

(1920) 04 CAL CK 0019
In the Calcutta High Court

Hem Chandra Roy Chowdhury

APPELLANT

Vs

Kristo Chandra Saha Sardar on his death His Heirs and Legal
Representatives, Bepin Behart Saha Sardar and Others

RESPONDENT

Date of Decision : 15-04-1920

Acts Referred:

Citation : 58 Ind. Cas. 879

Hon'ble Judges : Richardson, J; Greaves, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment and decree of the Subordinate Judge of Dacca, dated the 9th October 1917. The plaintiff is the proprietor of a hat known as the Ramchandradi hat, in the sense that the hat is held within a revenue estate belonging to him and that he derives certain profits from it. The Sardar defendants are neighbouring proprietors and, in February, 1 12, they set up a new hat at Gopaldi, within two miles of the plaintiff's hat. There is some controversy as to the details of the circumstances in which the new hat came to be established. The main facts, however, are not in dispute. In the plaintiff's hat, the right of collecting the dues payable by the stall-holders was farmed out to Ijaradars. One of these Ijaradars was Govinda Chandra Dhur Amongst the people who had stalls were a number of Jugis, or cloth sellers, of whom some are co-defendants with the Sardars in this suit. It appears that the Jugis felt themselves aggrieved because the Ijaradar Govinda was collecting subscriptions for the celebration of the Kali Puja at a rate double the rate which had prevailed in previous years. The Jugis, or some of them, in deputation, went to the plaintiff's Naib, Kausiki Charan Chakraborty, and preferred a complaint. If we accept the plaintiff's version of this part of the case, as we may without the result being affected, the Jugis not only complained of having to pay the subscription demanded from them but also demanded the "dismissal" of the Ijaradar. The Naib having refused to dismiss the Ijaradar, the Jugie, who had previously approached the Sardar defendants, went on the next market day to Gopaldi and began selling their cloths there. That was the origin of the new hat which, like

the Rim Chandradi hat, has since been held every Thursday. It is not now disputed that the Sardars did much to encourage traders to come to their market and the result was that their hat flourished with a corresponding diminution in the profits which the plaintiff received from his hat.

2. In the period following the establishment of the new hat, affairs took the course which they often take in these cases. There were breaches of the peace between the rival parties or, at any rate allegations, of breaches of the peace which led to proceedings in the Criminal Courts in the nature of a preliminary trial of strength. It was not till those proceedings had ended adversely to the plaintiff, or those siding with him, that in November, 1914, he instituted the present suit.

3. In his plaint the plaintiff alleged a conspiracy between the Sardar defendants and the Jugis, and the employment of illegal means for the purpose of inducing traders to attend the Gopaldi hat and not to attend the Ram Chandradi hat. On this footing, plaintiff claimed damages. He also prayed for a permanent injunction restraining the defendants from doing various things. The injunction was to restrain the defendants not only from employing illegal means but also from holding a market or hat on Thursdays or on any other day at Gopaldi or any other place within two miles of the plaintiff's hat.

4. In the Court below, the learned Subordinate Judge found that the Jugis had in fact approached the Sardars before they began selling their goods at Gopaldi, a finding in the plaintiff's favour which may again be accepted without harm to the defendants. He also found that the Sardar's peons had in fact engaged themselves in persuading people to desert the old hat and attend the new one. He came, however, to the conclusion that there was no combination between the Sardars and the Jugis amounting to an actionable conspiracy, and that the conduct of the Sardars, or their peon?, was not wrongful or illegal. He, therefore, dismissed the plaintiff's suit in toto. The plaintiff has appealed.

