

1930

Present : Maartensz A.J.

HANIFA v. DEHERAGODA.

508—P. C. Ratnapura, 44,643.

*Criminal trespass—Accused entitled to undivided share—Forcible entry on complainant's defined portion—Penal Code, s. 427.*

Where the accused who was declared entitled to an undivided share of a land forcibly entered a divided portion in the possession of the complainant,—

*Held*, that the accused would be guilty of criminal trespass if his intention was to intimidate or annoy the complainant

**A** PPEAL from an order of the Police Magistrate of Ratnapura.

*Hayley, K.C.* (with him *Tisseverasinghe and Marikar*), for complainant, appellant.

September 22, 1930. MAARTENSZ A.J.—

The accused in this case were acquitted of charges of criminal trespass and mischief and insult by the Police Magistrate of Ratnapura and the complainant appeals from that order with the sanction of the Solicitor-General.

The land on which the accused are alleged to have entered was the subject of case No. 4,379 of the District Court of Ratnapura.

In case No. 4,379 these three accused and another sued the complainant and his wife and others to be declared entitled to an undivided  $\frac{1}{3}$  share of certain lands described in the schedule to the plaint. The schedule has been omitted from the copy of the plaint filed.

Appellant's counsel stated that the extent was approximately 59 acres.

The defendants claimed title to a divided block of about 33 acres. The plaintiffs were declared entitled to an undivided  $\frac{1}{3}$  share, but no order was made declaring the plaintiffs entitled to possession.

Appellant's counsel stated that the defendants were entitled to an undivided share equivalent to 39 acres but were in possession of 43 acres within a barbed wire fence.

On October 22, 1929, the plaintiffs moved the Court to issue a writ of possession to place them in possession of the land.

This was refused as the decree did not order delivery of possession.

The accused thereupon, according to the case for the prosecution, forcibly entered on the land within the wire fence and tapped a number of rubber trees, and built a shed in which they lodged.

They also had a pig and threatened to make the complainant eat it. The complainant being a Muhammadan the threat, if true, was a gross insult.

A settlement was arrived at, which the accused subsequently refused to abide by. A new trial was ordered by this Court.

After the examination of three witnesses the order complained of was made by the Magistrate. There is nothing on the record to show whether the case for the prosecution was closed or the accused called on for their defence.

The learned Police Magistrate said the entry was on land to which the accused and complainant were jointly entitled, and the accused did not take possession of more than they were entitled to, and acquitted the accused.

The accused were no doubt declared entitled to an undivided share of the land in question but they had no right to take possession of a defined share by force, particularly as they were not declared entitled to possession and their application for a writ of possession had been refused.

A trespass of this nature has been held to be criminal in the case of *Karathelis Hami. v. Francis*,<sup>1</sup> if the intention of the accused was to intimidate and annoy the complainant.

The learned Magistrate has not in this case held that the accused had no such intention. Unfortunately he acquitted the accused without calling upon them for their defence and it is impossible for me, sitting in appeal, to say what their intention was in entering upon the land.

I accordingly set aside the order of acquittal appealed from and send the case back for a new trial by another Magistrate. I hope that the new trial will not be rendered futile by a premature termination of the proceedings by the Magistrate.

*Set aside.*

<sup>1</sup> (1920) 7 C. W. R. 184.