
(1904) 06 CAL CK 0010
In the Calcutta High Court

Maharaj Bahadur Singh

APPELLANT

Vs

Paresh Nath Singh

RESPONDENT

Date of Decision : 17-06-1904

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30

Citation : (1904) ILR (Cal) 839

Hon'ble Judges : Pargiter, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Pargiter, JJ.—This is an appeal by the defendants NOs. 1 and 3 against a decree for damage and for an injunction passed by the Subordinate Judge of Hazaribagh. The facts of the case may be briefly stated thus:--The plaintiff No. 1, Raja Paresh Nath Singh, zemindar of Gaddi Palgunge, is the owner of the Pareshnath hill. On the top of the hill there are certain shrines built by the Sitambari sect of Jains. There is a road which runs up the hill in question for the convenience and use of the pilgrims resorting to the said shrines; and it may be taken that the owner of the hill, the then zemindar of Gaddi Palgunge, dedicated the road for the use of the public. It appears that some years ago certain disputes broke out between Raja Paresh Nath Singh and the Sitambari sect of Jains, and these disputes were settled by an ekrarnamah executed between the parties in the year 1872; and the conditions of that ekrarnamah were subsequently reaffirmed in another ekrarnamah in the year 1878. Under these ekramamahs, the Sitambari Jains agreed to pay to the Raja certain shares of charnawas or offerings received at the shrines on the top of the hill, the Raja covenanting not to molest the Sitambaris and the pilgrims resorting to the said shrines, and also covenanting to continue to keep the road up the hill in repair. The road in question, however, was very steep at certain points thereof, the pilgrims being much inconvenienced in consequence, and it would appear that in February 1897 there was something like an informal meeting of a number of pilgrims belonging to the Degambari sect of Jains. They resolved to open a subscription book for the purpose of constructing a flight of steps between the said points on the road for

the convenience of the pilgrims resorting to the shrines, they entrusted the supervision of the work to five individuals, Harlal Ji, Raghudas Ji, Hazarimull Ji, Sheo Narain Ajense Matilal Patoji. On the 8th March 1898 a hukumnamah was granted by the Raja to Harlal Ji, one of the five persons we have just mentioned, describing him (Harlal Ji) as the gomastha of the Bispanthi Degambari sect of Jains, authorising him to construct the flight of steps, which had been resolved upon, with this condition, however, that the construction should be made for the convenience of the public, and not for the personal benefit of Harlal Ji, and that the latter should not attempt to create thereby any right in himself in any portion of the hill Pareshnath. By virtue of this hukumnamah, it would seem that Harlal Ji and the other persons mentioned in the resolution of the pilgrims, to which we have already referred, commenced to construct a flight of steps. They did construct a number of steps between certain points on the road in question, but, after they had done so, it is alleged that the defendants Nos. 1 to 3 destroyed some of the same. It is in consequence of this destruction by the defendants that the present suit was instituted.

2. The suit was instituted by Raja Paresh Nath Singh, the zemindar, Raghu Ji, Chela of Harlal Ji (he having in the meantime died), Hazarimull, Sheo Narain Lal and Matilal Set, the allegation in the plaint being that, under orders of Gopi Babu, manager of defendant No. 1, Maharaj Bahadur, a minor, defendants Nos. 2 and 3 destroyed the flight of steps in question, and thus caused considerable damage. In one portion of the plaint the plaintiffs referred to the hukumnamah of the 8th March 1898, to which reference has already been made, and there Raghu Ji, Hazarimull, Sheo Narain Lai and Matilal, that is to say plaintiffs Nos. 2 to 5, are described as the representatives of the Degambari sect of Jains. And it is stated that these persons commenced the work in February 1898 and, after the work was completed to a certain point, the defendants caused the destruction complained of. They asked that a decree for damage to the extent of Rs. 2,500 be awarded to the plaintiffs, and that an injunction be issued upon the defendants restraining them from demolishing the remaining steps, and from offering opposition to the construction of the stairs on the road in question, which had not yet been built.

3. We may here mention that, pending the suit, the defendant No. 2 Golab Pande died; and the Court below decreed the suit against the remaining defendants. Hence this appeal, as we have already indicated, by the defendants Nos. 1 and 3.

4. The principal ground which has been urged before us by the learned vakil for the appellants is that this being really a suit on behalf of the Degambari sect of Jains, of which sect the plaintiffs are members, the suit could not proceed without special permission from the Court being obtained u/s 30, Code of Civil Procedure. That section runs as follows: "Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's

expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in such case may direct." The Section indicates that the suit must be a suit on behalf of numerous parties; and it may well be said, having regarded to paragraph 3 of the plaint, to which reference has already been made, that so far as the plaintiff Nos. 2 to 5 are concerned, they substantially sued on behalf of the Degambari sect of the Jains generally; and so the Section applies. We, however, observe that the Allahabad High Court in the case of Hira Lal v. Bhairon (1883) ILR 5 All. 602, with reference to a question of a similar nature, which then arose before it, expressed its opinion as follows: "We read the first part of this Section as implying that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing, they also wishing the same." Now looking at the plaint as a whole, although it may be said that the plaintiffs Nos. 2 to 5 wished to sue on behalf for the Degambari sect of the Jains, yet there is nothing to indicate that the other members of that sect wished to bring the suit.

