
(1935) 02 MAD CK 0012
In the Madras High Court

Kosaraju Peda Subbayya and Others

APPELLANT

Vs

Moravaneni Veerayya and Others

RESPONDENT

Date of Decision : 11-02-1935

Acts Referred:

Citation : AIR 1935 Mad 750 : 160 Ind. Cas. 822 : (1935) 42 LW 17

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This is an appeal by the defendants, against the decree of the Subordinate Judge who awarded a sum of Rs. 2,930 with

further interest thereon, as damages caused to the plaintiffs by the joint acts of the defendants in unlawfully grazing their cattle on certain lands

obtained by the plaintiff's permanent jiroyati patta from the Zamindar of South Vallur.

2. The plaintiffs and the defendants belong to neighbouring villages and it would appear that some of the defendants have been trying to get the

lands in question from the Zamindar, but ultimately the plaintiffs succeeded in getting jiroyati patta for them on 31st October 1923. The lands

consist partly of cultivated land, but mainly of a large extent of forest land. The defendants on behalf of themselves and other ryots of their village

asserted that they had a right to graze their cattle and sheep on the suit lands and to take brushwood and fuel from the forest and also to take

wood for making agricultural implements. As the defendants persisted in asserting their rights and in grazing their cattle on the suit lands in spite of

the plaintiffs obtaining the suit lands on patta, the plaintiffs had to file O.S. No. 83 of 1923 against a large number of defendants as representing the

ryots of the villages of Koppakka and Peddakadimi, to obtain an injunction restraining them from doing any of the above acts. Pending that suit the plaintiffs applied for a temporary injunction; but the Court granted a temporary injunction only in respect of cutting of trees, but not in respect of grazing. It however directed that the defendants should file a statement showing the heads of the cattle which they possessed and they grazed in the plaintiff lands in a week. It is obvious that this condition was imposed with a view to facilitate the calculation of liability or damages in respect of the J grazing, if in the end the plaintiffs, should succeed in the suit. Unfortunately, the ryots did not file any such statement in that suit. The plaintiffs ultimately succeeded in that suit and have now filed this suit claiming damages jointly against all the defendants for the loss caused to them by their grazing their cattle on the suit lands during the faslis 1334, 1335 and 1336.

3. The Subordinate Judge has held that the defendants are jointly liable to the plaintiffs, but awarded a much smaller amount than that claimed in the plaintiff by way of damages. The defendants have appealed against the decree in so far as it awarded any amount by way of damages jointly against all the defendants, and the plaintiffs have filed a memorandum of objections claiming that a larger sum should have been allowed.

4. On behalf of the appellants, Mr. Viyanna contended that there ought to be no joint decree at all against the defendants because there is no satisfactory proof that they acted in combination or an conspiracy. He has relied on the fact that in the plaintiff in O.S. No. 83, there was no assertion that the defendants were acting jointly or in concert, that the story of combination or conspiracy rests only on the testimony of P.W. 3 and that none of the watchmen or other persons from the plaintiffs' village who could have spoken to any such joint act of obstruction or other unlawful act by the defendants have been examined. We see no reason to differ from the conclusion of the Subordinate Judge on this point. Having regard to what the evidence shows to have been the previous conduct of these defendants and their attempt to get these lands from the Zamindar for the use of their own villages and what we know generally as to the way in which the ryots of a particular village who have a common claim in respect of such rights generally act, it is quite probable that they acted in concert. Mr. Viyanna is of course right in saying that the mere fact of their

having acted jointly in the conduct of O.S. No. 83 ought not to be taken against them because, it being a representative suit, they had to act jointly.

But, as observed already, it is not merely (in that circumstance that the learned Subordinate Judge has rested his conclusions, but on the probabilities of the case.

