

. 1974
April 4

ELEFThERIA
ADAMOU

v.

CONSTANTIS
CHRISTOFI

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

ELEFThERIA ADAMOU,

Appellant - Defendant.

v.

CONSTANTIS CHRISTOFI.

Respondent - Plaintiff.

(Civil Appeal No. 5115).

Trespass to land—Trespass actionable at the suit of the person in possession—Slightest amount of possession sufficient—De facto possession of Khali land (Government land)—Gives right to retain possession and undisputed enjoyment as against all wrong-doers except the lawful owner or persons deriving title or authority from such owner—Jus tertii is no defence to the action, unless defendant can show that he acted under the authority of the owner or of some person having a right to give such authority—Sections 41 and 43 of the Civil Wrongs Law, Cap. 148.

Civil Wrongs—Trespass to land—Jus tertii—Section 41 of the Civil Wrongs Law, Cap. 148—De facto possession—Protection of—Based on the paramount necessity of preventing breaches of the peace—Cf. section 43 of Cap. 148, supra.

This is an appeal from the judgment of the District Court of Larnaca whereby it was declared and adjudged that the plaintiff (now respondent) was entitled to 93 olive trees found on part of plot No. 357 (Khali land *i.e.* state land) in the area of Kornos village and that he had the exclusive right of possession and enjoyment thereof; and that the defendant (now appellant) be restrained from interfering in any way with the said olive trees.

The plaintiff (respondent) has planted the said 93 olive trees on Khali land (*viz.* state or government land) and has been in continuous exclusive adverse possession of both the land and the olive trees for a period of about 45 - 50 years. The main point raised in this case is whether the trespass complained of (and proved) is actionable at the suit of the

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person in possession *i.e.* the plaintiff (respondent) who is neither the owner nor does he derive title from the owners. The Supreme Court held that it is so actionable. The case for the defendant lady (appellant) was mainly that the plaintiff (respondent) has no legal standing in these proceedings and has no right of action against her because the owner of the land in question is the Government.

Dismissing the appeal, the Supreme Court :-

Held, (1) In our view, *jus tertii* is no defence to the action, unless the defendant can show when trespassing that he had acted under the authority of the true owner or of some person having such a right. In a case of trespass the defendant has to plead and prove that he had a right to possession of the land at the time of the alleged trespass, or that he had acted under the authority of some person having such a right. That this is so finds ample justification in section 43 of the Civil Wrongs Law, Cap. 148 (*note*: The full text of section 43 is set out *post* in the judgment).

(2) In our view, the slightest amount of possession would be sufficient to enable the plaintiff to bring an action against the defendant (Cf. *Bristow v. Cormican* [1878] 3 App. Cas. 641, at p. 657; see also *Wuta-Ofei v. Danquah* [1961] 1 W.L.R. 1238).

(3) It would appear that the protection which the law gives to bare possession is nothing more than an extension of the protection accorded by law to the 'person'; and the explanation of such protection is to be found in the paramount necessity of preventing breaches of the peace

(4) For the above reasons the appeal is dismissed with costs.

Appeal dismissed with costs.

Cases referred to :

Bristow v. Cormican [1878] 3 App. Cas. 641, at p. 657,
per Lord Hatherley;

Wuta-Ofei v. Danquah [1961] 1 W.L.R. 1238.

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Appeal.

Appeal by defendant against the judgment of the District Court of Larnaca (Orphanides, D.J.) dated the 9th August, 1972, (Action No. 252/69) whereby her counter-claim for a declaration that she was the co-owner of certain lands was dismissed and it was further adjudged and declared, *inter alia*, that the plaintiff was entitled to the 93 olive trees found in part of plot 337, sheet/plan 39/56.

C. *Loizou*, for the appellant - defendant.

C. *Varda (Mrs.)*, for the respondent - plaintiff.

The judgment of the Court was delivered by :

HADJIANASTASSIOU, J. : This is an appeal by the defendant from the judgment of the District Court of Larnaca, dated August 9, 1972, whereby her counter-claim was dismissed and it was further adjudged and declared (a) that the plaintiff was entitled to the 93 olive trees found in part of plot No. 337, of sheet/plan 39/56, in the area of Kornos village belonging to the plaintiff and that he had the exclusive right of possession and enjoyment thereof; and (b) that the defendant, her servants and/or agents be restrained from interfering in any way with the said olive trees.

The appellant in the notice of appeal, raised these two grounds :- (1) That the decision of the trial Court was wrong in law in applying the principle of *jus tertii* in s 41 of Cap. 148, in a case relating to immovable property; and (2) that the said decision was contrary to the totality of the evidence. Before us, however, the latter point was abandoned, and the sole ground of appeal now relied upon is that the plaintiff had no right of action against the defendant.

The facts are these : The plaintiff has planted part of a field of about 8½ donums under plot 337, a khali land within the area of Kornos village, with 93 olive trees, and has been in continuous undisputed exclusive adverse possession of both the land and the olive trees for a period of about 45 - 50 years. The plaintiff filed an application No. A/1061 on August 4, 1969, with the L.R.O., and was claiming the land in question

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alleging that he had planted 93 olive trees. In October 1968, the defendant was caught trespassing and collecting the olives from the said olive trees, the property of the plaintiff. To a question put to the defendant in the presence of the Rural Constable of the village, she replied "I am collecting them because they are mine, a thing which I did not know before and you took advantage of by collecting them yourself".

