
(1916) 05 AHC CK 0025
In the Allahabad High Court

Dhanraj Singh and Others

APPELLANT

Vs

Musammat Lakhrani Kuar

RESPONDENT

Date of Decision : 26-05-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 47

Citation : AIR 1916 All 163 : 35 Ind. Cas. 601

Hon'ble Judges : Henry Richards, C.J; Rafique, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit for possession of certain Immovable property. The plaintiff obtained a decree for possession of this very land in 1906. On appeal this decree was confirmed. Admittedly, the plaintiff did not obtain possession through the Court and when she made an application for execution of the decree, her application was rejected on the ground that the decree was more than three years old. She then instituted the present suit. In the Court of first instance she succeeded in obtaining a decree. On appeal, the learned District Judge held that not having executed the decree within three years, her suit was barred by the provisions of Section 11 of the Code of Civil Procedure, and also by the provisions of Section 47 of the Code of Civil Procedure. In second appeal to this Court, the learned Judge reversed the decree of the lower Appellate Court and restored the decree of the Court of first instance.

2. An issue was framed in the Court of first instance as to whether or not the plaintiff had been-in possession within twelve years. It was, of course, necessary from every possible aspect of the case for the plaintiff to prove that she had been in possession within twelve years of the institution of the present suit. The mere fact that she had obtained a decree for possession of the land would not, in our opinion, entitle her to get possession in the present suit if she had never been in possession within twelve years. Two witnesses were produced who deposed for and against the alleged possession of the plaintiff, one witness for

the plaintiff and the defendant for himself. The plaintiff's witness was Ram Dawan Singh. He deposed that a year after the decree had been obtained, the plaintiff got possession and that she was subsequently put out by the defendants. He mentioned that she had cultivated the land. The defendant stated that he has been for eighteen years in possession and that he had cultivated the land himself and by tenants. His evidence was somewhat vague. The learned Munsif says, in dealing with the witness Ram Dawan Singh, that no connection of this witness with the plaintiff and no enmity with the defendant is shown or proved. He then points out that the defendant is an interested witness and that he places no reliance on his statement, and then he says he believes the witness for the plaintiff. In the memorandum of appeal no specific ground was taken against the finding of the Munsif that the plaintiff had been in possession within twelve years. Now the only evidence of her possession was the evidence of this witness and the possession he proved was possession after the decree, therefore, when finding that she was in possession within twelve years the Munsif must have found that she was in possession after the decree. The learned District Judge arrived at no finding on this point. He decided the case against the plaintiff purely on the question of law. The learned Judge of this Court considered that he was bound by the finding of the Munsif on the question of fact. This, we think, was wrong. He was entitled either to refer an issue on this question of fact or he might have exercised the powers conferred on the High Court u/s 103 and decided the issue himself. We consider that this is an important issue. We consider that it is a fit case for this Court to exercise the jurisdiction it has u/s 103. The evidence is on the record and is sufficient to enable us to decide the issue. The learned Munsif had the advantage of hearing and seeing the witnesses on this point. He believed the witnesses for the plaintiff and has given reasons for believing them. Furthermore, there is considerable probability that the evidence is true. After the plaintiff had finally got a decree for possession in 1907, it is improbable that she would have remained absolutely quiet for three years unless she had got into possession of the property. It is also probable that the defendants would not have resisted her in getting possession at first, though it is quite likely that finding her a defenceless woman they would have gradually attempted again to dispossess her. This is really what we believe actually happened. We find upon the evidence that the plaintiff did get into possession after the decree. On this finding of fact it seems to us that the plaintiff had a cause of action irrespective of the previous decree. The previous decree would, no doubt, be part of her title. We do not think that the mere fact that she obtained a decree for possession in 1907 would prevent her again suing for possession, if her possession was again interfered with, nor do we think that the doctrine of merger applies to decrees for ejectment. . No doubt if a party obtains a decree for a debt or for damages for tort, the original cause of action merges in the decree, but a decree in ejectment differs very much from other decrees. In Broom's Legal Maxims, Second Edition, page 251, in dealing with ejectment, under the Maxim, *Nemo debet bis vexari pro una et eadem causa* the learned author says:-- With respect to the action of ejectment, we may further specially

remark that by the judgment in this action the lessor of the plaintiff obtains possession of the lands recovered by the verdict, but does not acquire any title thereto, except such as he previously had; if, therefore, he had previously a freehold interest in them, he is in as a freeholder; if he had a chattel interest, he is in as a termor; and if he had no title at all, he is in as it trespasser, and will be liable to account for the profits to the legal owner, without any re-entry on his part. Moreover, although it has recently been decided that a judgment in ejectment is admissible in evidence in another ejectment suit between the same parties, yet it is not conclusive evidence because a party may have a title to possession and to grant a lease at one time, and not at another. Neither can a judgment in ejectment be pleaded by way of estoppel, because the defendant is bound, by the terms of the consent rule, to plead not guilty and hence there is a remarkable difference between ejectment and other actions with regard to the application of the maxim under consideration." It seems to us that if the plaintiff had got formal possession in execution of her decree and her possession was again interfered by the defendants she has a right to bring a fresh suit. If she succeeded in getting possession without applying to the Court, we see no reason why she should not be in as good a position as if she had got formal possession through the Court.

3. What we have said above is sufficient to dispose of the appeal. The learned Judge of this Court, however, seems to have held that the plaintiff's cause of action merged in the decree and then to have considered that it is always open to a decree-holder to bring a suit on the decree at any time within twelve years notwithstanding that the decree has become incapable of execution by lapse of time. This dictum, if correct, would mean that suit after suit could be brought upon barred decrees. If this is correct law, it is a very alarming situation. It is difficult to understand why the Legislature should have expressly limited the time within which a decree can be executed and at the same time allow decree-holders to bring suits upon decrees, thereby putting the parties to extra expense and vastly extending limitation. With regard to ordinary decrees we think that Section 47, which provides that no separate suit shall be brought in respect of matters relating to the discharge of decrees, prevents a fresh suit being brought upon a decree. We do not think it necessary to say anything further on the point, first, because it is not necessary for the decision of the present case and secondly, because the question has not been fully argued before us. In view of our finding on the issue as to possession and our view of the law, we dismiss the appeal with costs.