1975
June 19

ISMINI E. LIASIDOU AND ANOTHER

v.

KYRIACOS N. PAPADEMETRIOU ETC.

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

ISMINI E. LIASIDOU AND ANOTHER,

Appellants-Defendants,

v.

KYRIACOS N. PAPADEMETRIOU AS PROXY AGENT OF CHRISTAKIS E. IOANNOU,

Respondent-Plaintiff.

(Civil Appeal No. 5005).

Civil Wrongs—Trespass to land—Actionable at the suit of the person in possession—Slightest amount of possession sufficient—Trespass to channel standing on a wall—Plaintiff using channel for irrigation purposes—Said use amounting to acts of enjoyment and exclusive possession—Defendants rightly found liable for trespass to land and damage caused thereon.

Costs—Scale of assessment—Should not be higher than value of subject-matter—Action for trespass to land—There being no other evidence to determine the value of the subject matter the costs awarded should not exceed the amount of the damage caused.

The appellants in this appeal complain against a judgment whereby they were ordered to cease interfering with a wall and water channel the property of the respondent and to pay to them the amount of £43.500 mils for the damage caused to the said property.

Respondent alleged that the appellants trespassed on two separate occasions and caused damage by demolishing part of a wall and water channel of which he is the rightful owner and possessor.

Appellants denied having caused any damage and contended further that part of the wall in question was built unlawfully on the public road.

The trial Court found that the said wall and water channel were not constructed on the public road and concluded further, by relying on the evidence of three D.L.O. witnesses, that they were both constructed wholly on respondent's plots (Nos. 33 and 35).

Appellants contended that the finding of the Court below, that the strip of land where the said wall and channel were standing belonged to the respondent, was wrong. But as the cause of action was "trespass" the Court of Appeal found it unnecessary to go into the question of ownership of the said strip in view of the uncontradicted fact that the respondent had all along and for all intents and purposes exclusive *possession* of the wall and channel in question and also in view of the finding of the trial Court that the appellants had no right thereto as they did not stand on their land. Another complaint of the appellants was that the scale at which the costs were assessed was higher than the value of the subject matter.

Held, (1) The present appeal could be determined against the appellants on the issue that trespass, the cause of action, is actionable at the suit of the person in possession of land, possession meaning the occupation or physical control of same and anyone who disturbs such possession may be sued and it is no answer to such an action to show that the title and right to possession is in another person, unless the act complained of was done by the authority of the true owner (*Adamou* v *Christofi* (1974) 1 C.L.R. 100, at p. 104 followed)

(2) On the basis of the conclusion of the Court below that the respondent had exclusive possession of the property in question the appellants have been rightly found liable for trespass to land and the damage caused thereon

(3) The wording of the order of the Court below is hereby rephrased so that the words "interfere with the respondent-plaintiff's property" be substituted with the words "interfere with the wall and channel in the possession of the respondent-plaintiff"

(4) The costs awarded should not have exceeded the amount of the damage caused there being no other evidence to determine the value of the subject-matter Order of the Court below regarding costs varied

Judgment and order for costs varied accordingly.

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ISMINI E. LIASIDOU AND ANOTHER

v.

KYRIACOS N. PAPA-DEMETRIOU ETC.

Cases referred to:

Adamou v. *Christofi* (1974) 1 C.L.R. 100, at p. 104.

Appeal.

Appeal by defendants against the judgment of the District Court of Paphos (Pitsillides, D.J.) dated the 5th August, 1971 whereby they were ordered to cease interfering with a wall and water channel the property of the plaintiff and were further ordered to pay £43.500 mils damages.

