
(1939) 10 BOM CK 0022
In the Bombay High Court
Case No : First Appeal No. 108 of 1938

Purshottamdas Parbhudas Patel

APPELLANT

Vs

Bai Dahi

RESPONDENT

Date of Decision : 03-10-1939

Acts Referred:

Citation : AIR 1940 Bom 205 : (1940) 42 BOMLR 358

Hon'ble Judges : Wassoodew, J; Indarnarayan, J

Bench : Division Bench

Judgement

Wassoodew, J.—The plaintiffs are the pujaris of a temple of "Balía Kaka " in the village of Lambha in Ahmedabad. The defendants represent the village people of Lambha. It is common ground that Hindoos from Gujarat) have for several generations made vows to that idol when stricken with small-pox and similar diseases, and have personally come to fulfil their vows and made voluntary offerings of money and other goods. Those offerings the plaintiffs have been appropriating as of right as pujaris of the temple. Some time back, the villagers, perhaps animated by jealousy, attempted to claim an interest in those offerings, but in a suit instituted by the plaintiffs in 1919 the latter's right to exclusively appropriate, them was established. Recently, on May 25, 1933, one of the defendants, namely defendant No. 1, Patel Purshottam Shambhudās, purchased some open land in the village on the road leading to this temple and not far away from it, and published a notice in July, 1933, that he intended to build a new temple in fulfilment of his vow, and that a temple of Balía Kaka would be built at his own expense. The plaintiffs therefore instituted this action alleging that the defendants would thereby be practising deception on the pilgrims to their temple and depriving them of their emoluments. It is said that inasmuch as this temple of Lambha is particularly celebrated in Gujarat, a similar temple built in the vicinity would be an infringement of their right as pujaris. In regard to the cause of action the plaint states as follows :-

The Balía, Kaka Dev of Lambha has been an institution of very long standing and

no one has a right to set up a temple or institution of that name at" Lambha. There has been only one institution or temple in existence at Lambha from ancient times. We are the hereditary pujaris of the said institution of Balia Kaka Dev at Lambha a long time since. On account of the said office we are getting annual income. Our right in connection with the said office and the income has been already established in a civil suit against village people. These defendants or any other persons have no right to do any such act which would tend to affect the said office of ours or reduce our income in connection with the said office. If the village people are allowed to set up a new temple of the name of Balia Kaka of Lambha and in the vicinity of the present temple and to receive the income therefrom through pujaris or in any other way, then our office as the pujaris of the Balia Kaka Dev of Lambha and the income we get in connection therewith will be prejudicially affected and our established right will be affected thereby.

2. The plaintiffs therefore claimed an injunction against the defendants restraining them from setting up or causing to be set up a new temple of Balia Kaka in the village of Lambha. Alternatively they maintained that the defendants should be directed to make it known to others that the Balia Kaka temple which they would build is a new temple and an injunction issued to them preventing them from designating the new temple " Balia Kaka of Lambha " or by any other similar name.

3. The contentions of the defendants inter alia were that there was no cause of action for the suit, and that the plaintiffs being mere pujaris and not owners of the existing temple could not prevent the defendants from building a new temple and installing therein any deity they liked.

4. The learned trial Judge held that the plaintiffs were entitled to a declaration and injunction in a qualified form and passed an order to the following effect :-

It is declared that the defendants (excepting defendants Nos. 4 and 5) and the village people of Lambha have no right to set up a new temple of Balia Kaka in the name of the Balia Kaka of Lambha, or in any other name, which can be said to be a colourable imitation thereof and to receive offerings made in the name of and meant for the Balia Kaka of Lambha. Defendants (excepting defendants Nos. 4 and 5) are restrained from doing anything contrary to and inconsistent with the above said declaration. Defendants bear their own costs. Defendants Nos. 1 to 3 pay the costs of the plaintiffs.

5. Defendants Nos. 4 and 5, who are also pujaris like the plaintiffs, but who had refused to join the plaintiffs and were therefore made pro forma defendants, were exempted from the restraining influence of the above order. Defendants Nos. 1 to 3 have appealed against the order.

6. The plaintiffs' case as adumbrated in the pleadings rests on the following among other grounds, first, that the new temple proposed to be built by the defendants would necessarily affect their income which they say is derived from their office as pujaris ; secondly theirs being a right to worship and receive the

offerings, that right will be affected if intending pilgrims were misled by the installation of Balia Kaka in a new temple built in the vicinity ; and, lastly, that inasmuch as the) defendants representing the village people have combined or conspired together with the intention of doing harm to the plaintiffs by constructing a temple of Balia Kaka and intimidating the pilgrims and coercing them into refusing to make offerings to the plaintiffs' temple, they have committed an actionable wrong.

7. In appreciating the plaintiffs' case it is important to recapitulate the result of the suit between the pujaris and the village people in 1921, when the latter claimed a share in the profits of this temple. An extreme claim was then made by the pujaris that they were the owners of the temple and also of the idol and could remove the idol to any other place outside the precincts of the village as they liked. Upon issues joined, the Court there held that the plaintiffs and defendants Nos. 8 to 11 were not the owners of the temple and the stone image of Balia Kaka, that they were merely hereditary pujaris and could receive the offerings made in discharge of the vows of the devotees of Balia Kaka, but that they had no right to remove the image of Balia Kaka except at night few protecting the same, and that they were obliged to bring it back to the temple in the morning and hand it over to the next pujari according to his turn of worship, and that the image; could not be removed on any account beyond the limits of Lambha village. That decree is decisive of the rights and duties of the plaintiffs as pujaris vis a vis the worshippers and the village people. On that account the defendants were obliged to admit the position that the plaintiffs were exclusively entitled to the offerings made to this idol known as " Balia Kaka of Lambha ".

