

(1915) 02 CAL CK 0014
In the Calcutta High Court

Krishna Chandra Saha Sardar and Others

APPELLANT

Vs

Hem Chandra Rai Chowdhury

RESPONDENT

Date of Decision : 26-02-1915

Acts Referred:

Citation : 29 Ind. Cas. 855

Hon'ble Judges : Richardson, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against an order granting an interlocutory injunction. The case for the plaintiff-respondent is that under an ancient Crown grant, antecedent to the time of the Permanent Settlement, he is entitled to hold a market on every Thursday on his property known as Ram Chandradi and the defendants have maliciously started a new market on their property known as Gropaldi, which is situated at a distance of two miles. The plaintiff accordingly seeks a permanent injunction to restrain the defendants from holding their market on Thursdays, and also asks for an interlocutory injunction during the pendency of the suit. He further claims substantial damages for loss of profit from his market, due to the establishment of the new market.

2. It is not disputed that the market started by the defendants was opened in February 1912 and the present suit was not instituted till the 18th November 1914. In the interval, there had been attempts at breach of the peace and criminal cases had resulted. On behalf of the plaintiff and his servants, eight criminal cases were instituted against the defendants and their people. The first of these was instituted on the 1st March 1912, that is, within a few days of the establishment of the new market and the last was instituted on the 18th January 1913. Everyone of these cases was dismissed, and in some instances, the complainants were prosecuted and were convicted on the ground that they had instituted false cases. On the other hand, there were two counter-cases instituted by the defendants and their men, and in both instances the accused were convicted, on the 30th June 1913 and the 31st July 1913 respectively.

Since then, so far as we can gather from the materials on the record, there have been no fresh disturbances. The Subordinate Judge, however, has granted an interlocutory injunction which restrains the defendants from holding their market on Thursdays. On behalf of the defendants-appellants, it has been argued, first, that the Subordinate Judge has in substance prejudged the case and has expressed an opinion on the merits; secondly, that as there has been considerable delay on the part of the plaintiff in the institution of this suit, no interlocutory injunction should be granted : and thirdly, that the application should be refused, as it has not been made bona fide by the plaintiff for the preservation of his right, but rather with a view to secure the destruction of the property of the defendants. We have anxiously considered the circumstances of this case and arrived at the conclusion that the injunction must be discharged.

3. The principle applicable to cases of this description is well settled and may be briefly stated. In cases of interlocutory injunctions in aid of the legal right, all the Court usually has to consider is whether the case is so clear and free from objection on equitable grounds that it should interfere without waiting for the legal right to be established. This depends upon various circumstances, and it is impossible to lay down any general rule on the subject by which the discretion of the Court should in all cases be regulated. It is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events; it is quite sufficient if the Court finds a case which shows that there is a substantial question to be investigated and that matters should be preserved in status quo until the final disposal of the question. There is no room for doubt that in the present case there is a substantial question to be investigated in the suit : but can it be contended that the interlocutory injunction is sought with a view to preserve the status quo. The defendants have held their market every Thursday now for three years and have incurred expenses in its establishment and maintenance. The injunction as granted by the lower Court, if maintained, will undoubtedly destroy the market started by the defendants. On the other hand, there is nothing to show that if the defendants are not restrained, at this stage, further injury would be caused to the market founded by the plaintiff : no doubt, the loss in income may continue, but in that respect the plaintiff would, if successful, be amply compensated by a decree for damages. There has been considerable delay on the part of the plaintiff for which no satisfactory reason has been assigned, and he should not now be assisted to the serious detriment of the defendants: *Cooper v. Hubbuck*; *Hilton v. Granville* (1841) 4 Beav. 130 : CP. 283 : 10 L.J. Ch. 398 : 49 E.R. 288 : 54 R.R. 297. The balance of convenience is clearly against the grant of the injunction : the plaintiff has failed to prove, as he was bound to do, that the damage he might sustain if the injunction is refused and he should ultimately turn out to be right, is likely to be greater than the damage which the defendants would suffer if the injunction were granted and they should finally turn out to be right. *Child v. Douglas* (1854) 2 Jur. (N. s.) 950 : 1 K 560 : 5 De G.M. G. 739 : 2 W.R. 701 : 43 E.R. 1057 : 101 R.R. 736. It is further worthy of note that the defendants have readily submitted to the terms

we imposed on them as a condition of withholding the injunction, and have brought into Court a sum of Rs. 500 for the satisfaction of the claim for damages, should the plaintiff be ultimately successful: *Rigby v. G.W. Ry, Co.* (1846) 2 Ph. 44 : 1 C.T.C. 3 : 10 Jur. 531 : 41 E.R. 858 : 15 L.J. Ch. 266 : 78 R.R. 12. He will be sufficiently protected, if, in addition, the trial of the suit is expedited and we shall make an order in that behalf.

4. It has finally been argued on behalf of the plaintiff that an interlocutory injunction should be granted to restrain the defendants from interfering with the traders and customers who might desire to attend the market held on the property of the plaintiff. That, however, would be an injunction for a purpose entirely different from what is contemplated in the injunction granted"; we are clearly of opinion that we should not discharge the order of the Court below and substitute for it an entirely different injunction, the grant whereof can be justified only upon proof of facts not yet investigated. There is nothing on this record to indicate that recently there have been such acts and conduct on the part of the defendants as would necessitate the grant of such an injunction as that now proposed.

5. The result is that this appeal is allowed and the order of the Court below discharged. The record will be sent down at once and the Subordinate Judge directed to take up the suit for early disposal. The costs of this Court as also of the Court below will abide the result of the suit. We assess the hearing, fee at two gold mohurs.

6. The amount deposited by the defendants in this Court will be transmitted to the Court below to be invested in Government securities and retained in that Court till the disposal of the suit.