

Jahnabi Chowdhrani Vs. Bindu Basini Chowdhrani and anr.

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SooperKanoon Citation : sooperkanoon.com/856733

Court : Kolkata

Decided On : Jul-10-1896

Reported in : (1897)ILR24Cal260

Judge : Macpherson and ;Hill, JJ.

Appellant : Jahnabi Chowdhrani

Respondent : Bindu Basini Chowdhrani and anr.

Judgement :

Macpherson and Hill, JJ.

1. The plaintiff and the defendants are the owners of adjoining tenures. The plaint sets out that the defendants wantonly and with the intention of causing injury to the plaintiff dug a trench on the verge of the boundary of her tenure, 110 feet long and 8 or 9 feet deep, the depth being perpendicular downwards and sloping inwards towards the bottom in the direction of the plaintiff's land, and that this must necessarily result in the subsidence of the plaintiff's land. It is further alleged that the defendants were still going on with the work. The relief asked for is a perpetual injunction prohibiting them digging earth within a certain distance of the plaintiff's tenement; the filling up of the excavation, or in default a certain sum of money as the costs of filling it up. There was a further prayer for general relief.

2. The defendants raised various objections to the plaintiff's suit. They asserted their right to dig as they pleased upon their own land, and stated that the plaintiff was not entitled to an injunction. There was no direct denial of the particular acts alleged in the plaint, but it may be gathered from the 9th paragraph of the written statement that they were excavating a tank which had no slopes, although they intended to make them hereafter.

3. The case proceeded to trial, and, when it was ripe for decision, the defendants contended that the plaint disclosed no cause of action, inasmuch as no injury was alleged to have resulted from the acts of the defendants. The Munsif accepted as correct that view of the law, and, holding that until actual damage had ensued no cause of action could arise, dismissed the suit without deciding any of the other questions which arose in the case. It appears that the plaintiff in the course of the trial represented to the Court that, subsequent to the institution of the suit, injury had actually resulted from the acts of the defendants by the subsidence of some of the plaintiff's land, and evidence to that effect was given. The case went on appeal before the Subordinate Judge, who reversed the Munsif's decision and remanded the case under Section 562 of the Code of Civil Procedure, directing the Munsif to allow an amendment of the plaint and decide the question already raised in the case and any other questions that might arise after the amendment. This appeal is against the order of remand, and it is contended that the Munsif was right in dismissing the suit on the ground that the plaint disclosed no cause of action.

4. If the Munsif was right in holding that actual injury would alone give a cause of action, then he was right in dismissing the suit, because anything that happened subsequent to the institution of the suit could not supply a cause of action which did not exist before. In our opinion he was wrong in his view of the law. A suit for injunction may be a suit for preventive relief, and, under Section 54 of the Specific Relief Act, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The same section provides that when a defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the Court may grant a perpetual injunction in certain specified cases. Illustration (r) attached to the same section indicates a case in which an injunction may be sued for to restrain a defendant

from doing an act which threatens injury to the plaintiff's property, although no such injury had actually ensued. In the case of *Pattisson v. Gilford* L. R. 18 Eq. 259 the Master of the Rolls, speaking of the principles upon which a Court of Equity interferes when an injunction is asked for, says : ' I take it that, in order to obtain an injunction, a plaintiff who complains, not that an act is an actual violation of his right, but that a threatened or intended act, if carried into effect, will be a violation of the right, must show that such will be an inevitable result. It will not do to say a violation of the right may be the result; the plaintiff must show that a violation will be the inevitable result.' And then he proceeds to cite a case decided by Lord COTTENHAM, and another case in which the Lord Chancellor says: ' I consider this Court has jurisdiction by injunction to protect property from an act threatened which, if completed, would give a right of action. I by no means say that in every such case an injunction may be demanded as of right, but if the party applying is free from blame and promptly applies for relief, and shows that by the threatened wrong his property would be so injured that an action for damages would be no adequate redress, an injunction will be granted.' The facts of that case had, it is true, no analogy to the present case, but still the Master of the Rolls was dealing with the principle upon which relief is given against a threatened wrong, and the case is, we think, an authority that such a suit will lie when the threatened act is of such a character that it must inevitably result in injury---inevitably in the sense in which the Master of the Rolls says he uses the word, that is to say not in the sense of there being no possibility the other way, because Courts of Justice must always act upon the theory of very great probability being sufficient, but in the sense that there must be such a great probability, that, in the view of ordinary men, using ordinary sense, the injury would follow. The Munsif was, therefore, we consider, wrong in holding that, as a matter of law, actual injury before suit must in every case be alleged and proved in order to maintain the suit, and that it is sufficient if it is alleged that the result of the act complained of must inevitably, in the sense we have stated, flow from it. Whether the case is one in which an injunction or any other relief should be granted, or what precise form the injunction should take, are questions which the Courts dealing with the facts must decide with reference to the provisions of Sections 53 and 54 of the Specific Relief Act. It may be that the plaintiff is not entitled to the relief which she claims or to

relief in the particular form which she claimed it, but that would not make the suit unmaintainable. Now, no better proof of the inevitable consequence of an alleged act can be given than that the contemplated injury had actually occurred, and, we think, it is quite competent for the plaintiff in this case to give evidence of that injury, although it had not occurred prior to the institution of the suit, and, for that purpose and in order to give due notice to the defendants of the fact, which it is intended to prove, the plaint might properly be amended. It is not quite clear on what grounds the Subordinate Judge reversed the decree of the Munsif and remanded the suit. He does not say that the view which the Munsif took of the law was wrong, but merely that the plaintiff should be allowed to amend the plaint; in what way he does not say, and his order that the Munsif should allow the plaint to be amended in some undefined way is not a correct order. If he took the same view of the law which the Munsif took, and intended that the plaint should be amended in order to give the plaintiff a cause of action which did not before exist, his view is wrong. Nevertheless, we think that the order of remand is right, and that the plaintiff should be allowed to amend the plaint by inserting in it the nature and extent of the injury suffered. That is not an amendment inconsistent with the provisions of the Code. The act complained of occurred before the institution of the suit, and the injury, which was foreseen and which it was the object of the suit to avert, occurred after the institution of it.

5. The appeal fails and is dismissed with costs.