BECKLES v. CHANDLER ET AL

[SUPREME COURT Hanschell, J.), September 28, 1959]

[1958 - 60] 2 Barb. L.R. 116

Tort - Repeated trespasses - Perpetual injunction - Mandatory injunction to remove chattel house erected by first defendant - Exemplary damages.

Facts: The plaintiff Etheline Beckles became the owner of a parcel of land by a conveyance fromthe court. At the time of purchase the defendants were in possession but were subsequentlyejected by warrant of the court. After being ejected the defendants again entered on the land andtook possession and were again ejected by warrant of the court. The defendants trespassed againand depastured stock on the land for which damages were recovered by the plaintiff. Subsequentlythe defendants started to demolish a building on the land and on two occasions erected a chattelhouse thereon. The defendants further threatened to continue their trespass.

Held: (i) the actions of the defendants went beyond simple trespass and damages would not be anadequate remedy; a perpetual injunction restraining the defendants from trespassing should begranted;

(ii) the erection of the chattel house constituted a nuisance for which a mandatory injunctionshould issue against the male defendant, the owner of the house ordering him to remove it; and thedamages for the wilful persistence of the defendants in continuing the trespass. In fixing thedamages the court took into account the fact that the plaintiff suffered the defendants to be on theland from 1950 to 1954 before bringing the action.

Judgment for the plaintiff.

No cases referred to.

Statutory instruments referred to:

(1) Supreme Court of Judicature Act, 1958.

(2) Rules of the Supreme Court, 1958, O. 17, r. 13.

Mr. D.H.L. Ward for the plaintiff instructed by Messrs. Haynes & Griffith.

Mr. J.E.T. Brancker for the defendants instructed by Messrs. Hutchinson & Banfield. [116]

HANSCHELL, J.: This action was filed in the Court of Chancery in 1954 and was transferred tothe Supreme Court in August, 1958, when the Supreme Court of Judicature Act came intooperation. It came before me for hearing in January, 1958.

In the bill of complaint the plaintiff pleaded that a certain parcel of land, three roods, thirty-fourperches, situated near Roaches in the parish of St. Lucy in this Island was conveyed to her by deedof indenture dated June 7, 1950, made between Israel Vivian Gilkes, Clerk of the Assistant Courtof Appeal, of the one part and herself of the other part for an estate in fee simple absolute; that atthe time of this conveyance the defendants, who are husband and wife, were in possession of thisisland; that on August 20, 1950, the defendants were ejected and possession was given to theplaintiff under a warrant issued by the Assistant Court of Appeal; that some time duringSeptember, 1950, the defendants again broke and entered the said parcel of land and tookpossession thereof; that on February 9, 1951, a warrant to eject the defendants from the said landand to give possession of the same to the plaintiff was issued out of the Assistant Court of Appealand on February 16, 1951, the said warrant was executed and the defendants were ejected fromthe said land and possession of the same was given to the plaintiff; that on March 5, 1951, thedefendants again broke and entered the said land and depastured stock thereon; that on July 9,1951, the plaintiff obtained judgment in the Petty Debt Court of the District for £10 damages andcosts in respect of the said trespass of March 5, 1951; that this judgment on appeal was confirmedby the Assistant Court of Appeal and on further appeal to the Court of Error of this Island thejudgment was again confirmed and the appeal dismissed with costs.

The plaintiff further pleaded that the defendants have started to demolish the messuage standingon the said land and that they have removed the roof therefrom; that the defendants wrongfullyclaim that they are the owners of the said land and entitled to possession thereof; that since March5, 1951, the defendants have repeatedly trespassed and have threatened and intend to continuetrespassing, and finally that the defendants, after being ejected, have on two occasions re-erected achattel house on the said land and that the said chattel house still stands there.

The defendants in their answer have denied that either of them started to demolish the messuageor removed the roof therefrom. They have not denied or stated that they do not admit any of theother allegations of fact in the bill of complaint. Both defendants are over twenty-one years of ageand are of sound mind, and all allegations of fact in the bill of complaint, except paragraph 12dealing with the demolition of the messuage, must be taken to be admitted against them both.These pleadings were drawn up previous to August, 1958, under the rules of the Court ofChancery. The Rules of the Supreme Court made under the Supreme Court of Judicature Actwhich came into force in August, 1958, contain in O.17, r. 13, a similar provision.

