
(1931) 03 AHC CK 0027
In the Allahabad High Court

Dhanpat Pandey and Others

APPELLANT

Vs

Raja Pasput Pratap Singh and Others

RESPONDENT

Date of Decision : 24-03-1931

Acts Referred:

Citation : AIR 1931 All 587 : (1931) ILR (All) 764

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Niamatullah, J.—The suit which has given rise to this appeal was brought by the Rajah of Bansi, plaintiff 1, and two of his lessees, plaintiffs 2 and 3, for a perpetual injunction, against 62 defendants, including the appellants in this Court, restraining them from interfering with the plaintiffs' right of ferry across the river Rapti within the boundary of village Ghai Ghat, pargana Bansi, in the Basti District.

2. The plaintiffs' case is that plaintiff 1 has the exclusive right of ferry on the river Rapti in the Basti District, that in pargana Bansi within the boundary of village Ajgara he has a ferry at Tharwaria Ghat for passage of bullock carts, horses, cattle, foot-passengers, etc , across the aforesaid river, and that he has another ferry at Barwa Ghat for a similar purpose. The former is leased to plaintiff 2, and the latter is leased to plaintiff 3. The defendants are said to be proprietors of village Gai Ghat, through which the river Rapti passes at a point between Tharwaria Ghat and Berwa Ghat above referred to. It is alleged by the plaintiffs that for the convenience of the agricultural population of village Gai Ghat plaintiff 1 allowed the defendants to cross the river on a small boat free of any toll, a concession which has been enjoyed by the people of Gai Ghat for many a year; but that since October 1925 the defendants have been running a ferry of their own in village Gai Ghat at a place where land on either side of river Rapti belongs to them, which has materially affected the income accruing from the plaintiffs' ferry at Tharwaria Ghat and Berwa Ghat already referred to.

3. The suit was resisted by the defendants, who alleged that their ferry in village Gai Ghat had been in existence for over 60 years, and that in any case they were entitled to maintain a ferry of their own, the land on either side of the bank where they run their ferry being theirs. They denied the plaintiffs' exclusive right of ferry on the river Rapti wherever it ran in the Basti District. The learned Subordinate Judge of Basti who tried the suit decreed it on the finding that plaintiff 1 was the owner of the ferry at Gai Ghat, namely, that which the defendants claimed to be theirs and which the plaintiffs desired to be discontinued except for the limited purpose they mentioned in their plaint. He further found that the ferry of Gai Ghat was started by the defendants recently, as alleged by the plaintiffs, and had not been in existence as alleged by the defendants. On the last finding he held that the plaintiffs were entitled to restrain the defendants from maintaining a ferry at Gai Ghat. Though the decree passed by the learned Subordinate Judge is justified by the evidence he has not, in our opinion, approached the case from a correct standpoint. The plaintiffs did not claim that they had a ferry at Gai Ghat, and properly no question arose as to whether the ferry which the defendants claimed for themselves is "owned" by the plaintiffs. On the other hand, the plaintiffs' case was that there was no such ferry and that the defendants had encroached on the right of plaintiff 1 to have ferries on the river Rapti to the exclusion of everybody else. In other words, the plaintiffs claim a monopoly in that respect.

4. To clear the ground, we may briefly state the nature of a ferry as known to the law:

The right is wholly unconnected with the ownership or occupation of land, and it is not necessary that a ferry owner should have any property in the soil of the river over which he has a right of ferry. For, again, is it necessary that he should be the owner of the landing places of the ferry, it being sufficient that they are in a public highway or that otherwise he has a right to land upon them. The ferry owner does not occupy the highway over the river, but has merely a right to make a special use of it : Halsbury's Laws of England, Vol. 14, p. 556.

A ferry is created by a royal grant, or in modern days by acts of Parliament, or exists by prescription, which implies a royal grant.

If there be already an existing ferry between two towns in the hands of any person, the grant of another ferry between the said grounds is void....

A grant of a ferry may be in more or less extensive terms. " A grant of "all our ferriages and passages over a certain river applies to existing ferries, and does not confer on the grantee a right to: create new ferries over the same river : . Ibid, p. 557.

5. There is no statute law in India defining the mode of acquisition of ferry right and the conditions under which it can be exercised. Where there is no conflict of interest between the claimant to a ferry and the holder of a franchise from the Government in that respect " it is recognized law in India that a man may set up

a ferry on his own property, and take toll from strangers for carrying them across, and may acquire such a right by grant or by user over the property of others : *Lachmeswar Singh v. Manowar Hossein* [1892] 19 Cal 253 " at p. 262.

6. The sovereign authority can however confer a right of ferry exercisable in a given local area. Accordingly an owner of a ferry, granted under a Government; settlement, who plied it on hire, could restrain by suit another from running his ferry over the same spot, though that other levied no tolls on his ferry, if he did not use it exclusively for the convenience of his own servants and ryots *Luchmessur Singh v. Leelanund Singh* [1879] 4 Cal 599. The general right of the owner of the land on either bank of a river to establish a ferry for profit must give way if it comes in competition with the grantee of the Government who has previously enjoyed a monopoly under his grant. (The judgment then discussed evidence and proceeded) : Considering the oral and documentary evidence adduced by the parties, we are in agreement with the learned Subordinate Judge that apart from a small boat which the zamindara of Gai Ghat were allowed to use for the convenience of themselves and of their tenants there was no regular ferry at Gai Ghat till a year or so before the institution of the present suit. We are clearly of opinion that Gai Ghat which is situate between Tharwaria and Berwa ferries belonging to plaintiff 1 has had a ferry for some time before this litigation- during which it must have materially reduced the plaintiffs' income from Tharwaria and Berwa ferries. The documentary evidence also leads to the conclusion that plaintiff 1 has, at any rate in pargana Bansi, the franchise, of ferries derived from the Government under a settlement in respect of Jalkar Mahal.

7. The case of *Nitya Hari Roy v. Dunne* [1891] 18 Cal 652 seems to cover the points which, arise in the case before us. It was held by a Division Bench of the Calcutta High Court that

the franchise of a ferry is not necessarily an appurtenant to land, but when a right of ferry was claimed as appurtenant to certain villages, the grant of such right by the Crown would not be destroyed by mere non user without waiver, nor by the running of an opposition ferry The franchise would continue as long as the grant continues, and until the person who sets up an opposition ferry could show a Crown grant or give evidence from which a Crown grant should be presumed, the cause of action would remain.

8. The defendants do not allege any Crown grant and rely solely on their ownership of landing places. In the view of the case we take, the decree passed by the learned Subordinate Judge must stand. This appeal is accordingly dismissed with costs.