

Parimi Chakrapani Naidu Vs. Mathapalli Venkataraju

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Court : Chennai

Decided On : Feb-26-1937

Reported in : AIR1937Mad647; (1937)1MLJ611

Appellant : Parimi Chakrapani Naidu

Respondent : Mathapalli Venkataraju

Judgement :

Cornish, J.

1. The defendant is the appellant. He has been held liable by the lower appellate Court to damages for the loss to the plaintiff of three years' cultivation of his fields on the ground that this loss was caused initially by the defendant's wrongful obstruction to the plaintiff's right to bund a water channel. The facts are that plaintiff and defendant had a dispute over the former's right to bund this channel. The plaintiff put up a bund and the defendant removed it. The defendant then laid an information under Section 145 of the Criminal Procedure Code. On that information the Magistrate, after taking statements from both parties, made an order that the plaintiff should not raise a bund or divert the water from the channel until he had obtained a decree or order of a competent Court adjudging him to be entitled to raise such bund. A subsequent suit by the plaintiff resulted in his right to bund the channel being upheld. The Magistrate's order was made on 21st November, 1924, and plaintiff's claim for damages is in respect of the loss of cultivation of his fields for the years 1925, 1926 and 1927. The allegation in the plaint in para. 4 is:

The defendant afterwards instituted proceedings under Section 147 of the Criminal Procedure Code and got an order restraining the plaintiff from raising a cross-bund, consequently the plaintiff's lands were obliged to be kept fallow.

2. But in para. 8 the cause of action is laid generally on the loss caused to the plaintiff by the defendant's obstruction to the plaintiff's right to bund the channel.

3. The plaint leaves it somewhat obscure what exactly the plaintiff's cause of action is. But his learned Counsel has argued the case that the defendant's wrongful interference with the plaintiff's bund being the primary cause of damage suffered by the plaintiff, the order of the Magistrate made upon the initiative of the defendant, was only a secondary cause which cannot relieve the defendant of his liability for his initial wrongful act. I think that this position is unsustainable. There can be no doubt that the immediate and proximate cause of the plaintiff being deprived of his right to bund the channel was the order of the Magistrate. Indirectly it was due to the defendant's act in interfering with the plaintiff's bund and to his initiating proceedings in anticipation of a possible breach of the peace. But the direct cause of

the plaintiff's deprivation of the right to take water was the Magistrate's order. There is no allegation in the plaint that the defendant in taking these proceedings was actuated by malice. If he had acted maliciously his position might have been different. It must, however, be assumed that he acted from proper motives. The order of the Magistrate being an independent act in the course of his official duties, the defendant cannot be held responsible for it or for the damage suffered by the plaintiff in consequence of it. The Magistrate's order was, to use Lord Cave's expression in *Harnett v. Bond* (1925) A.C. 669 'a novus actus interveniens sufficient to break the chain of causation' between the defendant's wrongful act in removing plaintiff's bund and the injury suffered by the plaintiff in consequence. The House of Lords affirmed the judgment of the Court of appeal in the above case, reported in *Harnett v. Bond* (1924) 2 K.B. 517 where Scrutton, L.J., said:

There is no doubt that the action of a third party does not necessarily break the chain of causation and make subsequent damage too remote.... But it appears to me that where there comes in the chain the act of a person who is bound by law to decide a matter judicially and independently, the consequences of his decision are too remote from the original wrong which gave him a chance of deciding. It was on this principle that in *Lock v. Ashton* (1848) 12 Q.B. 871 it was decided that a defendant who had wrongfully taken a person into custody and brought him before a Magistrate was not liable for the subsequent remand by the Magistrate, which was a judicial act.

4. No suit will lie against a person for procuring an erroneous order from a Magistrate. See *Mina Kumari Bibi v. Surendra Narain Chakravarty* (1909) 3 I.C. 12. I am, therefore, of opinion that the lower Court's judgment was wrong. The decree of the lower Court is set aside and this appeal is allowed with

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