

(1954) 04 AHC CK 0021
In the Allahabad High Court
Case No : Second Appeal No. 2331 of 1953

Parma Nand and Others

APPELLANT

Vs

Sm. Chhimmawati and Another

RESPONDENT

Date of Decision : 28-04-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Specific Relief Act, 1877 — Section 53, 56, 9

Citation : AIR 1955 All 64

Hon'ble Judges : Brij Mohan Lall, J

Bench : Single Bench

Advocate : M.A. Kazmi, for the Appellant;

Final Decision : Dismissed

Judgement

Brij Mohan Lall, J.—This is a second appeal by the plaintiffs. A suit for possession u/s 9, Specific Relief Act, was instituted by the respondent against one Sm. Savitri and her husband Banarasi Das. During the pendency of that suit the present appellants purchased the property from Smt. Savitri. They were impleaded as parties to the litigation and a decree for possession was passed against them also.

2. They have now filed the suit which has given rise to this second appeal to obtain an injunction restraining the respondent from executing the decree. Both the courts below have dismissed the suit. In my opinion also such a suit does not lie. The appellants must first surrender possession and thereafter they can set up any right they like on the basis of title. If they are granted an injunction restraining the respondent from executing her decree the very object, and purpose of the suit u/s 9, Specific Relief Act, will be defeated. The object and purpose of that suit are that if a person takes the law in his own hands and forcibly dispossesses another otherwise than in accordance with law he must surrender possession irrespective of any title that may vest in him. If a plea of title cannot be set up in the suit itself, it can also not be set up as a bar to

execution proceedings.

3. I am, therefore, of the opinion that the appellants must first surrender possession to the respondent in execution of the decree passed u/s 9, Specific Relief Act, and then they may assert any right which they may possess.

4. The result, therefore, is that they cannot be granted an injunction to restrain the respondent from executing the decree.

5. The appeal fails and is dismissed under Order 41, Rule 11, C. P. C.