

(1934) 01 PAT CK 0001
In the Patna High Court

Muhammad Khalilur Hasan and Others	APPELLANT
Vs	
Janardan Prasad Singh and Others	RESPONDENT

Date of Decision : 29-01-1934

Acts Referred:

Citation : AIR 1934 Patna 264

Hon'ble Judges : James, J; Fazl Ali, J

Bench : Full Bench

Judgement

James, J.—The plaintiffs are the proprietors of Buzrug Doar village on the north bank of the Bur Gandak. The defendants are the proprietors of a village on the opposite bank named Belsandi. From time immemorial there has been a ferry between the two villages, with landing places on each bank, which in 1897 or at some time before that was made fit to carry loaded carts by the proprietors on the northern side, who had established a market in their village. A market was subsequently opened in Belsandi village; and the competition between the two markets led to ill feeling between the two sets of proprietors, who apparently had hitherto worked the ferry jointly and without friction.

2. The proprietors of Belsandi then attempted to assert exclusive right in the ferry which was contested by the proprietors of Buzrug Doar who in or about 1920 established by suit their right to share in the profits of the ferry. Early in 1926 the proprietors of Belsandi opened a new ferry about six hundred yards lower down the stream than the former ferry, having its landing place on the north in another village in which the proprietors of Belsandi have a share. The suit out of which this appeal arises was instituted by the landlords of Buzrug Doar on the allegations that the landlords of Belsandi had intentionally obstructed the road leading to the old ferry, so that the landing place could no longer be reached by carts, and that they had taken the boats of the old ferry to make their new ferry.

3. The plaintiffs prayed for a declaration that the defendants had no right to establish a new ferry in such a way as to injure them; and for an order for the

removal of the new ferry. They prayed also that the defendants might be required to destroy the embankment which according to the plaintiffs obstructed the route to the landing place of the older ferry; for a permanent injunction restraining the defendants from closing any portion of their road; and for a decree for one-half of the net income of the ferry from 2nd January 1926 until the date of suit. The Munsif found that the old ferry had ceased to exist not on account of any act of the defendants but because the course of the river had by erosion made the former route impracticable. The defendants had not by their embankment obstructed the route to the former landing place. They had not taken for their new ferry the old boats which belonged partly or wholly to the plaintiffs.

4. He further found that the plaintiffs had not been able to prove that they possessed such a ferry franchise or right of exclusive ferry as would entitle them to prevent the defendants from setting up an opposition ferry on their own land. He accordingly dismissed the suit and his decree was confirmed on appeal by the Subordinate Judge.

Mr. Hasan Jan on behalf of the plaintiffs-appellants argues that because the plaintiffs proved in their former suit the existence of the joint ferry from time immemorial we ought therefore on the analogy of English Law to presume a lost grant from the ruling power giving an exclusive right of ferry, with right to prevent the establishment of an opposition ferry which would reduce the profit from the existing ferry.

5. He further argues that since the plaintiffs and the defendants, were partners in conducting the old ferry the defendants ought to be held liable to account to the plaintiffs for any profit they made by setting up an opposition business to compete with that partnerships. But whether we have any doubt regarding the correctness of the findings or not, we are bound by the findings of fact in second appeal. The plaintiffs have apparently not run their ferry since 1926 and it cannot therefore be said that the defendants have taken any part of the profit which the plaintiffs would otherwise have made. The plaintiffs set up a certain explanation of why they had ceased to work their ferry, alleging that the defendants had obstructed the way to the ferry and that they had taken the boats; but on those points, the finding of fact is in favour of the defendants; and it has been definitely found by the Courts below that the old ferry was brought to an end because by the action of the river, the landing place in Belsandi had become unfit for use.

6. On the findings of fact it appears that it would have been impossible to continue the old ferry at the place where it originally stood and when the joint ferry was thus brought to an end, the defendants were certainly entitled to make a new ferry lower down the stream with landing place in their own village. If they had taken the boats of the partnership for the purpose or if by the mere establishment of the new ferry, they had injured the old ferry, it might perhaps have been said that the defendants must account to the plaintiffs for the profits

made from the new ferry; but the finding of fact is that the new ferry was not established with the boats in which the plaintiffs had any share, and that the old ferry had become impossible to work when the new ferry was established.

7. In these circumstances the defendants cannot be treated as partners setting up a business in opposition to that of the partnership or as partners setting up a business with a portion of the partnership capital, and on these findings of fact no relief can be granted to the plaintiffs.

On the question of whether if the facts proved had been otherwise, the plaintiffs would have been able to establish a claim to a right of exclusive ferry on the presumption of a grant from the Crown in accordance with the English Law, any remarks which we make must be merely in the nature of obiter dicta. It has not been shown in this case that profits derived from this ferry were treated as part of the assets of the estate at the time of the permanent settlement.

8. The effect of the recognition of a monopoly, on the presumption of a grant from the Crown in English Law, may often cause inconvenience; but that inconvenience is to some extent tempered by the fact that the monopolist is compelled to maintain his ferry in working order. We doubt very greatly whether when this ferry fell into disuse, it would have been open to the Secretary of State by suit to compel the parties to restore it; and we do not consider that on the facts proved the plaintiffs would have been entitled to require the removal of an opposition ferry which might have been established by any person who had proprietary right in the bed of their river and in the foreshore on each side.

9. Mr. A.B. Mukharji on behalf of the respondents says that they will have no objection to the re-establishment of the old ferry by the plaintiffs as their own ferry if they can make use of the, old landing place; but he says that this will be practically impossible.

This appeal must be dismissed with costs.

Fazl Ali, J.

10. I agree.