

## APPELLATE CIVIL.

Before Mr. Justice Baguley.

1936

S. ALAGU PILLAY v. A. M. PILLAY.\*

Jan. 22.

*Wrongful possession of land—Owner kept out of possession by Criminal Court's order or intervention—Claim for damages—Bona fides of defendant—Immunity from liability—Claim for mesne profits—Claim for loss of profits—Natural and probable consequence of wrongful act.*

The defendant-appellant who was the plaintiff-respondent's tenant gave notice that he was giving up the land at an early date. The plaintiff leased the land to another tenant, but when the tenant went to take possession the defendant resisted him, and the plaintiff thereupon applied to the magistrate under s. 145 of the Criminal Procedure Code. The magistrate directed that both parties should leave the land until one or the other of them should establish his right to the land in a civil suit. The plaintiff succeeded in establishing his claim, and now filed a suit for damages against the defendant for being kept out of the land for a whole year. The defendant contended that it was the magistrate's order that kept the plaintiff out of possession; that for his action the defendant was not responsible, and that the plaintiff was not entitled to mesne profits as the Civil Court's decision in favour of the plaintiff was passed too late for him to start cultivating the land for the year.

*Held*, that ordinarily where a person is kept out of possession of his land by the intervention or order of a Criminal Court he cannot claim mesne profits or damages from the person at whose instance or on account of whose action the criminal law was set in motion. But the basis of such immunity is that the defendant has acted *bona fide*. Where, as in this case, the defendant has acted *mala fide*, and the plaintiff's claim was not for mesne profits but for damages, he was entitled to them. The loss of the year's profit was the natural and probable consequence of the defendant's wrongful retention of the plaintiff's land.

*Kali Charan Sinha v. Ashutosh Sinha*, 25 C.L.J. 140; *Lock v. Ashton*, 12 Q.B. 871; *Rani Mina Kumari Bibi v. Chakraverty*, 14 C.W.N. 96—*referred to*.

*Aiyangar* for the appellant.

*J. B. Sanyal* for the respondent.

BAGULEY, J.—The appellant was the defendant in the trial Court. The facts which gave rise to the suit are of a special nature. The plaintiff was the owner

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\* Special Civil Second Appeal No. 245 of 1935 from the judgment of the District Court of Hanthawaddy in Civil Appeal No. 27 of 1934.

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of certain land which for some years had been rented by the defendant. On the 22nd of May 1933 the defendant sent a lawyer's notice to the plaintiff saying that he was giving up the land. It has been held in a previous suit that although the defendant denied responsibility for the issue of this notice it binds him. As between the parties this is *res judicata*. The notice asks the landlord to take delivery of the land at an early date. As a result of this the plaintiff leased the land to a tenant but when the tenant endeavoured to take possession he was resisted by the defendant and in consequence the plaintiff was compelled to file an application to the Magistrate under section 145 of the Criminal Procedure Code. The order passed by the Magistrate was that both sides were to leave the land until one or the other proved his right to the land in a civil Court. The plaintiff immediately filed a suit in the civil Court and on the 16th of September 1933 he got a decree directing the defendant to quit the land. This decree, I take it, is equivalent to a decree declaring the plaintiff's right to immediate possession of the land. He endeavoured to execute this decree, but the defendant got a stay of execution and filed an appeal, with the result that the plaintiff did not get possession until near the end of October, when it was too late to do any cultivation. In consequence, the present suit was filed. In this suit he claims damages. It is in the nature of an action on the case. Paragraph 10 of the plaint states that in consequence of the acts and conduct of the defendant the plaintiff has suffered loss and he assesses that loss at the rent which he would have obtained from the land had he leased it out. He asks for this as damages, or as *mesne* profits, or as compensation for use and occupation; in other words, he asks that the

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defendant may be compelled to pay him what he has lost owing to the defendant's wrongful action and he cares not by what name such payment is called.

The trial Court gave him a decree for the full amount asked for. The defendant appealed, and the learned District Judge found that the plaintiff was entitled to *mesne* profits for the period from 16th of September 1933, holding that it was only from that date that the defendant was accountable for *mesne* profits, because even with ordinary diligence he could not have entered upon the land until he got the decree passed in his favour by the civil Court. After investigation of what profit could have been obtained by occupation from the 16th of September 1933 the lower appellate Court gave a decree for Rs. 672 with costs on that amount in both Courts. The defendant now appeals.

