

the face of it clear that there was any order by the Collector in favour of the appellant necessitating a suit within a year by the respondent. It is not necessary, therefore, to remand the issue.

The appeal fails and is dismissed with costs.

Decree confirmed.

. B. G. R.

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MALKAR-

JUNAPPA

v.

ANANDRAM

ANNARAO

Madgavkar J.

APPELLATE CIVIL.

Before Sir Norman Kemp, Acting Chief Justice, and Mr. Justice Murphy.

RATANLAL GHELABHAI (ORIGINAL PLAINTIFF), APPLICANT v. AMARSING RUPSANG AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

Specific Relief Act (I of 1877), section 9—Landlord and tenant—Dispossession of tenant—Suit by landlord for possession in his own name.

Even when exclusive occupation of immoveable property is given to the tenant who is subsequently dispossessed, it is open to the landlord to bring a suit in his own name under section 9 of the Specific Relief Act, for an injury to the reversion.

Virjivandas Madhavas v. Mahomed Ali Khan Ibrahim Khan,⁽¹⁾ followed.

APPLICATION to revise an order passed by the Subordinate Judge at Nandurbar in Suit No. 1609 of 1926.

The plaintiff filed the above suit against the defendants under section 9 of the Specific Relief Act alleging that he and his predecessors in title were the owners of Survey No. 102 in the village of Nandora, West Khandesh District, that he leased the property to defendant No. 2 and that defendant No. 2 was forcibly dispossessed by defendant No. 1. The plaintiff called upon defendant No. 2 to join him in filing the above suit but as he refused he was made a co-defendant.

The learned Subordinate Judge dismissed the suit on the ground that a landlord could not bring a suit in his own name for possession under section 9 of the Specific Relief Act when he had let the property to a tenant who

*Civil Revision Application No. 129 of 1928.

⁽¹⁾ (1880) 5 Bom. 208.

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was entitled to and was in possession and who was dispossessed. The plaintiff applied to the High Court to revise this order.

H. D. Thakor, for the applicant.

K. H. Kelkar, for opponent No. 1.

KEMP, AG. C. J. :—The plaintiff-petitioner alleges that he and his predecessors in title were the owners of Survey No. 102 in the village of Nandora, West Khandesh District, that he leased the property to defendant No. 2 and that defendant No. 2 was forcibly and unlawfully dispossessed by defendant No. 1 and that he only came to know of this on July 7, 1926. He then called upon defendant No. 2 to join him in filing a suit for possession under section 9 of the Specific Relief Act but defendant No. 2 refused to join. The plaintiff thereupon filed Suit No. 1609 of 1927 in the Court of the Second Class Subordinate Judge of Nandurbar under section 9 of the Act and made defendants Nos. 1 and 2 defendants to that suit. The learned Subordinate Judge framed an issue in these terms :—“ Is the plaintiff entitled to bring this suit? ” He came to the conclusion that the question for determination was whether a landlord can sue for possession under section 9 of the Specific Relief Act when, as a matter of fact, the property is let to a tenant who was and is entitled to present possession. Shortly put, therefore, the question which he tried was whether the landlord could sue under section 9 when he had a tenant in possession who was dispossessed.

The learned Subordinate Judge came to the conclusion that the plaintiff could not bring such a suit and dismissed it. Against that order the plaintiff has filed the present Civil Revision Application.

Clearly, if the plaintiff is entitled to file such a suit under section 9 the finding of the learned Subordinate

Judge to the contrary is a matter which can be entertained in revision for the effect of the finding is to deprive the plaintiff of his right to redress under section 9 and the learned Subordinate Judge has failed to exercise a jurisdiction which he ought to have exercised.

Section 9 of the Specific Relief Act is in these terms :—

“ If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.”