E. Komodromos, for the appellants.

X. Clerides, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU, J.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J.: This is an appeal from the judgment of the District Court of Paphos given in two consolidated actions whereby —

(a) the appellants-defendants, their servants, agents and assignees were ordered to cease interfering with respondent-plaintiff's property under plots Nos. 33 and 35, Sheet Plan LI/10/18 situated at Kato Paphos, locality "Mnimata", Registration Nos. 2981 and 2982, respectively;

(b) any registration in the name of the appellants-defendants affecting respondent-plaintiff's rights in the said property, was cancelled, and

(c) appellants-defendants were adjudged to pay £43.500 mils damages, *i.e.* £16.- for the damage claimed in Action No. 574/69 and £27.500 mils for the damage claimed in Action No. 652/69, plus costs, as follows:-

> "(i) Before consolidation, separate costs for each action are awarded with this qualification that the costs in Action No. 652/1969 should be on the scale between £50.- to £100.- having taken into consideration the value of the property affected by defendants' interference together with the sum of £27.500 mils needed for the repairs.

(ii) After consolidation, only one set of costs are awarded for both actions on the scale between £100.- to £200.- as the subject matter, with the addition of the £16.- spent for repairs, would exceed the sum of £100.-".

The respondent-plaintiff brought these two actions alleging that the appellants-defendants trespassed on two separate occasions, one in 1968 and the other in 1969 and caused damage by demolishing part of a wall and water channel of which he is the rightful owner and possessor, to a length of 20 ft.

The appellants-defendants denied having caused the damage claimed and that they ever claimed a right of way through the properties of the respondent-plaintiff; appellant-defendant No. 1 merely applied under section 11(A) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (*exhibits* 5 and 6) for the acquisition of access to Plot 78 from the public road, admitting that Plot 78 had no such access. It was further contended that part of the wall in question was built unlawfully on the public road.

The evidence before the trial judge came from six witnesses; three of them were officials of the Department of Lands and Surveys and the other three were, the respondent-plaintiff's representative, (P.W.4) Moustafa Imam (P.W.5), a 70 year-old farmer, owner of the neighbouring plots 31 and 22 and Savvas Patsalos (P.W.6), a building contractor who testified regarding the cost of the repair of the demolished wall in 1969.

A local inquiry was carried out by Simos Petrou (P.W.1), the surveyor of the D.L.O. Paphos, together with a D.L.O. clerk, Demos Panayiotou (P.W.3), in the presence of the parties. Measurements were taken and a sketch was prepared. On the basis of this material and the Field Book a survey plan was prepared by the Drawing Office of the Survey Branch of the Department of Lands and Surveys (*exhibit* 1). In accordance with this survey plan, the boundary of plot 33 does not touch plot 35, the direct distance from the nearest part being about 25 feet. In plot 33 there is a water tank from which water was conducted to plot 35 through a water channel constructed along the top part of the wall.

Water was fed into the tank by means of a wind-mill and both plots 33 and 35 were irrigated therefrom. On the south-western sides of plots 33 and 35 there is a passage that separates the two plots from plot 34 described in the title deed of plot 34 as the passage of the heirs of Arghyros Michaelides.

This, coupled with the fact that neither the passage nor the wall, nor water channel are given as boundaries of plot 78, led the Court to the conclusion that plot 78 does not adjoin the passage and that the wall and water channel were not constructed on that passage. The trial judge further concluded, as a matter of fact, that the wall and water channel were constructed wholly on respondent-plaintiff's plots 33 and 35, for which he relied on the evidence of the three D.L.O. witnesses.

Andreas Christofi (P.W.2), a Senior Lands Survey Officer, gave as reasons for saying so the fact that the water tank and the wall with the water channel were clifted with plot 33, in this way showing that they belonged to it; the water channel was outside the boundary of plot 78 and it did not encroach on the passage. The boundary line between plot 78 on the one hand and plots 33 and 37 on the other hand being the side of the water channel nearer to plot 78. Furthermore, the fact that the outlet of the channel is in plot 35, proves that at least part of the water channel belongs to plot 35. These facts show that no part of the water channel forms part of plot 78. Simos Petrou (P.W.1) and Demos Panayiotou (P.W.3) also stated that the whole wall and water channel were constructed on land belonging to plots 33 and 35 and no part of the wall and water channel occupy any part of the passage or plot 78.

