LETTERS PATENT APPEAL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Doss.

KARNADHAR HALDAR

v.

HARIPRASAD ROY CHAUDHURI.*

1910
May 13.

Injunction—Perpetual Injunction restraining execution of a decree obtained in a previous suit against the plaintiff—Specific Relief Act (I of 1877) ss. 54, 56 (e).

Where the defendant has not invaded, or threatened to invade, the plaintiff's right to, or enjoyment of, any property, and there is no apprehension of a multiplicity of judicial proceedings to which the plaintiff need be subjected for the purpose of establishing or safeguarding his rights, or for preventing the acquisition of rights of the defendant :—

Held, that s. 56 of the Specific Relief Act constitutes a manifest bar in the way of the plaintiff's suit for a declaration that the defendant had no title to lands in suit, and for perpetual injunction restraining the defendant from taking possession of the lands by executing his decree.

Dhuronidhur Sen v. *Agra Bank* (1) followed in principle.

Appu v. *Raman* (2) not followed.

APPEAL by the defendant.

This appeal arose out of a suit brought by a landlord asking for an injunction restraining the defendant from taking possession of a holding in the landlord's estate in respect of which the defendant had obtained a decree for possession in a suit in which the landlord had not been a party. The defendant's father had long ago purchased a third portion of the holding, and thereafter had purchased the remaining $\frac{2}{3}$rd portion at a sale in execution. In 1903 the defendant brought a suit against one Piyarimohan Banerjee, asking for possession, on the ground that Piyarimohan had dispossessed him from the holding. In this suit, to which the landlord was not a party, defendant obtained a decree on an appeal to a Subordinate

*Letters Patent Appeal, No. 143 of 1909, in appeal from Appellate Decree No. 422 of 1908.

(1) (1878) I. L. R. 4 Calc. 380. (2) (1891) I. L. R. 14 Mad. 425.

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Judge, a decree which was affirmed by the High Court. The decree was for possession of the holding. The landlord in the present suit, which is on appeal, sued for an injunction restraining the defendant from taking possession under cover of the aforesaid decree. The Munsif held that, as the tenancy was not transferable, the defendant had no right under the purchase. He granted the injunction prayed for, restraining the defendant from taking possession. On appeal, the District Judge confirmed the Munsif's judgment. On second appeal to the High Court, Caspersz J., sitting singly, dismissed the appeal. The defendant, thereupon, filed this appeal under section 15 of the Letters Patent.

Babu Biswanath Bose, for the appellant. The plaintiffs cannot get an injunction because the defendant has not invaded, or threatened to invade, the right to the enjoyment of any property. The case does not come under section 54 (*d*) of the Specific Relief Act. Then, again, section 56 (*b*) is a bar to the suit. There is no fear of multiplicity of suits. The Calcutta case of *Dhuronidhur Sen* v. *Agra Bank* (1) is in my favour; see Mr. Justice Markby's remarks in the case. The defendant has, moreover, been recognised as a tenant by the landlord and now the suit is inequitable.

Babu Harendra Narayan Mitter, for the respondents. On the findings of fact arrived at by the Courts below, defendant is a trespasser and not a tenant. A multiplicity of suits is inevitable: see section 54 (*d*) and (*e*) of the Specific Relief Act and Woodroffe's "Law relating to Injunctions," pp. 359, 361. The landlord's right in his property does not merely consist of a right to receive fair and equitable rent for it, but a great deal more. He may enhance rent or take *khas* possession or derive other benefits in other ways. He can choose his own tenant and refuse to have undesirable tenants. The enforced recognition of transferability of a holding is undoubtedly an injury which cannot be repaired. The case, therefore, comes within the meaning of "irreparable injury."

(1) (1878) I. L. R. 4 Calc. 380.

The question of "pecuniary compensation" was not raised in the Courts below, and on general equities of the case the landlord should not be compelled to accept pecuniary compensation in return for parting with rights or some of the rights. Clause (*e*) of section 56 is in my favour. *Stalkartt* v. *Gopal Panday* (1) and *Appu* v. *Raman* (2) are clearly in my favour. Lastly, the mere receipt of rent from a *marfatdar* is not recognition of the tenancy : *Naba Kumari Debi* v. *Behari Lal Sen* (3).

JENKINS C.J. This appeal raises a point of some interest, and notwithstanding the ingenious argument of Mr. Mitter, I hold that the appellant is entitled to succeed.

