

**(1935) 02 MAD CK 0029**  
**In the Madras High Court**

Ramaswami Chettiar

APPELLANT

Vs

N. Suppiah Chettiar

RESPONDENT

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**Date of Decision :** 21-02-1935

**Acts Referred:**

Provincial Small Cause Courts Act, 1887 — Article 35(i)(2)

**Citation :** 158 Ind. Cas. 1 : (1935) 42 LW 404 : (1935) 69 MLJ 98

**Hon'ble Judges :** Venkatasubba Rao, J

**Bench :** Division Bench

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**Judgement**

Venkatasubba Rao, J.—The question is whether the lower Court's decree granting the plaintiff exemplary damages in respect of the

trespass complained against, is wrong. It is settled law that in an action for trespass to land, substantial damages may be recovered, though no loss

or diminution in value of property may have occurred. (Pollock on Torts, 13th Edition, p. 194.) The learned author points out that in action for a

wanton trespass on land persisted in with violent and intemperate behaviour, the Juries are, with the open approval of the Courts in the habit of

allowing exemplary damages (ibid.). In such cases the principle of restitutio in integrum does not apply, for, the damages that are awarded, are

intended to express indignation at the defendant's wrong rather than to recompense the plaintiff for his loss. (10 Hals Hailsham Edition, p. 87.) On

the evidence there can be no doubt that the conduct of the defendant must be held to have been highhanded and his trespass wanton and

malicious.

2. But trespass with intent to insult or annoy is, in the language of the Indian Penal Code, criminal trespass (Section 441). Actions for such trespass

are exempted from the cognisance of the Court of small causes second Schedule of the Provincial Small Causes Courts Act, Article 35 (i)(2). Mr.

Ramaswami Aiyar argues that the suit being one for damages for wanton trespass, the lower Court had no jurisdiction to try it. Perfectly true; but

this point has been taken before me for the first time. Having regard to the defendant's persistent defiance of the decree passed against him in

1918 and to his high-handed and malicious acts, I refuse to allow the point of jurisdiction to be raised for the first time in revision.

3. In the result, the lower Court's decree is confirmed and the Civil Revision Petition is dismissed with costs.