

1969

*Present* : Samerawickrame, J.

A. MAGIRIS and another, Appellants, and S. PIYANORIS, Respondent

*S. C. 522-523/67—M. C. Kalutara, 27383**Criminal trespass—Co-owners—Offence committed by owner of undivided share of land by unlawful entry upon the land—Quantum of evidence.*

The 2nd accused, after purchasing an undivided one-sixth share of a paddy land, entered unlawfully upon a portion of the same land possessed dividedly by the complainant-respondent for a period of 13 years. The evidence showed that the entry upon the divided portion was not made by the accused under a bona fide claim of right.

*Held*, that the accused was guilty of the offence of criminal trespass.

**A**PPPEALS from a judgment of the Magistrate's Court, Kalutara.

*M. M. Kumarakulasingham*, for the accused-appellants.

*M. Hussein*, for the complainant-respondent.

*Cur. adv. vult.*

July 29, 1969. SAMERAWICKRAME, J.—

The accused-appellants have been convicted of the offence of criminal trespass in that they unlawfully entered upon the land called Elapeguwela Owita in the occupation of the complainant-respondent Sandradurage Piyaneris, with intent to annoy him. They have appealed against the convictions and sentences.

The complainant-respondent had been in occupation of a divided portion of Elapeguwela Owita for a period of 13 years, first as an ande-cultivator and from the year 1960, as owner-cultivator. His name has been entered in the register of cultivators kept by the Cultivation Committee of Eladuwa and he has also produced the acreage tax receipt (P3) dated 5th March, 1966. His occupation of the field in question has been spoken to by the Secretary of the Cultivation Committee.

At a Fiscal's sale held on 3rd April, 1965, the 2nd accused-appellant had purchased an undivided one-sixth share of the entire land called Elapeguwela Owita. On 6th April, 1966, the appellants with a large party of persons had come on to the divided portion occupied by the complainant-respondent and started to plough it. They have continued to be in possession in spite of protests by the complainant-respondent and the efforts of the cultivation committee to settle the matter.

The appellants took up the position that the field had not been worked for about an year before they entered into occupation and that in fact they worked the field for two seasons before the dispute arose. The 1st accused-appellant who gave evidence also stated that before they went into occupation they orally informed the Secretary of the Cultivation Committee, but no questions on this point were put to the Secretary of the Cultivation Committee when he gave evidence for the prosecution. A Fiscal's Officer called by the defence also attempted to state that the lot that was sold was a divided lot though what was put up for sale was an undivided 1/6th share, but in cross-examination he admitted that he did not know from what part of the field the 1/6th share was sold and that the Fiscal did not place the 2nd accused-appellant in possession of any part of the land.

The learned Magistrate convicted the accused-appellants and in doing so, held that annoyance to the complainant was a natural consequence of the conduct of the accused and that in terms of the judgment reported in 14 New Law Reports, page 480, the accused were guilty of the offence of criminal trespass.

Learned Counsel for the appellants submitted that the case relied on by the learned Magistrate had been expressly overruled by the Privy Council in the case of *King v. Selvanayagam*<sup>1</sup>, where the Privy Council stated—

“ Entry upon land, made under a bona fide claim of right, however ill-founded in law the claim may be, does not become criminal merely because a foreseen consequence of the entry is annoyance to the occupant .”

The question, therefore, is, whether the appellants acted in the exercise of a bona fide claim of a right. The purchase by the 2nd accused-appellant of an undivided 1/6th share of the entire land called Elapeguwela Owita did not entitle the appellants to interfere with the occupation by the complainant-respondent of the divided portion which he had possessed for a period of 13 years, nor indeed did the appellants claim that they had any belief that the mere title to an undivided share of the entire land entitle them to do so. Their position was that this divided portion was in fact what was sold to them and that it had not been worked for a period of one year before they entered upon it. The learned Magistrate, upon a careful examination of the facts, has rejected the defence version and has come to the conclusion that the complainant was in occupation of this divided portion on the date in question. It seems to me, therefore, that the basis of fact upon which the defence sought to assert that there was a bona fide claim of right has failed. The appellants were seeking to obtain possession without the trouble and expense of an action and, though aware that they had no right to interfere with the complainant's occupation of the divided portion of the land, they made wrongful entry on it. Their entry is not referable to any belief in a right to enter

<sup>1</sup> (1950) 51 N. L. R. 470.

upon possession of that portion of land and though it may have been motivated by a desire to obtain unlawful advantage to themselves, nonetheless, the intent with which the entry was made was, in the circumstances, to harass and annoy the complainant. The convictions must, therefore, be affirmed.

The appellants have acted in a high handed manner. They entered upon the field in the occupation of the complainant with a large party of persons. In the circumstances I am unable to state that the learned Magistrate has acted otherwise than reasonably in imposing sentences of imprisonment. The appeals are, therefore, dismissed.

*Appeals dismissed.*

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