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VIJAY KUMAR

v.

JAYANTI LAL AND OTHERS

[SUPREME COURT, 1968 (Moti Tikaram Ag. P.J.), 29th August, 18th October] B

Appellate Jurisdiction

Practice and procedure—several defendants—submission of no case to answer by one only—ruling deferred until after evidence called by other defendants—Public Authorities Protection Ordinance (Cap. 6—1955) s.2. C

Appeal—civil appeal—several defendants—submission of no case to answer by one rejected—evidence called by others—appeal to be decided on whole of evidence.

In an action against several defendants, where one party elects to call no evidence and submits that he has no case to answer, it is correct procedure for the court not to deal with the submission immediately, but to continue with any evidence that may be called by the other defendants and then, in its discretion, permit counsel for the party who called no evidence to make a final submission. On an appeal, where a submission of no case has been rejected in the lower court, the proper course is to decide the appeal on the whole of the evidence. D

Cases referred to: *Smith v. Critchfield* (1885) 14 Q.B.D. 873; 54 L.T. 122: *Cave v. Capel* [1954] 1 Q.B. 367; [1954] 1 All E.R. 428: *Ryland v. Jackson & Brodie* (1902) 18 T.L.R. 574: *Payne v. Harrison* [1961] 2 Q.B. 403; [1961] 2 All E.R. 873: *Semayne's Case* (1558-1774) All E.R. Rep. 62; 77 E.R. 194. E

Appeal against a judgment of the Magistrate's Court: the judgment is reported only on a matter of procedure. F

M. S. Sahu Khan for the appellant.

K. P. Mishra for the respondents.

MOTI TIKARAM J.: [18th October, 1968]—

This is an appeal against a decision of the First Class Magistrate's Court, Ba whereby the appellant's claim for £400 was dismissed. In the Court below the appellant sued the respondents for trespass to premises and certain chattels allegedly in his possession, claiming damages for what he described as 'outrageous conduct committed on the plaintiff by the defendants, their employees and agents'. G

The appellant alleged, inter alia, that the seizure of chattels (under certain fieri facias issued by the first respondent to enforce judgment for the sum of £19.1.5. which they had obtained against one Jafar Ali) was unlawful. H

The learned trial Magistrate found as a fact that the chattels in question belonged to the judgment debtor. He also held that the writ was a valid one. In the course of his judgment, the learned trial Magistrate stated as follows : -

> "Thus the Court's finding that a return was not made to the Court issuing this writ until after the seizure was made is a finding in relation to the second defendant as much as it is a finding in relation to the others.
>
> It follows from this that the second defendant also was executing a valid writ and is thus protected by section 2 of the Public Officers' Protection Ordinance. In so far as the third and fourth defendants were assisting the second defendant under his control they are also protected in the same way."

In regard to the alleged trespass to the appellant's land, the learned trial Magistrate held that the appellant suffered no substantial grievance. Resting on the authority of *Smith v. Critchfield* 54 L.T. 122 as confirmed by *Cave v. Capel* [1954] 1 All E.R. 428, he was of the view that no action for trespass lies.

The grounds of appeal read as follows : -

> "1. *THAT* the learned trial Magistrate erred in law and in fact in not entering judgment for the plaintiff against the first respondents on their election to call no evidence when the evidence of the plaintiff remained uncontradicted.
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> 2. *THAT* the learned trial Magistrate erred in law and in fact on the evidence as a whole in not entering judgment in favour of the appellant when the trespass alleged was committed against the premises and chattels in possession of the appellant at the material date and in not awarding damages for the deprivation of the use of the said chattels by the appellant and causing the appellant humiliation and inconvenience.
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> 3. *THAT* in as much as the second named respondent had admitted that a nulla bona return had been made and that in view of the return so made and having been signed by the Deputy Sheriff on the 20th day of April, 1966 the learned trial Magistrate erred in law and in fact in not finding that there was in law no authority for the respondents to enter the premises of the appellant and remove therefrom the chattels removed from the possession of the appellant and retained by the respondents until 31st day of May, 1966 and consequently the respondents were liable in damages.
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> 4. *THAT* the learned trial Magistrate erred in law and in fact in not finding that the respondents having acted as they did the second respondent was the "special bailiff" of the first respondents and the third and fourth respondents were the servants agents and employees of the first respondents and consequently all the respondents remained liable in damages for trespass.
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> 5. *THAT* the learned trial Magistrate erred in law and in fact in not finding that on the material date, that is, the 20th day of April, 1966 there was no writ of fieri facias in force and consequently the

first respondents were primarily liable and the 2nd, 3rd and 4th respondents secondarily liable as the bailiffs, agents servants or employees of the first respondents and since there was no writ or authority in law in force empowering the respondents to enter and/or remove any chattels in the possession of the appellant no protection could be allowed under and by virtue of the Public Officers Protection Ordinance.

6. *THAT* the learned trial Magistrate erred in law and in fact in holding that the defendants/respondents were entitled to the protection of public officers protection Ordinance.

7. *THAT* the judgment is unreasonable and cannot be supported having regard to the evidence as a whole.

8. *THAT* the appellant reserves the right to add additional grounds of appeal on receipt of record.

In so far as the first ground of appeal is concerned, I hold that the learned trial Magistrate ultimately adopted the right course and he was entitled to take the whole of the evidence into account in deciding whether or not the action against the first respondents had succeeded or not. Both counsel in the Court below had agreed that the previous findings of fact made after submissions of no case to answer in respect of the first respondents be ignored. I agree with the learned Magistrate's view which he ultimately adopted that when one of a number of defendants in a civil action elects to call no evidence, the proper procedure is not to deal with the matter against him immediately, but to continue with any evidence that may be called by the other defendants and then in the Court's discretion to permit counsel for the defendant who called no evidence to make a final submission after the speeches for the plaintiff if the circumstances warrant it. Some support for this view can be found in *Ryland v. Jackson & Brodie* 18 T.L.R. 574. On an appeal such as this, the proper course is to decide the appeal on the whole of the evidence (including the defendants). Authority for this view is to be found in the decision of the Court of Appeal in *Payne v. Harrision & Anor.* [1961] 2 All E.R. 873. The head note of this report reads as follows :-

> "When in a civil action tried by a judge and jury (or by a judge alone) the judge has ruled against a submission by the defendant that there is no case for him to answer and, the defendant having elected to call evidence, his evidence completes the proof of the plaintiff's case, an appeal will be decided on the whole of the evidence (including the defendant's); and, even if the judge wrongly rejected the defendant's submission of no case, the appeal will not be allowed on a hypothetical basis, as if the defendant's evidence should not have been given."

In my view, the learned trial Magistrate's findings are consistent with the whole of the evidence before him. There can therefore be no basis for this Court to differ from his findings of facts. On the facts as found by the learned trial Magistrate, I hold that he came to the right decision in law.

As long ago as 1604, the Court of King's Bench, dealing with a case involving the execution of the King's process by the sheriff held, inter alia, as follows :-

"The house of anyone is not a castle or privilege but for himself, and does not extend to protect any person who flies to his house or the goods of any other which are brought and conveyed into his house to prevent a lawful execution and to escape the ordinary process of law; in such cases after denial on request made, the sheriff may break the house."

(See *Semayne's Case,* (1558-1774) All E.R. Rep. 62)

I have considered all of the remaining grounds of appeal but am unable to find any sufficient cause to reverse the decision of the learned trial Magistrate either in part or full. This appeal is therefore dismissed with costs to the Respondents.

Appeal dismissed.