

(1910) 05 AHC CK 0021

Allahabad High Court

Case No: None

Ram Saran and Another

APPELLANT

Vs

Dalip Singh

RESPONDENT

Date of Decision: May 12, 1910

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Article 15

Citation: 6 Ind. Cas. 704

Hon'ble Judges: Karamat Husain, J

Bench: Single Bench

Judgement

Karamat Husain, J

1. The facts of the case are that on the 18th. of July 1902, the defendants executed a zarpeshgi lease in respect of their sir land in favour of the plaintiff for 14 years from 1310 to 1323 F. in lieu of Rs. 300, with a statement at the end of the lease to the effect that "If the lessee does not get possession of the land, he will be entitled to recover possession by suit or to recover the money advanced with interest at the rate of Re. 1-6 per mensem, personally from the executants and from their property of every description." The defendants failed to deliver possession of the sir to the plaintiff, who instituted the suit, out of which this appeal has arisen, for the recovery of principal and interest. The relief claimed by him was "(a) Rs. 300, the amount of principal, and Rs. 188 0-9, the amount of interest, in. all, Rs. 488-0-9, with interest pendente lite and future interest and costs of the suit, with interest up to the date of the realisation, may be awarded against the defendants." The Court of first instance dismissed the claim, and the lower appellate Court reversed that decree. In its judgment it says: The plaintiff, however, does not sue for possession but wants to take advantage of the other alternative given to him by the deed to recover his mortgage money with interest." The defendants have preferred this second appeal. At the hearing, a preliminary objection is taken that the suit being of the nature cognizable by Courts of Small Causes, and the amount of the subject-matter being

less than Rs. 500, no second appeal lies, vide Section 583 of Act XIV of 1882. The learned Vakil for the appellants, however, argues that the suit is one for the specific performance of a contract and is exempted by Article 15, second Schedule, of Act IX of 1887, from the cognizance of a Court of Small Causes. The clause at the end of the deed set out above can, in my opinion, in no way be treated as a covenant by the mortgagor to pay the mortgage money to the mortgagee. That being so, the suit for the recovery of the principal and interest at the, rate specified is an ordinary suit for money and not a suit for specific performance. The preliminary objection, therefore, prevails including in this Court fees on the higher scale.