ALLAHABAD HIGH COURT

Yar Muhammad

Vs.

Lakshmi Das

Civil Revn. No. 461 of 1952, against decision of Addl. Munsif, Bansi

(Raghubar Dayal, G. Mehrotra and A.P. Srivastava, JJ)

29.03.1952. 28.10.1957

JUDGMENT

A. P. Srivastava, J.

1. This Full Bench has been constituted to consider the question

> "Whether the jurisdiction of the Civil Court is barred by virtue of Section 242 of the U.P. Tenancy Act in respect of suit filed under Section 9 of the Specific Relief Act for obtaining possession over agricultural land from which the plaintiff alleged his illegal dispossession within sis months of the date of the suit".

The reference has been made by Mukherji, J. as he felt that there was a conflict between two Division Bench decisions of this Court, the one being in the case of *Ganga Din v. Gokul Prasad*[1], and the other being an unreported decision in *Jag Narain v. Bhagwati Prasad*[2], and that it was desirable that the conflict be resolved.

2. The learned counsel wanted to argue a point in connection with Section 40(2) of the Land Revenue Act also but we did not allow him to do so because only the question mentioned above has been referred to us.

3. The plaintiff filed the suit on 30-11-1948 for possession under Section 9 of the Specific Relief Act alleging that they were in actual possession of the land in dispute (which was admittedly an agricultural land) but had been wrongfully dispossessed by the defendants otherwise than in accordance with law in November 1948. The defendants contested the suit and disputed the correctness of the plaintiff's allegations. They said that they had themselves been in possession of the land as tenants of the plaintiff for more than 12 years. It was therefore not open to the plaintiffs to eject them. They also pleaded that the plaintiffs had filed the suit under Section 9 of

the Specific Relief Act only to evade the jurisdiction of the revenue court as the suit if filed there could never succeed.

11951 All LJ 290 : AIR 1950 All 407

2 Civil Revn. No. 1548 of 1951 (since reported in 1957 All LJ 783 : AIR 1958 All 48)

4. The learned Munsif rejected the plea of want of jurisdiction relying on the case of 1951 All LJ 290 : AIR 1950 Allahabad 407. On facts ho accepted the plaintiffs case and rejected that of the defendants. He therefore decreed the suit The defendants then filed the application in revision out of which the present reference has arisen and it was contended on their behalf that the view taken by the learned Munsif about the applicability of Section 242 of the U.P. Tenancy Act was not justified and the case on which he relied in support of that view had not been correctly decided. The learned counsel sought support for his contention from the decision in Civil Revn. No. 1548 of 1951 : AIR 1958 Allahabad 48.

5. Five contentions, some of which clearly overlap each other, were urged by the learned counsel for the applicants in support of the plea that the plaintiffs suit was cognizable only by the Revenue court. They are :

> (1) Section 242 of the U.P. Tenancy Act is wide in its scope and imperative in nature. The history of the enactment shows that it has always been the intention of the Legislature to keep the revenue court as the only forum in which all disputes relating to agricultural land should be triable. Whenever courts made an attempt by interpreting the law to give concurrent or alternative jurisdiction in such matters to the civil court, the Legislature intervened and made bar excluding the jurisdiction of the Civil Court more stringent and comprehensive.

Whatever may be the nature of the dispute, therefore, if it relates to agricultural land and can in any way be considered to be of the nature specified in the Fourth Schedule of the U.P. Tenancy Act, the revenue court alone is entitled to hear it. No other court can have jurisdiction to entertain it. While enacting Section 242 of the U.P. Tenancy Act the Legislature made no exception in favour of suits filed under Section 9 of the Specific Relief Act. The plaintiffs cannot therefore be allowed to escape the bar of Section 242 simply by framing the suit as one under Section 9 of the Specific Relief Act.

> (2) As Section 242 stands, a claim based on any cause of action in respect of which any relief can be obtained by means of a suit or application in the revenue court can be filed only in the revenue court. The term "cause of action" used in the section has a wide and comprehensive meaning. It covers all the facts that have happened prior to the date of the suit on account of which the plaintiff got a right to claim the relief he wants.

