

(1967) 05 AHC CK 0040
In the Allahabad High Court
Case No : S.A. No's. 1002 and 1677 of 1960

Debi Sahai alias Debi Singh (died and after him Mir Singh and Others) APPELLANT

Vs

Mahabir and Another RESPONDENT

Date of Decision : 03-05-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1967) 37 AWR 632

Hon'ble Judges : S.N. Singh, J

Bench : Single Bench

Advocate : K.C. Agarwal, for the Appellant; N.C. Rajvanshi, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Singh, J.—The facts giving rise to these two appeals are as follows:

The Plaintiff Respondents who happened to be the landlords instituted a suit for the ejectment of the Defendant as tenant in the year 1949 and obtained a decree for his ejectment. When the decree was put in execution Rent Control and Eviction Act came into force with the result that in view of Section 14 of the Act the decree could not be executed. Thereafter it appears that the premises in suit according to the case of the Plaintiffs was demolished by the Defendant and according to the defence case it fell down during rains. The Plaintiffs instituted two suits one for recovery of damages against the Defendant on the allegation that the Defendant had demolished the construction and had misappropriated the materials thereof. Another suit was instituted for the ejectment of the Defendant on the ground of material alteration and default.

Both these suits have been decreed by the courts below. Plaintiff's suit for Rs. 100/- as damages has been decreed in one case on the finding that the Defendant had misappropriated the materials of the Plaintiffs house. In the other case the trial court accepted that there were arrears as well as there was

material alteration as such decreed the other suit as well.

On appeal the lower appellate court, however, did not accept the finding about default but accepted the decision of the trial court about material alteration as such decreed the suit for ejectment as well. Before the two courts below a plea based on Section 47 CPC was also raised and the courts accepted the plea based on Section 47 CPC and treating the second suit for ejectment as an application in execution allowed the prayer for ejectment.

2. The Defendant has come up in appeal in both these cases. Having heard the learned Counsel for the parties I am of opinion that both these appeals must fail. In the appeal in which damages were claimed on the finding of fact recorded by the two courts below it has to be accepted that the materials were misappropriated by the Defendant. It has been argued on behalf of the Appellant that the Defendant did not misappropriate the materials but only made construction on the disputed site. Even if this contention is accepted nevertheless in my opinion this will amount to misappropriation because the construction made by the Defendant was an unauthorised construction without the consent of the Plaintiffs. On the findings recorded by the two courts below learned Counsel has not been able to satisfy me that the damages allowed could be interfered with.

3. So far as the ejectment suit is concerned both the courts have held that there is material alteration. This finding also appears to be well justified on the evidence and the circumstances of this case. After hearing the argument, however, I am of opinion that the courts below wrongly applied Section 47 CPC to the facts of this case, the suit instituted by the Plaintiffs for ejectment appears to have been rightly instituted. The cause of action for the suit was a different cause of action and there was no question of executing the previous decree in this case. Learned, counsel for the Appellant urged that the suit was barred by time but he could not successfully substantiate this argument of his.

4. In the result these appeals fail and are hereby dismissed with costs.