5. But however that may be, and assuming that, so far as (sic) plaintiffs Nos. 2 to 5 are concerned, they really sued in their representative capacity, i.e., as representing the whole of the Degambari sect of Jains, yet so far as plaintiff No. 1, Raja Paresh Nath Singh, is concerned, his case stands upon a wholly different ground. He is the owner of the soil over which road the runs, the public having only a right of way and nothing more. As owner of the soil, the Raja is entitled to exercise all rights so as not to interfere with the right of way, which exists in the public. The law on this subject seems to have been thoroughly considered in England in the case of *The Vestry of St. Mary, Newington v. Jacobs* (1871) L.R. 7 Q.B. 47, where it was held that the owner of the soil, who dedicates a way to the public, parts with no other right than a right of passage, and that he might exercise any right not inconsistent with the exercise of the right of way of the public. Goddard in his *Treatise on the Law of Easements*, after referring to the case that we have just quoted, in page 104 makes the following observations: "The right," that is to say, the right in the public, "is not a right to the land, nor to any corporeal interest in the land, and the soil is in no way the property of the owner of the right. From this it follows that, as long as the owner of the right of way is not prevented enjoying his easement, he has no right to prevent the land-owner doing anything he pleases with the soil, if either has he any right to complain or interfere with any other person, whatever he may be doing, even though it may be an unlawful act or a trespass as against the owner of the soil."

6. Bearing in mind the principle enunciated in the case of *the Vestry of St. Mary, Newington v. Jacobs* (1871) L.R. 7 Q.B. 47, and the observations to which, we have just referred, let us consider whether in what was done either by the Raja or by the plaintiffs Nos. 2 to 5 under his authority, there was any interference with the easement, which is the only right that exists in the public (The Raja was entitled) to make any improvement in the road for the convenience of the (public, and he might have authorised any body to make such improvement. He

did authorize Harlal Pujari as representing the Degambari sect of the Jains, and that person and the other persons to whom some of the Degambaris entrusted the supervision of the construction of the flight of steps, commenced the work) tin question, and the steps were constructed between certain points (SIC) the road. The Subordinate Judge has, upon a careful examination (sic) the evidence adduced on both, sides, found that the work done was an improvement, and that it was for the purpose of affording greater facilities to the pilgrims resorting to the shrines on the top of the hill, This finding has not been seriously questioned by the appellants, though, no doubt, Babu Dwarkanath Chuckerbutty, with the usual care that he bestows upon his cases, did call our attention to certain portions of the evidence, which, might perhaps be taken to suggest a different result. We, however, take it upon the evidence as a whole that the construction of the flight of steps was an improvement upon the road, and that the defendants, or rather some of them, chose to destroy many of these steps; and this necessitated the institution of the present suit. Now it seems to us that, when the flight of steps was constructed, the steps became part of the road, and they became annexed to the soil of which the Raja, the plaintiff No. 1, is the owner. Under the two ekrarnamaha of the years 1872 and 1878 to which we have already referred, he was responsible for keeping the road in order and in repair, and if anybody destroyed the improvement, that was effected, either by himself or by others, Under authority received from him, he was entitled, in our judgment, to institute a suit, if not for anything else, yet for an injunction restraining the defendants from, repeating their acts of destruction. We are also of opinion that he was entitled to sue for damage as well. The road in question he was bound to keep in repair and in order for the use of the public; and it is obvious that, whoever might have borne the costs of the improvoment, he was entitled to bring a suit for the damage sustained by reason of the work of destruction committed by the defendants, (sic) improvement in question having been made under his express authority. It has, however, been contended by the learned vakil for the appellants that the road, being a public road, the plaintiff, had no right to sue without proving some special damage. (sic) argument may apply to the plaintiffs Nos. 2 to 6, but certainly, not to the plaintiff No. 1; for he does not sue as a member of the public, but as the owner of the soil and the person who, under the terms of the two ekrars of 1872 and 1878, (sic) was bound to keep the road in repair and in order.

7. The next question that has been raised before us is as to the propriety of the decree for damages passed against the defendant No. 1, Maharaj Bahadur Singh. We have already mentioned that he is a minor. The allegation in the plaint, so far as he is concerned, is that his manager, Gopi Babu, ordered somebody else to destroy the flight of steps constructed by the plaintiffs Nos. 3 to 5. The act of Gopi Babu, as manager of Maharaj Bahadur Singh, was not an act in connection with the management of his estate; and we fail to see how Maharaj Bahadur Singh could be held liable for a tort committed by a person, who happened to be his manager for the time being or by other persons acting under such manager"s

order. The Subordinate Judge does not seem to have sufficiently considered this matter. We are of opinion that the, decree for damages, so far as it has been pronounced against the defendant No. 1, cannot be sustained. But the decree for an injunction may well be sustained, for it is obvious that people in the employ of the defendant No. 1 have committed the acts of destruction complained of, and that the same work of destruction may be repeated. Upon this ground we see no reason to interfere with the decree of the Court below in so far as it relates to the injunction against defendant No. 1. The decree both for injunction and for damages against the defendants must stand.

8. The result is that this appeal is allowed so far as to dismiss the claim for damages as against the defendant No. 1, In other respects it is affirmed.

9. The plaintiffs are entitled to their costs in this Court from defendant No. 3 and to their costs in the lower Court from defendants Nos. 2 and 3.