
(1895) 04 CAL CK 0006
In the Calcutta High Court

Nritto Lall Mitter

APPELLANT

Vs

Rajendro Narain Deb and Others

RESPONDENT

Date of Decision : 04-04-1895

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : (1895) ILR (Cal) 562

Hon'ble Judges : Hill, J

Bench : Single Bench

Judgement

Hill, J.—This is a suit brought by the plaintiff u/s 9 of the Specific Relief Act for the recovery of possession of a room situated on the first floor of the outer apartments in No. 35/1, Rajah Nobokissen's Street. It has been objected, on behalf of the defendants, that the plaint discloses no cause of action. What the plaintiff says in effect is this : That originally the house to which this room belongs was the family dwelling-house of Rajah Sir Radhakant Deb, who died in 1868, having made a will in 1863; and that, under that will, the plaintiff's father and uncle are in possession and enjoyment of a portion of the house. It must be taken that they are so in possession of that portion of the house in which the room in suit is situated.

2. Then in the fourth paragraph, and it is on this that the defendant founds his contention, it is said that, as representing his uncle (Shamlal Mitter) and father (Ruplal Mitter), the plaintiff was, until the date thereafter mentioned, in possession of, amongst others, the room in suit; and the plaintiff goes on to say, that, in July 1893, the defendants forcibly broke open the padlock of that room and took possession of the room, thereby dispossessing the plaintiff.

3. The defendants contend that the possession intended by Section 9 of the Specific Relief Act must be what is described in certain of the authorities to which reference has been made as juridical possession, and that all that the plaintiff discloses in his plaint is a possession as representing his father and uncle, and that in effect the possession on which he relies, so far as its character is

disclosed in the plaint, is not his own, but his father's and uncle's; and it is argued that a possession of that description is not juridical so as to entitle him to succeed in this suit: to put it shortly, that the possession relied on is not his own, but that of some one else.

4. On the other hand, the plaintiff, in reply to Mr. Jackson's objection, suggests that some other meaning is to be attributed to the expression "as representing his father and uncle," which occurs in the fourth paragraph of the plaint, and that what the plaintiff is there asserting is an exclusive possession, not in a representative capacity at all, but on his own account. I confess I cannot put that interpretation upon the plaint; and I think accordingly that since, on the face of the plaint, it appears that if any one is entitled to be put in possession of this room in terms of the Act in consequence of the ouster in 1893, it is the father and uncle of the plaintiff, who were the persons really in possession of the room prior to that date, effect must be given to the defendants' objection, and the suit must fail.

5. It was urged by Mr. Dunne that, if I proposed to give effect to this objection, it would be proper that the plaintiff should be permitted to amend his plaint in order to show that the possession he held prior to the ouster of July 1893 was not on account of his father and uncle, but exclusively on his own account. It seems to me that that would be to permit the plaintiff to set up an allegation totally inconsistent with the case on which he came to Court, and I should not allow it at this stage.

6. The result is the suit must be dismissed with costs on scale 2.