

We set aside the order of the District Court, and direct that that the application to set aside the order of dismissal be allowed, unless the District Court holds that application to be barred by limitation.

The respondent will pay the applicant the costs of the application in this Court, advocate's fee two gold mohurs.

1926

BASARAT ALI
v.
MAUNG
ACUNG BAN.

RUTLEDGE,
C.J., AND
BROWN, J.

APPELLATE CIVIL.

Before Mr. Justice Otter.

MA NGWE BWIN AND OTHERS

v.

MAUNG PO MAUNG AND ONE.*

1927

Jan. 10.

Specific Relief Act (1 of 1877), section 9—Claim for possession not to be joined with claim for mesne profits—Court's power to vary decree.

Held that a decree under section 9 of the Specific Relief Act should be confined to directing delivery of possession and should not contain an award of mesne profits. The High Court in revision may cancel the order as to mesne profits, and confirm the decree for possession only.

Munshi Nazir Ahmed v. Abid Ali, 11 I.C. 38; *Sheo Kumar v. Narain Das*, 24 All. 501; *Tilak Chandra Dass v. Fatik Chandra Dass and others*, 25 Cal. 803—*referred to*.

Maung Tin—for Applicants.

Kale—for Respondents.

OTTER, J.—In this case a claim for mesne profits was joined with a claim for possession under section 9 of the Specific Relief Act of 1877. The suit was decreed in favour of the respondents, both for possession and for Rs. 400 in respect of mesne profits.

* Civil Revision No. 463 of 1925 from the judgment of the Township Court of Pagan in Civil Regular Suit No. 66 of 1925.

1927

MA NGWE
BWIN
AND OTHERS
v.
MAUNG PO
MAUNG
AND ONE.
— vs —
OTTER, J.

Mr. Maung Tin has argued that a claim for mesne profits cannot be joined with a claim under section 9, and he has cited *Tilak Chandra Dass v. Fatik Chandra Dass and others* (1) and *Munshi Nazir Ahmed v. Abid Ali* (2) in support of his contention. He is clearly right, and Mr. Kale does not argue to the contrary. He says, however, that so much of the decree as relates to possession should be allowed to stand, and distinguishes the present case from the Allahabad case, where a contrary view was taken. He also cites *Sheo Kumar v. Narain Dass* (3), as showing that the two causes of action are entirely separate and distinct. It is true that the learned Judge in the case of *Munshi Nazir Ahmed v. Abid Ali* (2) appears to have thought that the decree of the lower Court was indivisible, and declined to interfere with the order of the lower appellate Court setting it aside as a whole.

I express no opinion upon the point, but the present proceedings are by way of revision, and I may make such order as I think fit.

I set aside, therefore, so much of the order of the Township Court as relates to mesne profits. In the circumstances I think each party should bear its own costs of this application.

(1) (1898) 25 Cal. 803.

(2) (1911) 11 I.C. 38.

(3) (1902) 24 All. 501.