

(1889) 07 CAL CK 0017
In the Calcutta High Court

Purmeshur Chowdhry and Others

APPELLANT

Vs

Brijo Lall Chowdhry and Others

RESPONDENT

Date of Decision : 16-07-1889

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : (1890) ILR (Cal) 256

Hon'ble Judges : Rampini, J; Pigot, J

Bench : Division Bench

Judgement

Pigot and Rampini, JJ.—This is an appeal from the decision of the Munsif of Hajipore. Under the terms of an order made by this Court it has been brought up here to be heard as a regular appeal before us.

2. In the suit the plaintiffs ask for a declaration that certain land was in their possession for a long time, and that the defendants have no concern with it. They ask also for a decree for possession and for wasilut.

3. The Munsif gave the plaintiffs a decree. The facts established in the opinion of the Munsif, from which we see no reason whatever to dissent so far as the findings of fact go, are that the plaintiffs were in possession of the land in question, that is, their bari land which skirts their house; and that they were dispossessed by the defendants of that land. The Munsif, finding these facts and without making any finding as to the length of the plaintiffs' possession prior to their dispossession, gave them a decree.

4. This suit was instituted much more than six months after the dispossession by the defendants. It could not, therefore, be maintained u/s 9 of the Specific Relief Act. And although there are many cases in this Court, notably the case of Khajah Enaetollah Chowdhry v. Kishen Soondur Surma 8 W.R. 389, which did not affirm the proposition that either Section 15 of Act XIV of 1859, or Section 9 of the Specific Relief Act, bars a suit for ejectment founded upon possession wrongfully disturbed, recent cases in this Court have laid down that mere possession will

not entitle the plaintiffs to obtain a decree for recovery of possession except under the special statute which entitles him to recover possession, if the suit is brought within a certain time of the date of dispossession. That proposition we read from *Ertaza Hossein v. Bany Mistry* ILR Cal. 130, a case before Mr. Justice Tottenham and Mr. Justice O'Kinealy. A similar proposition was laid down in the case of *Debi Churn Boido v. Issur Chunder Manjee* ILR Cal. 39, where the dispossession was a forcible dispossession. These two cases adopted the view taken by Mr. Justice Prinsep in the case of *Kaiva Manjee v. Khoivaz Nussio* 5 C.L.R. 278, and they are all founded upon a passage in the judgment of their Lordships of the Privy Council in *Wise v. Ameerunnissa Khatcon* L.R. IndAp 73 80, 81 of the Report.

5. It is true that the Bombay High Court has taken a different view. It has held in *Krishnarav Yashvant v. Vasudev Apaji Ghotikar* ILR 8 Bom. 371, that the passage in the judgment of the Privy Council just referred to has not the effect attributed to it in this Court; and in the Full Bench judgment of the Bombay High Court in *Pemraj Bhavaniram v. Narayan Shivaram Khisti* ILR Bom. 215, which judgment was delivered by Chief Justice Westropp, and in *Mohabeer Pershad v. Mohabeer Singh* ILR Cal. 591 : 9 C.L.R. 164, in the judgment pronounced by Sir RICHARD Garth, the proposition was affirmed that proof of quiet possession at the time of disturbance is enough to establish a *prima facie* case against a trespasser. We think, however, that we are bound to follow the recent cases in this Court, and to hold that the plaintiffs are precluded, by the remedy u/s 9 of the Specific Belief Act conferred upon them by that enactment (and which is given to them on condition that their suit shall be brought within six months from the date of dispossession), from asserting the rights which the earlier cases and the English law recognized to exist. That their case was founded upon possession and unjustifiable dispossession is pretty clear: and our decision is limited to the proposition that they are debarred from succeeding, because they did not bring the suit within six months from the dispossession.

6. For myself, I am bound to say that, but for the rule that it is undesirable to disturb recent and established cases, I should follow the opinion expressed by Mr. Justice Dwarka Nath Mitter, in the case of *Khajah Enaetoollah Chowdhry v. Kishen Soondur Surma* 8 W.B. 389 and by Sir Richard Garth and Chief Justice Westropp in the cases I have referred to. But without referring the matter to a Full Bench it would be impossible to give effect to that view, and that we cannot do as we do not both dissent from the recent cases in this Court. Therefore, agreeing with my learned colleague as to the effect, of the recent cases in this Court, I am of opinion that this appeal must be allowed and the suit dismissed on the ground stated.

7. Under the circumstances we have determined to allow no costs. The parties will bear their own costs throughout in all the proceedings.