

## Kanhai Lal and Others Vs Jai Lal and Others

**Court:** Allahabad High Court

**Date of Decision:** Oct. 27, 1922

**Citation:** AIR 1923 All 54 : (1923) ILR (All) 164 : 69 Ind. Cas. 840

**Hon'ble Judges:** Pramada Charan Banerji, J; Gokul Prasad, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

### Judgement

Pramada Charan Banerji and Gokul Prasad, JJ.

This appeal arises out of a suit brought by the plaintiffs appellants for a declaration that a

certain sale deed of a shop, executed by five members of a joint family, was null and void as against the plaintiffs who were also members of that

family. The plaintiffs are all minors, except the plaintiff No. 1, who has just attained majority. The sale took place on the 1st of October, 1915, and

the suit was brought on the 27th of November, 1920. One of the pleas taken in defence was that the suit was barred by the provisions of Section

42 of the Specific Relief Act. The first court held that the plaintiffs were and had been in possession of the property and, therefore, no further relief could

be asked for and Section 42 of the Specific Relief Act had no application. On appeal, the learned District Judge has come to the conclusion that

because of a lease (kabuliat) executed by one of the vendors, on the 30th of September, 1919, in favour of the vendee defendant No. 1, the

vendee was in constructive possession of the property and the suit was, therefore, barred by Section 42 of the Specific Relief Act, and has

dismissed the suit. The learned Judge refers to a decree passed by him in a suit by the vendee against Ajudhia Prasad the lessee, and says: "This

would show that on the date of decree in the suit which has given rise to this appeal, the defendant No. 1 was in constructive possession of the

shop. Ajudhia Prasad was occupying it only as his tenant. The lower court relied upon the evidence of the witnesses who said that all the plaintiffs

used to sit in the shop. But this was natural, considering that the plaintiffs and their father and uncles (defendants 2 to 6) were all joint and all

carried on the business in the shop. This fact alone would not show that the plaintiffs alone used to sit in the shop." And then the learned Judge

goes on to say: ""On these facts I must hold that the appellant (defendant No. 1) is in possession of the shop and, as such, the plaintiffs" suit for a

mere declaration was not tenable and is barred by Section 42 of the Specific Relief Act."" In taking this view, we think the learned Judge was in

error. There was no further relief which the plaintiffs could have asked for. They were in actual physical possession of the shop, and constructive

possession, if any, of the defendant would not affect the matter. This was not a case in which the plaintiffs could be regarded as being out of

possession. The physical possession of the plaintiffs was admitted and the question was as to the nature of that possession. We asked the learned

vakil for the respondents to explain to us the nature of the further, relief which the plaintiffs could have asked for and he could not say that it would

be a relief for possession. This case is similar to that of Ram Manorath Singh v. Dilraji Kunwari ILR (1913) All. 126. In our opinion, in view of the

facts of this case, Section 42 of the Specific Relief Act has no application. We, therefore, allow the appeal, set aside the decree of the lower

appellate court and remand the case to that court with directions to restore it to its original number and to dispose of the remaining pleas according

to law. Costs here and hitherto will, be costs in the cause.