
(1915) 06 AHC CK 0042
In the Allahabad High Court

Jwala Singh and Others

APPELLANT

Vs

Abdul Razak and Another

RESPONDENT

Date of Decision : 01-06-1915

Acts Referred:

Citation : AIR 1915 All 270 : 29 Ind. Cas. 692

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—The plaintiffs-appellants in this Court describe themselves as zemindars of Mouza Rampur Jaichand, Mahal Awal; the defendants, they say, are zemindars of Mouza Bamhiana. The river Gara flows between the two villages. They add that the boats of both parties ply between the Mouzas Bamhiana and Rampur Jaichand but the defendant No. 4 in collusion with defendants Nos. 1 to 3 has of late prevented the plaintiffs from plying their boats and has appropriated the whole income that results from the same; in law and custom the owners of both villages are entitled to ply boats in the Gara between Rampur Jaichand and Bamhiana. They prayed that the defendants may be restrained from obstructing, and that damage may be awarded. In defence the plea is taken that for a very long time the ferry at Bamhiana and the right to ply boats has always appertained to Mouza Bamhiana and the income resulting from the ferry has always been entered in the revenue papers of that village as sewai income.

2. The Munsif of Tilhar, in whose Court the case was instituted, says in his judgment, "It is clear from the statement of the plaintiffs' own witness, the patwari, that the defendants alone have been working the ferry referred to since the last Settlement." The plaintiffs had failed to prove that they at any time since the last Settlement or before have ever worked the ferry on their own side. On the other hand, the defendants had by their evidence shown that they alone had been working the ferry for more than 20 years and had asserted a right to do so by prescriptive and adverse possession. It held, however, that a monopoly to a

ferry can only be acquiesced by a Crown grant. For these reasons it decided that the plaintiffs were entitled to start a rival ferry and that the defendants could not restrain them. It accordingly granted the plaintiffs a decree to this effect, that they are entitled to ply their boats on the river between the villages referred to and that the defendants be restrained from interfering with their doing so. It pronounced no decision upon the question whether the plaintiffs have a right to embark and disembark passengers on the Bamhiana side, holding that it did not arise in the present case. The defendants went in appeal to the District Judge of Shahjahanpur. That Court held that for more than 20 years ferry boats had been plying and the ferrymen had taken leases from the defendants, the owners of the village Bamhiana, and the income arising from it is entered by the patwari in the khatoni of that village; further, it held that the opposite bank of the river belongs to the defendants. The mere fact that there is a right of way across the river does not give the plaintiffs the right to disembark passengers on the defendants land. There is no public landing place there which every one has the right to use. For these reasons it held that the plaintiffs had no right to a declaration that they were entitled to carry passengers across the river at this ferry and allowing the appeal, it dismissed the plaintiffs claim with costs.

3. The plaintiffs have come to this Court and they contend, first, that the defendants have no monopoly to ply their boats across the river and plaintiffs have equal rights with the defendants, next, that the Court below having found that there was a right of way from one village to the other across the river when it was dry, it follows that the plaintiffs could ply their boats over the river when it was full. The second plea was the one that was strongly urged. The learned Vakils argument was that as the public had the right to go down by a path or road to Rampur Jaichand side, to cross the river when it was shallow, land on the Bamhiana side and take up their journey onwards, the defendants could not claim any monopoly to carry passengers across. When asked to point out the law or custom on which the plaintiffs based their alleged right, the learned Vakil could point out neither. Several English cases were cited but I do not think that they are of much use in deciding this matter. The case, in my opinion, resolves itself into the question whether the plaintiffs have acquired any right to easement or to a right in the nature of an easement on the Bamhiana side of the river, when that involves a right to embark and disembark passengers on another's land. It is a misnomer to talk of a public road. Whatever might be the nature of the track from the river side onwards, that track is on land belonging to the zemindars of Bamhiana and the plaintiffs are really seeking to enforce a right in the nature of an easement, when they claim a right to embark and disembark passengers on the Bamhiana land. Following the view taken by the Calcutta High Court in *Kityahari Roy v. Dunne*. 18 C. 652 I am prepared to hold that the use of a ferry by the zemindars of Bamhiana, which has been found to be a long and continuous use, is entitled to prevail until the plaintiffs who are starting up an opposition ferry can show a Crown grant or give evidence from which a Crown grant can be presumed. The result is that the appeal is dismissed

with costs, which will include fees in this Court on the higher scale.