

(1934) 03 CAL CK 0020
In the Calcutta High Court

Mohammad Zahadur Rahim

APPELLANT

Vs

Satyendra Narayan Mookhopadhy and Others

RESPONDENT

Date of Decision : 08-03-1934

Acts Referred:

Citation : AIR 1934 Cal 752

Hon'ble Judges : Mallik, J;M. C. Ghose, J

Bench : Full Bench

Judgement

Mallik, J.—The plaintiff-respondent is a patnidar of village Dadhia while defendant 1 is a patnidar of village Ayarpur which is contiguous to Dadhia. A mela is held on some land in Dadhia on the 3rd, 4th and 5th day after Sripanchimi every year. According to the plaintiff, defendant 1, along with the other defendants, has been trying to set up a rival mela on his land in Ayarpur on the three identical days by setting shopkeepers there by the use of force, violence, intimidation and threat for some time past. On these allegations the plaintiff instituted the suit that has given rise to the present appeal for a declaration of his right to hold a mela on his land in Dadhia, for damages as compensation for the loss caused to him by the defendants' disturbance and interference with the plaintiff's right, and also for a permanent injunction restraining the defendants from holding a rival mela or setting up shops on their land in Ayarpur at the time of the Dadhia mela. The plaintiff's claim was resisted by the defendants on various grounds. These grounds were overruled by the Court of first instance and the trial Judge gave a decree to the plaintiff declaring the plaintiff's right to hold a mela on his land in Dadhia, giving him damages for Rs. 100 and granting the permanent injunction as prayed for. This decision was affirmed on appeal. Defendant 1 is the appellant before us.

2. A preliminary objection was raised that the appeal is incompetent inasmuch as the heirs of respondent 7 who was dead had not been substituted and the appellant did not want to proceed against respondents 8 and 9, and the appeal has been dismissed as against these three respondents. I do not think that there

is any substance in this preliminary objection. The appeal may have been dismissed as against these three respondents who with the appellant had been made defendants in the suit, but it cannot be contended that the present appeal cannot proceed in the absence of those respondents.

3. Mr. Gupta for the appellant had no exception to take to that part of the decree of the lower appellate Court by which the plaintiff had obtained a declaration of his title and also damages. But he strenuously attacked the part by which an absolute permanent injunction had been granted. His contention was that the grant of absolute injunction in the present case whereby the defendant-appellant has been restrained from enjoying his own land is wholly illegal. This contention, in my opinion, is well-founded and must therefore prevail. It is an unassailable proposition of law that an act which is not unlawful in itself does not become unlawful merely because it interferes with other people's business or merely because the motive of the act is bad: see *Sorrell v. Smith* (1925) AC 700 . The appellant is the owner of village Ayarpur and as such owner he has every right to hold a mela on his land in Ayarpur on any day he likes just in the same way as the plaintiff has a right to hold a mela on his land in Dadhia. The defendant's action in holding such a mela would not be unlawful merely because it may interfere with the plaintiff's mela or merely because the defendant in holding his mela had a bad motive for his act. But such an act on his part would be an actionable wrong if he would exercise his right of using his land by the employment of illegal means by setting shopkeepers by the use of force or violence or intimidation or threat. In the present case the lower appellate Court has found in a way that the defendant did use intimidation and threat in making the shopkeepers to come to his land. This was certainly an actionable wrong and there would have been nothing illegal in granting an injunction that would, restrain the defendant from doing it.

4. But the injunction that has been made in the present case restrained the defendant not only from using his land and exercising his rights by illegal means but restrained him also from exercising those rights even in a lawful manner. The effect of the injunction given in the case has been to make an invasion on the defendant's legitimate rights to use his own property rights which he is perfectly justified in exercising so long as he does not exercise them in an illegal way.

5. Mr. Sashtri contended that in order to make the injunction effective it was necessary to give it in an absolute form, his contention being that it would not be possible to distinguish the exercise of the defendant's rights to use his land by employing illegal means from an exercise of those rights by means that are not unlawful. This contention, I need hardly say, is not worthy of any serious consideration. There can be no difficulty in saying whether a man when he exercises his rights, exercises them by illegal means or in a way in which there is nothing unlawful. The decree of the lower appellate Court cannot therefore in my opinion be maintained in its entirety. I would accordingly maintain it so far as it relates to the declaration of the plaintiff's right and also to damages. But I would

set aside the order of injunction that has been made and grant in its place an injunction restraining the defendant from holding a mela on his land in Ayarpur by the employment of illegal means by use of force or violence or intimidation or threat. I would make no order as to costs in this appeal.

M. C. Ghose, J.

6. The decree given by the trial Court was to this effect: The plaintiff's right to hold the mela in their Dadhia mela ground peaceably and without interruption by the defendants is established. The defendants against whom the suit is decreed are restrained permanently from holding a rival mela in their village Ayarpur or in any land close to the Dadhia mela of the plaintiffs or setting up any shop in any such land on the Saptami Ashtami and Nabami days following the Saraswati puja. The plaintiffs will also get Rs. 100 from these defendants by way, of damages. I agree with my learned brother that the first and the third portions of the decree are correct and should stand, but the second portion whereby the defendants are restrained permanently from holding a lawful mela in their own village, is not in accordance with law. The defendants may be lawfully restrained from illegally preventing people from attending the plaintiffs' mela. But they should not be restrained from holding a mela or shops in their own land in a peaceful manner. I therefore agree with my learned brother that the wording of the injunction should be altered in the manner indicated by him.