

**(1949) 11 AHC CK 0017**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Appin. No. 49 of 1946

Jagdish Singh and Others

APPELLANT

Vs

Mehi Lal Mullah

RESPONDENT

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**Date of Decision:** Nov. 3, 1949

**Acts Referred:**

- Oudh Rent Act, 1886 - Section 108(10)
- Specific Relief Act, 1877 - Section 9
- Uttar Pradesh Tenancy Act, 1939 - Section 242

**Hon'ble Judges:** Misra, J

**Bench:** Single Bench

**Advocate:** Farooq Hasan, for the Appellant; P.N. Bhatt, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Misra, J.

This revision arises out of a suit instituted by the Plaintiff opposite-party, Mehi Lal u/s 9 Specific Relief Act. Possession was decreed by the learned Munsif on the finding that Mehi Lal was dispossessed by the Defendants-applicants Jagdish Singh and others within six months of the date of suit.

2. The only point which now arises for determination is whether or not the cognizance of the suit by the Civil Court was barred by the provisions of Section 183 read with Section 242 of the U.P. Tenancy Act.

3. The trial Court decided the point against the Defendants and the applicants, learned Counsel has challenged the decision.

4. The plain object of Section 9 Specific Relief Act is to discourage people from taking the law into their own hands howsoever good their title. It affords a summary and speedy remedy to a dispossessed person without any inquiry into his title. In order that a suit may fall u/s 183 U.P. Tenancy Act, it must be by a person who claims to be

a tenant of the holding and alleges that the dispossession was not in accordance with law for the time being in force and it was either by his landholder or a person claiming as a landholder to be entitled to eject him or by a person admitted to or allowed to retain possession of the land by such landholder or person. In such a suit it is unnecessary to prove that the Plaintiff was in possession within six months of its institution and the relief claimed therein may be for possession of the holding, for compensation for wrongful dispossession or for compensation for any improvement made therein by the Plaintiffs. The suit covered by Section 183 U.P. Tenancy Act is clearly a suit on title, dispossession being the immediate cause of action upon which the relief claimed depends. In a suit u/s 9, Specific Relief Act, the strength or weakness of the Plaintiff's title is wholly immaterial. In the other case, the absence of title would render the suit liable to dismissal.

5. Sitting with my brother Chandiramani J. I had recently occasion to consider the question of jurisdiction of Civil Courts in cases u/s 9 of the Specific Relief Act in 115 Application No. 46 of 1944. That case arose out of a suit for possession of certain lands which the Plaintiff described as her khudkasht. The question there was whether or not the suit was of the nature contemplated by Section 180 and, therefore, barred by the provisions of Section 242 U.P. Tenancy Act. The view which I took was in consonance with the decision of the Full Bench in *D. N. Rege v. Kazi Mohammad Haider* 1946 A.W.R. (H.C.) 403. where a distinction was drawn between an ordinary suit against a trespasser in a Civil Court and a suit u/s 180 U.P. Tenancy Act. The following observation of Allsop J. who delivered the judgment of the Full Bench with reference to Section 180 U.P. Tenancy Act may be reproduced:

We, therefore, think that there cannot be any doubt now that the distinction between an ordinary suit against a trespasser in a Civil Court and a suit u/s 180 of the U.P. Tenancy Act, 1939, is that the Plaintiff in the first case alleges that the Defendant is setting up a title against his proprietary interest whereas in the second case the Plaintiff alleges that the Defendant is setting up a title to hold the land as a tenant. We do not think that Section 180 applies at all the cases in which the Defendant has never given the Plaintiff reason to think that he is setting up a claim to be the proprietor of the land and conversely that a suit in a Civil Court does not lie when the Defendant has given the Plaintiff reason to think that he is claiming an interest as a tenant. We would point out that the jurisdiction of a Court does not depend upon the defence which is set up after the suit is instituted but upon the state of affairs which existed before the institution of the suit. We are not to be understood to express the opinion that a Plaintiff can give either the Civil Court or the Revenue Court jurisdiction by making false allegations in his plaint, it may be thought that there may be cases in which the Plaintiff would not know what position the Defendant was claiming to occupy but we think that such cases would be very few indeed. The Plaintiff would in most cases know on what grounds the Defendant was claiming to be in possession of the land and if he did not, it would be open to him by means of notice or otherwise to inquire before he instituted the suit. We feel

that a Plaintiff should as far as possible ascertain the facts before he files a plaint.

