

Sobha Vs. Ram Phal

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Court : Allahabad

Decided On : Feb-15-1957

Reported in : AIR1957All394

Judge : Tandon, J.

Acts : Specific Relief Act, 1877 - Sections 8 and 9

Appeal No. : Civil Rev. No. 1322 of 1950

Appellant : Sobha

Respondent : Ram Phal

Disposition : Petition dismissed

Judgement :

ORDER

Tandon, J.

1. This is a plaintiff's revision against the order of Munsif, South Faizabad, in a suit brought by him under Section 9 of the Specific Relief Act, for possession over plot No. 1165, area 9 biswa 15 biswans situated in mohal Sripalkhan, village Baiti Kalan, The defendant was Ram Phal, who is opposite-party. The munsif dismissed the suit on September 15, 1950.

2. The plaintiff's allegation in the court below was that he was in possession of the aforesaid plot for a considerable time but was dispossessed without authority by the defendant on July 3, 1950. On that, date, according to him, the defendant ploughed the field and sowed his crop. The suit was commenced on July 25, 1950, well within six months from July 3, 1950.

3. The defence put forward was that the defendant had been in possession of the plot for a very long time and it was also his tenancy land. The plaintiff is first cousin of the defendant. His case further was that if he (plaintiff) had, by any means, got his name entered in the patwari's papers, that would not affect him, as he (defendant) has been in its possession as aforesaid.

4. Both sides adduced oral evidence. Extracts from Patwari's papers were also produced by the plaintiff. From the latter it appeared that plot no. 1165 to which the dispute relates, was the tenancy area of Ram Phal the defendant, but since 1351F onwards upto 1355F the following entry existed in the remarks column.

'Marfat Sobha Kalwar birudar khud', 'The plaintiff's oral evidence was to the effect that he was in possession of the plot for over 25 years. The defendant's on the other hand was that he went to Burma some 8 or 9 years before 1950 and that his own brother Chotey Lal, was a minor then aged about 12 years. He entrusted the plot to the plaintiff with the direction that he should hand over the produce to Chotey Lal. Ram Phal also said that he returned from Burma three years ago, i.e., about 1947, and since then he was in possession. It was admitted by him that, during the time he was away to Burma, the plaintiff was in occupation of the land. Luddar another witness for the defendant made a similar statement.

The Munsif found, after considering the evidence for the parties, including the extracts from Patwari's papers, that the defendant's version was correct. He also found that the entries in the Patwari's papers supported it. There is no specific finding as to period for which and up to which date one or the other party was in actual occupation of the plot. The finding is:

'I, therefore, hold that the defendant's version is correct and that the defendant himself has been really in Possession on the eye of law over the plot. The issue is,

therefore, decided against the plaintiff.'

The issue itself was:--

'Whether the plaintiff has been in possession over the plot in suit and whether the defendant illegally dispossessed him within six months of the suit?'

5. The defendant's version was that, before he went to Burma some 3 years prior to 1950 he had entrusted the land to the plaintiff with directions to hand over the produce thereof to his younger brother, Chotey Lal, who was minor, and that on his return from Burma about three years before prior to 1950 he got back the plot and occupied it as below. From the finding 'that the defendant's version is correct' by the Munsif it followed that he found that the plaintiff had held the plot in suit during defendant's absence in Burma having been entrusted it by the defendant and that he did so under arrangement that he shall hand over the produce to his brother, Chotey Lal. Also that since defendant's return from Burma in 1947, he, i.e., the defendant, was in possession of the plot. The learned counsel for the applicant has contended, referring to the further finding by the learned Munsif, namely, that the defendant was in possession in the eye of law' that both the above findings by him were, in fact due to his having entered into the question of title as, however, was not open in these proceedings. And the mere fact that extracts from Revenue papers were before him and according to them the plot belonged to the holding of the defendant, could not be said to warrant any such conclusion. I have not found anything in the judgment either of the learned Munsif to uphold this contention. No doubt, he has used the words that the defendant was in possession in the eye of law but that did not mean that he entered into any inquiry about title.

It was next contended that the above finding indicated in any event that the actual possession was of the plaintiff. I do not think that this also is correct. There was clear assertion by the defendant in his evidence before the court that he returned from Burma years ago and ever since he was in possession of the plot in suit. The above finding could, therefore, well, mean that the Munsif believed that the defendant was in possession of the plot earlier through the plaintiff but since his return personally so.

6. It, however, further appears in this case that the applicant cannot succeed even if it be considered that he held the plot until he was dislocated by the defendant. The defendant contended that he had entrusted the plot to the applicant while proceeding to Burma under arrangement that he would hand over the produce etc, to his younger brother, Chotey Lal. This description by the defendant was believed by the learned Munsif and has not been disturbed here also. For the purposes of Section 7 (8?) and Section 9 of the Specific Relief Act the possession claimed by a party should be juridical possession. The possession of a servant or, for the matter of that, of a deputed or appointee for the benefit and on behalf of the master or the person deputed or appointing, is really the possession of the latter. The person in actual occupation, being a servant, deputed or appointee of another, holds the property for such other person. His occupation is the occupation of the master or the person deputed or appointing him. In *Nritto Lal Matter v. Rajendra Narain Deb*, ILR 22 Cal 562 (A), it was held:--

'Where the plaintiff alleged that he was in possession of a certain room, as representing his father and uncle, who were alive but who were not parties to the suit, and that he had been dispossessed from such room within six months of the institution of the present suit his possession not being juridical possession did not entitle him to maintain a suit under Section 9 of the Specific Relief Act.'

7. The principle enunciated in this case will stand to the present facts also. I do not, therefore, think that even if the plaintiff was in occupation of the plot his occupation will be such possession as to entitle him to a remedy under Section 9 of the Specific Relief Act against a defendant for and on whose behalf he had been holding the plot.

8. In view of the above the application fails and is hereby dismissed with costs.

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