Evidence has been led by the plaintiff on all the allegations of fact which she has pleaded and boththe plaintiff and the defendants have led evidence on the issue of demolition of the messuage andremoval of its roof.

It is clear that the plaintiff is the owner of this land and that she has a good title to the same. It isalso clear that the plaintiff was put in possession of this land on August 22, 1950, and that thedefendants were ejected from the same on that day [117] and their board and shingled houseremoved from this land. This was done under a warrant of the Assistant Court of Appeal. Almostimmediately after they were ejected the defendants trespassed on the land and occupied the stonemessuage or dwelling-house. On September 17, 1950, the plaintiff, in the exercise of her right asowner in possession, went on the land and removed the doors and windows of the messuage aswell as some floor boards, thus rendering the messuage no longer habitable and with the view ofpreventing further occupation by the defendants. Within three weeks of September 17, 1950, thedefendants again trespassed and re-erected their board and shingled chattel house on the land.

On February 16, 1951, the defendants were again ejected and their said board and shingled housewas again put off the land and the plaintiff was again formally put in possession under a warrant ofthe Assistant Court of Appeal. Two weeks later the two defendants re-erected the said board andshingled house on the said land.

On July 9, 1951, the Petty Debt Court for District E awarded the plaintiff the maximum ofdamages for trespass in the pasturing of sheep against the two defendants, and this judgment wasconfirmed by the Assistant Court of Appeal and eventually by the Court of Error.

Since 1951 both defendants have continued to trespass up to the present and it is not disputed thatthey intend to continue their trespass in the future. The defendants in the course of trespassinghave cultivated the plaintiff's land and reaped crops from it, they have placed a chattel house onthe land and lived in it, and appeared to be so doing up to August 23, 1958, when the courtviewed the land in question.

Up to August, 1950, the stone messuage was habitable; the defendants lived in it up to September17, 1950, when the plaintiff removed its windows and doors. On February 16, 1951, when thedefendants were ejected for the second time a hip of the roof of the messuage had been removedand was leaning against the said building and all of the remaining flooring had also been removedand was also leaning against the said building. The plaintiff saw this at a time when the defendantswere both living in their chattel house on the said land. Subsequently all of the roof has beenremoved from the messuage and of its walls only small ruins remain to show the dimension ofsame. There is no evidence that either of the defendants was ever seen to remove any part of theroof, or flooring of this building, but Delbertine Gibbons saw the defendant Hilary Chandlerdigging down part of its wall on one occasion and has heard the sledge-hammer at work duringthe time that these two defendants were living on the land subsequent to the time when theplaintiff was put in possession by order of the Assistant Court of Appeal. Up to 1958 Hilary soldstone from the land and on May 15, 1958, the female defendant was seen heading stone to thelorry from the wall building. Hilary Chandler denies that he or his wife in any way demolished anypart of this messuage. He admits however that he has sold two truck loads of stone which he saysfell from the wall due to heavy rain.

While I am satisfied that the removal of the windows and doors by the plaintiff would haveexposed the building to damage by the weather, particularly as it was an old rubble structure themortar of which would tend to crumble, the rate at which this building has deteriorated anddisappeared from the site during a period [118] when the defendants, although trespassers, wereliving on this land, together with the fact that one defendant was seen engaged in digging downpart of its wall and the other was seen heading out stone at a time when a truck was hauling stonefrom the land, is evidence from which a court, on the balance of probabilities, can only come tothe conclusion that the defendants were actively engaged in demolishing this messuage. The extentof the demolition by the defendants is far from clear but the fact that they did take some part in itis established.

Apart from demolishing the messuage the defendant Hilary Chandler has stated in evidence that hehas been blasting stone out of the land and selling it to be used in making roads. He is a rockblaster and admits that he sold about 12 loads of stone in all of which ten loads were blasted fromthe land and two were sold from the messuage.

