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Court : Kolkata

Decided On : Dec-18-1922

Reported in : 73Ind.Cas.223

Judge : N.R. Chatterjea and ;Cuming, JJ.

Appellant : Hemangini Devi and anr.

Respondent : Raja Bejoy Singh Dudharia

Judgement :

N.R. Chatterjea, J.

1. This appeal arises out of a suit for a declaration of the plaintiff's right to a pathway, and for a mandatory injunction for the removal of an over-bridge, which the defendants had constructed over the pathway, on the allegation that the pathway was a private pathway belonging to the plaintiff, and that the defendants had no right to construct the overbridge.

2. The defendants, among other things, denied the plaintiff's right, and also pleaded that the plaintiff was precluded, by reason of acquiescence in the construction of the overbridge, from having it demolished.

3. The Court of first instance declared the title of the plaintiff to the disputed pathway but refused the mandatory injunction to demolish the overbridge, and

gave the plaintiff a decree for Rs. 100 as damages.

4. On appeal by the plaintiff, the learned District Judge directed the removal of the overbridge.

5. The defendants have appealed to this Court.

The first contention raised is that a certain letter by which the defendants had asked for the permission of the plaintiff for the erection of the overbridge was no evidence of the title of the plaintiff, and that the question of title should have been' decided upon other evidence.

6. There is no doubt, however, that the letter contained a clear admission of the plaintiff's title and both the Courts below have found that the plaintiff's title was proved. The main contention, however, is that the Court below ought to have held that there was acquiescence on the part of the plaintiff and that the Court, therefore, was not justified in directing the removal of the overbridge.

7. It appears that the defendants, on the 20th November 1918, wrote the letter referred to above, asking for permission to errect the overbridge. No orders appear to have been passed on this letter and the defendants without waiting for any order built the overbridge. The plaintiff's local agents were residing very near the place and they did. not raise any objection. It is accordingly contended that this amounted to acquiescence on the part of the plaintiff' which precluded him from having a mandatory injunction. The cases of Noyna Misser v. Rupikin 12 C.W.N. 519 : 35 C. 661 and Benode Coomaree Dossee v. Soudaminey Dossee 9 C. 609 : 12 C.L.R. 300 : 4 Ind. Dec. (N.S.) 1054 have been relied upon On behalf of the appellants.

8. In the second case, the question was whether a building which had obstructed the entrance of light into the plaintiff's buildings should be demolished, when the; plaintiff had not taken prompt steps. Wilson, J., observed: 'When a plaintiff has not brought his suit or applied for an injunction at the earliest opportunity, but has waited till the building has been finished, and then asks the Court to have it removed, a mandatory injunction will not generally be granted, though there might

be cases where it would be.'

9. The building to be demolished, however, in that case was not erected upon any land belonging to the plaintiff and the case, therefore, is quite distinguishable from the present.

10. The first case related to an agricultural holding. The tenant of an agricultural holding planted the land of his jote with mango trees to the knowledge, but without the consent, of the landlord, thus changing the character of the land. More than three years afterwards, the landlord sued for a mandatory injunction to have the mango trees removed. It was held that having stood by for more than three years and allowed the tenants to spend his labour and capital upon the land without taking any action in the matter, the landlord was not entitled to a mandatory injunction. It was the case of a tenant, and it is unnecessary to consider under what circumstances a landlord is entitled to a mandatory injunction against his tenant.

11. Here the defendant was a stranger. So far as strangers are concerned, the law on the point appears to be quite settled. In the leading case of Ramsden v. Dyson (1866) 1 H.L. 129 : 12 Jur. (N.S.) 506 : 14 W.R. 926 it was observed that, 'if a stranger begins to build on land supposing it to be his own, and the real owner perceiving his mistake, abstains from Setting him right and leaves him to persevere in his error, a Court, of Equity will not afterwards allow the real owner to assert his title to the land. But if a stranger builds on land knowing it to be the property of another, equity will not prevent the real owner from afterwards claiming the land, with the benefit of all the expenditure upon it'.

