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Court : Guwahati

Decided On : Feb-26-1952

Judge : Ram Labhaya, J.

Acts : Specific Relief Act, 1877 - Sections 9; Code of Civil Procedure (CPC) , 1908 - Sections 115

Appeal No. : Civil Revn. No. 139 of 1951

Appellant : Abdul Bari

Respondent : Asrab Ali

Advocate for Pet/Ap. : N.M. Dam, Adv.

Disposition : Petition dismissed

Judgement :

Ram Labhaya, J.

1. This petition of revision is directed against an order of the Munsiff of Cachar dated 30-6-1951 by which plaintiff's suit for possession of the disputed land was decreed under Section 9, Specific Relief Act.

2. Plaintiff's case was that he was in occupation of 5 powas of land under his Mirasdar and he was dispossessed forcibly on 12-6-1950 by the defendant.

Defendant pleaded that he had been in possession of the suit land under one Arju Mia and others and denied that he dispossessed the plaintiff forcibly as alleged.

3. The trial Court found on the evidence, direct and circumstantial, that the plaintiff was in pos-session of the property and had been dispossessed. He also found that the dispossession occurred on 12-6-1950. On these findings, he decreed the claim.

4. The learned counsel for the defendant petitioner has contended before me that the findings arrived at on the two questions that arose in the case are erroneous. He has pointed out that the learned Munsiff was influenced to a considerable extent by the fact that the plaintiff admittedly had his 'bari' on the 'bhita' left by Esub and Yakub, the previous occupants of the land. It is true that this circumstance has been considered as a relevant piece of evidence and the learned counsel does not dispute its relevancy. The land in dispute is admittedly contiguous to the 'bari' which is in plaintiff's possession. His contention that he came in occupation of the land after the previous, occupants receives support from his admitted possession of the 'bari'. There is also direct evidence consisting of the statements of two witnesses which show that he was in possession and had been dispossessed.

5. As regards the date of dispossession, the allegation in the plaint was that the date on which dispossession occurred was 12-6-1950. As this allegation was supported by the criminal litigation that followed the learned Munsiff accepted this date as the date of dispossession notwithstanding the fact that the plaintiff in his statement before him could not give any definite date of dispossession and made an indefinite statement that dispossession occurred in Baisakh or Jeth. The learned Munsiff considered the evidence in the light of the documentary evidence that was available and found that dispossession occurred on the date alleged in the plaint.

6. Mr. Dam assails the correctness of this finding mainly on the ground that the plaintiff himself did not give any definite date in his statement in Court.

7. The main question in the case is whether in these circumstances interference in revision would be justified in a case covered by Section 9, Specific Relief Act. An order under Section 9 of the Act is not appealable and is also not open to review. These remedies are not allowed to an aggrieved party under Section 9 of the Act. The aggrieved party can institute a suit on the basis of title. Interference in revision, therefore, has been generally declined even though Section 9 does not exclude the remedy by way of revision altogether. Interference is normally restricted to cases where there has been no proper trial of the case at all or the suit has been dismissed under a misapprehension as to the scope of Section 9 or there is some defect of jurisdiction or other defect of a like nature.

8. In--'Ajodhiya Prasad v. Ghasi Ram Prem Sai', AIR 1937 Nag 323 (A), the suit was dismissed on a mistaken view of the law and interference was considered justified. This case has been relied on by Mr. Dam but it is clearly distinguishable.

9. In--'Badudas v. Mt. Dhanni', A. I. R. 1934 All 541 (B), the view that prevailed was that when a suit under Section 9, Specific Relief Act, is decreed the remedy of the defendant lies not in revision but in the institution of a suit for a declaration of the defendant's title and for possession.

10. In--'Ramamanemma v. Basavayya', AIR 1934 Mad 558 (C), it was held that in a suit under Section 9, Specific Relief Act, the plaintiffs have their remedy by way of suit and hence the High Court will not ordinarily interfere by way of revision. But if the remedy is clear, the parties will not necessarily be driven to another suit. In this case the Court of first instance had found in favour of the plaintiff on the merits of the case but had non-suited her on the ground that she could not bring a suit as the tenants were inoccupation. It was found that a suit by a landlord for possession under Section 9 in which the tenants in possession have not joined is not maintainable.

11. In--'Bhojraj Krishnarao v. Seshrao Diwakarrao', AIR 1949 Nag 126 (D), it was laid down that remedy of a person aggrieved by the decree passed in a suit under Section 9, is by way of a suit based on title and the High Court will not except in a very extreme case, interfere by way of revision as a separate remedy is available to the aggrieved party.

12. The same view was expressed in--'Rajai Singh v. Suraj Bali', AIR 1942 Oudh 179 (E). It was held in this case that an order or a decree passed under Section 9, Specific Relief Act, has not been made the subject of any appeal or review, and although the High Court is not precluded from interfering with such orders in revision under Section 115, C. P. C., such interference should be confined to cases of very exceptional nature.

13. The conclusion which may be drawn from the authorities referred to above may be stated thus. Whether interference in a particular case is justified would depend on the circumstances of; each particular case. The rights of the aggrieved party may be so clear that it may not be desirable to force him to institute another suit. The case may have been disposed of on an obvious misapprehension as to the legal position. There may be some defect of jurisdiction. But where no exceptional circumstances are brought out and the only contention raised is that the finding on a question of fact is not based on adequate evidence or is erroneous, interference would not be justified, for if a petition of revision is entertained on the ground that the finding on a question of fact is erroneous or based on evidence which is not adequate, it would be going against the spirit of Section 9. Its effect would be to convert a petition of revision into an appeal which the law expressly disallows.

14. I am not satisfied in this case that the findings arrived at by the learned Munsiff can be regarded as erroneous. In any case, this case has

got no exceptional or unusual features which

would attract the revisional jurisdiction of this

Court. The petition of revision is, therefore, dismissed.

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