

Present : Shaw J.

1921.

JAYASUNDARA v. GODAGE.

226—C. R. Galle, 1963.

*Overhanging trees—Right to cut down—Is order of Court necessary?—
Only one co-owner objecting—Have all co-owners to be joined?*

In strict law an order of Court is not necessary to cut down overhanging branches if the person whose land is overhung with branches could clip the branches without trespassing on his neighbour's land. It is desirable that an order of the Court should be obtained in case there is opposition to the trimming of the trees.

Where only one co-owner raised objection to the cutting of the trees, it was held that there was no need to make the other co-owners parties to the action.

THE facts appear from the judgment.

J. S. Jayawardene, for the defendant, appellant.—The defendant is not the sole owner of the land on which the trees stand. The other co-owners should have been joined as defendants. [Shaw J.—Is an action necessary at all for cutting down overhanging trees?]

Elliott, K.C., for the respondent. — The plaintiff anticipated trouble.

Jayawardene, for appellant.—The appellant does not contest the right to cut down overhanging trees in view of the judgment in *Muttiah v. Dias*.¹ [Shaw J.—Do the other co-owners object?]
They might.

Elliott, K.C., for respondent, not called upon.

March 7, 1921. SHAW J.—

The respondent sued the appellant for the purpose of having some trees which overhang his field cut down on the ground that they damage his cultivation. The Commissioner has inspected the trees and found that they do overhang the plaintiff's land, and has made an order issuing authority to the plaintiff to cut the overhanging branches. The defendant appeals. It is clear from the judgment in *Muttiah v. Dias*¹ that the owner of a land which is overhung by a neighbour's trees has a right to have the overhanging trees cut. It was proper to bring an action for the purpose, because an

¹ (1887) 2 N. L. R. 83.

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order of the Court is advisable in case opposition should be made to the trimming of the trees. In strict law, however, it appears to me that an action for an order of the Court would not be necessary if the person whose land is overhung with branches should clip the branches without trespassing on his neighbour's land. It is very desirable, however, that legal authority should be obtained before this right is exercised. A point was taken on the appeal that the other co-owners of the defendant should have been joined as parties to the action. It appears from the trial, however, that the only person raising objection to the clipping of the branches is the person sued. I do not think it necessary in the present case to go to the extent of adding persons who do not wish to contest the right claim of the defendant.

I therefore dismiss the appeal, with costs.

Appeal dismissed.

