

Putraya Vs. Krishna Gota

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Court : Chennai

Decided On : May-04-1934

Reported in : AIR1935Mad31; 152Ind.Cas.579

Appellant : Putraya

Respondent : Krishna Gota

Judgement :

Butler, J.

1. This is an appeal by the plaintiff who sued for a mandatory injunction compelling the defendant to cut back the branches of certain trees, standing on the northern bund of a channel, which the plaintiff alleged overhung his lands and caused damage to the crops by their shade, by the fall of leaves and by the dripping of the rain from the branches. The plaintiff held land to the south, and the defendant land to the north of the channel. A Commissioner was appointed to make a plan of the locality and his plan clearly shows that the trees overhang the plaintiff's lands to a considerable extent and I should have thought it obvious from the extent of the overhanging that damage must have been caused to the plaintiff's crop. But the lower Courts have found against this. The learned District Munsif does not make any mention of shade or the dripping of rain from the branches. He only speaks of the falling of the leaves. Whereas the lower appellate Court purporting to follow the learned District Munsif, though he did not advert to that matter in his judgment,

found that there was no damage from shade. As the lower Courts have found as a fact that no damage has been caused I have to proceed in this appeal on the basis of no damage and the question is whether no damage having been proved to have been caused is the plaintiff entitled to the injunction prayed for?

2. It is well settled that an owner or occupier of land has no right to allow his trees to overhang his neighbour's lands and he cannot acquire such a right by [prescription. It is also established that a person has a right to abate, the nuisance himself and if the neighbour's trees overhang his lands he is entitled to cut the branches away to the line of the boundary and he can do so without notice if he could do so without entering upon the neighbour's lands. It is therefore clear here that that remedy is open to the plaintiff should he wish to exercise it. But it has been stated in arguing this appeal, that this is not a practical remedy as it will be impossible to cut them away without entering upon the respondent's lands. *Lammon v. Webb* (1895) A.C. 1, the leading authority upon this, does not deal with this particular point. An action is certainly open, for either' damages or an injunction where damage has been caused. *Smith v. Giddy* (1904) 2 K.B. 448, in India *Lakshmi Narain v. Tara Prosanna* (1904) 31 Cal. 944 and *Hari Krishna v. Shankar Vithal* (1895) 19 Bom. 420. On the other hand he is not entitled to an action where the danger to his land is merely prospective. It was held in *Ram Lal v. Dalgamjan* (1883) 5 All. 369 a case where trees had been planted close to his boundary and did not, as I understand, overhang it, a claim for the removal of the same was not granted and that there was no such remedy open to the plaintiff'. The matter however appears to me to be concluded by the decision of the Bombay High Court in *Vishnu Jagannath v. Vasudeo Raghunath* 1918 Bom. 68, This was an action for cutting off portions of the trees which overhung the plaintiff's lands and for an injunction to remove the overhanging portion and for damages. The damage was not proved; but the injunction was granted and the granting of the injunction was upheld on appeal. There it was held that as it was found that the trees were likely to cause damage the injunction could be granted. In this Court *Pandalai, J.*, has held in *Guru Sami v. Perumal Raja* 1929 Mad 815, that injunction is the proper remedy where money compensation is not the appropriate relief. I am therefore clear that there is a reasonable apprehension of damages and the owner of the land may compel his neighbour by an injunction to cut away the

overhanging branches of the trees on the northern boundary. As I find that there is such a reasonable apprehension of damages, I grant the injunction prayed for and allow this appeal to that extent with proportionate costs throughout.

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