

Kondapa Rajam Naidu and ors. Vs. Devarakonda Suryanarayana and anr.

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Court : Chennai

Decided On : Mar-04-1910

Reported in : (1911)ILR34Mad173

Judge : Benson and ;Krishnaswami Ayyar, JJ.

Appellant : Kondapa Rajam Naidu and ors.

Respondent : Devarakonda Suryanarayana and anr.

Judgement :

1. The plaintiffs were in enjoyment of a watercourse. For the purpose of this case, we may assume that they had not acquired an easement by prescription, for the enjoyment did not extend to 20 years. The defendants, who have no manner of right to the watercourse or the land over which it flowed, obstructed the plaintiff's user. The District Judge has given the injunction asked for. It is argued by the learned Advocate-General that the plaintiffs not having acquired a complete title, they would not be entitled to restrain the defendants from interference. The law is well settled that if the plaintiff was in possession of land for less than the statutory period, he would be entitled to protect that possession against any one but the true owner. We do not think that there is any distinction in principle because the right now claimed to be protected is in the nature of an incorporeal right in process of acquisition. Incorporeal rights are in many cases capable of possession just as much as rights to corporeal hereditaments. In *Jaffies v. Williams* 5 Ex., 792 it was held by Baron Parke that a trespasser on adjoining land was not entitled to cause a subsidence by working mines to the prejudice of the mines in the plaintiffs' enjoyment, though he had not acquired a title to the same. This was followed in *Elisabeth Bibby v. Garter* 4 Hurlstone and Norman's Report, 153, where the plaintiff who had not acquired a title was held entitled to sue for damages against a trespasser on adjoining land who caused injury to the plaintiff's buildings. The principle of these cases has been applied in India to cases of light where, before the right had matured, a trespasser interfered with it. [See *Jootoor Achhanna v. Vanamala Venkamma* : (1895)5MLJ24 and *Dhuman Khan v. Muhammad Khan* I.L.R. (1897) All. 153.] We think that the District Judge is right in applying the same principle to the present case of a watercourse enjoyed for less than the prescriptive period. We must dismiss the second appeal with costs.