
(1913) 08 CAL CK 0024
In the Calcutta High Court

Bhramar Lal Banduri and Others

APPELLANT

Vs

Najstda Lal Chowdhuri

RESPONDENT

Date of Decision : 20-08-1913

Acts Referred:

Specific Relief Act, 1877 — Section 56

Citation : 24 Ind. Cas. 199

Hon'ble Judges : Ray, J;Coxe, J

Bench : Division Bench

Judgement

Coxe, J.—This was a suit for an injunction to restrain the defendant from digging up the land in his possession for the purpose of making bricks. The Munsif dismissed, the suit holding that as the plaintiff was out of possession the suit was not maintainable. The Subordinate Judge in appeal hold that this view was erroneous and accordingly decreed the plaintiffs suit. The defendant appeals.

2. The question whether a suit of this nature is maintainable by a plaintiff who is out of possession is discussed in the case of Davenport v. Davenport (1849) 7 Hare Rep. 217 : 68 Eng. Rep. 89 : 18 L.J.Ch. 163 : 13 Jur. 227 : 82 R.R. 76. That case may be regarded as authority that the Courts will not interfere by way of injunction when the plaintiff is out of possession unless there is some privity between the parties. As pointed out in Lowndes v. Bettle (1864) 33 L.J. Ch. 451 : 10 Jur. (n. s.) 226 : 12 W.R. 399 : 10 L.T. (n. s.) 55 : 3 N.R. 409 : 143 R.R. 388., the tendency of decisions has been to break down the unreasonable distinction between waste and trespass, and in Davenport v. Davenport (1849) 7 Hare Rep. 217 : 68 Eng. Rep. 89 : 18 L.J. Ch. 163 : 13 Jur. 227 : 82 R. R. 76. the refusal of an injunction was regretted. Indeed in such a case as the latter in which an action of ejectment was also pending the Courts in India would probably grant an injunction. But it certainly seems to me wrong that when a plaintiff avers that the defendant is on his land without any right whatever, he should be allowed to sue for an injunction when he ought to sue for recovery of the land.

3. Accordingly I would decree the appeal and restore the decision of the Munsif

with costs throughout.

Ray, J.

4. I agree. The learned Subordinate Judge says that the plaintiffs have constructive possession through their recorded tenant. This is not correct. The original tenant is not now on the land. The plaintiffs allege that he had no assignable interest. They further allege that defendant has no right to the land. That means he is a trespasser. In a case like this relief can be obtained by the usual proceeding in ejectment and Section 56 of the Specific Relief Act lays down that the exceptional relief by injunction should not be allowed, vide illustration (i). The appeal should be decreed.