In further support of the finding that the water channel stands on plots 33 and 35, the trial judge relied on the fact that is the certificate of registration of plot 35 (*exhibit* 4) one of the boundaries of plot 35 is respondent-plaintiff's father Efstathios Ioannou, who was the owner of plot 33 and to which plot this boundary must refer, as the other property owned by Efstathios Ioannou in the vicinity is plot 34 separated from plots 35 and 33 by the passage which is also referred to as boundary.

Hence, there could be no reference to plot 34 as constituting a boundary of plot 35.

Although the appellants-defendants by the present appeal complained that once the survey plans showed that there was a distance of 25 ft. between the nearest points of plots 33 and 35, the finding of the trial judge that that strip formed part of either plot 33 or 35 and that the wall standing thereon belonged to respondent-plaintiff, was wrong, nevertheless, we find it unnecessary in the present appeal to go into the question of ownership of the said strip of land, in view of the uncontradicted fact that the respondent-plaintiff had all along and for all intents and purposes possession of the said wall and channel and also of the finding of the trial judge that the appellants-defendants had no right thereto, whatsoever, as it did not stand on their land, nor did there exist a right of passage across that strip of land in favour of plot 78.

Consequently, the present appeal could be determined against the appellants-defendants on the issue that trespass, the cause of action in both cases, is actionable at the suit of the person in possession of land, possession meaning the occupation or physical control of same and anyone who disturbs such possession may be sued and it is no answer to such an action to show that the title and right to possession is in another person, unless the act complained of was done by the authority of the true owner. This has been the approach of the Court in the recent case of *Adamou* v. *Christofi* (1974) 1 C.L.R. 100, where, at p. 104 it is stated :-

> "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 on 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 wrong-doer. 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."

In the present appeal we have the findings of the trial Court based on the evidence adduced that the channel in question standing on the wall was used for irrigation purposes by the respondent-plaintiff, which, use, amounts to acts of enjoyment of the property in question and exclusive possession thereof. On the basis of these conclusions, the appellants-defendants have been rightly found liable for trespass to land and the damage caused thereon.

Regarding the amount of damages that the appellants-defendants have been adjudged to pay, the evidence for the respondent-plaintiff was uncontradicted and the learned trial judge was justified in arriving at the conclusion that the total cost of the damage done to the wall, on both occasions, was £43.500 mils. Furthermore, the repetition of the damage fully justifies the granting of the injunction so safeguarding against future recurrence. Its wording, however, should be rephrased, so that the words "interfere with the respondent-plaintiff's property" be substituted with the words "interefere with the wall and channel in the possession of the respondent-plaintiff".

There remains now to consider the question of costs which it twofold. The first one is that the trial judge failed to determine by whom the costs for the adjournment of the case on the 16th December, 1970, reserved by him at the time, would be borne, and the second one is that the scale at which the costs were assessed was higher than the value of the subject-matter.

As to the first point, the relevant facts are that on the day in question it was discovered that the relevant documents and sketches were at the Nicosia Survey Department and Simos Petrou (P.W.1), the surveyor of the D.L.O., Paphos, was not in a position to produce them, the case was adjourned on the application of counsel for respondent-plaintiff and the judge reserved the question of costs for that adjournment. The matter does not

appear to have been dealt with by the judge at any stage of the proceedings, obviously through an oversight, and in the circumstances, we feel that the costs for the adjournment at the minimum scale should be deducted from those awarded against the appellants-defendants.

As to the second point, we are of the view that the costs awarded should not exceed the amount of the damage caused there being no other evidence to determine the value of the subject matter in each case. For this reason, the costs in Action No. 574/69 should be on a scale between £10.- and £25.- and in Action No. 652/69 on a scale between £25.- and £50.- up to consolidation and thereafter, one set of costs to be awarded on a scale between £25.- to £50.- within the total of the damages awarded falls, less the costs of the hearing for the adjournment of the 16th December, 1970 at the minimum of the scale.

In the result, the judgment and order of the Court for costs is varied accordingly and in the circumstances appellants-defendants are ordered to pay the costs of this appeal on the scale between £25.- and £50.-.

Appeal partly allowed.
Order for costs as above.