

Ramasami Chetti and ors. Vs. Paraman Chetti

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Court : Chennai

Decided On : Oct-25-1901

Reported in : (1902)ILR25Mad448

Judge : Davies and ;Benson, JJ.

Appellant : Ramasami Chetti and ors.

Respondent : Paraman Chetti

Judgement :

1. The plaintiff brought this suit to recover possession of the plaint lands with mesne profits from defendants alleging that he had purchased the lands from the former owners and had been unlawfully ousted from them by the defendants.
2. The defendants denied that plaintiff had any title to the land or any possession. They denied the alleged trespass and alleged that they had themselves been in possession for many years and had a title to the lands.
3. Issues were framed on these allegations and were all found in plaintiff's favour by the District Munsif who accordingly gave plaintiff a decree for possession and for past and future mesne profits. On appeal, the District Judge found that plaintiff had failed to prove a valid purchase from the former owners, but had shown that he had been dispossessed otherwise than by due course of law by the defendants within six months prior to the institution of the suit. He therefore confirmed the decree of the District Munsif so far as it restored plaintiff to possession and

awarded him mesne profits, but he reversed it so far as it established plaintiff's title and dismissed the plaintiff's suit in that respect.

4. The defendants appeal.

5. We think that the second appeal is well founded. The suit as laid by the plaintiff is a suit in ejectment and is founded on plaintiff's title. It is not a suit brought under the special provisions of Section 9 of the Specific Relief Act. The plaintiff might, no doubt, have brought his suit to recover possession under that provision of law, and had he done so he would have been entitled to a decree for possession on proof of his unlawful dispossession by the defendants within six months of the institution of the suit, and the defendants would not have been allowed to plead a superior title. The question of title would have been immaterial and no appeal could have been brought against any order or decree made in the suit. But the plaintiff did not bring his suit under that section. He based his suit on his superior title. The defendants denied that title and set up their own title, and we think that the issues thus raised between the parties should have been tried by the District Judge. We do not think that he ought to have regarded the suit partly as a suit under Section 9 of the Act, and partly as a suit based on plaintiff's title. To do so must, in our opinion, lead to inconvenience and inconsistency. In a suit under Section 9, no question as to title on either side can be raised and no appeal is allowed. In a suit based on plaintiff's title, the title on both sides may be gone into, and the decision of the original Court is open to appeal and second appeal. In the present suit the District Judge has, indeed, gone into the plaintiff's title and given a decision against it, but has given no decision as to the defendant's title. The plaintiff and the defendants by their pleadings raised the question of the defendant's title and if it is a good title, we can see no reason why the defendants should not have it established in this suit instead of being driven to another suit to do so. No doubt the District Judge's treatment of the case is in accordance with the law as laid down in the case of *Ram Harakh Rai v. Sheodihal Joti* I.L.R. 15 All. 384 but with great respect for the learned Judges who decided that case, we are, for the reasons stated by us, unable to follow it. We may add that the District Judge has decided against the validity of the plaintiff's title by purchase on the ground apparently that there was no delivery of the land to plaintiff by his vendors : but it is

not easy to reconcile this view with plaintiff's possession and dispossession in 1897 as found by the District Judge. We must set aside the decree of the District Judge and remand the appeal for decision in accordance with law. Costs in this second appeal and in the lower Appellate Court will be provided for in the fresh decree of the lower Appellate Court.

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