

Kathappudayan Vs. Muthappudayan

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Court : Chennai

Decided On : Mar-12-1900

Reported in : (1900)10MLJ230

Appellant : Kathappudayan

Respondent : Muthappudayan

Judgement :

1. The District Munsif found that the defendant entered the plaintiffs'house without his consent, and during his absence with intent to commit adultery with the plaintiffs wife but that no adultery was committed as the defendant and plaintiffs wife were surprised almost immediately. He dismissed the suit for damages on the ground that no adultery was committed. On appeal the District Judge agreed with the District Munsif that adultery. was not committed and dismissed the appeal. He did not find whether or not the trespass was committed, nor whether such trespass would by itself be a ground for damages.

2. If the house-trespass with intent to commit adultery found by the District Munsif was true, we are of opinion that a case for house-trespass existed apart from the question of any actual adultery. The intention to commit adultery is a circumstance to be taken into consideration in assessing the amount of damages for the tort. Cf. Merest v. Harvey, This view of the case does not appear to have been presented to the lower courts, but the facts were alleged from the beginning as constituting the plaintiffs case, and we think the lower Courts erred in ignoring the plaintiff's

right to damages for the trespass even though he failed to prove the alleged adultery. We must therefore, set aside the decree of the District Judge and remand the appeal to him for disposal in the light of the observations now made. We make no order as to costs in this second appeal as the plaintiff did not present his case to the lower courts in the aspect now urged before us.

3. In the view we have taken it is not necessary for us to decide the other question urged by the appellant's vakil that the plaintiff would be entitled to damages for an attempt to commit adultery apart from the question of house-trespass. No authority has been cited to support the contention. In such a case damages would seem not to be recoverable if regard is had to the theory on which the actions for criminal conversation were formerly allowed in England and even if that theory is not well founded we should, in the absence of any authority or clear principle in favor of such a view, hesitate to hold that a mere attempt would amount to an actionable wrong.

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