

The result, therefore, is that, subject to her paying those Court Fees within one month from this date, the decree of the District Judge will be reversed; otherwise it will be confirmed.

The defendant must get the costs of the appeal to the District Court, but the costs in this Court will abide the result.

In case the Court fee is not paid within the time indicated, the defendant must get the costs also of the appeal to this Court.

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## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.*

RUDRAPPA BIN SANKAPPA (ORIGINAL PLAINTIFF), APPLICANT, v. NARSINGRAO RAMCHANDRA HEBLIKAR AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.\*

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December 6.

*Specific Relief Act (I of 1877), section 9—Civil Procedure Code (Act XIV of 1882), section 622—Tenant holding over—Dispossession by landlord—Suit by tenant to recover possession—Extraordinary jurisdiction.*

A tenant holding over after the expiry of the period of tenancy was dispossessed without his consent by the landlord. The tenant then brought a suit for possession against the landlord under section 9 of the Specific Relief Act (I of 1877). The Subordinate Judge dismissed the suit. The plaintiff (tenant) thereupon applied under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882).

*Held*, reversing the decree, that the plaintiff (tenant) was not liable to be evicted by the defendant (landlord) *proprio motu* and that he was entitled to a decree for possession.

*PER BATCHELOR, J.* :—“To read the words ‘due course of law’ in section 9 of the Specific Relief Act, as merely equivalent to the word ‘legally’ is, we think, to deprive them of a force and a significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done ‘in due course of law’; to enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and the ‘due course of law’ means, we take it, the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication. That, in our opinion, is the primary and natural meaning of the phrase, though it may be applied in a derived or secondary sense to other proceedings held under the direct authority

\* Application No. 103 of 1903 under extraordinary jurisdiction.

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of the law ; in this sense it may be said, for instance, that revenue or taxes are collected in due course of law."

The only issue tried by the Subordinate Judge was—' Whether the plaintiff was wrongfully dispossessed within six months before the suit.'

*Held* that the plaintiff's remedy lay in an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) inasmuch as that issue was not one upon which the dispute between the parties could be properly adjudicated upon.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of V. J. Kaduskar, Joint Subordinate Judge of Dhárwár, in a suit for possession of land under section 9 of the Specific Relief Act (I of 1877).

The plaintiff, who was the tenant of the defendants under a rent note for one year which ended in April 1902, having failed to vacate the land at the end of the stipulated period, the defendants dispossessed him and took possession. The plaintiff thereupon brought the present suit against the defendants for the recovery of possession under section 9 of the Specific Relief Act (I of 1877).

The defendants set up their title to the land on the strength of the rent note.

The Subordinate Judge framed only one issue, namely, " whether the plaintiff was wrongfully dispossessed within six months before the suit," and having found on the issue in the negative, he dismissed the suit on the ground that the plaintiff had no longer the right to hold the land at the end of the period mentioned in the rent note and he was rightly dispossessed.

The plaintiff preferred an application under the extraordinary jurisdiction urging that the Judge wrongly exercised jurisdiction in dismissing the suit, that the dispossession by the defendants without the plaintiff's consent was otherwise than by due course of law, that the Judge had not raised proper issues arising in the case under section 9 of the Specific Relief Act, and that he failed to notice the distinction between an ordinary suit for possession on title and a possessory suit under section 9 of the Specific Relief Act. A *rule nisi* having been issued requiring the defendants to show cause why the decree of the Subordinate Judge should not be set aside,

*N. V. Gokhale* appeared for the applicant (plaintiff) in support of the rule.—He relied on the following authorities:—Sandars Institutes of Justinian (Fourth Edn.) lib. IV, Tit. XV, 6; Collett on Specific Relief Act, pp. 74, 75 (Third Edn.); section 15 of Act XIV of 1859; *Khajah Enaetollah v. Kishen Soondur*<sup>(1)</sup>, *Sofaull Khan v. Wopean Khan*<sup>(2)</sup>, *Jonardun Acharjee v. Haradhun Acharjee*<sup>(3)</sup>, *Wali Ahmad Khan v. Ajudhia Kandu*<sup>(4)</sup>, *Nund Kishore Lal v. Sheo Dyal Oopadhya*<sup>(5)</sup>, *Krishnarav v. Vasudev*<sup>(6)</sup>, *Bandu v. Naba*<sup>(7)</sup>, *Hanmantrav v. The Secretary of State for India*.<sup>(8)</sup>