The case arises in this way: the present defendant brought a suit to recover possession of lands from which he said he had been wrongfully ousted. He obtained a decree in his favour for recovery of possession, and that decree was ultimately confirmed by the High Court. As yet the plaintiff in that suit, who is the defendant in this, has taken no steps to execute his decree, and it does not appear that he has even threatened to execute it. But the present plaintiffs have commenced this suit, whereby they pray to have it declared that the defendant had no title to the lands in suit, to establish that they are not bound by the decree of the Title Suit No. 135 of 1903, for perpetual injunction restraining the defendant from taking possession of the lands in suit by executing the decree of Title Suit No. 135 of 1903, and for damages.

The Munsif has granted the plaintiff's prayer for an injunction to the extent of restraining the defendant from taking *khas* possession of the lands in suit, as he is the plaintiff's tenant; and that decree has been confirmed by the lower Appellate Court and afterwards by Mr. Justice Caspersz on appeal to this Court, and it is from this judgment of Mr. Justice Caspersz that the present appeal is preferred to us under the Letters Patent.

(1) (1873) 20 W. R. 168. (2) (1891) I. L. R. 14 Mad. 425.
(3) (1907) I. L. R. 34 Calc. 902.

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JENKINS, C.J.

The case has been argued—and I think properly argued—upon the basis that the whole question turns upon whether this is a case in which the plaintiffs are entitled to the injunction which has been granted to them, for if they are not so entitled, then the declarations made in their favour would naturally go, as they were merely steps towards the relief of an injunction. In my opinion, the plaintiffs are not entitled to this injunction. The law is formulated for us in Chapter X of the Specific Relief Act: and, to begin with, it was incumbent upon the plaintiffs to bring themselves within the conditions prescribed in section 54 of that Act. Mr. Mitter conceded that his best chance of success was to rely on the provision of clause (*e*). But in my opinion clause (*e*), which prescribes as one of the conditions entitling the plaintiffs to an injunction, that such relief is necessary to prevent a multiplicity of judicial proceedings, has no application, for the simple reason that there was no ground to apprehend any such multiplicity. The clause has application to a well-known condition of affairs which is absolutely remote from that with which we have to deal in this case. It is not as though the plaintiffs here would have to bring repeated suits or to make repeated applications or to take repeated proceedings for the purpose of establishing or safeguarding their rights, or of preventing the acquisition of rights by the defendant. If they are right in their contention, then should the present defendant obtain possession, it will be open to these plaintiffs to bring such suit as they may think proper for the purpose of recovering possession. It is unnecessary to consider the rest of section 54, though I would point out that on the facts of this case it is impossible to say that the defendant has invaded, or threatened to invade, the plaintiffs' right to, or enjoyment of, any property. Further than that, section 56 appears to me also to constitute a manifest bar in the way of the plaintiffs' suit: I say so, notwithstanding the decision of the Madras High Court in *Appu* v. *Raman* (1). I feel as Mr. Justice Markby did when deciding *Dhuronidhur Sen* v. *Agra Bank* (2). He said at page 396: "It

(1) (1891) I. L. R. 14 Mad. 425. (2) (1878) I. L. R. 4 Calc. 380.

has already been found difficult enough to bring litigation in this country to a termination, and, if we were to grant this injunction, I am very much afraid that advantage would be taken of the precedent to prolong litigation very much further.

In my opinion, the plaintiffs have failed to establish any right to bring this suit for an injunction, and I think the judgment of Mr. Justice Caspersz was erroneous. We, therefore, reverse the decree of the lower appellate Court and dismiss the suit with costs throughout.

Doss J. I agree.

S. M. *Appeal allowed.*

ORIGINAL CRIMINAL.

Before Mr. Justice Woodroffe.

EMPEROR

v.

TARANATH ROY CHOWDHRY.*

1910

May 18.

Confession—Admissibility of statement alleging, whether truly or not, that it was not voluntary—Evidence Act (I of 1872) s. 24.

A statement in writing by the accused, which contains an allegation from which it is to be inferred that the statement of which it forms a part was not made voluntarily, is inadmissible.

THE accused was originally tried at the Ordinary Criminal Sessions of the High Court by Brett J., with a Special Jury, on the 5th May 1910, charged, under sections 19 (*f*) and 20 of the Arms Act (XI of 1878), with having in his possession or under his control arms and ammunition in contravention of section 14, and with keeping them secretly. The Jury disagreed, three being for conviction and six for acquittal. They were thereupon discharged, and the accused remanded pending a re-trial which was directed by the learned Judge. The case was re-tried, on the 17th May, before Woodroffe J. and a Special Jury on the same charges.

* Original Criminal Jurisdiction.