Keeping this wide meaning of the term in view, everything happening before the suit on account

of which the plaintiff can claim any relief constitutes his cause of action and if in respect of it, he can claim any relief in a suit or application filed in the revenue court he has no option but to go to that court for that relief. The relief which the revenue court can grant him may not be adequate and may not be identical with the relief which the plaintiff wants. If any relief of any kind can be had from the revenue court that court is the only court to which recourse can be had. Going to the civil court is out of question.

> (3) A plaintiff is bound to put forward in his plaint the actual and the real cause of action. As the term covers all the facts that have happened till the date of the suit he is bound to put forward all those facts. It is not open to him to allege an unreal or incomplete cause of action, nor can he be allowed to twist the facts or to put forward only a part of the cause of action with a view to take away the jurisdiction of the revenue court and confer it on the civil court.

If he does so, the civil court may in the first instance entertain his suit initially because the allegations in the plaint alone are to be seen for deciding the question of jurisdiction, but as soon as it comes to the notice of the court that the full facts have not been alleged, that something had been concealed, or that some facts have been twisted, the civil court will refuse to deal with the matter and will decline to entertain the suit. The plaintiffs in the present case could not, therefore, file the suit in the civil court simply by alleging possession and dispossession. They should have alleged the full facts and circumstances and had they done so it would have been found that the suit was really one which could have been filed under Section 180 of the U.P. Tenancy Act. As soon as the learned Munsif came to know of this he should have dismissed the suit.

> (4) Even if the plaintiffs had filed a suit with incomplete or twisted allegations and their suit was initially entertained by the civil court under the impression that it could be tried by it is soon when the defendants appeared and put all the facts before the court, the court should have non-suited the plaintiffs leaving them to seek their remedy in the proper Revenue Court.
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> (5) Though complete facts had not been given by the plaintiffs in their plaint in essence the suit was a suit for the ejectment of alleged trespassers and was clearly covered by Section 180 of the U.P. Tenancy Act. The learned Munsif lost sight of this fact when he entertained the suit and held it to be cognizable by him.

6. Section 242 of the U.P. Tenancy Act, as it stood immediately before its repeal by the Zamindari Abolition and Land Reforms Act, provided as follows :

> "Subject to the provisions of Section 286 all suits and applications of the nature specified in the Fourth Schedule shall be heard and determined by a revenue court, and no court other than a revenue court, shall, except by way of appeal or revision as provided in this Act, take cognizance of any such suit or application, or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such

suit or application.

Explanation I : If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical with that which the revenue court could have granted.

Explanation II : If the cause of action is one in respect of which relief might be granted by the revenue court under Section 180, it is immaterial that the relief which may be asked for from the civil court is greater than or additional to that which the revenue court could have granted.

Example : If in a suit under Section 180 a person claims damages exceeding four times the annual rental value, he cannot oust the jurisdiction of the revenue court by framing his relief as such." The corresponding section in the earlier Agra Tenancy Act of 1926 was Section 230 of the Act. As originally enacted, that section contained the word 'adequate' before the word relief. By Act XIII of 1939, however the word 'adequate' was omitted from that section and when the section was re-encted in Section 242 of the U.P. Tenancy Act of 1939, the word 'adequate' was not re-introduced. As it originally stood, the second explanation and the example were not there in Section 242. They were added by Section 22 of the U.P. Amending Act X of 1947. The same section introduced the word "any" in the first paragraph before the word relief.

