

(1887) 06 CAL CK 0013
In the Calcutta High Court

Tarini Mohun Mozumdar

APPELLANT

Vs

Gunga Prosod Chuckerbutty Alias Tin Cowrie Chuckerbutty

RESPONDENT

Date of Decision : 15-06-1887

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : (1887) ILR (Cal) 650

Hon'ble Judges : W. Comer Petheram, C.J.; Ghose, J

Bench : Division Bench

Judgement

Ghose, J.—The facts of this case, so far as they are necessary to be mentioned for the purposes of the rule before us, are these: There is a certain property which is occupied by a number of ryots. The plaintiff alleges that he was in constructive possession of this property by receipt of rent from the ryots, but that, on a certain day, the defendant induced them to discontinue paying their rent to the plaintiff and to pay it instead to him, the defendant. The plaintiff, thereupon, brought the present action u/s 9 of the Specific Relief Act for the purpose of recovering possession of the said property from the defendant.

2. The Munsif has held that this suit does not fall within the scope of Section 9 of that Act, and has accordingly dismissed it. That section runs thus: "If any person is dispossessed without his consent of Immovable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit."

3. The learned vakil for the petitioner contends that his client was the party in possession of this property, and that the only mode in which that possession could, in the circumstances, be enjoyed was by receipt of rent, and that, when the ryots discontinued paying him rent and paid the same to the defendant, he was practically dispossessed within the meaning of Section 9, and that he was, therefore, entitled to maintain the present suit; and he relied upon certain remarks made by Sir Richard Couch in the case of *In re Sutherland* 9 B.L.R. 229.

4. What Sir Richard Couch was called upon to determine in that case was as to the meaning of the word "possession" in Section 318 of Act XXV of 1861, and he held that if a person was in possession of a property through his servant, or if he was in possession through ryots paying rent to him directly, that would be a possession within the meaning of that section; and, if a dispute with regard to such possession arose before the Criminal Court, that Court would have jurisdiction to take cognizance of it.

5. But the question that we have to consider in the present case is a wholly different one. What we have to determine, is whether the plaintiff has been dispossessed, without his consent, of the property in dispute within the meaning of Section 9 of the Specific Relief Act.

6. According to the plaintiff's own case the actual possession of the property was with the ryots, and the only way in which possession was enjoyed by him was by receipt of rent from those ryots. Now, if he was in the receipt and enjoyment of the rents from the ryots, the mere discontinuance of the payment of that rent would not constitute a dispossession without his consent within the meaning of the Specific Relief Act, for he might very well bring a civil action against the ryots for the recovery of the rent; and the mere fact of the defendant having persuaded the ryots to pay to him the rent, said to be due to the plaintiff, would be no answer to the claim. Therefore it appears to us that the plaintiff was not dispossessed against his consent so as to entitle him to maintain the action.

7. It appears to us that the real object of the Legislature in engrafting this section into the Specific Relief Act was 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. It is not the plaintiff's case that the ryots have been dispossessed ; his case is that the ryots are still in occupation of the property. If they had been dispossessed they might have maintained a suit for recovery of possession; and in certain circumstances he might himself bring such a suit. But they are in possession and, as I said before, the mere non-payment of the rent by them cannot be taken to be a dispossession of the plaintiff without his consent.

8. Reference was made to Sections 2 and 4 of Act IV of 1840 and Section 15 of Act XIV of 1859. We have considered those enactments; and we observe that the language of Section 4, Act IV of 1840, is very different from that of Section 15, Act XIV of 1859, and of Section 9 of the Specific Relief Act, so far as the particular point before us is concerned. It seems to us that, notwithstanding what might have been laid down in Section 4 of Act IV of 1840, the Legislature, when it promulgated the Specific Relief Act, did not intend to provide that, where a person was not in actual possession of property, but only in constructive possession of it by receipt of rent from ryots, and those ryots continued in occupation of that property, a suit by the landlord might be brought under the Specific Relief Act for recovery of possession by reason of discontinuance by the ryots to pay him rent.

9. For these reasons we think that this rule must be discharged with costs.