, alleged to be a trespasser on the plaintiff's land, had planted rubber trees and erected a hut on a portion of the land. On the plaintiff filing a suit for a mandatory injunction directing the removal of the trees and the hut.

*Held*, that the case was merely one of trespass and as there was no obligation on the part of the defendant to perform the acts prayed for, a suit for a mandatory injunction would not lie.

*Kyaw Din*—for the Appellant.

*Young*—for the Respondent.

DAS, J.—The respondent filed a suit for a mandatory injunction directing the appellant to remove his rubber trees, a hut and brickpost standing on the

\* Civil Second Appeal No. 697 of 1926.

respondent's rubber land. The respondent's case was that the land in question formed part of his holding, and that the appellant had trespassed on it, planted rubber trees and erected a hut on a portion of the land. Both the lower Courts granted the injunction asked for.

It is now argued before me that section 54 of the Specific Relief Act does not apply to the facts of this case ; that a suit for a mandatory injunction will not lie on the facts of this case ; and that the respondent should have filed a suit for possession of the land before asking for an injunction. Section 55 of the Specific Relief Act runs as follows :—

“When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.”

Before a suit for a mandatory injunction can be filed there must be an obligation on the part of the defendant to perform certain acts. In this case it is not alleged that the appellant has committed a breach of any obligation on his part. The case was merely one of trespass, and the respondent's remedy was to file a suit for possession of the land. I do not think that a suit for a mandatory injunction can be filed without suing for possession of the land.

I must, therefore, allow this appeal and dismiss the respondent's suit with costs in all Courts.

1927

EWIN SHAWK

WA

v.

U PO NYUN.

DAS, J.