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We may add, that the incident appears to have been greatly magnified. Musammat Mahi duly appeared in Court and gave her evidence. The convictions and sentences are, therefore, set aside. We direct that the petitioners be discharged from bail. The rule is made absolute.

Rule absolute.

E. H. M.

CIVIL RULE.

Before Mr. Justice Mookerjee and Mr. Justice Caspersz.

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March 23

KESHO PRASAD SINGH

v.

SRINIBASH PRASAD SINGH.

Injunction—Cases where injunction might be granted—Plaintiff out of possession—Prima facie claim to the disputed property—Irreparable injury.

Where the plaintiff is out of possession and claims possession, the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right; but where the threatened injury will be irreparable, an injunction will lie at the instance of a complainant out of possession.

No injunction should be granted in a case where there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste.

Where the plaintiff has another adequate remedy, and where if an injunction were granted it would be of the vaguest description, no injunction ought to be granted in such cases.

RULE obtained by the plaintiff, Kesho Prasad Singh.

The plaintiff brought a suit for recovery of possession of a large estate, known as the Dumraon Raj, on declaration of his title thereto, against the defendants, Srinibash Prasad Singh and another. The suit of the plaintiff was decreed in the Court of first instance. Defendant Srinibash Prasad, who is a minor under the Court of Wards, preferred an appeal to

* Civil Rule, No. 1149 of 1911, in connection with Appeal from Original Decree, No. 441 of 1910, under section 45 of the Specific Relief Act.

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the High Court. During the pendency of the appeal, the plaintiff-respondent obtained this Rule calling upon the defendants to shew cause why they, as also their agents and servants, should not be restrained by an injunction in the use and enjoyment of the subject-matter of the litigation now in their possession.

It appeared that there was no foundation for any suggestion that the defendants were about to commit an act in the nature of waste.

Mr. B. C. Mitter, Babu Provas Chandra Mitter and *Babu Narendra Chandra Bose,* for the petitioners.

Mr. S. P. Sinha, Dr. Rash Behari Ghose, Babu Ram Charan Mitra and *Babu Mohini Mohan Chatterjee,* for the opposite party.

Cur. adv. vult.

MOOKERJEE AND CASPERSZ JJ. We are invited in this Rule, by the plaintiff-respondent in an appeal from original decree to grant an injunction upon the defendants-appellants so as to restrain them in the use and enjoyment of the subject-matter of the litigation now in their possession. The circumstances under which the Rule was obtained are not disputed, and may be briefly narrated. The subject-matter of the litigation is known as the Dumraon Raj estate, which was in the possession of Maharani Beni Prasad Koeri up to the time of her death, on or about the 13th December, 1907. Upon her death the Court of Wards took possession of the estate on behalf of an infant Jung Bahadur Singh, now known as Maharaj Kumar Srinibash Prasad Singh, alleged to have been adopted by the late Maharani and entitled to succeed to the Raj as such adopted son. The plaintiff thereupon commenced this litigation in the Court of the Subordinate Judge for recovery of possession of the estate, on the allegation that he was the reversionary heir lawfully entitled to succeed to the properties upon the death of the Maharani. The trial lasted for many months, and on the 12th August, 1910, a decree was made in

favour of the plaintiff. On the 8th September following, the defendants lodged an appeal in this Court, and obtained a Rule for stay of execution as also an order for an *ad-interim* stay of proceedings. On the same date, the plaintiff obtained a Rule upon the members of the Board of Revenue, under section 45 of the Specific Relief Act, to compel them to release the estate in his favour. Both these Rules were discharged on the 2nd March, 1910. The plaintiff thereupon obtained the Rule now under consideration, calling upon the defendants-appellants to shew cause why they, as also their agents and servants, should not be restrained from spending any sums whatsoever out of the estate; he also asked for an *ad-interim* injunction to restrain the defendants from spending any sums except such sums as are necessary for the payment of Government revenue and other public charges and rents due to superior landlords. This prayer, however, was not granted.

