(1914) 03 AHC CK 0014

Allahabad High Court

Case No: None

Ishwari Singh and Others	APPELLANT
Vs	
Narain Dat and Others	RESPONDENT

Date of Decision: March 9, 1914

Citation: AIR 1914 All 19 : (1914) ILR (All) 312

Hon'ble Judges: Piggott, J; Muhammad Rafiq, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Muhammad Rafiq and Piggott, JJ.

This is a reference under Rule 17 of the Rules and Orders relating to the Kumaun Division, 1894, asking us to give our opinion on two points mentioned in the letter of reference. It appears that the plaintiffs in the case sued for a declaration of their title in respect of certain laud, of which they were admittedly not in possession, and in fact it was admitted by them that they had not been in possession of the land in suit for at least seven years prior to the institution of the suit. The claim for the declaration sought was based on Mr. Beckett''s settlement. It was resisted on the ground, among others, that Section 42 of the Specific Relief Act barred it. The court of first instance dismissed the plaintiffs'' claim both on the merits and on the ground that it was barred by Section 42 of the Specific Relief Act. On appeal by the plaintiffs the learned Deputy Commissioner accepted the appeal and decreed the claim on the ground of title, ignoring the plea taken u/s 42 of the Specific Relief Act. The defendants preferred a second appeal to the court of the Commissioner of Kumaun, and the learned Commissioner upheld the judgment of the first appellate court without any reference to the objection taken by the defendants appellants under the Specific Relief Act. On an application by the defendants to the Local Government the present reference has been made to us for opinion on three questions, viz. (1) whether the plea of the defendants that the suit is barred by Section 42 of the Specific Relief Act is a valid one; (2) whether the first and second appellate courts

were justified in ignoring the plea, and (3) what order should be passed as to costs.

2. On reference to the pleadings in the case there is no doubt that the objection u/s 42 was taken by the defendants respondents throughout. There is an admission by the plaintiffs, apart from any other evidence on the record that the plaintiffs were out of possession for more than seven years prior to the institution of the suit. They, therefore, could claim a further relief than that of a mere declaration. It is contended on their behalf that the land in suit wag at the time of the institution of the suit lying waste and neither party was in possession of it, and therefore the plaintiffs need not have asked for possession. The only thing that stood in their way was an entry in the settlement of 1906, by which, owing to some mistake, the names of the defendants respondents had been entered in respect of the land in suit. The learned Counsel in the course of his argument referred to the case of Ramanuja v. Devanayaka (1) in support of his contention. We do not think that the Madras ease helps the plaintiffs at all. It is laid down there that u/s 42 of the Specific Relief Act the Court should not make a declaration of title when the plaintiffs are able to seek further relief than a mere declaration and omit to do so. But it is said that if the plaintiffs had been in possession of the entire property and the defendants denied their title and required the plaintiffs to deliver possession to them, then the plaintiffs may claim a declaration of right to hold the property. In the present case the plaintiffs were admittedly out of possession and the defendants are obviously keeping them out of it. The plaintiffs, therefore, could have sued and ought to have sued for recovery of possession of the land in suit.

3. Our answer to the first question, therefore, is in the affirmative and to the second in the negative. As to costs we see no adequate reason why they should not follow the event.