
(1877) 12 AHC CK 0003

Allahabad High Court

Case No: None

Altaf Ali

APPELLANT

Vs

Lalji Mal and Another

RESPONDENT

Date of Decision: Dec. 3, 1877

Citation: (1875) ILR (All) 518

Hon'ble Judges: Robert Stuart, C.J; Turner, J; Spankie, J; Pearson, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

It appears to me that the Calcutta rulings referred to in the order of reference expound the law correctly.

2. The Subordinate Judge says that the defendant held possession of the villages without any reason or right, and he therefore concludes that he is not entitled to any collection-fee or village-expenses; but in this view he is clearly mistaken, not only on the authority of these Calcutta rulings, but on the principle that any claim such as is made against the defendant here must be founded on wrong towards the plaintiff (Addison on Torts, p. 11); and the plaintiff can show no such wrong by the fact that the defendant, although wrongfully in possession, had merely made payments which the plaintiff himself, or any other owner, would have had to moot. A recent decision of the Calcutta Court (Kemp and Pontifex, JJ.) ILR Cal. 406 appears to recognise the same principle, where it was held that no suit for damages as between joint owners on undivided estates will lie in consequence of the sale of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue, the meaning of which ruling appealing to be that no wrong can be pleaded in such a case as the present by the defendant, whether a bond fide trespasser or not, paying the Government revenue, for that must lie paid as from, the land, and no matter by whom, whether legally or merely ostensibly in possession.

2. The English case of *Wood v. Morewood* 3 Q.B. 446 was an action for an injury to the plaintiff's reversion in certain closes by making holes and excavations and getting coals, with a count in trover for coals, and baron Parke told the jury that "if they thought that the defendant was not guilty of fraud or negligence, but acted fairly and honestly in the full belief that he had a right to do what he did, they might give the fair value of the coals, as if the coalfield had been purchased from the plaintiff." In another English case, *Doe v. Hare* 2 C. and M. 145, referred to in *Mayne on Damages*. 1856 p. 255, it was laid down that "if the defendant has made any payment while in possession for which plaintiff would be liable, as ground-rent, he is entitled to have it taken in reduction of damages." But the principle thus recognized appears to me to go further, and, I think, justifies me in holding that, whether the defendant is a trespasser bond fide or not, he is entitled as against the rightful owner to be credited with all such payments in respect of the land as these collection-fees and other village-expenses.

Pearson, Turner and Spankie, JJ.

3. When in the exercise of a bond fide claim of right a trespasser enters on and holds the property of another, the owner is sufficiently compensated by receiving an amount equivalent to the net profits he would have himself received had he been in possession. In such a case then such costs of collection as are ordinarily incurred by the owner might fairly be allowed to the trespasser, as well as such sums as must of necessity be paid, as, for instance, Government revenue. But when the trespass is altogether tortious and malicious, in other words, when the trespasser has entered or continued on the property without any bond fide belief that he is entitled to do so, where in defiance of the rights of another he has thrust himself into an estate, although he may still claim all necessary payments, such as Government revenue or ground-rent, it is not imperative on the Court, in estimating the damages, to allow the wrong-doer even such charges as would ordinarily, but voluntarily, be incurred by an owner in possession, but the Court may refuse to sanction the deduction of such charges--*Wood v. Morewood* 3 Q.B. 440.