The main point raised by the appellant before me is that ordinary diligence would not have produced any appreciable crops if a person entered upon the land so late as September 17th. It was only by taking extra-ordinary measures that a crop of any kind could be raised. Although he is prepared to support the finding of the District Judge that profits could have been realised by a tenant starting work on the 17th of September, for the respondent it is urged that as a matter of fact, although he has filed no cross-appeal, he ought to have been given a decree for the larger amount awarded by the trial Court, but he says he is prepared to take Rs. 672 as the damages for being kept out of the land for a whole year.

There is undoubtedly a considerable body of authority that in circumstances like the present, when the plaintiff has been kept out of possession, ultimately, by an order of a criminal Court the

person through whose action the plaintiff had been kept out of possession is not liable for *mesne* profits ; *vide* : *Indurjeet Singh v. Baboo Radhey Singh* (1), *Rani Mina Kumari Bibi v. Surendra Narain Chakraverty* (2), *Ammami Ammal v. Sellavi Ammal* (3), *Abbas v. Fassih-ud-din* (4), *Kali Charan Sinha v. Ashutosh Sinha* (5) and *Chhagnull Agarwalla v. Amanatulla Mahammad Proadhan* (6) ; but it seems to me that none of these cases are directly to the point, because this is not a plain straightforward action for *mesne* profits ; it is a claim for damage which has been caused to the plaintiff by the wrongful action of the defendant. There is no dearth of authority for saying that once a criminal Court had intervened any damage which results from its action is the result of the action of the Court and not of the person who sets the Court in motion as the Court can in no sense be regarded as an agent of the person who sets the Court in motion.

The case which is regarded as the foundation of this doctrine is *Lock v. Ashton* (7). This leading case has a judgment of almost unique brevity, being less than four lines, but the facts are very fully set out in the report and they are entirely different to the facts in the present case. This was a case for wrongful arrest and imprisonment, and there seems to me no possible doubt that the basis of this decision is that the defendant who set the Court in motion acted *bona fide*. Had this been a case tried in this country as an ordinary action for damages for false and malicious prosecution, it seems to me that the plaintiff would undoubtedly have failed to get any damages at all,

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(1) 21 W.R. 269.

(2) 14 C.W.N. 96.

(3) (1883) I.L.R. 6 Mad. 426.

(4) (1897) I.L.R. 24 Cal. 413.

(5) 25 C.L.J. 140.

(6) (1924) I.L.R. 51 Cal. 853.

(7) 12 Q.B. 871.

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because the defendant had reasonable and probable cause for thinking that the plaintiff had committed an offence. He had been sent to get twenty sacks of oats from a third party. He signed a receipt for eighteen and only delivered seventeen sacks, and inquiries put to him resulted in unsatisfactory answers. It was only after he had been remanded twice by the Court that the third party discovered the missing sack on their premises. That the *bona fides* of the person who sets the criminal law in motion is an important matter is shown in the report of *Rani Mina Kumari Bibi v. Surendra Narain Chakraverty* (1), where (at page 100 of the report) appears the passage, "It is not suggested that this information was untrue in fact." In *Kali Charan Sinha v. Ashutosh Sinha* (2) the suit was one against the widow of A, who was a trespasser. Though she took possession, she apparently was not a wrongdoer and, therefore, the damages to which she was liable was only up to the extent of the profit she had made by occupation of the land to which she was not entitled. But in the present case the acts of the defendant were *mala fide* from the very beginning. He took possession of this land *mala fide*; that is beyond all possible doubt, and I fail to understand how it can be said that the fact that the plaintiff lost the use of his land for the whole year can be regarded as anything but the natural and probable result of the action of the defendant in forcibly ousting his tenant.

It was argued that as the plaintiff had set the criminal law in motion, with the result that both parties were kept out of possession, he cannot recover damages from the defendant because ultimately he lost his possession for the whole of the useful portion of the year as a result of the order of the Court. It was

(1) 14 C.W.N. 96.

(2) 25 C.L.J. 140.

stated that he should have quietly left the trespasser in possession and let him cultivate the land in order that he could get the full *mesne* profits after he had established his title to the land. If he was suing only for *mesne* profits this argument would have been correct, but he was suing for damages for invasion of his rights. If the argument put forward for the defendant in the present case is correct, then it would appear that anybody who has his land trespassed upon risks the loss of the whole year's profits merely because he makes an application to the criminal Court to enforce his rights. I do not see how this can be just or good law. Had the action of the defendant been *bona fide*, other considerations would have applied, but in this particular case his action was undoubtedly *mala fide*. The loss of the year's profit is the natural and probable result of his forcibly taking possession of the land of the plaintiff at the beginning of the cultivating season, and to this extent he ought to be liable.

It has not been argued that the amount of the decree is excessive for the loss of the use of the land in question for a whole year, and I therefore dismiss this appeal with costs.

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