

1922.

*Present: Bertram C.J.*DIAS *v.* NIKKO.53—*C. R. Galle, 2,564.**Action for trespass—Constructive possession of plaintiff.*

Mere constructive possession is not a sufficient basis for an action for trespass.

THE facts appear from the judgment.

Soertsz, for plaintiff, appellant.

Keuneman, for defendant, respondent.

August 25, 1922. BERTRAM C.J.—

I cannot allow this appeal. The plaintiff is the Crown grantee, and he brings the action in respect of an alleged trespass, but at the date of the trespass he had not obtained his grant. It is clear from the case (*Chellamma v. Navasivayam*)¹ that at that date he had no title, and though it would appear from the case of *Daudu Maricar v. Edirisuriya*² that if a purchaser has taken possession of the land, even before a deed of transfer has been obtained, he had a sufficient interest in the land to enable him to bring a possessory action or to sue for trespass; in this case it does not appear that the plaintiff had ever assumed active possession of the land. The record is not full, but at least this is clear that a document was put in by the plaintiff which disclosed the facts on which he relied. The document consisted of the proceedings of a Police Court case, in which the plaintiff had prosecuted the defendant. From those proceedings it appears that the land was then chena, and that plaintiff had never cleared it. On those facts, therefore, the case cannot be brought within the authority last cited. Mr. Soertsz says that if the case is sent back, he might be able to prove constructive possession; he might show that somebody had attended from the Kachcheri, and handed over the land to him. I doubt that very much. There is a letter from the Government Agent informing the plaintiff that the land had been sold to him. I think it most unlikely that anyone would have troubled after that letter to go and put the plaintiff in possession. As advised at present I doubt whether mere constructive possession would be sufficient basis for an action for trespass. Under the circumstances I do not feel justified in sending the matter back for formal trial, and I must dismiss the appeal, with costs.

Appeal dismissed.

¹ (1907) 3 *Bal.* 209.

² (1910) 5 *Bal.* 39.