5. Mr. Viyanna's next argument is that in the present suit the plaintiffs have-not impleaded all the persons, who were defendants in the former

"action, that, therefore the plaintiffs must be held to have split up the claim against the various joint tort-feasors and this is an additional reason why

the plaintiffs could at best claim only a decree against individual defendants in respect of the damages which each defendant might be found to have

caused. In support of this contention, reliance has been placed upon the decisions in Ram Ratan v. Aswini Kumar (1910) 37 Cal. 559 and

Tilakdhari Singh v. Ram Prasad (1921) 62 I.C. 25. In those two cases however the finding was that the person who claimed mesne profits had

entered into settlements with some of the wrongdoers receiving some payment in satisfaction of his claim against them. On that settlement, an

extreme contention was raised on behalf of the other wrong doers that according to the principle of the English Law a settlement with, or release

of, one joint wrong doer ought to be held to satisfy the claim against all and exonerate them from liability. The Calcutta High Court refused to

follow that rule in its entirety and held it sufficient to say that it amounted to a splitting up of the claim against the joint wrong doers and entitled the

plaintiff only to a decree against each wrong doer in respect of his several liability. In those two cases, the evidence would seem to show that

different defendants were in respective possession of identifiable interests or pieces of land and the claim was more in the nature of one for mesne

profits with reference to which it was possible to define the liability of each defendant.

6. In the present case there has been no kind of settlement or compromise or release in respect of any of the wrongdoers. All that Mr. Viyanna is

able to rely on is the fact that some of the defendants in the former suit have not been impleaded in the present suit. That by itself does not raise any

presumption of settlement with them. Their nonjoinder may be due to various causes. It was contended on the strength of the decision in Brinmead

v. Harrison (1872) 7 C.P. 547 that not having impleaded some of the wrong doers in the present suit the plaintiffs may be precluded from bringing

a second suit against them arid in that sense this is as good as if the plaintiff's have released them from liability. But if this part of the English rule is

to be followed, it would also follow that the non-joinder of some of the defendants would be no defence to the suit, so far as the plaintiffs claim a

decree in the first instance, for the full amount, against some of the wrong doers. This decision does not therefore help Mr. Viyanna. The rule is one

of joint and several liability and all that was laid down by the Judges of the Calcutta High Court in Ram Ratan v. Aswini Kumar (1910) 37 Cal 559

, is that though the liability of wrong doers in tort is as a general rule joint and several, it cannot be laid down as an inflexible rule that in every case

of tort the Court is bound to pass a joint decree against wrong doers making each jointly and severally liable for the whole amount decreed.

Further, the learned Judges in that case also found that there was no foundation for the suggestion that the defendants had combined or conspired

to keep the plaintiffs out of possession.

7. It is in these circumstances that they held that the liability should be apportioned according to the share of the profits intercepted by each

defendant. The decision in Tilakdhari Singh v. Ram Prasad (1921) 62 I.C. 25, which follows the above ruling does not carry the matter any

further. It is true, as stated by Mr. Salmond, that the mere coincidence of a number of persons doing a series of acts whereby the plaintiff may be

injured will not amount to their acting in combination or conspiracy, but it must also be shown that they acted concurrently. That is a matter of

evidence in each case and, as we have already observed, the probabilities in the present case are in favour of the latter view. With reference to the

possibility of passing a decree for separate amounts in respect of the liability of each individual we have already adverted to the fact that the ryots

did not choose to file the kind of statement which they were directed to file by the order on the injunction petition in O.S. 83. It is therefore not

possible in the circumstances of the present case to fix their several liability.

8. Mr. Viyanna strongly contended that in the case of joint wrong doers all must be sued in a single action; but he has not been able to cite any

authority for the proposition. It is one thing to say that under the rules of

procedure, the plaintiff is permitted to join them in a single action, but a very different thing to say that the plaintiff is bound to implead them all in one action. The mere omission to sue some of them will not disable him from claiming full relief against the other joint wrong decree who have been sued. We therefore see no reason to disturb the decree of the lower Court. As regards the memorandum of objections we are of opinion that the lower Court has done the best possible in the circumstances of the case and we see no reason to increase the amount of damages awarded. The appeal and the memorandum of objections are therefore both dismissed with costs.