

(1912) 10 MAD CK 0022
In the Madras High Court

Moideen Kutti

APPELLANT

Vs

Koman Nair and Others

RESPONDENT

Date of Decision : 18-10-1912

Acts Referred:

Citation : (1912) 23 MLJ 618

Judgement

1. This is. a suit for damages sustained by the plaintiff by the defendant's unlawfully setting fire to and destroying pepper vines on his land. Both

courts have found that the act assigned by the plaintiff was committed at the instigation of the 1st defendant by the 5th defendant, a tenant of his. It

is contended that there is no legal evidence to support the finding of instigation by the 1st defendant. This observation is only correct in the sense

that there is no direct evidence of any one who actually saw the act of instigation. There was strong circumstantial evidence against the 1st

defendant and we must accept the concurrent findings of the courts below that it was proved against him. The Subordinate Judge reversing the

District Munsif's decree dismissed the suit on the ground that it was barred by limitation. He applies Article 36 of the Limitation Act which

provides ""for compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for."" It is

clear that article can apply only to cases of malfeasance, misfeasance and nonfeasance not provided for by other articles. The appellant contends

that the case really falls within the purview of Article 39 for compensation for trespass upon immoveable property. We are of opinion that his

contention must be upheld. We are entirely unable to agree with Mr. Ryru Nambiar's argument that trespass consists only of unlawful entry upon

another man's land. It certainly includes mischief which the trespasser commits after entering on the land. The majority of the Full Bench of the

Calcutta High Court held in *Mangungha v. Dolhin Golab Koer* ILR (1897) C. 692, that a suit for damages for cutting crops on the owner's land

would come within Article 39. See also *Surat Lal Mandrill v. Umal Haji* ILR (1895) C. 877. Maclean, C.J. was inclined to hold that even if the

crops cut were carried away the same article would apply. Fishing in the owner's tank without his permission was held to be trespass. *Lahhimoni*

v. Koruna Kant Moitro ILR (1878) C. 509. Entry of the defendant's cattle and the causing of the damage thereby was regarded as trespass.

Boyle v. Tamlyn (1827) 6 B. & Cr. 329. Rampini J. no doubt held in several cases that the doing of an unlawful act by a person who has

wrongfully entered on another's land would not be trespass within the meaning of Article 39 but a malfeasance coming within Article 36. We can

only say with respect to the learned Judge's opinion that it ignores the well understood signification of trespass in law. It is unnecessary to consider

whether if a trespasser carries away anything from the land a suit for damages for the loss of what is carried away would not fall within Article 49.

That article itself provides that a suit for compensation for injury to moveable property might be instituted within 3 years. Such a suit would not

therefore fall within Article 36. It would be curious if the period of limitation for suing for compensation for injury to Immovable property should be

less than that for compensation for injury to moveable property. We entertain no doubt that Article 39 is the proper one to be applied in this case.

Mr. Ryrü Nambiar contends that the plaint does not allege that the defendants trespassed on his land. The allegation in the plaint is that the

defendants set fire to his pepper vines. The plaintiff's case undoubtedly was that he did so having entered on the land for the purpose. He asked

for permission in the court of first instance to make specific allegation in the plaint to that effect. Leave to amend was refused. We agree with the

Court of First instance that the plaint, properly read does charge trespass against the defendants. We do not consider any amendment is necessary.

With regard to the amount of damages we see no reason to differ from the award made by the District Munsif. The appeal will therefore be

allowed, the Subordinate Judge's decree set aside and the Munsif's decree restored. The claim for the amount larger than that allowed by the

Munsif must be disallowed. The parties will pay and receive proportionate costs in this Court and in the Lower appellate court.