5. Now, I may say at once that there were two points on which we did not think it necessary to call on the learned Counsel for the Sardar defendants for a reply. The first point is the somewhat shadowy claim set up by the plaintiff, that his hat is a very ancient hat and that, on that ground, he is entitled to some special protection. It is true that the hat has existed for a considerable time and it also appears that it is shown on the Revenue Survey Map with the date 1726 below it. Beyond that, however, there are no materials which carry the history of the hat back to the Permanent Settlement and the Subordinate Judge has found that the evidence does not establish that it existed at that time. Even if it had been shown that the hat was in existence in 1793, the case of *Rakhal Das Addy v. Durga Sundari Dasi* 17 C. 458 : 8 Ind. Dec. (N.S.) 845 would be a complete answer to the plaintiff's claim, See also *Nanda Kumar v. Emperor* 11 C.W.N. 1128 : 6 Cr. L.J. 321. In this part of India, there appears to be no such thing as a market franchise or a right to hold a market, conferred by grant from the Crown, At any rate, so far as we are aware and as the learned Vakil for the plaintiff has

been able to inform us, there is no authority which affirms the existence of such a right and no authority which countenances the acquisition of any such right by prescription.

6. It might possibly be expedient that markets should be regulated by some system of licensing. But that raises a question of policy which is outside the province of the Courts. In England, it is said, no one can hold a market without a license from the Crown and the reason has been thus stated: ""The reason why a market or fair cannot be Holden without a grant is not merely for the sake of promoting traffic ; commerce, but also, for the like reason as in the Roman Law, for the preservation of order, and prevention of irregular behaviour; Ubi est multitudo, ibi debet esse rector." The words are those of Mr. justice Wilmot in *Rex, v. Marsden* (1765) 3 Burr. 1812 : 1 W.Bl. 579 : 97 E.R. 1113 and they were cited in the House of Lord in the case of *Hammerton v. Earl of Dysart* (1916) 1 A.C. 57 68, 88 : 85 L.J. Ch. 33 : 13 L.T. 1032 : 80 J.P. 97 : 13 L.G.R. 1255 : 59 S.J. 665 : 31 T.L.R. 592.

7. In Bengal the right to hold a market is treated as incident to the ownership of land. A proprietor may set up a market in proximity to his neighbour's market without infringing the maxim, *Sic utere tuo ut alienum non l?das*. The proprietor of the old market has no monopoly or privilege which is entitled to protection and no immunity from competition *Hammerton v. Earl of Dysart* (1916) 1 A.C. 57 68, 88 : 85 L.J. Ch. 33 : 13 L.T. 1032 : 80 J.P. 97 : 13 L.G.R. 1255 : 59 S.J. 665 : 31 T.L.R. 592. He has no remedy at law merely because his profits are diminished.

8. That is not to say, however, that the setting up of a new market in proximity to an old market is not regarded as an neighborly ant, It almost necessarily leads to friction and sometimes to a state of things which may not inaptly be described as a state of hostilities ending in an appeal first to the Criminal, and then to the Civil Courts.

9. The Second question on which we thought it unnecessary to call on Mr. Byomkesh Chakraborty concerns this suit as a suit against the Jugi defendants. Hare, again, I agree with the learned Subordinate Judge. On the materials before us, I agree that it cannot be said that the Jugis were guilty of any wrongful conduct. They were at liberty to go in deputation to the plaintiff's Naiband complain of conduct on the part of the Ijarada. Govinda, which they considered harsh and oppressive. They may have gone rather far in asking for the "dismissal" of Govinda but they did nothing to entitle the plaintiff to damages. It was said that it is a wrongful act for one person to induce another to break his contract with a third person, and it was argued that the request made to the Naib, coupled with the Jugis going to the Sardars and arranging for the establishment of a new hat, was evidence that both the Sardars and the Jugis were parties to an actionable conspiracy. The position, cannot be sustained. In the first place, there was no breach of any contract between the plaintiff and the Ijaradar, and, secondly, the Ijaradar is not a plaintiff in this suit and claims no damages from the Jugis or any one else. When one man is induced to break his

