Vajjula Anantharaman Vs. Adapala Subba Reddi and anr.

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SooperKanoon Citation : sooperkanoon.com/796521

Court : Chennai

Decided On : Mar-27-1951

Reported in : AIR1952Mad597; (1951)IIMLJ419

Judge : Raghava Rao, J.

Appeal No. : Second Appeal No. 2249 of 1947

Appellant : Vajjula Anantharaman

Respondent : Adapala Subba Reddi and anr.

Advocate for Def. : C.A. Vaidhyalingam and ;P. Ramachandra Reddy, Advs.

Advocate for Pet/Ap. : R. Ramamurthi Iyer and ;P.S. Raghavarama Sastry, Advs.

Judgement :

Raghava Rao, J.

1. The appellant in this secondappeal was the plaintiff in the original Court.His suit was for recovery of certain damagesand for an injunction. The damages related tothe value of the earth said to have been dugfrom this land by the first defendant with theconnivance of the second defendant, a tenantof the plaintiff. The earth dug was convertedinto bricks and the injunction was to restrainthe defendants from entering, removing or interfering with the brick kilns. The kilns aresituated in an area of 10 cents in a larger areaof 70 cents from out of which there was thedigging

of the earth. The trial Court held thatthe plaintiff was entitled in damages to a sumof Rs. 400. How that was arrived at by thetrial Court was that Rs. 300 was considered byit to be the value of the earth removed. Rs. 50was regarded by it as the expense to be incurred by the plaintiff for manuring of theplots which were dug out and another Rs. 50was reckoned to be the charge for levelling upof the pits which were created in the process ofdigging of the earth. On appeal the learned District Judge added a sum of Rs. 284 more to theamount of damages. The District Judge did so forthe reason that he considered that Rs. 150 insteadof Rs. 50 was the proper charge for manuringand that a like sum was the proper chargefor levelling. He also held that the plaintiffwas entitled to the value of the crops that hewould have been able to realise from out ofthe lands in question for the years 1945-46 and1946-47. The value of the crops according tothe estimate of the learned Judge was Rs. 84:Both the Courts below refused the relief ofinjunction.

2. In second appeal the point urged is that Rs. 684 is insufficient damages. It is said that that is so, because in addition to the Rs. 684 the plaintiff is entitled in law to the value of the bricks themselves into which the earth was actually converted. It was apparently considered by the Courts below that no claim for the value of the bricks should be allowed to be made when the value of the earth which was removed was itself being granted to the plaintiff. This it is contended by the learned counsel, is wrong because the injunction that was asked for in the plaint proceeded on the basis that the property into which the earth became converted was really that of the plaintiff. It is urged that where a wrong-doer has actually converted earth removed from the plaintiff's land into something else, the value of that something else is really what has to be taken into account by the Court for assessment of damages.

3. In support of this contention reliance is placed by Mr. Ramamurthi Aiyar, for the Appellant, on a decision of the Calcutta High Court reported in 'Carrit Moran and Co. v. Maanmathanath Mukherji', ILR (1941) Cal 285. It is also urged by the learned counsel that the District Judge was wrong in supposing that the trial Court had out of the Rs. 400 granted by it, put down Its. 300 as for value of the earth removed. The trial Court in fact, took into account the value of the whole property

as with reference to the purchase price paid by the plaintiff in the year 1924 and roughly held the 70 cents, which according to it became useless for the plaintiff after the digging of pits in it by the first defendant, to be worth about Rs. 300. Mr. Ramamurthi Aiyar says that the test adopted by the trial Court is wrong.

4. The Calcutta case relied upon by the learned advocate for the appellant was one in which tea leaves were converted by a wrongdoer who had plucked them from out of the estate of the owner into tea dust. On the question of conversion, Chief Justice Derbyshire who delivered the leading judgment of the Court observes thus at page 296 of the report.

'Shyam was far removed from the position of the defendant in 'Wood v. Moorewood', 1941 QB 440, where, in an action for trover for coal wrongfully got and raised, Parke B directed the jury that if the defendant was not guilty of fraud or negligence but had acted fairly and honestly in the full belief that he had a right to do what he did they might give the defendant credit for the cost of raising the coal -- which the jury did.'

Then at page 297 the learned Chief Justice observes:

'Be that as it may, it seems to me that the matter is concluded by a pronouncement of Lord Sankey L. C. in 'Banco de portugal v. Waterlow and Sons LTD.', (1932) AC 452 . It was similarly stated by Lord Blackburn in the House of Lords in 'Livingstone v. Rawyards Coal Co.', (1880) 5 AC 25 , in these words: 'Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation'. There is no doubt as to the law.'

In applying the legal principles thus enunciated by the learned Chief Justice to the case on hand we have to bear in mind the concurrent finding of both the Courts that the first defendant in this case acted without fraud or negligence, and quite fairly and honestly. Then in regard to the sum of Rs. 300 fixed by the trial Court as

representing the value of the site which has been prejudicially affected by the digging of pits, but which the learned trial Judge has wrongly supposed to be the value of the earth removed, the true position is that it really represents the value of the site prejudicially affected; and that position I accept. But in addition to that, there must also go to the plaintiff the value of the bricks into which the earth has been converted. The net value of the bricks, that is to say, the figure to be arrived at after deducting the making charges incurred by the first defendant according to the finding of the lower appellate Court, is a sum of Rs. 300. There is no reason why in the circumstances this sum of Rs. 300 should not be added to the sum of Rs. 684 granted by the lower appellate Court even on the assumption of bona fides about the conduct of the first defendant. This will mean a sum of Rs. 984 which the plaintiff is entitled to get; but then it is urged by Mr. Ramamurihi Aiyar that it is impossible to believe that on an investment of Rs. 4000 or so over the brick-making there should have been only a net profit of Rs. 300 realised by the defendant. This looks quite a reasonable' argument although the point is one of fact on which the lower appellate Court has recorded its own finding. On the whole, it seems to me that the interests of justice will be properly met by fixing a sum of Rs. 1000 for damages to the plaintiff on all heads put together.

5. I vary the decision of the lower appellateCourt by directing the substitution of Rs. 1000for the sum of Rs. 684. The plaintiff will beentitled to his proportionate costs right throughIn all the three Courts without any liability topay costs to the' first defendant. The memorandum of cross-objections is not pressed andis therefore dismissed, but without costs. Noleave.