12. The principle was referred to by the Judicial Committee in the case of Beni Ram v. Kundan Lal 26 I.A> 58 : 21 A. 496 : 1 Bom. L.R. 400 : 3 C.W.N. 502 : 7 Sar. P.C.J. 523 : 9 Ind. Dec. (N.S.) 1022 (P.C.), (which was a case of a tenant). Their Lordships pointed out that the Rule of equity 'might possibly be made to apply to the case where the owner of land sees another person erecting buildings upon it, and knowing that such other person is under the mistaken belief that the land is Ins own property, purposed abstains from interference, with the view of claiming the building when it is erected.'

13. The circumstances under which the owner of a legal right will be precluded by his acquiescence, from assenting it, was considered by Fry, J., in Willmott v. Barley (1880) 1 H.L. 129 : 12 Jur. (N.S.) 506 : 14 W.R. 926; the learned Judge observed : 'It has been said that, the acquiescence which will deprive a man of his legal rights must amount to fraud, and, in my opinion, that is an abbreviated statement of a very true proposition. A man is not to be derived of his legal, rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place, the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff: must have expended some money or must have done some act not necessarily upon the defendant's land on the faith of the mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it, he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiffs mistaken belief of his rights. If he does not, there is nothing which it calls upon him to assert, his own rights. Lastly the defendant, the possessor of the legal right, must have encouraged the plaintiff, in his expenditure of money or in the other acts which he has done, either directly, or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do.'

14. As stated above, the defendants in the present case were under no mistake about their rights, they were perfectly aware that the land belonged to the plaintiff, and they wrote a letter to the plaintiff asking for permission to construct an over-bridge. The principal ground upon which the doctrine of acquiescence is applied, namely, that the party must have made a mistake as to his right, therefore, does not apply to the present case.

15. It is contended, however, on behalf of the appellants that after having written that letter, the defendants expected that the plaintiff would agree to the construction, and that having regard to the fact that no steps were taken to prevent

the construction of the overbridge by the local agents and the further fact that one of them when invited to the house of the defendants passed over the bridge, and did not object to it are relied upon as acquiescence on the part of the plaintiff. Our attention has been drawn to the provisions of Section 56(j) of the Specific Relief Act which lays down that an injunction cannot be granted when-the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court. It is further contended that the acquiescence of the agent is sufficient to bind the plaintiff.

16. There may be cases where the acquiscence of the agent is binding on the principal. In the present case, however, the letter was admittedly written to the Raja himself and to his local agents. The defendants constructed the overbridge without waiting for the plaintiff's permission, and if they constructed it in the expectation, that permission would be granted, they must be taken to have clone so at their own risk.

17. Under these circumstances, I do not see-how the mere fact that the plaintiff's local agents did not raise an objection to the construction of the overbridge could beheld to be acquiescence on the part of the plaintiff. The permission, as stated above,-was asked for not from them but from their master, the plaintiff himself: and there is nothing to show that the plaintiff was aware of the construction of the over-bridge or that his local agents had any authority to sanction the construction of the overbridge. As to the fact of one of the agents having passed over the over-bridge when invited to the defendants' house that must have been after its construction as he could not have passed over it unless the construction was completed or nearly so. There was some criminal proceeding in connection with the overbridge, and it does not appear that there was much delay in instituting it, and, shortly after, this suit was instituted.

18. The last contention was that the over-bridge having been completed, the plaintiff could only ask for damages and not an injunction. But the principle applicable to such cases has already been pointed out above. If the land belongs to the plaintiff and the defendants, with full knowledge that they have got no right to the land, erect a structure on it, there is no reason why the plaintiff should suffer

the structure made upon his land to stand and submit to be compensated with damages.

19. On the whole, I think that the decision of the lower Appellate Court is correct and this appeal must be dismissed with costs.

Cuming, J.

20. I agree.

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