In support of the Rule, it has been argued by learned counsel, that the defendants-appellants ought not to be allowed to spend the income of the properties in their possession to which the title of the plaintiff has been declared by the Court of first instance, and that, in any event, the defendants ought not to be allowed to spend any sums in excess of what is needed for the payment of Government revenue and other public charges and rents due to superior landlords as also sums needed for the management of the estate. It has been contended in substance that if the defendants are not so restrained, they may spend the whole of the income of the estate, as it is alleged they have done in the past, and that plainly they have no authority to appropriate to their own use monies which belong to the plaintiff. In answer to the Rule it has been argued, that the question of the title of the plaintiff is still in controversy; that in spite of the decision of the original Court, it cannot be maintained that the plaintiff has any fair prospect of success; that, in any event, the plaintiff has other remedies at his disposal; and that, in any view, the plaintiff cannot by an injunction practically compel the defendants to manage the estate at their cost for his benefit. After careful considera-

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tion of the arguments which have been addressed to us on both sides, we are of opinion that the application for an injunction ought to be refused.

It may be conceded that the plaintiff now occupies a position of some advantage by reason of the decision in his favour by the original Court. If the application for injunction had been made during the pendency of the trial in the Court below, the defendants could undoubtedly have contended that the injunction ought not to be granted until the plaintiff had established, as put by Lord Cottenham in *Clayton* v. *Attorney General* (1), that he has a fair prospect of success, or, as observed in other cases [*Preston* v. *Luck* (2), *Challender* v. *Royle* (3), and *Republic of Peru* v. *Dreyfus* (4)], that he has made out a probable or *prima facie* case. Let us assume, therefore, that as the plaintiff has made out his title after a protracted trial in the Court of first instance, he has a *prima facie* claim to the disputed properties. But this by itself is not sufficient to justify the grant of an injunction. It is well settled that, as a general rule where the plaintiff is out of possession and claims possession, the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right; but where the threatened injury would be irreparable, an injunction will lie at the instance of a complainant out of possession, though in jurisdiction where a distinction is made between a Court of Law and a Court of Equity, such injunction has been refused even against irreparable injury, if the title has not been established at law and no action to establish it has been brought: *Strelley* v. *Pearson* (5), *Harman* v. *Jones* (6), and *Wilson* v. *Townend* (7). In this country, however, we are not embarrassed by the distinction between a Court of Law and a Court of Equity; in any event, in the case before us, the plaintiff has commenced a suit for declaration of his title and has been successful in the original Court.

(1) (1834) 1 Coop. temp. Cott. 97, 139.
(2) (1884) 27 Ch. D. 497, 505.
(3) (1887) 36 Ch. D. 425, 436.
(4) (1888) 38 Ch. D. 348, 362.
(5) (1880) 15 Ch. D. 113.
(6) (1841) 1 Cr. & Ph. 299.
(7) (1860) 1 Dr. & Sm. 324.

The principle, therefore, to be applied here is that, unless irreparable injury is threatened, the Court will not grant an injunction to the plaintiff who is out of possession as explained in *Lowndes* v. *Bettle* (1), where the decisions were reviewed and classified by Kindersley V.C. As the learned Judge pointed out, the remedy by injunction is afforded more liberally to a complainant in possession to protect that possession than to one out of possession to protect the property until possession can be recovered by law.

The same doctrine has been recognised in numerous decisions in the American Courts as based on sound principles of justice, equity and good conscience; and it has been repeatedly ruled that a defendant in possession will not be enjoined from the use of the property in controversy, unless it is made to appear that the complainant will otherwise lose the fruits of his action if he establishes his title. The leading decision upon the point is the case of *Snyder* v. *Hopkins* (2), where Mr. Justice Brewer laid down the principle that, pending an action for possession, while the title is disputed and still finally undetermined, the defendant ought not to be restrained from continuing in possession and from the ordinary natural use of the premises and the enjoyment of all benefits which flow from such possession. If, however, the defendant should attempt to commit any act in the nature of waste, the Court will interfere by injunction to restrain him. A similar view was affirmed in *Hunt* v. *Steese* (3), *Williams* v. *Long* (4) and *Taylor* v. *Clark* (5): see also *Lloyd* v. *Trimleston* (6), and *Fingal* v. *Blake* (7). In the case before us, there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste; the plaintiff, therefore, is not entitled to an injunction to restrain them in the enjoyment of the properties still in their possession.

