

Maya Ram Vs. Sant Ram and ors.

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Court : Allahabad

Decided On : Aug-28-1964

Reported in : AIR1965All409

Judge : D.S. Mathur, J.

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

Appeal No. : Civil Revn. No. 490 of 1962

Appellant : Maya Ram

Respondent : Sant Ram and ors.

Advocate for Pet/Ap. : Shanti Bhushan, Adv.

Disposition : Revision allowed

Judgement :

D.S. Mathur, J.

1. This is a revision under Section 115, Civil P. C., by Maya Ram, plaintiff, against the order dated 28-4-1962 of the First Additional Munsit of Meerut, dismissing with costs his suit for delivery of possession under Section 9 of the Specific Relief Act.

2. The material facts of the case are that on 30-9-1959 Maya Ram, plaintiff, instituted the present-suit against Sant Ram and others for a permanent injunction to restrain defendants Nos. 1 to 6 from interfering with his possession over the Kotha detailed in the plaint. On the request of the plaintiffs-commission was issued to find out as to who was in possession and the Commissioner visited the spot on 2-10-1959, though he submitted his report dated 20-10-1959 somewhat late. The plaintiff was, according to him, dispossessed from the Kotha on 9-10-1959 after the Commissioner had visited the spot. He, therefore, applied for amendment of the plaint including the reliefs sought for. The amended relief was for delivery of possession under Section 9 of the Specific Relief Act, after dispossession of defendants Nos. 1 to 6 or of such defendant as was found to be in possession on the date of delivery of possession.

3. The Munsif framed issues as in a suit under Section 9 of the Specific Relief Act, and after recording evidence he gave the finding that the plaintiff was dispossessed after the Commissioner visited the spot on 2-9-1959. This date is wrong, the correct date being 2-10-1959. The necessary amendments were made under application dated 10-11-1959 and consequently dispossession of the plaintiff was within six months of the suit, the suit under Section 9 having been instituted on 10-11-1959.

4. Though the Munsif recorded the finding that the plaintiff had been dispossessed within six months of the suit, he held that the suit under Section 9 was maintainable as the plaintiff had made reference to his title to the house in the main part of the plaint.

5. The defendants-opposite parties have not put in appearance and the revision is being disposed of in their absence.

6. A perusal of the plaint as amended makes it clear that the plaintiff wanted possession under Section 9 of the Specific Relief Act, and not under the ordinary law on the basis of a claim based on title. When the suit was under Section 9, such a relief could be granted. The mere fact that the plaintiff had referred to his claims of ownership in the plaint, shall not make a difference. That would be a matter of history not material or relevant for purposes of the suit under Section 9.

The Munsif could have, if he so desired, directed the plaintiff to delete the irrelevant material from the plaint, or he could under Order VI, Rule 16, Civil P. C. strike off a part of the pleading which was unnecessary for purposes of the suit.

7. Three cases relied upon by the Munsif are not helpful and could not be made applicable to the instant case. *Lachman v. Shambhu Narain*, 7 All LJ 1078 (FB) was a case where the plaintiff had sued for possession on the basis of title and failed to establish his title. He, however, made a request for the first time in the Second Appeal that a decree for possession be granted under the first paragraph of Section 9 of the Specific Relief Act. The present suit, on the other hand, was simply for possession under Section 9 of the Specific Relief Act. In *Ganga Din v. Gokul Prasad* : AIR1950 All407 and also *Beni Madho Singh. v. Prag*, : AIR1949 All510 , the opinion was expressed with reference to a suit for possession pertaining to an agricultural holding. That view had to be adopted in view of the wording of Section 242 of the U. P. Tenancy Act which excluded the jurisdiction of the civil Court not only in suits and applications specified in the Fourth Schedule, but also suits in which an additional relief which the revenue court could not grant had been asked for. In other words, a suit based on a cause of action with regard to which a relief could be granted by the revenue court had to be instituted before the revenue court and no one could oust the jurisdiction by asking for an additional relief or a relief worded differently.

8. It was in these circumstances that importance was attached to the fact that the plaintiff was claiming to be a tenant and wanted dispossession of a person having no title.

9. The present suit under Section 9 of the Specific Relief Act was thus maintainable and the Munsif had the jurisdiction to put the plaintiff into possession in case he was dispossessed within six months of the suit. The Munsif has recorded a finding which cannot be said to be improper, namely, that the plaintiff was dispossessed on or after 2-10-1959, that is, within six months to the suit as amended. The plaintiff was thus entitled to a decree for possession, though he could later be ejected by the defendants or by the owner of the property by seeking remedy before a competent court. The Munsif has failed to exercise the

jurisdiction vested in him under the law and this Court can substitute his order by a suitable order.

10. The revision is hereby allowed ex parte with costs and the order under revision is set aside. It is further ordered that the plaintiff's suit for possession under Section 9 of the Specific Relief Act shall stand decreed with costs. The stay order is vacated.

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