

(1925) 03 CAL CK 0034
In the Calcutta High Court

Peary Lal Mullik

APPELLANT

Vs

Surendra Nath and Others

RESPONDENT

Date of Decision : 19-03-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 91

Citation : AIR 1925 Cal 1233

Hon'ble Judges : Suhrawardy, J; Duval, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This appeal is by the defendant in a suit brought by the plaintiffs on behalf of the Hindu public of a village called Sukhchar and other neighbouring villages on the banks of the Hughli for a declaration that the public have the right to use a certain ghat and steps for certain purposes. The claim was based upon the use of the ghat from time immemorial and also upon dedication by one Bir Narasingh Dutt, who took a lease of this plot of land from the zamindars. Both the Courts below have agreed in allowing the plaintiffs a modified decree, namely, a declaration that they were entitled to use the ghat for bathing and certain other religious purposes though the property was the private property of the defendant.

2. Two points have been raised by the learned advocate for the appellant. The first objection is as to the competency of the suit in the form in which it is brought. The suit is brought under Order 1, Rule 8, Civil P.C. on behalf and for the benefit of the Hindu residents of the village Sukhchar and other adjoining villages. It is contended that the suit could only be brought u/s 91, Civil P.C. with the consent of the Advocate-General; and It is accordingly argued that) it is a case of public nuisance within the meaning of that section. In their plaint the plaintiffs state as follows:

The defendant who has now purchased the interest of Narasingh Dutt from his heirs obstructed the ghat after his purchase and prevented the people from using it freely." We do not think that this is a case of nuisance much less of public

nuisance. " Nuisance " has not been defined in the Civil P C. but it has been defined in the Indian Penal Code as an act or illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in that vicinity or to persons who may have occasion to use any public right. It is hardly conceivable that for the act complained of the defendant can be prosecuted before the criminal Court for causing public nuisance. The obstruction on which the cause of action is based is the infringement of their right to use the ghat for certain purposes. Be that as it may, Section 91 does not take away the right of the plaintiffs to sue which may exist independently of its provisions. No authority has been placed before us nor do we think that Section 91 controls or restricts the provisions of Order 1, Rule 8. This contention, therefore, ought not to prevail.

The second point taken by the learned advocate is that on the facts found the plaintiffs are not entitled to the relief granted to them. It is argued that the plaintiffs came to Court with a case of actual dedication by Bir Narasingh Dutt, but the decree was founded upon long user by the plaintiffs of the property in suit. The view taken by the Subordinate Judge was that the plaintiffs were not able to prove actual dedication by Bir Narasingh Dutt; but from the conduct of the parties and the subsequent events it appeared that though there was no dedication by Bir Narasingh Dutt, he intended to dedicate the property for public use and that he did so dedicate for more than 40 years ago, and the people used it in accordance with his desire. The learned Subordinate Judge was of opinion that written dedication in a case like this is not necessary, and he held that the facts disclosed in this case sufficiently created a dedication of the land in favour of the plaintiffs. The learned Additional District Judge in appeal concurred with the Subordinate Judge on these findings and has also supported his judgment by holding that in the circumstances of this case lost grant may be presumed. He has relied upon a circumstance which throws a good deal of light upon the present controversy. Bir Narsingh Dutt took a lease of this property from the zamindar on the distinct understanding that it would be for the benefit of the local public and this formed a part of the consideration for the lease. He or his successors cannot now be allowed to turn round and say that they have an absolute interest in the land leased and that the public has no right to use the ghat for the purpose mentioned in the lease. He has found that the people of the villages have been using the ghat, which was at one time kachcha from time immemorial. The learned Judge is right in deducing from these facts that the title is based upon lost grant. He has further found that Bir Narsingh Dutt made the ghat pucca and allowed the public to use it in the same way as they used it before; and further that the portion on which this right was exercised by the public was walled off from the portion, which is in possession of and used by the defendant. On those facts the learned Judge has come to a finding which we consider to be one, which cannot be challenged in second appeal.

3. The result is that this appeal fails and is dismissed with costs.

Duval, J.

4. I agree.