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Court : Allahabad

Decided On : Nov-19-1948

Reported in : AIR1949All510

Appellant : Beni Madho Singh

Respondent : Prag

Judgement :

ORDER

Bhargava, J.

1. On 3rd September 1945, Beni Madho Singh (plaintiff-applicant) instituted a suit, under Section 9, Specific Belief Act, against Prag (defendant-opposite-party) to recover possession over two plots of tenancy land on the following allegations: Over a century ago the predecessor-in-interest of the defendant had mortgaged with possession the plots in dispute to the plaintiff's predecessor-in-title. Under the mortgage the plaintiff's predecessor-in-title and also the plaintiff held possession over the plots aforesaid. After the expiry of the period allowed by law for redemption of the mortgage, the plaintiff held possession over the plots as tenant on behalf of the landlord until July 1945, when he was illegally and without his consent dispossessed by the defendant.

2. The defence was that the suit, as framed, was not maintainable under Section 9, Specific Relief Act, and it was exclusively triable by the revenue Court. The

defendant further alleged that the plaintiff had himself put him in possession to avoid ejectment proceedings under Section 171, U.P. Tenancy Act.

3. The trial Court (Munsif of Banda) came to the conclusion that Section 9, Specific Relief Act had no application to cases for which special provision was made in the Tenancy Act and that the present suit was of the nature mentioned in Section 180, Tenancy Act, consequently it was not maintainable in the civil Court, under Section 9, Specific Relief Act. Accordingly, the suit was dismissed. The plaintiff has come up to this Court in revision.

4. It has been argued on behalf of the applicant that the lower Court failed to exercise the jurisdiction vested in it by law and it acted with material irregularity in dismissing the suit. The applicant had, no doubt, alleged in his plaint that he had held possession over the land in suit first as a mortgagee on behalf of the opposite party and then as a tenant on behalf of the landlord and that he had been dispossessed from that land within six months of the date of the institution of the suit, which was framed as of under Section 9, Specific Relief Act; but he had also alleged that the opposite party and his predecessor-in-interest at one time were the tenants of the land in dispute and the applicant and his predecessor-in-interest held it as mortgagees; that after the expiry of the period allowed by law for redemption of the mortgage the opposite party lost his tenancy rights in the land and the applicant acquired those rights and held it; as a tenant on behalf of the landlord; and that the applicant was dispossessed by the opposite party.

5. Section 9, Specific Relief Act, provides for a summary remedy for restoration of possession, in certain cases, which can be obtained in a civil Court. Therefore, the claim for restoration of possession under the said section should be such as can be entertained by the civil Court. The law relating to agricultural tenancies and other matters connected therewith has been consolidated and enacted in the U.P. Tenancy Act, 1939. In that Act under the heading 'Ejectment of person occupying land without consent' we find Section 180, which provides:

(1) A person taking or retaining possession of a plot of land without the consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable

to ejectment under this section on the suit of the person so entitled....

The dispute in this case relates to tenancy land. The opposite party is said to have taken possession of and been retaining possession over the land without the consent of the person entitled to admit him to occupy such land and otherwise than in accordance with law for the time being in force. The applicant claims to be a tenant of the land on behalf of the landlord and seeks to recover possession over the land by ejectment of the opposite party. In order to determine the real nature of the relief claimed, we have to consider the averments in the plaint and the pith and substance of the relief claimed and not the form in which it has been couched. Applying this test, it must be held that the suit is of the nature contemplated by Section 180, Tenancy Act.

6. Section 242, Tenancy Act, lays down:

Subject to the provisions of Section 286 all suits and applications of the nature specified in Schedule 4 shall be heard and determined by a revenue Court, and no Court other than a revenue Court, shall, except by way of appeal or revision as provided in this Act, take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Section 180 is mentioned in Schedule 4. Therefore, having regard to its real nature the suit was barred from the cognizance of the civil Court and, that being so, the plaintiff could not claim relief under Section 9, Specific Relief Act, which could only be granted by the civil Court.

7. On behalf of the applicant reliance has been placed upon a single Judge ruling of this Court reported in *Lal Bahadur Singh v. Surajpal Singh* : AIR1946 All486 . In that case a suit was instituted in the civil Court under Section 9, Specific Relief Act, for possession over certain plots of land-presumably tenancy land-and the defence was that the civil Court had no jurisdiction to try the suit, as it was barred from the cognizance of that Court in view of the provisions of Section 242, Tenancy Act. It was held that 'the summary cause of action provided by Section 9, Specific Relief Act' was not the same thing

as the cause of action, which is really a cause of action based on title, covered by the relevant sections of the U.P. Tenancy Act

and that the relief claimed in a suit

under the Specific Relief Act was not such as might have been claimed in any suit or application based on a cause of action under the machinery of the U.P. Tenancy Act,

so the suit was cognizable by the civil Court. As I will presently show, this case has no bearing on the facts of the present case.

8. It would appear from the plaint allegations that the present suit was not based merely upon 'the summary cause of action provided by Section 9, Specific Relief Act.' The opposite party, it was alleged, was the owner of the equity of redemption in the mortgaged property, which was said to have been lost by efflux of time. The landlord was alleged to have stepped in and given the land to the applicant. The cause of action, which was said to have arisen, entitled the applicant to institute a suit of the nature contemplated in Section 180, Tenancy Act. Apart from it, the cause of action for a suit for possession under Section 9, Specific Relief Act, as well as for a suit for ejectment under Section 180, Tenancy Act, is based on possession and subsequent dispossession. Moreover, the factor which determines forum in suits for possession over land is not merely the cause of action but also the nature of the subject-matter of the suit and the fact whether relief can be obtained in the civil or the revenue Court. Under Section 242, Tenancy Act, certain classes of suits for possession of tenancy land are expressly barred from the cognizance of the civil Court, except by way of appeal or revision as provided in the Act. The suit of the present nature being barred from the cognizance of the civil Court, it seems to me that no relief could have been granted under Section 9, Specific Relief Act, by the civil Court.

9. I, therefore, see no reason to interfere in revision. The application is dismissed with costs.