contract with another it is the latter who may have a right to complain, In any case, the question would arise whether the action of the Jugis was justifiable in the circumstances *South Wales Miners' Federation v. Glamorgan Coal Company* (1905) A.C. 239 : 74 L.J.K.B. 525 : 92 L.T. 710 : 53 W.R. 593 : 21 T.L.R. 441. The request, therefore, made to the Naib gives the present plaintiff no cause of action against the Jugis. So, again, if it was lawful for the Sardars to set up a new hat, any combination between them and the Jugis for that purpose was not in itself unlawful. Finally, it is not shown, or even suggested, that the Jugis were parties to or were in any way concerned in the unlawful conduct attributed to the peons of the Sardars, In my opinion, therefore, as against the Jugis, the suit was properly dismissed and the appeal fails.

10. There remains the question of the conduct of the peons, which I may state in the words of the Subordinate Judge: "Whether the Sardar defendants resorted to force, violence or improper threats for preventing people from going to the plaintiff's hat?" In that connection, the plaintiff examined a large number of witnesses, If their evidence be accepted, the methods of inducements employed by the peons were of the cruder kind, including actual physical compulsion or coercion, which come without difficulty within the expressions used in the line of cases from the *Mogul Steamship Co. v. McGregor* (1892) A.C. 25 : 61 L.J.Q.B. 295 : 66 L.T. 1 : 40 W.R. 337 : 7 Asp. M.C. 120 : 56 J.P. 101 onwards, to denote illegal methods of carrying out objects which may in themselves be lawful. Now the Subordinate Judge has not entirely disbelieved or rejected the testimony of these witnesses. He has accepted their testimony up to a certain point and he has only disbelieved them when they speak to conduct on the part of the peons which was obviously unlawful. We were taken through the whole of the evidence on this part of the case and it seems to me quite impossible to minimize the force of that large body of evidence. It would take too long to go through the depositions in details. I was specially struck by the evidence of the ferry-man, Hari Majhi, who plies a ferry at Gopaldi and by the evidence of the paddy dealers, Abbas, son of Daya Gazi, and Tomizuddi. There is also the witness Agaraddi who used to sell paddy at the Ramchandradi hat His evidence is of some import once because, if accepted, it corroborates not only the evidence of the ferry man but also the evidence of the plaintiff's Naib, Kausiki Mohan; and the plaintiff's servant, Bhikaram Das. Having heard what both sides had to say on all this evidence I was left with a strong impression that a certain amount of actual physical violence--coercion or compulsion--was in fact used by the peons of the Sardars for the purpose of furthering the interest of their master?, the proprietors of the new hat at Gopaldi.

11. It was argued for the Sardars that the question was one of fact and that a Court of Appeal should be slow to differ from the trial Court on a question of fact depending on the credibility and veracity of witnesses. No one disputes that as a general proposition. But there are cases where the trial Judge has approached the evidence from a wrong standpoint or has applied to that evidence wrong standards of probability or improbability. If a trial Judge says that a servant

speaking for his master ought never to be believed, the Appeal Court is not obliged to accept his estimate of the servant's evidence. In such a case the question is not merely a question of the credibility of the particular witness. The witness has not been given a fair chance. There are verdicts or findings which are contrary to the weight of the evidence. In the present case, as I have said, the learned Subordinate Judge has gone some way towards accepting the evidence of the witnesses, His conclusions are thus stated: "The Sirdars employed a number of men at the hat and fed them at Hanif's house. It was stated that these men used to keep order at the hat. But from their own witness it was elicited that only two or three of them used to work at the hat. So it may be inferred that the others remained round about the hat for picketing and persuaded people to attend the new hat. But it is not likely that men thus employed on daily wages ran the risk of being hauled up before the Criminal Court by applying force or committing assault; and the evidence as discussed above does not also establish the story of assault." The Subordinate Judge, therefore, finds that the peons were employed, or employed themselves, in picketing "or the new market. In the view I take, it is not necessary to consider whether peaceful picketing or the mere accosting of people on the high way in order to recommend and invite them to attend the new market would be an actionable nuisance for which the plaintiff would be entitled to damages. But it is obviously short step from such picketing to picketing accompanied by coercive or intimidating threats or the use of physical force to pull or push men towards the new market. The Subordinate Judge says that it is improbable that men employed on daily wages would run the risk of being hauled up before the Criminal Court by applying such force. Two of the peons were examined for the Sardars and we have it from both of them, Abu Rihim and Jamir ud Din, that they get, not daily wages but monthly wages, and I entirely dissent from the Subordinate Judge's view that it is improbable that the peons would resort to any degree of force. On the contrary, it seems to me exceedingly probable that the Sardars' peons would be zealous for their masters and would not be too nice or too scrupulous in the means which they employed. If they were taken before the Magistrate, they would expect their masters to fight their cases for them, On the evidence and in the circumstances, I differ from the learned Subordinate Judge's conclusion, and find that illegal means, in the nature of intimidation and physical compulsion, were employed to induce traders to attend the new hat.