6. So far as Section 183 U.P. Tenancy Act is concerned, the true position is brought out by Ghulam Hasan J. in *Rajai Singh v. Suraj Bali*, 1941 A.W.R. (Rev.) 1062. That case arose out of a suit u/s 9 of the Specific Relief Act and the contention urged in revision was that the suit was barred by Section 108(10) Oudh Rent Act. The learned Judge laid emphasis on the fact that the Plaintiff did not put forward a case of tenancy and did not allege that he was a tenant of the land and had been illegally dispossessed therefrom by the landlord. On the contrary he alleged that he was in possession of the land as mufi on the basis of a gift. The learned Judge then concluded:

No relationship of landlord and tenant having been alleged or admitted, there was no bar to the maintainability of the suit u/s 9 Specific Relief Act.

7. A similar view was taken by Braund J. in *Lal Bahadur Singh v. Surajpal Singh*, 1949 A.W.R. (H.C.) 401. With reference to Section 9 of the Specific Relief Act, it was emphasised that that section furnishes a person who has been dispossessed with a cause of action which is very different from the one provided by Section 180 or Section 183 of the U.P. Tenancy Act. In this connection he said:

The only qualification for a person claiming relief under this section is that i.e. shall be able to predicate of himself, not that he was any particular type of tenant or was in occupation under any particular title or right, but that he was merely in possession and was dispossessed. That no question of title arises is made quite clear by the proviso which says that nothing shall stop him from suing to establish his title in another Court. It is, in short, a summary remedy, and, if successful, it remains a completely open question whether he can keep that possession as against somebody who comes forward with a better title.

8. The learned Judge felt great difficulty in agreeing with the contention urged before him that the cause of action for suits u/s 180 or Section 183 U.P. Tenancy Act were either similar to or identical with the cause of action u/s 9 of the Specific Relief Act. He accordingly overruled the plea of jurisdiction set up in bar.

9. My attention has, however, been drawn to recent decision of Bhargava J. in *Beni Madho Singh v. Paragm*, 1949 A.W.R. 112. That case must on facts be distinguished from the class of cases with which Braund J. was concerned in *Lal Bahadur Singh v. Surajpal Singh*, 1949 A.W.R. (H.C.) 401, for there it appeared from the Plaintiff's own pleadings that he was setting up his tenancy rights on the ground that he held the tenancy land under an irredeemable mortgage against his mortgagor who had dispossessed him and had disclaimed that the Plaintiff had become a tenant by lapse of the right of redemption. Bhargava J. held that the suit was of the nature provided for by Section 180 U.P. Tenancy Act, and could not be entertained by the Civil Court.

10. The pleadings in the case with which I am concerned have been set out in some detail in the earlier part of this judgment and in the plaint Mehi Lal did not set up any title. There was no admission that the Defendants were the landlords. The written statement was also silent. The Defendants challenged the jurisdiction of the Civil Court but did not state in their written statements the grounds upon which the plea was based. In oral pleadings they said that the Plaintiff was sub tenant of some of the plots in suit and as dispossession had taken place at the instance of the landholder the jurisdiction of the Civil Court was barred. There was nothing in the evidence to prove that the Plaintiff was a sub-tenant of the aforesaid plots or that the Defendants were the landlords. It is obvious that the suit could not attract to itself the provisions of Section 183 U.P. Tenancy Act.

11. The revision has no substance. I dismiss it with costs.