
(1895) 07 CAL CK 0020
In the Calcutta High Court

Nasir Ali Fakir

APPELLANT

Vs

Meher Ali alias Chutai Fakir

RESPONDENT

Date of Decision : 22-07-1895

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : (1895) ILR (Cal) 830

Hon'ble Judges : Norris, J;Gordon, J

Bench : Division Bench

Judgement

Gordon, J.—The plaintiff in this suit obtained a decree for possession of certain land u/s 9 of the Specific Relief Act. When he went to take possession in execution, he was obstructed by the defendant. Thereupon the decree-holder complained to the Court, and his complaint was registered as a suit, he being the plaintiff and the person who obstructed him in execution, the defendant. The Munsif gave the plaintiff a decree. On appeal the Subordinate Judge reversed it. One of the points taken before the Subordinate Judge was that no appeal lay from the Munsif's order u/s 331, on the ground that this was merely a proceeding in continuation of the original suit u/s 9 of the Specific Relief Act, and as no appeal lay against a decision passed under that section, no appeal lay in this case to the Subordinate Judge. This point has also been urged before us in second appeal.

2. We think that the view contended for cannot be accepted. The wording of Section 331 of the CPC is distinctly opposed to it. That section lays down that "if the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant," and the Court shall then "proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under

the provisions of chapter V." And the concluding paragraph is : Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise."

3. We are clearly of opinion that proceedings under this section are in the nature of a fresh suit between the decree-holder and a third party, and that, therefore, an appeal lay to the Subordinate Judge in the case. We have been referred to the case of *Ravloji Tamaji v. Dholapa Raghu* ILR 4 Bom. 123 as supporting the contention of the appellant; but we think that that case is not an authority for the proposition contended for in the present case. It appears to have reference rather to matters of jurisdiction for the purpose of valuation, and for that purpose only proceedings u/s 331 of the Civil Procedure Code, may be considered to be proceedings in continuation of the original suit. Moreover this decision has been dissented from in the cases of *Muttammal v. Chinnana Counden* ILR Mad. 220 and *Kalima v. Nainan Kutti* ILR Mad. 520.

4. We think, therefore, that this appeal fails and must be dismissed with costs.