12. Then, what is the result? The conspiracy between the Jugis and the Sardars alleged by the plaintiff is not established. No conspiracy is charged between the Sardars and the peons, but the Sardars are undoubtedly responsible for the Acts of the peons as Acts committed within the scope of their employment. The plaint is wide enough to cover a claim against the Sardars for damages on that footing. The Acts done were unlawful in themselves they were not only intended to injure the plaintiffs' hat but such pecuniary injury was their natural consequence and did in fact ensue. One purpose of the law is to prevent persons from attaining lawful ends by unlawful means and, in my opinion, the plaintiff in the present

case was so interfered with in the peaceful enjoyment of his hat as to entitle him to a civil remedy by way of a suit for damages. If the contrary be held, the peons might repeat their unlawful acts with impunity. The individuals threatened or molested, provided that no great violence was used, would be slow to take proceedings against influential landowners like the Sardars or against their servants.

13. As to the amount which the Sardars should be condemned to pay, the Subordinate Judge has found that the plaintiff suffered loss to the extent of Rs. 900 a year. Without suggesting that it is possible to fix the damages precisely, I would allow the plaintiff damages at the rate of Rs. 900 a year for the period from February 1912 to November 1914.

14. As to the claim for an injunction; as the law stands, the plaintiff is certainly not entitled to an injunction restraining the Sardars from holding a hat at Gopaldi or from holding the hat on Thursdays. If the plaintiff had come to the Civil Court earlier, he might have been entitled to an injunction restraining the defendant Sardars and their servants from employing illegal means to prevent attendance at the plaintiffs' hat, the evidence, however, is clear that after 1913, probably after January 1913, no acts of violence were committed by the Sardars or their servants. That being so, the claim for an injunction must be reheated. I am prepared, however, to leave it open to the plaintiff to apply for an injunction if occasion should arise for his doing so in the future.

15. There remains the question of costs. The appeal will be dismissed as against the Jugi defendants. They have not appeared in this Court and are not entitled, therefore, to any costs here. They are entitled, however, to the costs incurred by them in the Court below. As to the Sardar defendants the trial has been complicated and lengthened by extravagant claims on the part of the plaintiff. The plaintiff is not entitled to his full costs, either in this Court or in the Court below, I think the reasonable order to make is that the plaintiff should get half his costs from the Sardar defendants in both Courts.

Greaves, J.

