

Ram Doyal Samonta Vs. Upendra Nath Samonta and anr.

Ram Doyal Samonta Vs. Upendra Nath Samonta and anr.

SooperKanoon Citation : sooperkanoon.com/869515

Court : Kolkata

Decided On : Dec-12-1912

Reported in : 18Ind.Cas.298

Judge : Chitty and ;Teunon, JJ.

Appellant : Ram Doyal Samonta

Respondent : Upendra Nath Samonta and anr.

Judgement :

1. These two Rules have been obtained by the plaintiff in two cases under Section 9 of the Specific Relief Act. The plaintiff brought two suits to recover lands from which he said he had been dispossessed on different dates in Chaitra 1318. The Munsif granted him a decree in one suit for possession of 5 bighas of which the plaintiff had been in possession for some years but refused a decree with regard to the rest of the lands on the ground that the plaintiff had only been let into possession of those lands during the year 1318; and as he was evicted just before the close of that year, he must be regarded as a tenant of those lands for one year only, that is, a ticca tenant or a tenant-at-will. It may be remarked in passing that this inference of the Munsif was hardly justifiable. But the question in this case is whether we should interfere in revision under Section 115 of the Code of Civil Procedure. It is argued by the opposite party that there has been no refusal in these cases by the Munsif to exercise his jurisdiction; but that he has at most been guilty of an error in law. Having regard to the clear words of Section 9 of the

Specific Relief Act, we think that the Munsif's decision is more than a mere error of law; it was rather a refusal to exercise jurisdiction vested in him. That section says that a person dispossessed without his consent of immoveable property otherwise than in due course of law may by suit recover possession thereof notwithstanding any other title that may be set up in such suit. The Munsif here finds that the plaintiff was in possession within the six months required by the section; and he goes into the question of title and on that ground has refused to grant the plaintiff the relief prayed for, to which on the finding as to possession the plaintiff was entitled. Under these circumstances, we think that we ought to interfere. We accordingly set aside the decrees of the Munsif in both the cases and in both cases pass a decree for the plaintiff for possession of all the lands claimed by him with costs. The defendants must bear the costs of this Rule. We assess the hearing fee at one gold mohur in each case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com