7. These changes were apparently necessitated by the interpretations that were put by this Court on the section. Under the N. W. F. Tenancy Act, 1901, suits against trespassers could not be filed in the revenue court. When that Act was in force suits against trespassers on agricultural land were entertained by the civil courts alone. The Agra Tenancy Act of 1926 was then enacted and Section 44 of that Act permitted a landholder to sue for the ejectment of a person taking or retaining possession of land without his consent and in contravention of the provisions of the Act. It also entitled him to claim if he liked damages which could extend to four times the annual rental value of the rent applicable to statutory tenants. Section 230 of the Act made a suit under Section 44 triable exclusively by the revenue court and also provided that if adequate relief could be obtained by a suit of that nature, recourse could not be had to the civil court. A question then arose whether Section 230 took away entirely the jurisdiction of the civil court to try suits for ejectment of trespassers on agricultural land. In the case of *Mohammad Muslim v. Mahrania*[3], a Full Bench of this Court took the view that in spite of Sections 44 and 230 of the U.P. Tenancy Act, the civil court and the revenue court continued to have concurrent jurisdiction to entertain suits against trespassers. The only difference was that if the landholder plaintiff considered that four times the rent was adequate enough for him he could file the suit in the revenue court. If, however, he wanted to claim a greater amount of damages he could file the suit in the civil court. This interpretation of the law was based on the use of the word 'adequate' inflection 230 as it was originally enacted. The decision in Mohammad Muslim's case was followed in a number of cases, and the Legislature obviously felt that undue importance had been given by the Full Bench to the word 'adequate' in Section 230. By Act 13 of 1939, therefore, the word adequate was omitted from that section. Soon after-wards the Agra Tenancy Act of 1926 was substituted by the U.P. Tenancy Act of 1939 and Section 230 of the Agra. Tenancy Act was enacted in the new Act

as Section 242. The word 'adequate' was not there in the new section. The question what was the effect of the omission arose for consideration in *Parmeshari Das v. Angan Lal*[4] In that case it was held that the omission was immaterial and that the word 'relief which continued in the section meant the relief claimed by the plaintiff or a substantial portion of it and not "any relief". This view was not accepted by the Legislature with the result that by the U.P. Amending Act X of 1947 the word 'any' was inserted before the word relief in the first paragraph of Section 242 and a second

[3]25 All LJ 545 : AIR 1927 All 369
[4]1944 All LJ 67 : AIR 1944 All 81

explanation and example were added to the section. The intention was to make it clear
that if in inspect of a cause of action any relief, whatever be its nature or extent whether it was adequate or inadequate, could be obtained by means of a suit or application mentioned in the Fourth Schedule of the Tenancy Act, the suit on that cause of action was to be filed in the revenue court and could not be entertained by the civil court.

8. It is however not possible either on the .basis of the terms of Section 242 or on account of the several amendments introduced in it from time to time to uphold the contention of the learned counsel for the applicants that the Legislature intended that provided it relates to agricultural land every kind of suit irrespective of its nature or scope was to be triable by the revenue court alone and could not be filed in the civil court. The section confers exclusive jurisdiction on the revenue court and at the same time takes away the jurisdiction of the civil court only in respect of two kinds of actions.

(1) suits or application of the nature specified in the Fourth Schedule of the Act, and
(2) suits or applications based on a cause of action in respect of which any relief can be obtained by means of a suit or application specified in that schedule.

9. Before Section 242 can be attracted, therefore, the action must fall under either of these two categories. If it does not, the jurisdiction of the civil court will not be ousted and the revenue court will have no jurisdiction to entertain the action. The other entries in the Fourth Schedule are admittedly inapplicable. The suggestion of the learned counsel is that the relief claimed by the plaintiff could have been claimed in a suit either under Section 180 or 183 of the Act which are entered in the Schedule under serial Nos. 18 and 19.

10. In order to see whether the plaintiffs suit partook of the nature of a suit under Section 180 or 183 of the Tenancy Act, or was based on a cause of action in respect of which any relief could be obtained by means of a suit under those sections, one will have to bear in mind the purpose and object of Section 9 of the Specific Relief Act and the essential nature of a suit under that section on the one hand and the nature and essential features of suits under Sections 180 and 183 of the Tenancy Act on the other.

