

Present : Fisher C.J. and Garvin J.

SURABIAL v. SINGAPPU et. al.

313—D. C. Avissawella, 76.

Prescription—One act of violence—Interruption of possession—Ordinance No. 22 of 1871, s. 3.

An isolated act of destructive violence is not sufficient to interrupt prescriptive possession.

AN appeal from a judgment of the District Judge of Avissawella.

Soertsz (with C. V. Ranawake), for defendants, appellants.

H. V. Perera (with Croos Da Brera), for plaintiff, respondent.

February 26, 1929. FISHER C.J.—

In this case the plaintiff sued the defendants for declaration of title to a piece of land to which he acquired the legal title on March 8, 1924. The land lies to the north of land belonging to the first defendant, with which he in good faith incorporated it by putting up a barbed wire fence on its northern boundary, and it had been in his possession on the basis of its being part of the land to which he was legally entitled since July 1, 1916.

On April 26, 1926, the plaintiff forcibly destroyed the fence, and, in the words of the learned Judge, "forcibly cleared the jungle thereon." In so doing, in the opinion of the learned Judge, the plaintiff destroyed and interrupted the possession of the first defendant within the meaning of section 3 of Ordinance No. 22 of 1871. The learned Judge says: "He (the defendant) had had possession adversely to the plaintiff and his predecessors for nine years and nine months, but the plaintiff had broken his chain."

The question we have to decide, therefore, is whether the learned Judge is right in holding that the action of the plaintiff put an end to the possession of the first defendant. It is clear that the plaintiff having committed the acts referred to did nothing further in the direction of taking possession. On the other hand, there is nothing to show that by reason of the acts of the plaintiff the first defendant was dispossessed of or abandoned possession of the land. On the contrary, he indicated clearly that so far as intention is concerned the land was still in his possession and part and parcel of his own

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 FISHER C.J. land, because on June 8, 1926, he took proceedings in the Police Court to have the plaintiff punished for what he had done. In giving judgment in the case of *Siman Appu v. Christian Appu*¹ Lawrie A.C.J. said, at page 291 : “ if the actual physical possession has never been interrupted, it matters not that the possessor has been troubled by lawsuits, or by claims in execution, or by violence ; if he has succeeded in holding possession, these attempts to oust him only make it the more certain that he held adversely to those who disputed with him.” I think that the principle underlying that statement applies to this case.

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In my opinion an isolated occasion of destructive violence is not of itself enough to destroy or interrupt an existing state of things as regards possession. I do not think, therefore, that the learned Judge was right in holding that the first defendant's claim of possession was broken by what happened on April 26, 1926, but I think that it continued at all events up to August 10, 1926, when, according to the record of the criminal proceedings referred to, both parties agreed “ not to do anything on this land pending the civil action.”

I would, therefore, allow the appeal and set aside the judgment of the District Court, and order that judgment be entered for the defendants, with costs in this Court and in the Court below.

GARVIN J.—I agree.

Appeal allowed.

¹ *N. L. R.* 288