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Court : Rajasthan

Decided On : Dec-14-1972

Reported in : 1972WLN906

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil Second Appeal No. 609 of 1966

Appellant : Piladram

Respondent : Surjansingh

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. The finding of both the lower courts is that the defendant respondent has encroached upon the plaintiff's land in a triangular shape with nine inch, 9 base on the northern side by constructing a well. The trial court was of the opinion that this encroachment took place because the plaintiff not construct his boundary wa 1 after full measurements. It therefore held that it was not a case which called for a mandatory injunction but was one where a sum of Rs. 50/- as compensation would suffice. The above finding was affirmed by the appellate court. Dissatisfied with the judgment and decree pasted by the appellate court, the plaintiff has filed this

appeal and the defendant has filed cross-objection.

2. It is contended on behalf of the plaintiff-appellant that in cases of encroachment mere award of compensation is not an appropriate remedy as it is a continuing trespass on the plaintiff's property. On the other hand, it is argued on behalf of the defendant that this is a fit case for compensation and not for grant of a mandatory injunction. His further contention is that the amount of compensation awarded by the courts below is excessive.

3. The question for decision is, whether, in the circumstances of the case, a mandatory injunction for removal of the wall should be granted. In the case of *Shelfer v. City of London Electric Lighting Co.* (1895) 1 Chancery Division 287, it was held that when one person has committed a wrongful act thereby invading the rights of another he cannot in ordinary circumstances ask the court to sanction his wrongful act and allow him to pay monetary compensation to the person whose right has been infringed. In such a case if the act complained of is a continuing wrong, the person wronged is ordinarily entitled to an injunction against the person who has injured him. In the course of his judgment in that case however, at p.322, Lord Justice Smith laid down certain exceptions to this rule. He stated:

In my opinion, it may be stated as a good working rule that:

- (1) if the injury to the plaintiff's legal rights is small,
- (2) and is one which is capable of being estimated in money,
- (3) and is one which can be adequately compensated by a small money payment
- (4) and the case is the one in which it would be oppressive to the defendant to grant an injunction: then damages in substitution for an injunction may be given.

There may be cases in which, though the four above mentioned requirements exist the defendant by his conduct, as, for instance; hurrying up his buildings so as if possible to avoid an injunction, or otherwise acting with a reckless disregard to the plaintiff's rights, has disentitled himself, from asking that damages may be assessed in substitution for an injunction.

It is impossible to lay down any rule as to what, under the differing circumstances of each case, constitutes either a small injury, or one that can be estimated in money, or what in a small money payment, or an adequate compensation, or what would be oppressive to the defendant. This must be left to the good sense of the tribunal which deals with each case as it comes up for adjudication.

The law in India as to the grant of mandatory injunction is laid down in Section 3 of the Specific Relief Act and according to the wordings of that section, the court may in its discretion grant an injunction. The power of the courts in India is therefore discretionary, but the discretion must be exercised in a judicial manner. It was pointed out in the case of Mahomed Auzam Ismail v. Jagannath Jamnadas AIR 1925 Ran 327 that the courts in India have a wider discretion in the matter than the courts in England. The Bombay High Court in Lalji Dayal v. Vishvanath Prabhuram Vaidya AIR 1929 Bom 137 held that when the issue of a mandatory injunction would involve the removal of a completed structure which entails no inconvenience and only a slight invasion of the plaintiff's rights, not committed wantonly or after protest, pecuniary compensation is the more appropriate remedy.' In that case, a gallery projecting over the defendant's land v. as allowed to remain on payment of compensation. I am inclined to think that on the analogy of Lalji Dayal' s case (3) supra, the trial court's decree granting compensation was justified. In the present case the land encroached upon by the defendant is very small and there is nothing to show that the defendant deliberately committed trespass on the plaintiff's land. The wall which is said to have been constructed by the defendant is like a pillar and even if it is allowed to exist, it is not going to cause any inconvenience to the plaintiff Considering all the circumstances of the case, I am inclined to hold that the case does not call for grant of a mandatory injunction and the pecuniary compensation awarded to the plaintiff would be adequate.

4. As regards cross-objection, I do not think that the amount of Rs. 50/- awarded by way of compensation is in any way excessive.

5. The result is that the appeal as well as cross-objection fail and they are hereby dismissed. In the circumstance, the parties are left to bear their own cost to this

Court.

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