(1) (1864) 33 L. J. Ch. 451; 10 L. T. 55.
(2) (1884) 31 Kansas 557; 3 Pac. 367.
(3) (1888) 75 Cal. 620;
(4) (1900) 129 Cal. 229; 61 Pac. 1087.
(5) (1898) 89 Fed. Rep.
(6) (1829) 2 Molloy 81.
(7) (1828) 2 Molloy 50.

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Apart from the reason just stated, it is clear that no injunction ought to be granted in the case before us as the plaintiff has another adequate remedy. It is plain that the plaintiff can execute the decree he has obtained and thereby obtain full and ample relief. It is also obvious that the injury apprehended by the plaintiff is susceptible of perfect pecuniary compensation; in fact, the plaintiff has obtained a decree for mesne-profits during the period of dispossession. No doubt, the mere fact that damages are recoverable is no objection to the grant of an injunction in cases where such damages would not be an adequate compensation for the injury, for instance, where the amount of the damage cannot be accurately computed or where the amount cannot be adequately proved: *Jordeson* v. *Sutton Gas Company* (1). Here, however, there is no solid ground suggested in support of the view that the plaintiff will not be amply compensated for any injury he may suffer if the injunction is refused. Consequently, as an equally efficacious relief is available to the plaintiff, the Court will not grant an injunction.

Lastly, it may be observed that if an injunction were granted, it must necessarily be of the vaguest description. As already stated, the plaintiff prays that the defendants should be restrained from spending any portion of the income of the estate except for payment of Government revenue and other similar demands or rent payable to the superior landlord. This is manifestly unreasonable, because the plaintiff cannot in justice call upon the defendants to manage the estate for him at their expense. The learned counsel for the plaintiff, therefore, conceded that the injunction if granted should be so framed as to leave it open to the defendants to spend such portion of the income as might be needed for the management of the estate. But any injunction so framed, would obviously lack precision, and consequently, become valueless. If the plaintiff should subsequently apply to this Court to proceed against the defendants for alleged violation of the injunction, and if the defendants should plead that any

(1) [1899] 2 Ch. 217.

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disputed sums they had spent were needed for the protection of the estate, the Court could hardly undertake to determine the validity of the objection; the result would be that the injunction, by reason of indefiniteness would be practically useless. Under circumstances like these when the plaintiff really seeks to obtain control over the expenditure of the income of the disputed property during the pendency of the litigation, the appropriate remedy is rather by the appointment of a receiver than by the grant of a vague and indefinite injunction. In our opinion, the objections we have explained are, each of them, fatal to the grant of the injunction.

The result, therefore, is that the Rule is discharged with costs.

S. C. G. *Rule discharged.*

APPEAL FROM ORIGINAL CIVIL.

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

McINERNY

v.

THE SECRETARY OF STATE FOR INDIA. *

1911

June 9.

Cause of action—Amendment of plaint—Secretary of State for India in Council—Action in tort—Notice of suit—Civil Procedure Code (Act V of 1908) s. 80—Amendment of plaint, when not permissible—Leave to withdraw.

Where notice of an action against the Secretary of State for India in Council required under section 80 of the Civil Procedure Code, pointed to a suit based on negligence, and the original plain[illegible] on that basis, and it was subsequently sought to amend setting up a cause of [illegible]d on nuisance:-

Held, that such amen[illegible]

Leave to withdraw sui[illegible]

APPEAL by the [illegible] judgment of Flet[illegible]