

Rudan vs Ujagar Singh And Anr. on 26 October, 1951

Equivalent citations: AIR1953ALL733, AIR 1953 ALLAHABAD 733

JUDGMENT

Kidwai, J.

1. On 2-11-1946, Th. Ujagar Singh and Shrimati Jagrani, his wife, instituted the suit out of which this appeal arises under c against Rudan Chamar alleging that they were in possession of the land of which they were the owners and that Rudan had wrongfully dispossessed them on 10-7-1946. They claimed possession by reason of this dispossession within Six months under Section 9, Specific Relief Act.

2. The defence was that the plaintiffs had never been in possession and that the defendant had all along been in possession as a tenant. It was also alleged that the plaintiffs alone were not the owners, but that other co-sharers were also owners and so the suit did not lie.

3. The trial court upheld the pleas of the plaintiffs and found that they had been in possession and had been dispossessed within six months of the institution of the suit. One of the pleas taken before the court was that the civil court had no jurisdiction. The learned MunSif found that the suit fell within his jurisdiction since it was one under Section 9, Specific Relief Act.

4. Rudan has now come up in revision and his learned Advocate contends that the civil court had no jurisdiction to try the case).

5. It has been laid down in -- 'Rajai Singh v. Suraj Bali', AIR 1942 Oudh 179 (A); --'Jadunath Singh v. Bishunath Singh', 1950 All LJ 288 (B) and -- 'Jagdish Singh v. Mem" Lal', 1950 All LJ 645 (C) that the suit under Section 9, Specific Relief Act, lies in a civil court and that the jurisdiction of that court is not barred by reason of Section 242, U.P. Tenancy Act read with Ss. 180 and 183 of that Act.

6. This view has been slightly modified in -- 'Ganga Din v. Gokul Prasad', AIR 1950 All 407 (D) and it has been held that if the plaint shows that the case falls within Section 180 or Section 183, U.P. Tenancy Act, the suit would be barred from cognizance by the civil court by reason of Section 242, even if it was a suit under Section 9, Specific Relief Act. This latter judgment does not consider the earlier judgments, particularly the judgment in 1950 All LJ 288 (B), which was also 3 Bench decision. It is, however, not necessary for me to go into that question because, in the present case, the jurisdiction of the civil court is not barred, even if the view taken in AIR 1950 All 407 (D) is applied.

7. It is true that in paragraph 1 of the plaint it is stated that the plaintiffs are the owners of the land. This, however, does not indicate that the suit is one governed by Section 180, U.P. Tenancy Act. It has been laid down in -- 'D. N. Rege v. Muhammad Haider', AIR 1946 All 379 (FB) (E) by a Full Bench that it is only in suits in which it is alleged in the plaint that the defendant is setting up title to hold the land as tenant that the civil court has no jurisdiction. If there is no such allegation then the civil court will have jurisdiction, because the revenue court is not competent to decide questions of title between two rival claimants to the possession of the property. In the present case there is no allegation to the effect that the defendant claims to be the tenant, but what is alleged is that the defendant has unlawfully ejected the plaintiffs from possession. Thus, in view of the Full Bench decision, this is not a case which falls under Section 180, U.P. Tenancy Act, and consequently Section 242 of that Act does not apply. That being so, even on the reasoning adopted in AIR 1950 All 407 D., civil court's jurisdiction was not barred.

8. This application, therefore, fails and is dismissed with costs.