16. As we are differing from the learned Subordinate Judge on a question of fact, and that after a long and careful trial and the exhaustive judgment, I want to add a few words to the judgment that has just been delivered. At, has already been stated, the plaintiff's hat at Ramchandradi was started many years ago and the Subordinate Judge has found that it was in a flourishing condition at the time the rival hat was started bringing in an income of some Rs. 1,200 a year. The defendants' hat was started by the defendants Nos. 1 to 6 in February 1912 and this suit was not instituted until the 18th November 1914. It is, therefore, open to comment that the plaintiff has been guilty of delay in enforcing such civil remedy as he is entitled to. Now, the suit was based on the contention that the hat started by the Sardar defendants at Gopaldi was the result of a conspiracy between themselves and the Jugi defendants to ruin the plaintiff's hat at

Ramchandradi. Various reliefs were claimed in the suit, and it is not necessary to refer to them in detail. The defenses put forward were that the claim was barred by limitation, that there was no conspiracy established and that the decline of the plaintiffs' hat was due to other reasons than the competition of the hat of the Sardar defendants. The Judge has found that there was no conspiracy, and in this we agree, and it is not necessary to deal with that part of the case. He has also held that no grant of the hat can be inferred and we agree with him in that finding also. He has found that no unlawful means or force was used by the Sardar defendants to prevent the Haturias from attending the plaintiff's hat at Ramchandradi and this is the question which really arises on this appeal. So far as the defence is concerned, the question of limitation has not been pressed before us and Counsel for the respondents admitted that the date of the discontent which induced the Jugi defendants to leave Ramchandradi was not the time of Durga Puja but the time of Kali Puja. So no question of limitation really arises. The lower Court has also found in favour of the plaintiff that the decline of his hat was not due to the causes alleged by the defendants but to the competition of the hat established by the defendants Nos. 1 to 6. There are one or two passages in the judgment of the lower Court to which I think reference can be made. The first passage will be found at page 515 of the printed paper-book Volume II the learned Subordinate Judge says, There can be no doubt that the plaintiff has suffered substantial loss in consequence of the establishment of the new hat. The primary cause of the break up was no doubt the discontent among the traders originating in the oppressive and unsympathetic conduct of the plaintiff's Ijaradara and officers, but it is certain that, unless a new hat had been established, the traders, though smarting under a sense of injustice, would have continued to attend the hat. Then, at page 522, occurs this passage: "The Sardar defendants established the new hat with the co operation of the Jngi defendants who assured them that they would attend the new hat in preference to the plaintiff's hat" Then the Judge found that there was no proof of pressure so far as the Jugis were concerned or any improper conduct on their part. Then comes the following passage at page 538: "The only question to be decided now is, whether the Sardar defendants resorted to force violence or improper threats for preventing people from going to the plaintiff's hat" At pages 540 and 541, the learned Judge states his reasons for arriving at the conclusion that there was no violence or threat used by the Sardars. He says that these defendants used persuasion or offered favourable terms, that there was picketing about the hat to persuade people to attend the new hat and that, upon the evidence, the story of assault is not established. At page 545 he expresses his doubt that the Sardars would have been able by forcible means to have kept away from the plaintiff's hat some five or six thousand people and at page 550 he states his conclusion that it has been satisfactorily established that there was no other cause for the break up of the plaintiff's hat except the discontent of the traders and the persuasion used by the defendants. The last passage to which I desire to refer is to be found at page 552 and it runs as follows: "At the present time the Sardar defendants are not adopting very proper methods to secure attendance to their