11. Possession is prima facie evidence of title and if a person who is in possession is dispossessed, he has a right to claim back possession from the j person who dispossesses him. In an ordinary suit of that kind if the plaintiff succeeds in establishing! his title as well as possession he is bound to succeed. Even if he is unable to prove his title he can succeed on the basis of prior possession alone. But the suit can easily be defeated if the defendant succeeds in proving a good title in himself or another. In that case the presumption in favour of the plaintiff is displaced.
In such a suit, therefore, the title of both the parties can be brought in issue and can be considered by the court. A suit under Section 9 of the Specific Relief Act is however an entirely different land of action. That section gives a special privilege to persons in possession who take action promptly. In case they are dispossessed it entitles them to succeed simply by proving

> (1) that they were in possession,
> (2) that they have been dispossessed by the defendant,
> (3) that the dispossession is not in accordance with law, and
> (4) that the dispossession took place within six months of the suit.

12. No question of title either of the plaintiff or of the defendant can be raised or gone into in that case. The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is however always subject to a regular title suit and the person who has the real title or even the better title cannot therefore be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession.

13. The obvious objects for the attainment of which the section was enacted appear to be these :

> (1) Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause. As observed by Edge, C.J., in *Wali Ahmad Khan v. Ajudhia Kandu*[5]*,*
> "The object of the section was to drive the person who wanted to eject a person into the proper court and to prevent them from going with a high hand and ejecting such persons."

The same thing was expressed recently by Mootham, C.J. and Hari Shankar, J., in *Dr. M.C. Batra v. Lakshmi Insurance Co. Ltd*[6]*.,* when they observed :

> "The object of the section is to discourage people from taking the law in their own hands, however good their title may be."
> (2) In the interest of public order self-help is not permitted so far as possession, over immoveable property is concerned. The section is, therefore, intended to discourage and prevent proceedings which might lead to serious breaches of the peace. It does not allow a

person who has acted high handedly by wrongfully dispossessing a person in possession from deriving any advantage of his own unjustified act.

(3) It prevents all attempts to shift the burden of proof by illegal dispossession. As Phear, J., put it in *Kalee Chunder Sein v. Adoo Shaikh*[7],

"A person turned out of possession by a stranger and invoking the assistance of court of law, would go into a court seeking to eject one who has possession, and, therefore, by the general rules of procedure, the burden would he placed

[5] ILR 13 All 537 at p. 558
[7] 9 Suth WR 602
[6] 1956 ALJ 392: AIR 1956 All 709

upon him to prove a prima facie title, before the defendant would be called upon whereas had it not been for the high-handed act of violence, which had turned the plaintiff out of possession, the defendant could not have obtained the land in question, except, upon some condition, viz., of discharging the onus of showing a prima facie title; and we imagine that the Legislature considered it advisable to do away with opportunity thus laying open to powerful persons, of shifting by wrongful acts the burden of proving from their shoulders to those of persons less able to support it."

14. Section 9, therefore, provides for a summary and quick remedy for a person who is in possession but is illegally ousted there from without his consent. As this remedy is a summary one and is intended to restore the status quo ante, all questions of title whether of the plaintiff or the defendant are out of place in it, and cannot on that account be allowed either to be raised or to be considered. This seems to be a peculiar feature of this kind of suits and distinguishes it from suits of other kinds.

15. Suits under Sections 180 and 183 of the U.P. Tenancy Act appear to be of an essentially different nature. They are not summary suits based on possession and dispossession alone. It is not possible to exclude considerations of titles from such suits. In fact the very opening words of Section 183 makes it quite clear that, before a person can maintain a suit under that section he must be a tenant : Even if he is in possession and has not been dispossessed he cannot succeed without proving that he was in possession as a tenant. The suit can easily be defeated if the defendant proves that the plaintiff was not a tenant and that the person who has dispossessed him was neither the landholder nor a person claiming to have a right to eject him as a landholder. In a way, therefore, the question of the title of the plaintiff as well as the defendant must necessarily arise in such suit.