*M. V. Bhat* appeared for the opponents (defendants) to show cause. He relied on the following cases:—*Bandu v. Naba*,<sup>(7)</sup> *Amirudin v. Mahamad*,<sup>(9)</sup> *Virjivandas v. Mahomed Ali Khan*,<sup>(10)</sup> *Chandri v. Daji Bhanu*.<sup>(11)</sup>

BATCHELOR, J.:—This is an application under the Court's Extraordinary Jurisdiction under section 622, Civil Procedure Code. The applicant was the plaintiff in a suit instituted in the Court of the Joint Subordinate Judge, Dhárwár, to recover possession of certain land under section 9 of the Specific Relief Act. The defendants produced a rent note signed by the plaintiff (Exhibit 25) which satisfied the learned Subordinate Judge that the plaintiff was the defendants' tenant holding over after the expiry of the period of tenancy. From this circumstance the Subordinate Judge inferred that the plaintiff was rightly dispossessed, and dismissed the suit with costs.

Before us the facts of the case are admitted and are in substance these. The rent note, passed by the plaintiff to the defendants' attorney, is dated 9th November 1901, and is for the Shake year 1823, which ended on the 8th April 1902. In June 1902 the defendants obstructed the plaintiff in his attempts to cultivate the land and ultimately dispossessed him of their own motion and without his consent. Thereupon the plaintiff filed this suit under section 9 of the Specific Relief Act.

(1) (1867) 8 W. R. 386.

(2) (1868) 9 W. R. 123.

(3) (1869) 9 W. R. 513.

(4) (1891) 13 All. 537.

(5) (1869) 11 W. R. 168.

(6) (1884) 8 Bom. 371 at p. 375.

(7) (1890) 15 Bom. 238.

(8) (1900) 25 Bom. 287 at p. 292.

(9) (1891) 15 Bom. 685.

(10) (1880) 5 Bom. 208.

(11) (1900) 24 Bom. 504.

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Now the material part of this section reads as follows :—

“ If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

“ Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

Thus upon the admitted facts in this case, the only question which calls for solution is whether the dispossession of the plaintiff was effected “ otherwise than in due course of law ” within the meaning of the Act. Adopting the first and principal test laid down, namely, a consideration of the words themselves (see *Bank of England v. Vagliano* <sup>(1)</sup>) we are of opinion that this question must be answered in the affirmative. A tenant holding over is, no doubt, a tenant on sufferance, but it does not follow that he is therefore liable to be evicted by the landlord *proprio motu* : whether he is so liable or not depends precisely upon the intention of the Legislature in the section under discussion and no fair presumption as to that intention can be collected from the law prevailing in England. It may be doubted whether the holding-over is sufficient to make the tenant's possession “ wrongful ” within the ordinary acceptation of that word ; and that such possession is still juridical possession seems to us apparent from the fact that a tenant holding over could recover as against a third party who unlawfully dispossessed him. We conceive, therefore, that there is nothing in the character of such possession which should be allowed to override a plain provision of the Act that the landlord shall not *suo motu* dispossess a tenant without his consent. And to our minds this is the plain effect of section 9. To read the words “ due course of law ” as merely equivalent to the word “ legally ” is, we think, to deprive them of a force and a significance which they carry on their very face. For a thing, which is perfectly legal, may still be by no means a thing done “ in due course of law ” ; to enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law, and the “ due course of law ”

(1) (1891) A. C. 107.

means, we take it, the regular, normal process and effect of the law operating on a matter which has been laid before it for adjudication. That, in our opinion, is the primary and natural meaning of the phrase, though it may be applied in a derived or secondary sense to other proceedings held under the direct authority of the law; in this sense it may be said, for instance, that revenue or taxes are collected in due course of law. But this latter use of the expression has clearly no bearing upon the words in the particular context in which they occur in section 9; there we think they must be read in their primary sense as referring to the process and operation of the law invoked by the ordinary method of a civil suit.

Nor do we find that this construction leads to any result which can be called incongruous or unnatural; on the contrary, the result appears to us natural and reasonable. For on the hypothesis which is a condition precedent to the operation of the section there is a dispute between two persons as to the right to the possession of immoveable property, and the Legislature in its anxiety to prevent agrarian crime may well have desired to enact that such a dispute should be settled exclusively by judicial decision, and not by either of the parties under whatever claim of title he may put forward; in other words it may well have been the intention that, in the circumstances contemplated, the landlord should be debarred from taking the law into his own hands. This view is corroborated by the proviso in the second paragraph that nothing in the section shall bar any person from suing to establish his title and recovering possession upon the strength of it. So far, therefore, as the section itself is concerned, it would seem to look to possession alone, and to provide that when such possession is to be recovered *ab invito*, recourse must be had to the institution of legal proceedings, and that where such proceedings are not taken, the tenant may claim to be restored to possession, though such restoration shall not affect that landlord's right to establish his claim in a separate suit.

