
(1915) 01 CAL CK 0010
In the Calcutta High Court

Musammat Ajiman Bibi and Others

APPELLANT

Vs

Reasat Sheikh and Others

RESPONDENT

Date of Decision : 19-01-1915

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : 28 Ind. Cas. 570

Hon'ble Judges : D. Chatterjee, J;Chapman, J

Bench : Division Bench

Judgement

1. The object of Section 9 of the Specific Relief Act is "to provide a speedy remedy for that class of cases where a person in physical possession of property is forcibly dispossessed from it against his will and consent." See Tarini Mohun Mozumdar v. Gunga Prosad Chuckerbutty 14 C. 649. The main question for determination, therefore, in a case under this section is whether the plaintiff while in physical possession of property has been dispossessed of the same in the manner and within the time specified in the section. If he was in physical possession he can be restored to such possession under the decree of the Court. A man in joint possession of Immovable property is as much in physical possession of his share as the entire body of co-sharers are in physical possession of the whole and such joint possession can as well be physically restored in respect of his share as the possession of the whole can be restored to the entire body of co-sharers. The case of Hari Narain Das v. Ellemjan Bibi 23 Ind. Cas. 618 : 19 C.L.J. 117 : 19 C.W.N. 120 is quite distinguishable from this case, as there the dispossession was of the whole and possession was claimed in respect of a part, so that the Court was called upon to restore quite a different state of things from that which had been disturbed. The learned Judges distinctly say: "we have treated the case as being one where a party seeks possession of his share only of property from which he himself and his co-sharers have been dispossessed, and it is incompetent for the Court to give possession of the whole of the property in such a case." The remarks as to exclusive possession in the judgment must be read in reference to the facts of that case and do not stand in

the way of that joint physical possession being restored which existed before the disturbance.

2. The case before the learned Munsif will be decreed if the plaintiff proves his joint physical possession within six months of the suit.