
(1939) 08 PAT CK 0003
In the Patna High Court

Yellayi Sannaya

APPELLANT

Vs

Sannayajulu Ramesham and Others

RESPONDENT

Date of Decision : 18-08-1939

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : AIR 1940 Patna 193

Hon'ble Judges : Harries, C.J.;Mohamad Noor, J

Bench : Full Bench

Judgement

Mohamad Noor, J.—This application in revision is directed against a decree of the learned Additional Munsif of Berhampore, decreeing a suit of the opposite party brought u/s 9, Specific Relief Act. The plaintiff's case was that he, his full brother defendant 2, and his half-brothers defendants 3 and 4, and their father, were in joint possession of a privy. On the death of the father, defendant 1, on the basis of a Sale deed in his favour said to have been executed by the father, erected a partition wall dividing the privy into two parts and forcibly dispossessed them from half of the privy.

2. The learned Munsif after recording the evidence decreed the suit. A question of law was raised before him that the plaintiff admittedly being in possession of an undivided portion of the privy was not entitled to maintain the suit, his prayer being that the principal defendant, that is defendant 1, should be dispossessed from half of the privy of which he had taken forcible possession. The defendant relied before the learned Munsif on a decision of the Madras High Court in Para Koothan v. Para Kulla Vandu AIR (1916) Mad 587. The learned Munsif declined to follow this case in the face of a decision of the Calcutta High Court in Ajiman Bibi v. Sheikh Reasat AIR (1916) Cal 562 which according to him was in favour of the plaintiff.

3. He held that the area being under the jurisdiction of the Patna High Court where the decisions of the Calcutta High Court are followed, that decision must be followed in preference to the decision of the Madras High Court. He, therefore,

decreed the suit. Defendant 1 has filed this revision application.

Apart from the two decisions already referred to, which I shall discuss in a moment, Mr. Chatterji appearing on behalf of the petitioner has referred us to another decision of the Calcutta High Court in *Hari Nama Dass v. Sheikh Naji* AIR (1914) Cal 496. This decision and that of the Madras High Court which I have already referred to clearly lay down that a Court in a suit u/s 9, Specific Relief Act, has no jurisdiction to pass a decree in favour of a plaintiff who claims an undivided share in a property from which he and his co-sharers were ousted.

4. I am inclined to follow these two decisions. The remedy by a possessory suit provided in Section 9, Specific Relief Act, is a special remedy under the statute the principle underlying it being that in a summary proceeding the order of which is not appealable the condition of possession before the inroad made upon a property without any process of law should be restored. The present case is exactly similar to the two cases above referred to. Here the plaintiff and his cosharers were dispossessed. The plaintiff asks for the restoration of his possession as well as of his brothers but his brothers do not claim possession. Defendant 2 filed a written statement in which he supported the plaintiff but did not join as a plaintiff nor did he bring his own separate suit for being put in possession of his undivided share.

5. Defendants 3 and 4 have remained absent from the suit and there are indications that they are siding with the principal defendant 1. Whatever may be the position, a possession cannot be restored to a man who does not want to be put in possession. Another alternative is that the plaintiff be put in an undivided possession along with the principal defendant. I have no doubt that such a possession is not contemplated by Section 9, Specific Relief Act.

The learned Munsif has, as I have said, relied upon a Calcutta decision reported in *Ajiman Bibi v. Sheikh Reasat* AIR (1916) Cal 562. In my opinion the facts of that case have no application to the present case.

6. There the plaintiff was dispossessed from his undivided share of a tank by his cosharers. A question arose whether he could maintain the suit for recovery of possession of that portion only from which he had been dispossessed. The Court after distinguishing that case from the case reported in *Hari Nama Dass v. Sheikh Naji* AIR (1914) Cal 496 held that he was entitled to succeed. The difference between the Calcutta case reported in *Hari Nama Dass v. Sheikh Naji* AIR (1914) Cal 496 and the Madras case on the one hand and the second Calcutta case reported in *Ajiman Bibi v. Sheikh Reasat* AIR (1916) Cal 562, on the other, is obvious. In the first two cases though the plaintiff and his cosharers were dispossessed from the entire property he was entitled to restoration of possession of a portion of it only. In the second Calcutta case the plaintiff wanted restoration of possession of the whole of the share from which he alone was dispossessed.

7. I would allow this application in revision, set aside the decree of the learned

Munsif and dismiss the plaintiff's suit with costs in the lower Court. The petitioner will be entitled to his costs in this Court which I would assess at one gold mohur.

Harries, C.J.

8. I agree.