hat." Therefore, the only question that really arises is whether the Judge was right in the conclusion which he drew from the evidence, namely, that there was no force or violence or illegal means employed by the Sardar defendants to induce people to attend their hat in preference to attending the hat at Ramchandradi. In the judgment that has just been delivered, the evidence has been carefully considered. There are a very large number of witnesses examined in the case on this point. Their evidence was referred to by the learned Vakil who appeared for the appellant and it was again referred to by the learned Counsel who appeared for the Sardar defendants. Some comment was made with regard to these witnesses that many of them were either servants or tenants under the plaintiff and that their evidence must be discounted on this score. But, even apart from this, it appears to me that there is a considerable body of evidence, in support of the plaintiffs case, namely, that of Karan Ali, Abad Ali, Abbas and Tomizuddi who, as far as we can see, are independent witnesses and, again, so far as the boatman whose evidence has already been referred to, namely, Hari Majhi, is concerned, although he is a tenant of the plaintiff, he is on his own evidence, receiving a pay of Rs. 40 a year from the Sardar defendants for ferrying people to the hat at Gopaldi. It seems to me, therefore, that it is impossible to throw aside, as the learned Subordinate Judge has done, this large body of evidence and to say, in face of the fact that admittedly a considerable number of persons were employed by the Sardar defendants not merely for keeping order in the hat itself but for the purpose of picketing or persuading people to go to their hat, that there was no force or violence used more than was justifiable by the Sardar defendants. It does not seem to me that we are really differing from the Subordinate Judge in any finding with regard to the credibility of the witnesses who appeared before him; but we are rather differing from the conclusion that he has drawn from the evidence with regard to the force or violence used in the case. Speaking for myself, upon the evidence which has been referred to, I fail to see how it is possible to arrive at the conclusion that there was not a certain amount of force or violence used by the Sardar defendants. That being so, the only question that arises is whether damages have been suffered by the plaintiff and this the learned Subordinate Judge has found. The other question that arises is whether, upon such facts, a civil remedy is open to the plaintiff in the suit. Mr. Chakraborty on behalf of the respondents has argued that the only remedy under circumstances of this kind which is open to the plaintiff is a resort to the Criminal Court and he has referred us to various criminal cases that were instituted on both sides. I should be very loath to come to the conclusion that when one has a right to property of the nature of a hat and when force or violence or illegal means are used for preventing people from coming to that hat by the rival hat owner, there is no remedy in the Civil Court either by way of damages or by way of injunction. We have been referred, in the course of this case, to various English cases many of which are complicated so far as this case is concerned by the fact that they relate to trade disputes. The latest case in which the various cases are discussed is the case of *Pratt v. British Medical Association* (1919) 1 K.B. 244 : 88 L.J.K.B. 628 : 120 L.T. 41 : 63 S.J.

84 : 35 T.L.R. 14, Mr. Justice McCardie considered there all the cases of actionable conspiracy and so on that had been dealt with by the English Courts. I read from his judgment at page 260 in which he states as follows: "The true principle of the common law had, I think, already been indicated in *Garret v. Taylor* (1620) Cro. Jac. 567 : 79 E.R. 485 and *Tarleton v. M'Gawley* (1793) 1 Peake N.P.C. 270 : 3 R.R. 689, and the incident of conspiracy seems to add nothing of direct juristic relevance to that principle. In my opinion, the rule of law is reasonably clear that a single person, or a body of persons, will commit an actionable wrong if he or they inflict actual pecuniary damage upon another by the intentional employment of unlawful means to injure that person's business even though the unlawful means may not comprise any specific act which is per se actionable." We were also referred to the case of *Lyons & Sons v. Wilkins* (1899) 1 Ch. 255 : 68 L.J. Ch. 146 : 79 L.T. 709 : 47 W.R. 291 : 63 J.P. 339 : 15 T.L.R. 128. There Lord Justice Chitty in delivering his judgment stated that "the acts of watching or besetting here proved in reference to the 4th sub-section and done with the view mentioned were Acts in themselves unlawful at common law and are not made lawful by the Legislature. In my opinion they constitute a nuisance at common law." It will, therefore, appear that, according to the doctrines of common law, apart from violence, mere besetting or watching may by itself be actionable. I think there is some force, however, in the argument that Mr. Chakraborty has addressed to us as to the application of the principles of a case of this kind to the present case. There, there was a trade dispute. Here, it is a dispute between two rival hat owners ; and the question is whether a rival hat owner is justified in inducing people by means of persuasion to attend his market or shop and to dissuade people from attending the market or shop of the rival owner, There is no doubt that he can do so and the only difficulty arises when the line is overstepped and force and unlawful means are adopted" as, I think, has happened in the present case. I have nothing more to add except that I agree with the conclusion of my learned brother as to the measure of damages and the order which he has made with regard to the costs of the case.