Because the defendant denied trespassing, the plaintiff filed the present action against her and during the local enquiry carried out by Mr. Nikiforou, the defendant in his presence alleged that the plot in question and the olive trees belonged to her because originally it belonged to her deceased father who was the original owner and she inherited it from him. On the contrary, the plaintiff alleged that the land in question was khali land and he took possession of it and planted it with 93 olive trees. It appears that not only the disputed land is not registered in the name of defendant's deceased father, but on the contrary, another plot of land was found registered in the name of the father and later on in the names of the defendant and another four persons in undivided shares of one-fifth each under Registration 7019 dated August 10, 1950, plot Nos. 331, and 337/3 of sheet/plan 39/56 within the village of Kornos. This piece of land is 8 - 10 donums away from the disputed land in the possession of the plaintiff.

Although it was made clear by the learned trial judge that in view of the evidence of the L.R.O. clerk that it was necessary to amend the pleadings of the defendant, yet nothing was done, and on May 30, 1972, the defendant gave evidence admitting that she had been collecting olives from the disputed land and alleging that the plaintiff himself told her that the disputed land belonged to her.

The learned trial judge who had the occasion to hear and observe the demeanour of the witnesses before him, believed the evidence of the plaintiff and rejected the version of the defendant and her witnesses, adding that it was a pity that the defendant was naive to believe at that late stage of the proceedings that she could base her allegation on her counter-claim on the alleged

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admission of the plaintiff that that was the piece of land which was in the possession of her father.

Counsel on behalf of the defendant contended both before the lower Court and before us that the plaintiff was not entitled to the relief claimed and that the trial Court was wrong in relying on the principle of *ius tertii*.

There is no doubt that the plaintiff was in possession of the land in question and has planted the olive trees himself, and clearly in our view the defendant had no right at all to collect the olives and was all along a mere trespasser. It has been said in a number of cases that trespass to land consists in any unjustifiable intrusion by one person upon land in the possession of another. Trespass, therefore, is actionable at the suit of the person in possession of land, in spite of the fact that he is neither the owner nor does he derive title from the owner. Once, therefore, the plaintiff was in occupation or physical control of the land in question and because he has planted those trees, he is holding the land as a *de facto* possessor and it is too late for the defendant—who never had any title to the land—or indeed she never genuinely believed the land to be hers, to allege that the plaintiff had no right of action against her because the Government is the owner of that land.

In our view, the slightest amount of possession would be sufficient to enable the plaintiff to bring an action against the defendant. In *Bristow v. Cormican*, [1878] 3 App. Cas. 641, Lord Hatherley said at p. 657 :-

“There can be no doubt whatever that some possession is sufficient, against a person invading that possession without himself having any title whatsoever, as a mere stranger, that is to say, it is sufficient as against a wrongdoer. The slightest amount of possession would be sufficient to entitle the person who is so in possession or claims under those who have been or are in such possession, to recover as against a mere trespasser.”

See also *Wuta-Ofei v. Danquah* [1961] 1 W.L.R. 1238, where the dictum of Lord Hatherley in *Bristow v. Cormican* (*supra*) was followed and applied.

There is no doubt that a *de facto* possession gives

a right to retain the possession and undisputed enjoyment as against all wrong-doers, except the lawful owner, because he who has such a possession may, just as may the lawful owner, use a reasonable degree of force in the defence of the land which he possesses. He may sue in trespass anyone who disturbs his possession, and in such an action it is no answer for the defendant to show that such title and right to possession is in another person. In our view, *jus tertii* is no defence to the action, unless the defendant can show when trespassing that he acted under the authority of the true owner or of some person having such a right. Therefore, we find ourselves unable to follow the argument of counsel on behalf of the appellant, because in our opinion, the principle of *jus tertii* applies equally to a case of land and not only to torts as contended by counsel. We would reiterate that in a case of trespass the defendant has to plead and prove that he had a right to possession of the land at the time of the alleged trespass, or that he acted under the authority of some person having such right. That this is so finds also ample justification in our Civil Wrongs Law Cap. 148, and s. 43 is in these terms :-

“(1) Trespass to immovable property consists of any unlawful entry upon, or any unlawful damage to or interference with, any such property by any person.

(2) Where the acts complained of are permitted by local custom, such custom if established shall be a defence but in any action brought in respect of any trespass to immovable property the onus of showing that the act of which complaint is made was not unlawful shall be upon the defendant.”

It appears that the protection which the law gives to bear possession seems to be nothing more than an extension of the protection that it accords to the person. Possession, as we said earlier in this judgment, implies to some extent personal presence, and the inviolability of the person extends to those sorts of disturbances by which the person might at some time be interfered with. In other words, the explanation of the protection of possession is to be found in the paramount necessity of preventing breaches of the peace.

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For the reasons we have advanced, we have reached the conclusion that counsel has failed to persuade us that the decision was wrong in law, and we would, therefore, affirm the judgment of the learned trial judge and dismiss the appeal with costs.

Appeal dismissed with costs.