

(1924) 08 MAD CK 0068
In the Madras High Court

Ramasami Naicker and Another

APPELLANT

Vs

Meenakshisundaram Chettiar and Others

RESPONDENT

Date of Decision : 26-08-1924

Acts Referred:

Citation : 85 Ind. Cas. 268

Hon'ble Judges : Srinivasa Iyengar, J

Bench : Single Bench

Judgement

Srinivasa Iyengar, J.—The question raised in this second appeal relates to the principle on which damages should be awarded in respect of trespass on land and the proper measure of such damages. The plaintiffs-appellants are the owners of about 21/2 acres of land on which and several other, adjoining lands a cattle fair used to be held annually. The predecessor-in-interest of the plaintiffs would appear to have been content to let this land for the purpose of the fair receiving the sum of Rs. 50 as rent every year. But from about the year 1911 the plaintiffs refused to let the land on the same rent. For the years 1911 and 1912 the plaintiffs obtained in a decree ex parts damages against the defendants at Rs. 300 per annum for trespass on the suit land consisting in their using the land for the cattle fair without any agreement with the plaintiffs and without their permission. In the first two suits the plaintiffs have. claimed from the defendants damages at the rate of Rs. 300 per annum for two years in each of the suits and in the last suit Rs. 550 as damages for one year. The Court of first instance granted the plaintiffs damages at Rs. 50 per annum and the lower Appellate Court had confirmed the same. The learned Advocate-General for the appellant has argued that the principle on which the lower Courts awarded damages only at Rs. 50 per annum was wrong in law and that a different measure of damages should have been adopted. I am unable to understand on what particular principle the lower Appellate Court proceeded to fix the damages at Rs. 51) per annum. Apart of course from its statement of agreement with the Court of first instance in that matter in one part of the judgment it almost seems that the learned Subordinate Judge was inclined to adopt, as the true measure of

damages, the number of cattle that were on the plaintiff's land. At another place he has indicated that if the accounts of the lessees could have been produced, that might have furnished to Mm a measure of damages he could have adopted. Iference is also made to the sum of Rs. 50 having been accepted by the plaintiffs' predecessor-in-interest as rent, as also to the said amount "being reasonable rent, having regard to the rents charged in the neighbour hood. The amount of rent which the plaintiffs' predecessors were content to receive in previous years could possibly not be a measure of damages at any rate for the succeeding years. The rents paid or received in respect of the adjacent lands were the result of contracts. In *Williams v. Currie* (1845) C.B. 841 Justice Maule observes as follows: "If we were to hold that the Jury, in estimating the damages for an unlicensed trespass of this sort, are to be restrained to exactly the amount of the injury sustained by the plaintiff, it would in effect be placing a wrong doer upon precisely the same footing as one who enters with the owner's permission." The learned Judge proceeds further to indicate that the wilfulness of an act of trespass and that the trespass was done for the pecuniary benefit of the defendants' would be matters to be taken into consideration in assessing damages. In the case of *Jegon v. Vivian* (1871) 6 Ch. A. 742, before the House of Lords, the Lord Chancellor generally approves of the principle that in awarding damages a distinction may be made between a trespasser bona fide claiming a title and a wilful trespasser, and goes on to observe that the Court never allows a man to make profit by a wrong. I do not, however, understand by the last statement that the wrong doer is or should be placed exactly in the same position as an agent or trustee and made to account for all the profits he has made. I construe that statement of the law merely to signify that a wilful trespasser should not be placed in a better position than a person who had to enter into an agreement with the landlord in respect of the use or occupation of the land, that is to say, in other words, the damages awarded against a wilful trespasser ought in no case to be less than the amount which having regard to all the circumstances, a prudent and reasonable, landlord would have agreed to let the land for the purpose or less than the amount which the trespasser would have had to pay as the result of the reasonable negotiations for such use or occupation of the land. The amount so arrived." at would be the minimum of damages. awardable against him, over and above that, there is high authority for holding that, as in the case of certain personal wrongs, the animus with which a trespasser commits the wrong, may be taken into consideration for the purpose of awarding higher damages than would otherwise have been. In this case I have no hesitation in holding that the trespass was wilful. I am bound, therefore, to award as and by way of damages to the plaintiffs in the circumstances not only the reasonable amount which, if there, had been negotiations between the parties, would have been fixed as rent but also a further amount for the wilfulness of the trespass. But at the same time, in the present case there is the undoubted fact that the plaintiffs knowing that the trespass was about to be Or certain to be committed stood by and allowed the trespass to be committed year after year in the undoubted hope that they would be able to recover from the

defendants the large amount of damages for which they had obtained a decree ex parte in the previous suit. The conduct of the plaintiffs who complain of the wrong is an undoubted element to be taken into consideration in awarding damages and I have no hesitation in laying it down that the plaintiffs who stands by and virtually encourage the wrong are not entitled to damages on the same scale on which damages might be granted to a plaintiff who had done his best to prevent the commission of the wrong. Taking all these circumstances into consideration, the conclusion, I have arrived at, is that the plaintiffs in this case would be entitled in the first place to such amount as having regard to all the circumstances might be deemed to be the amount for which on negotiations between" the parties the plaintiffs might have agreed to let and which the defendants might have agreed to pay in respect of the suit land in the years in question, and in addition thereto such further damages for the wilfulness of the trespass taking into consideration at the same time the conduct of the plaintiffs in not preventing the trespass but standing by and allowing the trespass to be committed. The process is difficult of imagining, the plaintiffs and the defendants coming together, negotiating reasonably and arriving at a reasonable amount of rent but it has got to be done. I have come to the conclusion that a sum of Rs. 100 per annum would represent such amount. I should have been disposed to grant as and by way of further damages for the wilfulness of the trespass a sum of Rs. 50 per annum, but having regard to the plaintiffs standing by and allowing the trespass to be committed with the anterior object of claiming damages, I award only Rs. 25 in addition for each year. In the result, instead of Rs. 50 per annum awarded by the lower Courts I award Rs. 125 per annum. The decrees of the lower Courts will be varied accordingly in all the "cases. The respondents will pay the appellants" costs in this Court and in the lower Appellate Court.