16. In a suit under Section 180 also, as was pointed out in 1951 All LJ 290 : AIR 1950 Allahabad 407 :

"But, as will be seen from its language, the section contemplates a suit by a person "entitled to admit the defendant as a tenant" and speaks of the suit "of the person so entitled". It is, therefore, clear that a suit under Section 180 is instituted by a person who has some title to the land and who has the power to admit the defendant as a tenant. This

> conclusion is reinforced when we consider Sub-Section (2). When a suit is not brought under the section the man in possession becomes, on the expiry of the period of limitation, a hereditary tenant of the land.

In order that a person should become a hereditary tenant of the land, the omission to sue must be the omission of the person who has title to the land either as a landlord or as a tenant-in-chief or in some other capacity. It is obvious, therefore, that in a suit under Section 180 the plaintiff has to allege that he has a title to the land". It was urged that the section which was being considered in that case was the section as it stood before it was amended by the U.P. Tenancy (Amendment) Act of 1947. The amendments made by that Act made an essential difference. There appears to be no force in this contention. The only amendments made by the Act of 1947 which can be material for our present purpose are the amendments by which tenants were also allowed to take advantage of the section and that by which the section became available against co-sharers. These amendments certainly increased the scope of the section but did not in any way make a suit under that section analogous to a suit under Section 9 of the Specific Relief Act. Even under the section as it stands after the amendments the person who could maintain a suit is the person who can show that he is entitled either as a landlord or a tenant to admit another person to tenancy. The provisions of Sub-Section (2) of the section remain unaltered. If the person who has taken possession is to acquire the rights of a hereditary tenant on account of omission to sue under the section it is obvious that the omission must be of a person who has some sort of title to the land. The question of title is therefore not altogether foreign to the suit and is in fact bound to be considered in some form or other.

17. Learned counsel pointed out that a trespasser in possession of the land could hold it against the entire world except the true owner and could even admit a person to tenancy. He urged that a trespasser, too could therefore sue under Section 180 of the Tenancy Act. No doubt a trespasser can claim certain rights. If, however, he files a suit under Section 180, his claim will be based not on possession and dispossession alone but on the rights which he can claim on the basis of his possession. It is this feature which essentially distinguishes a suit, under Section 180 of the Tenancy Act from a suit under Section 9 of the Specific Relief Act. In a suit for the latter kind no question of rights arises at all. The only thing to be seen is whether the plaintiff was in possession and had been dispossessed within a certain time otherwise than in accordance with law. A suit of this kind is not contemplated by Section 180 or 183 or in fact any other section or the Tenancy Act and could not therefore be intended to be excluded from the jurisdiction of the civil court by Section 242 of the Act.

18. The argument that even if the plaintiff's suit could not be considered to be a suit which was included in any of the entries in the Fourth Schedule, it was certainly a suit based on a cause of action in respect of which some sort of relief could be obtained by a suit under Section 180 of the Tenancy Act also appears to be untenable. It is based on a misconception of the term 'cause of action' used in Section 242. According to the learned counsel (and in this contention he has the

support of certain observations made in the case of *Jag Narain v. Bhagwati Prasad*,) the term 'cause of action' means "everything that has happened up to the date of the suit." Taking that to be the meaning of the term he urges that if on the basis of everything which has happened before the suit the plaintiff can claim any relief in the revenue court he must life a suit there. The plaintiffs in the present case who were zamindars had according to their own pleadings been dispossessed by the defendants. The defendants claimed tenancy rights in the land and also claimed that they had been in possession of it for some time. All these facts constituted the plaintiffs cause of action and the plaintiffs were therefore bound to allege all these facts in their plaint. In respect of this cause of action a suit could have been filed under Section 180 of the U.P. Tenancy Act and some relief could have been claimed in it. The plaintiffs could not therefore avoid going to the revenue court unless they were allowed to come to Court with an incomplete cause of action. When they filed the suit merely alleging possession and dispossession they conceded an essential part of the cause of action.
The term cause of action is not defined in the Tenancy Act or in any other statute. By long user, however, it has acquired a definite connotation which can be presumed to have been known to the Legislature. This meaning which has been considered in numerous cases can be traced back to the early English case of *Cook v. Gill*[8]*,* from which it was quoted with approval by Lord Esher M.R. in *Read v. Brown*[9]*,* According to that definition the term means

> "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court, but does not comprise every piece of evidence which is necessary to prove each fact but every fact which is necessary to be proved."