The plaintiff has sworn that the two defendants live on her land, that they have walked on her landfrom the time that she was given possession of it, that they claim the land as theirs, that they havesaid that they are not going to leave it and that no matter who puts them off they are going backon. The defendants have not denied any of this and the defendant Hilary Chandler has stated inevidence that his wife is claiming this land, that he has put his house there because she told him to,that he does not intend to leave this land and that it is not the plaintiff's land.

The plaintiff is the owner in possession and both of the defendants have trespassed sinceSeptember, 1950. They have violated the plaintiff's possessory right in a manner which has gonebeyond simple trespass to land, it amounts to destructive trespass and it is also a continuingtrespass which has lasted at least up to August, 1958, when the court visited the land. Over andabove this they have threatened to continue living on this land and do not intend to leave it. Inthese circumstances I do not think that recourse to an action for ejectment and damages is anadequate remedy for the plaintiff; in order to quiet her right to possession of this land this courtissues a perpetual injunction restraining both defendants from trespassing on this land. Thisinjunction is to take effect from January 1, 1960.

On two occasions the male defendant's house has been removed from the land by order of a courtand on each occasion it has been re-erected there. This house has by its presence constituted anuisance, having been on this land since its last re-erection there for at least seven years and Ithink it just and equitable that a mandatory injunction should issue against its owner, the defendantHilary Chandler, ordering him to remove it from this land. This mandatory injunction isaccordingly issued requiring the said defendant, Hilary Chandler, to remove the said chattel housefrom this land on or before December 31, 1959.

In view of the length of time during which this chattel house was allowed to remain on this landfrom its last re-erection there in March, 1951, up to the time when this action was brought, and inview of the time which has elapsed since the action was brought (which latter period is no fault ofthe plaintiff), together with the possible difficulties to be faced in obtaining a house spot andarranging for the removal of this house, I think that three months is a reasonable period forcompliance with the mandatory injunction.

No injunction will be issued in respect of demolition of the messuage because its condition whenthe court viewed the land would not merit such relief. Any further [119] damage to this couldadequately be remedied by fresh action for damages.

In this action, apart from the injunctions claimed, the plaintiff has claimed damages. I think that inthe circumstances of this case the measure of

damages is the loss and in-convenience to theplaintiff worked out in terms of such rent as would be required for a licence to use the land in theway the defendants have used it together with an additional sum as exemplary damages for thewilful persistence of these defendants and the consequent vexation to the plaintiff of this longcontinuing trespass. In connection with the demolition of the messuage and kitchen although Ihave found that the two defendants are responsible in some part for this demolition. The evidencedoes not show to what extent they are liable and there is no evidence of the value of these oldbuildings. Therefore, although this demolition will be taken into account because of itsindisputably vexatious effect on the plaintiff, damages cannot be given otherwise in respect of itbecause the measure of damages here is the difference between the money value of the owner'sinterest before and after the demolition of the building.

Delbertine Gibbons gave evidence that she used to rent land above the land in question of threeroods and 14 perches all arable and that she now rents a half acre from Roach's in the same districtat one shilling a week of which part is arable. She has estimated that the plaintiff's land would beworth about $18 per annum for agricultural purposes. I think that $18 per annum would bereasonable for that purpose; the defendants, however, have used the land for agriculture, forresidence and for blasting stone from it for sale. In these circumstances where the land has beenput to these uses I think that the rental value would be at least $25 per annum.

In awarding an additional amount by way of exemplary damages I have found that the defendantswere high-handed in their conduct by persisting in this trespass for all these years in spite ofhaving been ejected twice by legal process, and that their conduct has shown a contempt of theplaintiff's right, which contempt has gone to the extent of the defendants threatening to persist inthe trespass even in this very trial.

However, the plaintiff suffered these defendants from 1950 to 1954 before bringing this action andthe damages must be assessed also in this light. I think that the proper sum of money to beawarded to the plaintiff as damages is $400.

Judgment is given for the plaintiff for $400 against both defendants and the plaintiff is awarded hercosts to be taxed. [120]