Moreover, this construction appears to be supported by the weight of authority so far as the section has been considered and interpreted by the Courts. Omitting a certain provision as to limitation, the section corresponds with section 15 of Act

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XIV of 1859, upon which we have the benefit of several rulings of the Calcutta High Court. In the first of such cases to which our attention has been directed, *Khajah Enaetoollah v. Kishen Soondur* <sup>(1)</sup>, Mr. Justice Mitter in commenting upon the section observes —: “If the suit is brought within the period prescribed by that section, even the rightful owner of the land is precluded from showing his title.” To the same effect is the decision of Peacock, C. J., in *Sofaoll Khan v. Woosean Khan* <sup>(2)</sup>, which was also a case where the tenant held over after the expiry of the lease. In dealing with the argument that if the landlord could turn the tenant out by force, he was at perfect liberty to do so, the learned Chief Justice says:—“It appears to us that that is an erroneous position, and that the zemindar is not at liberty to take the law into his own hands. The defendant having turned the plaintiff out of possession of his own authority, instead of proceeding in due course of law, the plaintiff sued to recover from him the possession which he had unlawfully taken, and the Court was quite right in decreeing for the plaintiff in that suit”. In the same year we have the Full Bench Ruling in *Jonardun Acharjee v. Haradhun Acharjee* <sup>(3)</sup>, where the defendant admitted the ejectment, but pleaded in justification that the plaintiff-appellant had no right to occupy the land inasmuch as the period of his lease had expired before the dispossession took place. In delivering the judgment of the Full Bench, Peacock, C. J., expressed himself as follows:—“If, however, the Zemindar acts of his own authority and without the intervention of a Court of law, or of the Collector, he comes within section 15 of Act XIV of 1859; and if the ryot sue him in the Civil Court ‘within the period then prescribed’ he will be entitled to recover possession without reference to the title of the Zemindar to eject him.” The reference to the Collector goes out of this case, as it was based upon a provision of the Act of 1859, which has no longer any force. It is clear, then, from these decisions that the expression “due course of law” was interpreted as being in contrast with the acting of one’s own authority or acting without the intervention of the Court, in other words, the construction approved was

(1) (1867) 8 W. R. 386 at p. 389.

(2) (1868) 9 W. R. 123.

(3) (1868) 9 W. R. 513 at p. 514.

that which we have already indicated as the plain meaning of the language. Reference may also be made to the observations of Edge, C. J., in *Wali Ahmad Khan v. Ajudhia Kandu* <sup>(1)</sup>.

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With regard to the contention that this application will not lie, it will be enough to say that the only issue tried by the Subordinate Judge—whether the plaintiff was *wrongfully* dispossessed—was not an issue upon which the dispute between the parties could be properly adjudicated upon. There was thus a material irregularity by the Subordinate Judge in the use of his jurisdiction, and this application is in order under section 622, Civil Procedure Code.

The Subordinate Judge's decree must be reversed, and the plaintiff's claim must be decreed. The defendants-opponents will bear all costs throughout.

*Decree reversed.*

G. B. R.

(1) (1891) 13 All. 537.

## APPELLATE CIVIL.

*Before Mr. Justice Russell and Mr. Justice Aston.*

1904.  
December 8.

VARAJLALBHAISHANKAR SELAT AND OTHERS (ORIGINAL DEFENDANTS),  
APPELLANTS, v. SHOMESHWAR *alias* AMRATLAL PARIDAT BHAT  
(ORIGINAL PLAINTIFFS), RESPONDENTS. \*

*Civil Procedure Code (Act XIV of 1882), sections 373, 374—Limitation Act (XV of 1877), section 14—Cause of like nature—Withdrawal of a suit with permission to bring another—Limitation.*

On the 15th April, 1898, two plaintiffs, a father and son, filed a suit against two defendants to recover damages for an assault which took place on the 7th April, 1898. The defendants pleaded misjoinder of parties and of causes of action. On the 14th November, 1901, the High Court on appeal gave effect to this plea of the defendants, but under section 373 of the Civil Procedure Code gave leave to one of the plaintiffs, whose name was struck out, to file, if so advised, a fresh suit in respect of his own cause of action. The plaintiff, whose name was so struck out, filed this suit on the 13th February, 1902.

*Held*, that the second suit was barred by limitation, for when a suit is withdrawn under section 373 of the Civil Procedure Code, with permission to bring

\* Appeal No. 4 of 1904 from order.