There is nothing in this section to show that possession is confined to actual physical possession. In the case of a landlord and tenant the landlord is in possession through his tenant and, as pointed out in *Virjivandas Madhardas v. Mahomed Ali Khan Ibrahim Khan*,⁽¹⁾ the proper remedy where exclusive occupation of immoveable property is given to a tenant is for the tenant to file a suit for possession but the landlord, if he desires to sue immediately on the possessory right, can sue in the name of the tenant and further, for an injury to the reversion, the landlord can sue in his own name. The injury in the present instance consists in a denial of the plaintiff's title to the land for defendant No. 1 has taken possession of it claiming it to be his. I think, therefore, that there is an injury to the reversion in respect of which the plaintiff can sue in his own name. The plaintiff as landlord is entitled to recover rent from his tenant and this right is one which comes under the definition of “ immoveable property ” in section 3, clause 25, of the General Clauses Act. In the case of *Fadu Jhala v. Gour Mohun Jhala*⁽²⁾ the majority of the Judges held that a suit for the possession of a right to fish in a Khal the soil of which does not belong to the plaintiff does not come within the provisions of section 9 of the Specific Relief Act. It was an

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⁽¹⁾ (1880) 5 Bom. 208.

⁽²⁾ (1892) 19 Cal. 544.

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incorporeal right which was not intended to be included within the provisions of the section. Here the case is different and there is, I think, no objection to the plaintiff suing under section 9 for the injury to the reversion.

If the landlord were unable to file a suit under section 9 of the Specific Relief Act and the tenant were, as has been pointed out in one of the cases, disinclined to take any action under section 9 the landlord to obtain redress would then be in the difficult position of having to file a regular suit for a declaration of his title against the person in possession of the land and, possession being evidence of title, the "onus" would be on the plaintiff; whereas if the suit can be filed under section 9 it will lie on the 1st defendant to establish by a regular suit, his title to the land.

But even if the plaintiff cannot sue alone we have the fact that he has joined his tenant as defendant No. 2 in the suit and all the parties who are interested in the land are therefore before the Court and the Court can pronounce a decree which will bind them all. The plaintiff attempted to persuade defendant No. 2 when he filed the suit to join him as a co-plaintiff but defendant No. 2 refused. The suit was filed on December 1, 1926. Thereafter, an application was made on December 12, 1927, by defendant No. 2 for an adjournment to enable him to be joined as a plaintiff. That application was refused but it shows that defendant No. 2 consented later to participate as a plaintiff in the suit. Under these circumstances, there seems to be no objection to the suit.

It is impossible to leave this case without a very unfavourable comment on the time that it has taken to dispose of it. The case took more than a year to decide in the lower Court and much of the summary

nature of the remedy under section 9 of the Specific Relief Act has been lost.

We make the rule absolute and remand the suit for trial under Order XXI, rule 23. The lower Court's order discharged. The first opponent to pay the costs of this application.

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Rule made absolute.

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APPELLATE CIVIL.

Before Mr. Justice Madgavkar.

RAMCHANDRA ANANTA DESAI AND ANOTHER (ORIGINAL DEFENDANTS),
 APPELLANTS v. BHAGWANT GOPAL THAKUR DESAI (ORIGINAL PLAINTIFF),
 RESPONDENT.*

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Civil Procedure Code (Act V of 1908), Order XXI, rule 66 (2) (e)—Hindu Law—Decree on a debt against father, member of joint Hindu family—Minor sons not impleaded in suit—Debt not tainted with immorality—Application by decree-holder to insert in proclamation of sale, "right, title and interest of minor sons," whether competent.

When a decree is obtained against a Hindu father on a ruzu-khata which is not shown to be tainted with immorality, it is open to the decree-holder in execution proceedings to apply under Order XXI, rule 66 (2) (e) of the Civil Procedure Code to have the right, title, and interest of the minor sons, not impleaded in the suit against the father, included in the proclamation of sale.

Timmappa v. Narsinha Timaya⁽¹⁾; *Dayanand Pandurang v. Daji Narayan*⁽²⁾ and *Sripat Singh v. Tagore*,⁽³⁾ referred to.

SECOND Appeal No. 890 of 1927 from the decree passed by N. V. Desai, District Judge at Ratnagiri, in Appeal No. 60 of 1927.

Application under Order XXI, rule 66 (e), of the Civil Procedure Code.

The plaintiff brought a suit on a ruzu-khata (adjusted account) against Anant, father of the defendants, who were minors, and his brother Hari, the latter being impleaded on the ground that he was a member of a joint Hindu family along with Anant.

*Second Appeal No. 890 of 1927.

⁽¹⁾ (1913) 37 Bom. 631.

⁽²⁾ (1926) 50 Bom. 793.

⁽³⁾ (1916) L. R. 44 I. A. 1.