

alia) that the bonds regarding which the applicant asked for a certificate were in his (opponent's) possession, and that, therefore, he alone was entitled to the certificate and not the applicant; that, in any case, a certificate should not be given to the applicant alone, and that as both the applicant [685] and the opponent were the brothers of the deceased Chotiram, a joint certificate should be issued to them.

The District Judge passed an order issuing a certificate in the names of both the applicant Lonachand and the opponent Uttamehand.

The applicant Lonachand appealed to the High Court.

Narayan Ganesh Chandavarkar, for the appellant :—It has been held that a joint certificate under Act XXVII of 1860 could not be granted—*Madan Mohan v. Ramdial* (1); *Jamnabai v. Hastubai* (2). The provisions of Act VII of 1889 are similar to the provisions of that Act. The District Court ought to have determined which applicant had a better right to the certificate.

There was no appearance on behalf of the respondent.

JUDGMENT.

SARGENT, C.J.—This Court, following *Madan Mohan v. Ramdial* (1), has expressed the opinion that to grant a joint certificate is to frustrate the object of the Act—*Jamnabai v. Hastubai* (2).

We must, therefore, reverse the order of the District Judge and send the case back for a fresh decision on the rival claims for the certificate. Costs to abide the result.

Order reversed.

15 B. 685.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

AMIRUDIN (*Plaintiff*) v. MAHAMAD JAMAL (*Defendant*)*

[23rd February, 1891.]

Specific Relief Act (I of 1877), s. 9—The Mamltdars' Courts' Act (Bombay Act III of 1876)—Suit by a trespasser to recover possession.

A trespasser who has been dispossessed is not entitled to bring a suit under s. 9 of the Specific Relief Act I of 1879 or under Bombay Act III of 1876 to recover possession.

[686] *Dadabhai Narsidas v. The Sub-Collector of Broach* (3), *Krishnarav Yashavant Vasudev v. Apaji Ghotikar* (4) and *Virjivandas Madhvasdas v. Mahomed Ali Khan Ibrahimkhan* (5), referred to.

[R., 12 C.L.J. 605 = 7 Ind. Cas. 700; 12 C.P.L.R. 52.]

THIS was a reference made by Rao Saheb Dwarkanath Narayan Banadive, Subordinate Judge of Panvel, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

Suit for possession under s. 9 of the Specific Relief Act I of 1877.

* Civil Reference No. 26 of 1890.

(1) 5 A. 195.

(4) 8 B. 371.

(2) 11 B. 179.

(5) 5 B. 208.

(3) 7 B.H.C.R. A.C.J. 82.

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The plaintiff, Amirudin, sued under the above section to recover possession of a certain room from the defendant. He alleged that up to the 3rd June, 1890, he had been in possession of the room.

The defendant answered that the room was his and had been in his possession and not the plaintiff's; that the plaintiff had committed a trespass by excluding him from the room and putting a padlock on the door, and that he (the defendant) had subsequently removed the padlock and resumed possession. He contended that the plaintiff was a mere trespasser, and, as such, was not entitled to bring a suit for possession under s. 9 of the Specific Relief Act.

The Subordinate Judge was of opinion that the plaintiff's possession previous to his dispossession by the defendant was not that of a trespasser, but he submitted the following question for the opinion of the High Court:—

"Whether it was competent for a defendant, in a suit instituted under s. 9 of the Specific Relief Act, or under Bombay Act III of 1876, to show that the plaintiff's possession previous to dispossession was that of a trespasser?"

JUDGMENT.

SARGENT, C.J.—The reference in this case raises a question of some importance on the construction of s. 9 of the Specific Relief Act. The defendant's case is that he had been in possession of the room in question, and that about 30th May, 1890, the plaintiff put a padlock on the room and went to Bombay, and that as he, the defendant, wanted the use of his room, he [687] removed a window two days afterwards and effected an entrance. The question is whether, assuming the defendant's story to be true, the plaintiff's possession is such as to enable him to avail himself of the above section.

In *Dadabhai Narsidas v. The Sub-Collector of Broach* (1), Mr. Justice Melvill expressed an opinion that a mere trespasser could not succeed under s. 15 of Act XIV of 1859, the language of which is virtually the same as that of the section under consideration, on the ground that the plaintiff in such a case has not acquired juridical possession and, therefore, could be dispossessed. We think this is the correct view of the section, and it is quite consistent with the remark in *Krishnarav Yashvant v. Vasudev Apaji Ghotikar* (2) as to the general object of the Act. It is further in accordance with the remarks of the Court in *Virjivandas Madhavdas v. Mahomed Alikhan Ibrahimkhan* (3). Therefore, in the present case, assuming the defendant's statement is true (as to which we of course express no opinion) even if the plaintiff can be said to have been in possession by what he did, still such possession not having been acquiesced in by the defendant never became a juridical possession which could give him the right to invoke the aid of the Mamlatdar or the Court under s. 9 of the Specific Relief Act.

Order accordingly.

(1) 7 B.H.C.R.A.C.J. 82.

(2) 8 B.371.

(3) 5 B. 208.