

(1870) 05 CAL CK 0005

Calcutta High Court

Case No: Regular Appeals Nos. 182, 184, 189 and 213 of 1868

Radha Pyari Debi
Chowdhrain and Others

APPELLANT

Vs

Nabin Chandra
Chowdhry

RESPONDENT

Date of Decision: May 16, 1870

Judgement

Sir Richard Couch, Kt., C.J.

We must endeavour to collect the intention of the Legislature in section 230 from the language which they have used. It appears to me that, looking to that language, the title may be gone into in an application under that section. The section provides for the case where a party in a suit for the recovery of immoveable property has obtained a decree, and the decree is about to be executed. It says that, "if any person, other than the defendant, shall be dispossessed of any land or other immoveable property in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was bon■ fide in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the decree-holder as defendant." Then it says what is to be done,--namely, that "the Court shall proceed to investigate the matter in dispute." Now what is the matter in dispute? I think that the matter in dispute is the right of the decree-holder to dispossess the applicant of the property under the decree, and the subsequent words which state the grounds upon which the applicant may come to the Court do not restrict the meaning of those words, but are intended to show the cases in which the applicant is entitled to come to the Court. Unless he can show that he was bon■ fide in possession on his own account or on account of some other person, he has

no right to apply to the Court, but if he can show that, and if the Court is satisfied that there was probable cause for his application, the Court may receive it and proceed to investigate the matter; but still the matter in dispute appears to me to be the right of the decree-holder to dispossess him. So far, then, I think that there is nothing in this section to show that the matter to be tried was limited merely to the question of possession; but then we come to the words that the Court is to investigate the matter in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the "decree-holder." Now, if a suit for the property had been instituted by the applicant against the decree-holder, instead of having been instituted by the decree-holder against some other person, the title would have been gone into. A suit instituted to recover the property, and not to recover merely the possession, is a suit in which there would have been an enquiry into the title. Looking then at these words, it appears to me that we may collect that it was the intention of the Legislature, in a case of this kind, that if the Court should be satisfied that there was a probable ground for the application, the title should be tried between the parties; and the mode of proceeding provided is that the applicant may come in and show that he was really entitled to the property, and that the decree obtained by the decree-holder for the recovery of it was obtained against the wrong person, and was not binding in any way upon the applicant. This construction appears to me to be somewhat strengthened by the words of section 231, which says that no future suits shall be entertained in any Court between the same party or parties claiming under them in respect of the same cause of action. The cause of action in a suit for the recovery of property u/s 230 would be the dispossession under the decree. It may certainly be that the applicant might show that there was a dispossession of the property at some other time, and possibly in that way he might escape from being bound by section 231; but it appears to me that the Legislature using the words in respect of the same cause of action really contemplated the case of the applicant asserting his title to the property, saying that he has been dispossessed of it, and that it was his, and bringing a suit for the recovery of it; and that they intended to treat the proceedings u/s 230, as if the applicant had brought a suit. I cannot say that the language of the section is as clear as it might be, but it appears to me that it may fairly be collected from the language used that that was the intention of the Legislature. Then we must apply that construction to the questions which have been put to us, and which perhaps require to be answered in some special manner. The first question is whether a person who has been dispossessed of land or fisheries in execution of a decree against a third person, not a party to the case, is bound to prove anything more than that he was really and bon■ fide in possession, and dispossessed in execution of the decree. Now it does not follow from the Court having the power to go into the question of title, that the applicant, or the plaintiff in such a case, is bound to prove more than that he was really and bon■ fide in possession. If he proved that, it would be evidence of title upon which he might rest his case, and if he did not choose to go into evidence of his title, we cannot say that he was bound to do it. Now, with regard to the first branch of the second question, whether the decree-holder can put the plaintiff to proof of his title, although we say that the decree-holder can do so, he cannot insist upon direct proof of title, and the plaintiff may, if

he thinks fit, rely upon his possession; but, as to the latter branch of that question, whether the decree-holder can go into evidence of title in himself, we must say that he can; if he has a good title he is at liberty to give evidence of that title and to prove that he is really the person to whom the property belongs, and that it should not be taken in execution of the decree. This is the way in which it appears to me these questions must be answered.

Kemp, J.

I am of the same opinion.

Jackson, J.

2. I am of the same opinion. I think that sections 230 and 231 of the CPC must be read together, and that the terms of the last mentioned section will very materially assist us in coming to a conclusion as to what the Legislature meant by the first mentioned section.

3. The earlier words of section 230 refer to the circumstances which will entitle a party to make application to the Court under this section,—that is to say, that the property which has been the subject of dispossession was bon■ fide in his possession on his own account, or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit "in which the decree was passed;" and then follow the words if, after examining the applicant, it shall appear to the Court "that there is probable cause for making the application," that is to say, that the Court is to satisfy itself of the existence of those circumstances, namely, that the applicant was bon■ fide in possession as stated above, and that the land was not included in the decree, or, if included, that he was not a party to the suit in which the decree was passed; and the Court, on becoming satisfied that there was such probable cause as that for making the application, is then empowered to deal with the matter, and treat it as if it were "a suit between the applicant as plaintiff, and the decree-holder as defendant," and proceed to investigate the matter in dispute in the same manner as if a suit for the property had been instituted by the applicant against the decree-holder.

4. I concur with the learned Chief Justice in thinking that the matter in dispute is the enlarged subject-matter which the Court arrives at, after satisfying itself of the existence of the cause for making the application; and that the power conferred upon the Court in investigating the matter and passing a decision is the same as in an ordinary civil suit. That decision, u/s 231, is "of the same force as a decree," that is, a decree for the property "subject to appeal;" that would be an appeal to determine whether the decision as to the right to the property was correct: and then the section concludes with saying that no fresh suit shall be entertained in any Court between the same party or parties claiming under them in respect "of the same cause of action."

5. This course of procedure, it will be seen, is in marked contrast with that laid down in section 246, on a somewhat cognate subject, There it is said that an "order passed by the Court under this section shall not be subject to appeal, but the party against whom the order may be given, shall be at liberty to bring a suit to establish his right." Then when the Legislature, by this section, debar the party or parties claiming under him from bringing a fresh suit in respect of the same cause of action, which, I apprehend, would be a suit based upon the dispossession under that decree, and in which the plaintiff would seek to establish his title, they would not have excluded him from bringing a fresh suit unless they had at the same time given him the means and opportunity of adducing every thing he could to entitle him to succeed, and consequently unless he had been competent to prove his title in those proceedings. As to the particular mode in which the question should be answered, I entirely concur with the Chief Justice.

Phear, J.

I do not dissent.

Mitter, J.

I concur in this judgment.