

Ghulam Hussaln and anr. Vs. Muhammad Hussaln and ors.

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SooperKanoon Citation : sooperkanoon.com/473939

Court : Allahabad

Decided On : Jan-14-1909

Reported in : 2Ind.Cas.209

Judge : George Knox and ;Griffin, JJ.

Appellant : Ghulam Hussaln and anr.

Respondent : Muhammad Hussaln and ors.

Judgement :

1. The subject-matter in dispute in this appeal is a house situated in Badaun. The plaintiff sued for possession, but in his plaint added a further prayer that any other relief to which he might be entitled be granted to him. One of the defences and the only one with which we are now concerned, was that as the plaintiff's mother acting for him had granted a lease to certain third persons, the plaintiff could not sue for immediate possession, inasmuch as the lease was a lease for one year and this period had not determined at the time when the suit was brought. The Court of first instance sustained this plea, but in appeal the District Judge held that the plaintiff was entitled to claim immediate possession. He accordingly reversed the order of the Munsif and remanded the case for determination on the merits under Section 562 of the former Code of Civil Procedure. The defendants who were in actual possession have come to this Court and again raise the plea that upon the plaintiff's own showing his suit for immediate possession cannot succeed as the term of the lease had not expired at the date of suit,

2. The learned vakil for the appellants relied upon C.T. Davis v. Kazee Abdool Hamed 8 W.R. 55 and Ramanadan Chetti v. Puli Kutti Servai 21. M. 288. We think that this prayer is so far entitled to prevail that the plaintiffs suit at the time ho brought it, so far as it related to immediate possession, was not maintainable in consequence of the existence at that time of the outstanding lease in favour of Nazir Khan and Amin Khan. It is true that in the case of Ramanadan Chetti v. Puli Kutti Seravi 21. M. 288 the Court refused, to grant a declaration in plaintiff's favour but that was in consequence of the special circumstances of that case. This Court in the case of Sita Ram v. Ram Lal 48 A. 410 while upholding a plea that the plaintiff was not entitled to possession so long as there was a tenant entitled to possession, held further that the landlord in such a case had a right to a declaration under Section 42 of the Specific Relief Act. The learned vakil for the appellants contends that even this relief could not be given, inasmuch as it would alter the nature of the suit. We do not agree with this. We allow the appeal so far as to amend the order of the District Judge into an order under Order XLI, Rule 23, of the present Code of Civil Procedure. Under that Rule we direct the case be remanded, that issues Nos. 1 and 2, as fixed in the Court of first instance, be tried in the case now remanded and that the Court proceed to determine the suit; the evidence, recorded during the original trial shall, subject to all just exceptions, be. evidence in the case after remand. If the Court find these issues in the plaintiff's favour be should be granted a declaratory decree under Section 42 of the Specific Relief Act. The costs of this appeal will follow the event.