

SAMARASINHA v. BALAHAMY.

D. C., Matara, 2,795.

1902.

May 20.

Action for partition—Claim for damages.

In a partition suit, damages cannot be claimed or awarded.

Parties claiming damages in such an action are liable to pay stamp duties on the part of their claim.

THE plaintiff prayed for the partition of a field and for damages, in that "the defendants wrongfully cultivated the fertile portion of the land and appropriated the whole produce" for two years. The District Judge decreed partition and awarded Rs. 25 damages.

Defendants appealed.

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H. Jayawardene, for appellant.—Damages are not recoverable in a partition suit. Stamp duties are not payable in such a case, but an action for damages cannot be raised free of stamps. The decree for partition merely is right, but the order as to damages is wrong.

Bawa, for respondent.—Damages have been proved, and plaintiff is entitled to them.

20th May, 1902. MONCREIFF, A.C.J.—

Plaintiff brought a partition suit and joined with it a claim for damages. The trial took place, and the Judge granted decree for partition and assessed the damages at Rs. 25. I think all parties agreed in doing this, well knowing what they were about. So far as I am aware, the procedure of the Civil Code cannot be adapted to the procedure in a partition case. It does not appear to be the custom to add a cause of action for damages in partition cases, and I think that the partition decree in this case should stand, and that so much of the decree as deals with the claim for damages should be set aside. The parties should pay the stamp duties leviable on that part of the claim, and as to the costs in appeal, parties will pay their own costs.

WENDT, J.—

I agree. It is certainly novel to me that in an action under the Partition Ordinance the plaintiff should join a claim for damages for wrongful possession by the defendant of more than his share. I think there are many reasons of convenience against such a course being allowed.

The plaintiffs and the defendants will make good the amount of stamps which they would have had to use on their pleadings if they had been stamped as for an action for the amount of damages which were claimed.