A Full Bench of this Court in *Murti v. Bhola Ram*[10]*,* interpreted the term as meaning

> "the whole bundle of material and essential facts which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit."

In *Mt. Chand Koer v. Pratab Singh*[11]*,* the Privy Council laid down that

> "the cause of action refers to the media upon which the plaintiff asks the court to arrive at a conclusion in his favor."

After observing

> "Now the cause of action has no relation whatever to the defense which might be set up by the defendants, nor does it depend upon the character of the relief prayed for the plaintiff."

It is thus put beyond the pale of controversy that the term cause of action does not include

everything which has happened upto the date of the suit but embraces only these essential facts which it is necessary for the plaintiff to prove in order to get the relief which he claims. In a suit under Section 9 of the Specific Relief Act, the only thing which it is necessary for the plaintiff to prove, if traversed, is that he was in possession, that he was dispossessed, that dispossession took place otherwise than in accordance with law and that it took place within! six months of the suit. No other facts need be alleged or proved. These facts alone can therefore be considered to constitute the entire cause of action for a suit under Section 9 of the Specific Relief Act. It is not necessary for a plaintiff in a suit of that kind to allege or to prove any other facts. In a suit of that kind therefore if a plaintiff comes to court only with these allegations and no other it cannot be said that he has come to court with an incomplete cause of action. Considering the nature of action enumerated in the Fourth Schedule of the Tenancy Act it is obvious that on these facts alone the plaintiff cannot expect to get any relief from the revenue court. The revenue court will not grant any relief or even entertain any suit based on these allegations only. On these allegations relief
could be had only from the civil court under Section 9 of the Specific Relief Act. Section 242 of the Tenancy Act cannot, therefore, apply to such a suit or exclude it

[8](1873) 8 C. P. 107 : 28 L. T. 32

[9](1888) 22 QBD 128

[10] ILR 16 All 165

[11]15 Ind App 156

from the cognizance of the civil court.

19. It is true that no plaintiff can be permitted to confer jurisdiction on one court or to oust the jurisdiction of another court by making incomplete or twisted allegations. There is also no doubt about the proposition that as the question of jurisdiction has to be determined initially on the allegations of the plaint, a suit may be entertained by a court it is triable by it on the allegations made in the plaint, but if subsequently the allegations are found to be incorrect the suit is liable to be dismissed. These principles, unexceptionable as they are, do not, however, affect the matter in hand in any manner. The plaintiffs in the present case made only those allegations in their plaint which it was necessary for them to make in view of the terms of Section 9 of the Specific Relief Act. They were not bound to allege their own title or the nature of rights which the defendants could or were claiming and even if they had made these allegations they could not have been taken into consideration. There was, therefore, no question of the plaintiff's coming to court with incomplete or twisted allegations. The allegations they had made were in fact the only allegations that could have been made in a suit of that nature. The defendant, too, could not be allowed to raise any question of title in the suit either directly or indirectly. There was therefore no question of any fact being put forward by either of the parties on the basis of which the court could hold that the suit should have been filed in the revenue court. The suit of the plaintiffs could certainly have been dismissed if their allegations were found to be incorrect. In this case however their allegations of fact have been found by the learned Munsif to be correct and he has disbelieved the case to the contrary set up by the defendants. The suit of the plaintiff could not therefore be thrown out on the ground that it did not be in the civil court and should have been filed in the revenue court. In view of the express terms of Section 9 of the Specific, Relief Act the defendants could not defeat the suit by raising a question of their being in rightful possession. If they had wrongfully dispossessed the plaintiffs by taking the law into their own hands they were

bound to restore possession to the plaintiffs. If under the law they could claim a right to take possession, for establishing that right, if they had it, they had their remedy in a regular suit.

