

Ganesh and anr. Vs. Dasso and anr.

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Court : Allahabad

Decided On : May-20-1927

Reported in : AIR1927All669; 103Ind.Cas.428

Appellant : Ganesh and anr.

Respondent : Dasso and anr.

Judgement :

Iqbal Ahmad, J.

1. This appeal must fail. It is well settled that possessory title is good against everybody except the true owner and in the case of a wrongful ouster, a plaintiff is entitled to succeed upon the strength of previous possession, if the defendant fails to prove a better title. Against a mere trespasser prior possession is itself a title inasmuch as possession raises a presumption of title. Possession in law is a subsisting right which the law protects and which can be enforced against any person who does not prove a better title. Accordingly in a suit for ejectment against a trespasser based on the plaintiff's title, if the plaintiff fails in proving title in himself but proves that he was in peaceful possession of the property in suit at the time of his wrongful ouster by the defendant, he is entitled to a decree for possession as against the trespasser. In short, in a suit for possession if the plaintiff proves that he was in peaceful possession at the time of dispossession by the defendant, the defendant can only resist the claim for possession on proving

title in himself. If he fails to prove title, the plaintiff is entitled to a decree on the basis of his possessory title notwithstanding the fact that the plaintiff did not frame his suit as a suit under Section 9, Specific Relief Act, and did not sue the defendant within a period of six months from the date of his dispossession. A distinction is to be drawn in cases under Section 9, Specific Relief Act, and cases in which Courts grant the plaintiff a decree in suits filed after six months of the date of dispossession on the basis of the plaintiff's possessory title. In suits under Section 9, Specific Relief Act, a person who has been dispossessed is entitled to a decree for possession if he files a suit within six months of the date of dispossession, notwithstanding any other title that may be set up in such suit.

2. In suits under Section 9, Specific Relief Act the Court does not try the question of title and, therefore, the defendant cannot resist the plaintiff's suit on the ground of his being the rightful owner. No matter how good the title of the dispossesses, the person previously in possession is entitled to a decree for possession in suits under Section 9, Specific Relief Act, provided he brings the suit within six months of the date of his dispossession, That is not the case in suits for possession brought more than six months after the dispossession of the plaintiff. In such suits Courts have to try questions of title and, therefore, it is open to a defendant notwithstanding the previous possession of the plaintiff to resist the claim for possession by setting up and proving a title in himself. In other words, title is no defence in a suit under Section 9, Specific Relief Act, but affords a conclusive defence in other suits.

3. In the suit giving rise to the present appeal the plaintiff alleged that he was in possession as a mortgagee of half of the holding in dispute by virtue of a mortgage-deed executed by defendant 1 in favour of the plaintiff on the 12th July 1925, and that the defendants wrongfully dispossessed him from the holding. The suit was not resisted by defendant 1. Defendants 2 and 3 contested the suit on the ground that the holding in dispute belonged to them and that the mortgage in favour of the plaintiff was invalid. They further alleged that the plaintiff was never in possession and was never dispossessed by them.

4. A number of issues were framed by the trial Court. But that Court, without first ascertaining what the facts were and, without deciding the questions of fact that were necessary for determination of the suit, dismissed the suit on the ground that the plaintiff being a mortgagee of an occupancy holding, a transfer of which is prohibited by law, was not entitled to maintain the suit.

5. On appeal by the plaintiff the lower appellate Court, after pointing out that defendant 1 did not contest the suit nor did she set up the invalidity of the mortgage as a bar to the plaintiff's claim, held that if defendant 1 was the owner of half of the holding and if the plaintiff had succeeded in getting possession of that share of the holding as a mortgagee, the contesting defendants, viz. defendants 2 and 3, cannot be allowed to resist the plaintiff's claim on the ground of the invalidity of the mortgage executed by defendant 1. That Court further held that the suit having been brought within a month of the alleged date of dispossession it was

amply within the period of limitation for a suit under Section 9, Specific Relief Act, and therefore.

the plaintiff might have been entitled to a decree for recovery of possession under Section 9, Specific Relief Act.

6. As the suit was decided by the trial Court on a preliminary point, and the decision on that point was reversed by the lower appellate Court that Court remanded the suit to the trial Court for decision on the merits.

7. In appeal before us it is argued on behalf of defendants 2 and 3, that the suit being a suit based on a title in which the plaintiff not only claimed a decree for possession, but also a decree for damages, Section 9, Specific Relief Act, had no application to the case. This contention of the learned Counsel is well founded. If a plaintiff in a suit for possession claims a decree on the basis of title and further claims a decree for damages, the suit does not come within the purview of Section 9, Specific Relief Act, and if the plaintiff fails to prove his title, either possessory or as a rightful owner, he cannot be granted a decree for possession even though the

suit may have been brought within six months of the date of dispossession.

8. But though the lower appellate Court was wrong in assuming that the plaintiff may be entitled to a decree under Section 9, Specific Relief Act, in our judgment the order of remand passed by that Court is perfectly correct, and ought to be affirmed. It is clear that a mortgage of an occupancy holding is prohibited by law and it may have been open to defendant 1 to contest the validity of the mortgage on that ground but, as already stated defendant 1 did not contest the suit and did not set up the invalidity of the mortgage as a bar to the plaintiffs claim. If the plaintiff, on the basis of the invalid mortgage succeeded in getting peaceful possession of the holding, he is entitled to a decree as against defendants 2 and 3 on the basis of his possessory title, provided that those defendants are not the owners of the share of the holding mortgaged to the plaintiff. If the plaintiff succeeded in getting possession as a mortgagee under an invalid mortgage he is entitled to have his possession protected as against everybody except the true owner. It is obvious that if defendants 2 and 3 are the owners of the share of the holding mortgaged to the plaintiff the plaintiff's suit is bound to fail. It is manifest, therefore, that the suit cannot be decided without deciding the questions of fact noted above. Accordingly I would dismiss the appeal with costs.

Walsh, J.

9. I entirely agree with the judgment which has just been delivered. It is a pity that the trial Courts do not realize the serious mischief which is continually done by these impetuous methods of deciding what are really academic points. Counsel for the appellants contends that in fact the appellants are, at any rate, interested in one half of the property. To take an extreme case they may eventually succeed in persuading the Court that they and their predecessors-in-title have been in adverse possession for a thousand years and that the plaintiff never had a leg to stand upon. But the fact is that they have not done so at present because no evidence has been called. We have pointed out over and over again that even if a suit is dismissed upon a preliminary point it is of the greatest advantage to the parties and to the appellate Court that all the issues should be determined because preliminary points are 'sometimes unsound and if they are overruled in

the appellate Court, the appellate Court is then seised of all the material which enables it to dispose of the suit if it happens to disagree with the first Court. It is clear from what has already been said that our decision relates to the claim only so far as it is based upon a possessory title. When the facts are ascertained and found any point of law not disposed of by us in dismissing this appeal which really arises on the finding will be open to either party.

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