

(1910) 05 CAL CK 0052

Calcutta High Court

Case No: None

Karnodhar Halдар

APPELLANT

Vs

Hari Prosad Rai Chowdhury and
Others

RESPONDENT

Date of Decision: May 13, 1910

Acts Referred:

- Specific Relief Act, 1877 - Section 54, 56

Citation: 6 Ind. Cas. 444

Hon'ble Judges: Lawrence Jenkins, C.J; Doss, J

Bench: Division Bench

Judgement

Lawrence Jenkins, C.J.

This appeal raises a point of some interest, and notwithstanding the ingenious argument of Mr. Matter, hold that the appellant is entitled to succeed.

2. The case arises in this way : The present defendant .brought a suit to recover possession of lands from which, he said, he had been wrongfully ousted, lie obtained a decree in his favour for recovery of possession, and that decree was ultimately confirmed by the High Court. As yet the plaintiff in that suit, who is the defendant in this, has taken no steps to execute his decree and it does not appear that he has even threatened to execute it. But the present plaintiffs have commenced this suit whereby they pray to have it declared that the defendant had no title to the lands in suit, to establish that they are not bound by the decree of the title Suit No. 135 of 1903, for perpetual injunction restraining the defendant from taking possession of the lands in suit by executing the decree of title Suit No. 135 of 1903, and for damages.

3. The Munsif has granted the plaintiffs" prayer for an injunction to the extent of restraining the defendant from taking khas possession of the lands in suit, as he is the plaintiffs" tenant; and, that decree has been confirmed by the lower appellate

Court and afterwards by Mr. Justice Caspersz on appeal to this Court, and it is from this judgment of Mr. Justice Caspersz that the present appeal is preferred under the Letters Patent.

4. The case has been argued--and I think properly argued--upon the basis that the whole question turns upon whether this is a case in which the plaintiffs are entitled to the injunction which has been granted to them, for if they are not so entitled, then the declaration made in their favour would naturally go, as they were merely Steps towards the relief of an injunction. In my opinion, the plaintiffs are not entitled, to this injunction. The law is formulated for us in Chapter X of the Specific Relief Act; and, to begin with, it was incumbent upon the plaintiffs to bring themselves within the conditions prescribed in Section 54 of that Act. Mr. Mitter conceded that his best chance of success was to rely on the provisions of Clause (e). But, in my opinion, Clause (e), which prescribes as one of the conditions entitling the plaintiffs to an injunction that such relief is necessary to prevent a multiplicity" of judicial proceedings, has no application, for the simple reason that there was no ground to apprehend any such multiplicity. The clause has application to a well known condition of affairs which is absolutely remote from that with which we have to deal in this case. It is not as though the plaintiffs here would have to bring repeated suits or to make repeated applications or to take proceedings for the purpose of establishing or safeguarding their rights or of preventing the acquisition of rights by the defendant. If they are right in their contention, then should the present defendant obtain possession, it will be open to these plaintiffs to bring such suit as they may think proper for the purpose of recovering possession. It is unnecessary to consider the rest of Section 54, though I would point out that on the facts of this case it is impossible to say that the defendant has invaded or threatened to invade the plaintiffs' right to, or enjoyment of, any property. Further than that, Section 56 appears to me also to constitute a manifest bar in the way of the plaintiffs' suit : I say so notwithstanding the decision of the Madras High Court in Appu v. Raman 14 M. 425. I feel, as Mr. Justice Markby did when in deciding Dhuronidhur's Case 4 C. 380 : 2 C.L.R. 283 : 3 C.L.R. 421, he said at page 396: "it has already been found difficult enough to bring litigation in this country to a termination; and, if we were to grant this injunction, I am very much afraid that advantage would be taken of the precedent to prolong litigation very much further".

5. In my opinion, the plaintiffs have failed to establish any right to bring this suit for an injunction; and I think the judgment of Mr. Justice Caspersz was erroneous. We, therefore, reverse the decree of the lower appellate Court, and dismiss the suit with costs throughout.

Doss, J.

6. I agree.