

Kunwar Singh and ors. Vs. Damodar Singh and ors.

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Court : Allahabad

Decided On : Jan-15-1946

Reported in : 1949CriLJ257

Judge : Seth, J.

Appellant : Kunwar Singh and ors.

Respondent : Damodar Singh and ors.

Judgement :

Seth, J.

1. The applicant in the case was the defendant in the Court below in a suit for possession under S. D, Specific Relief Act. It has been found as a fact that the plaintiff was dispossessed by the defendant on 6th July 1944, without his consent and otherwise than in due course of law. On these findings the suit has been decreed by the Court below. Before the institution of the suit and after dispossession, which took place on 6th July 1941, proceedings under Section 115, Criminal P. C, were started on a police report. These proceedings terminated on 21st December 1944, when it was found by the criminal Court that the defendant was in possession on the date of the preliminary order under Section 146, Criminal P. O., and on that ground his possession over the property was to be maintained so long as he was not evicted therefrom by due process of law.

2. The contention of the learned Counsel before me is that the due process of law mentioned in Section 145, Criminal P. C, should be confined to a civil suit based upon title and does not include a proceeding under Section 9, Specific Relief Act. This contention was raised in the Court below but was not pressed and as such was abandoned. I am loath to entertain a revision on a ground which had been abandoned in the Court below.

3. Quite apart from this fact there seems to be no merit in the contention that has been put forward in this Court. A cause of action, entitling the plaintiff to institute a suit under Section 9, Specific Relief Act, arose on 6th July 1944, when he was dispossessed by the defendant. It is not possible to accept the contention that the plaintiff was deprived of the right of seeking a remedy under Section 9, Specific Relief Act on account of the proceedings having been instituted under Section 145, Criminal P. O., before the limitation for instituting a suit under Section 9, Specific Relief Act had expired.

4. The argument of the learned Counsel for the applicant is that the result of entertaining a possessory suit Under Section 9, Specific Relief Act would be to bring about a conflict between the orders of the criminal Court and the civil Court. In the first place, I am not satisfied that the result of entertaining a suit under S 9, Specific Relief Act, would be to bring about any conflict such as is supposed by the learned Counsel. The issue for decision under Section 9, Specific Relief Act, was quite different from the issue that awaited the decision of the criminal Court in proceedings under Section 145, Criminal P. C. All that the criminal Court was concerned with was, which party was in possession of the property on the date of the preliminary order or within two months of that order if forcibly evicted within that period. The issue for decision in the suit Under Section 9, Specific Relief Act, was whether the plaintiff had been dispossessed otherwise than in accordance with the provisions of law within six months of the institution of the suit. The two proceedings were to be decided according to the possession of the parties on two different dates. If the argument of the learned Counsel for the applicant has to be accepted then any one dispossessing another person in an illegal manner can easily defeat the right of the dispossessed person to institute a suit under Section 9, Specific Relief Act by starting a proceeding under Section 145, Criminal P, C.,

just after the expiry of two months from the date of the illegal dispossession. In the absence of any authority it is impossible to hold that one party can deprive another party of his right by his own action.

5. In the second place, the order of the criminal Court being, by virtue of Section 145, Criminal P. C., itself subject) to an order of a civil Court, it cannot be said that any conflict comes into existence by a contrary order having been passed by the civil Court. There seems to be no reason to exclude proceedings under Section 9, Specific Relief Act, from the purview of the expression 'evicted in due course of law.' A proceeding under Section 9, Specific Relief Act, in as much a proceeding under the due course of law as a title suit or any other proceeding. I am supported in this view by an authority of this Court in *Jwala Prasad v. Ganga Prasad*, so all. p. 331:(5 AL.J. 297).

6. There is thus no force in this application in revision and it is accordingly dismissed with costs.

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