

Ram Naresh And Ors. vs Deo Narain And Ors. on 7 August, 1953

Equivalent citations: AIR1954ALL109, AIR 1954 ALLAHABAD 109

ORDER

Randhir Singh, J.

1. This is an application in revision under Section 115, Civil P. C. against a decree passed under Section 9, Specific Relief Act by the Munsif of Kunda, Partabgarh.
2. The onposite party filed a suit under Section 9, Specific Relief Act in the Court of the Mun-sif of Kunda, Partabgarh, on the allegation that he was in peaceful possession of two plots and was dispossessed forcibly by the defendants within six months of the institution of the suit. The Munsif decreed the claim and the defendants have now come up in revision.

The only point which arises for determination in this application for revision is whether the suit instituted by the plaintiffs in the Court of the Munsif could be instituted in the revenue Court and as such the jurisdiction of the Munsif was barred under the provisions of Section 242, U.P. Tenancy Act. It is alleged on behalf of the applicants that the plaintiffs could have maintained a suit under Section 180 or Section 183, U.P. Tenancy Act and as such the suit could not be instituted in the civil Court. A perusal of Section 180 shows that 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 shall be liable to ejectment under Section 180 'on the suit of the person so entitled'. It would thus appear that a suit under Section 180 can be maintained only by a person who is the power or the landlord of the land claimed. A suit under Section 183, U. P. Tenancy Act can be maintained by a person holding tenancy rights in the land which is the subject of the suit. In the present case no averment was made by the plaintiffs, about their own title to the land. It was simply a case on the basis of possession and no question of title was raised on behalf of the plaintiffs. Even on fact's as were presented subsequently to the Court, it appears that the plaintiffs could not maintain a suit under Section 180 or Section 183, U. P. Tenancy Act. The admitted facts of the case were that the two plots in respect of which the plaintiffs had sued for possession formed part of the tenancy khata of the defendants but happened to be in the possession of the plaintiffs for quite a long time. The plaintiffs never claimed any tenancy rights in these plots and did not sue for possession on the basis of any tenancy rights. Such a suit could not have been instituted under Section 183, Tenancy Act. Even, therefore, on facts the jurisdiction of the Civil Court could not be said to be barred.

3. It has been held by a Division Bench of this Court in -- 'Ganga Din v. Gokul Prasad', AIR 1950 All 407 (A) that if upon a reading of the plaint it is made out that the plaintiff claims a relief on the basis

merely of his previous possession and dispossession by the defendant, the suit is one which is cognizable by the Civil Court under Section 9, Specific Relief Act. The present suit was based entirely on possession which had been disturbed by the defendants. The case was, therefore, clearly within the cognizance of the Civil Court.

4. Learned counsel for the applicants has cited a ruling, -- 'Beni Madho Singh v. Prag', AIR 1949 All 510 (B). A perusal of the judgment in this reported case also leads to the conclusion that it is only that suit which is cognizable by a Revenue Court which is barred under Section 9, Specific Relief Act. The ruling, therefore, does not support the point pressed on behalf of the applicants.

5. The application for revision is dismissed with costs.