20. It is urged that to allow the plaintiffs to get a decree under Section 9 of the Specific Relief Act only to have it upset soon after by a regular suit would amount to encouraging unnecessary litigation, No court should pass a decree of that kind. The policy of law which underlies the enactment of Section 9 of the Specific Relief Act is however to deprive a wrong doer of any possible advantage which he may claim on the basis of his wrongful act. Possession wrongfully taken must therefore be restored and a claim of title cannot be allowed to be set up even in execution of the decree under Section 9 vide *Parmanand v. Sm. Chhimmawati*[12], and *Bhagwan Din v. Chhotey Lal*[13], The only course that will be open to the wrong doer was therefore to hand back possession and then it he can take it back by establishing his own title. A court cannot therefore refuse to entertain a suit under Section 9 simply on the pretext of discouraging, multiplicity of litigation.

21. None of the contentions pressed by the learned counsel for the applicants, therefore, appear to be tenable and with due deference to the learned Judges who

[12]1954 All LJ 486: AIR 1955 All 64
[13]1955 All LJ 672

decided the case of *Jag Narain v. Bhagwati Prasad,* we think that to the extent, to which that case supports the applicants' contention it has not been correctly decided. The other decision in *Ganga Din v. Gokul Prasad*, appears to be distinctly preferable and, if we may say so with respect, lays down the correct law.

22. With the exception of the case of Jag Narain, and some subsequent cases in which it has been followed the trend of opinion on this question also appears to be in consonance with the view that we are disposed to take. The question appears to have arisen first in *Khushnud Husain v. Janki Prasad*[14], The plaint in that suit had been framed as one under Section 9 of the Specific Relief Act. The defendant wanted to plead tenancy and urged that the suit should have been filed in the revenue court. The plea was not accepted and it was held that as there was nothing to show that the suit as framed was not triable by the civil court that court could entertain it. The case was followed in *Brij Narain Lal v. Gokul Prasad*[15], A similar case arose in Oudh with reference to Section 108 of the Oudh Rent Act in *Rajai Singh v. Suraj Bali*[16], and in that case also it was held that a suit under Section 9 of the Specific Relief Act lay only in the civil court and could not be filed in the revenue court. The decision in ***Lal*** *Bahadur Singh v. Suraj Pal Singh*[17], is to the same effect.

23. In *Beni Madho Singh v. Pragi*[18], the plaintiff instituted a suit for possession under Section 9 of the Specific Relief Act, but made allegations of title also in the plaint. He alleged that the land had been mortgaged with his ancestors and the right to redeem having come to an end by lapse of

time, he had become the lawful tenant of the land. He had however been dispossessed without his consent by the defendant. It was held that the suit should have been filed in the revenue court under Section 180 because according to the allegations made in the plaint itself, the suit was not based merely upon the summary cause of action provided by Section 9 of the Specific Relief Act.

24. In *Jagdish Singh v. Mehi Lal*[19], again, a suit under Section 9 of the Specific Relief Act was held to be maintainable in the civil court in spite of Section 240 of the Tenancy Act. The view was confirmed by a Division Bench in 1951 All LJ 290 : AIR 1950 Allahabad 407. One of the Judges constituting the Bench had earlier decided the case of 1949 All LJ 24 : AIR 1949 Allahabad 510. That case was distinguished on facts. This Division Bench case was later followed in *Ram Lakhan Tewari v. Mt. Tulsa*[20], *Ram Naresh v. Deo Narain*[21], and *Rudan v. Ujagar Singh*[22],

25. We are therefore of opinion that the question referred to us should be answered in the negative. It is answered accordingly. Let the record be returned with the above answer to the referring court.

Answer in negative.

[14] AIR 1931 All 663
[15] 1935 All LJ 813
[16] AIR 1942 Oudh 179,
[17] 1946 All LJ 201 : AIR 1946 All 486
[18] 1949 All LJ 24: AIR 1949 Alla 510
[19] 1950 All LJ 645
[20] 1953 All LJ 705: AIR 1954 Alla199
[21] 1953 All LJ 528: AIR 1951 All 109
22 AIR 1953 All 733