

(1876) 06 AHC CK 0011

Allahabad High Court

Case No: None

Ganga Ram

APPELLANT

Vs

Tulsi Ram and Others

RESPONDENT

Date of Decision: June 26, 1876**Citation:** (1875) ILR (All) 252**Hon'ble Judges:** Turner, J; Spankie, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

1. The plaintiff sued to obtain possession of 4 bighas, 12 biswas of land out of 92 bighas, 12 biswas, and one-fourth of 1 bigha, 11 biswas (jureehi), situate in Thoke Muhoor, Mauza Bahtori, together with mesne profits for three years.

2. It appears that, on December the 23rd, 1862, Baldeo, the father of the defendants, sold the lands in suit with other lands to the plaintiff, and with a view, it is said, of confirming his title, he in 1864 sued for and obtained a decree declaring his rights under the sale. It is admitted that he had not at the time of the institution of the declaratory suit and that he has not up to the present time obtained possession.

3. The defendants pleaded inter alia that the suit was barred by the provisions of Section 7, Civil Procedure Code. The Munsif allowed the plea and dismissed the suit without trial on the merits. The lower Appellate Court held that the suit was not barred and remanded it for trial u/s 351, Civil Procedure Code. The lower Appellate Court considered that Section 7 applies to cases in which the plaintiff omits to seek relief in respect of a portion of his claim, and not to cases in which, although he may be entitled to claim more than one kind of relief, he seeks for the time one remedy only.

4. In our judgment the lower Appellate Court has properly interpreted the provisions of the section referred to. We have not now to consider whether the plaintiff ought to have obtained a declaratory decree, seeing that he might have obtained that relief in an

ordinary suit for possession. We have to determine whether, in seeking a declaratory decree to establish his purchase-deed, and omitting to sue for possession, he can be held to have omitted any portion of the claim arising out the cause of action he then put in suit. The cause of action he then put in suit did not necessarily involve any breach of the contract to deliver possession. The plaintiff might have obtained a declaratory decree without entering on the question of possession. For these reasons we hold that Section 7 is inapplicable, and we consequently affirm the order of the lower Appellate Court and dismiss the appeal with costs.