8. The real point of difficulty is whether the plaintiffs are entitled to prevent the erection in Lambha village of another temple of Balia Kaka in the vicinity of or on the road leading to the old temple. It is worthy of note that the plaintiffs do not object to the erection of another Balia Kaka temple or temples outside the precincts of Lambha, for according to the plaintiffs the celebrity attaches to their idol as it is the only image installed in the village of Lambha and regarded as propitious.

9. The Indian law does not recognise the exclusive right of one person, to erect a temple and to instal any particular idol therein or to name a temple according to his choice, so that he could prevent another from building a similar temple on his own land. " A man has a right to do as he likes with his own" is a popular adage which signifies that as long as he does not do harm to his neighbour freedom of action is secured to him. There are, however, recognised limits to this freedom of action on his own property. Those limits are exemplified in cases of nuisance, claims to easements and rights of lateral support. But no authority has been cited to show that under ordinary circumstances one pujari of a temple can prevent another from building a temple of the same idol. The plaintiffs as I have said do not object to the building of another temple. But they object to the installation of a similar idol, for they say that such an idol if installed in a temple

at Lambha would mislead the public. It may at once be stated that their case does not rest purely upon an allegation of usurpation of office. It is well settled that if a person usurps office of another and receives the fees of the office, he is bound to account to the rightful owner of that office. By building an independent temple of the same idol obviously there can be no usurpation of the office of a pujari. Even if a common name was given to the new temple, prima facie it would be descriptive of the idol, and as it is clear upon the evidence that the idols of Balia Kaka have been commonly installed in different villages and worshipped by the people, the mere common name given to a new temple would not prima facie amount to usurpation of office. Pollock in his " Law of Torts " (14th edn., p. 123) says "... our law does not in general recognize any exclusive right to the use of a name, personal or local. I may use a name similar to that which my neighbour uses-and that whether I inherited or found it, or have assumed it of my own motion-so long as I do not use it to pass off my wares or business as being his, which is quite another matter."

10. But Mr. Thakor has argued that even if the name Balia Kaka were merely descriptive of the same deity and therefore publici juris, it has a clear secondary sense so far as this temple is concerned, just as the trade name of certain goods of a particular manufacture, and that therefore the ordinary incidents of trade name which has gained reputation in the market shall apply to this temple. It is said that the plaintiffs' temple known as Balia Kaka of Lambha has become famous for the supposed propitious and benignant influence of the idol at Lambha, and that a person by building another temple of Balia Kaka at Lambha would be trading on the reputation of the existing temple of the plaintiffs, unless sufficient precautions are taken to prevent deception [Reddaway v. Banham (1896) A.C. 199]. It has been argued that just as a trade name or trade mark may have a particular significance and the injury caused by the passing off of one's goods or business as the goods or business of another is a specialised variety of wrong resulting from injurious falsehood, a founder of a new image or an idol in a locality may, by describing it as an idol or image which has gained a particular local fame, commit similar wrong. The question is whether this case can be treated on the same footing as an infringement of a trade mark or trade name.

11. The law as regards trade name or mark is designed to protect traders against a form of unfair competition which consists of acquiring for oneself, "by means of false and misleading devices, the benefit of the reputation already achieved by another rival trader. If one trades under a name so closely resembling that of the plaintiff as to be mistaken for it by the public, he can be restrained by injunction : Hendriks v. Montagu (1881) 17 Ch. D. 638 and The National Bank of India Vs. The National Bank of Indore, . There is no question in this case that this is a very famous Balia Kaka temple in Gujarat and that fact is expressly admitted by the defendants. In regard to the character of the plaintiffs' right, they being worshippers by turns, there is no question that theirs is a right in property [See Mitta Kunth Audhicarry v. Neerunjun Audhicarry (1874) 14 Beng. L.R. 166, Limba

bin Krishna v. Rama bin Pimplu ILR (1888) 13 Bom. 548, and Girjashankar Daji v. Murli-dhar Narayan ILR (1920) 45 Bom. 234 : 22 Bom. L.R. 1202]. Our Courts have held that any interference; with the remuneration of the officiating priest or pujari, who has established his right to receive exclusively the offerings placed before the idol, will be actionable. If the defendants had removed the offerings made to the plaintiffs' temple, the case would have been simple of decision. But that is not the case here. Professedly the defendants do not wish to remove the offerings made to the plaintiffs' temple, but they do not conceal the fact that their temple will also be known as " Balia Kaka temple of Lambha " and may attract offerings from persons making vows. There is thus a difference in the method of reducing the plaintiffs' offerings. The question is whether it involves the possible violation of their rights. The underlying supposition in the plaintiffs' argument is that a competitive temple of the same description is calculated to deceive the pilgrims, and therefore the founder's act will be actionable.

12. The facts which have been proved and admitted are these :-Defendant No. 1 has in May, 1933, purchased land in the vicinity of this temple avowedly for the purpose of erecting a temple. He has issued a public notice containing the declaration of his intention in that respect. In his evidence he has made no secret of the fact that he intends to build a) temple of Balia Kaka on the site which he has purchased. He says : " I want to give the name " New Balia Kaka" to the new temple." What is urged in justification of that intention is that there could be no invasion of the plaintiffs' right. We are referred to a number of authorities in support of the view that there can be no cause of action if harm results from a lawful act done in a lawful manner, and that the mere fear of loss of the emoluments or revenue would not be a ground for a quia timet action, for such an action must involve an invasion of a substantial right or irreparable injury. Therefore it is urged that even if the plaintiffs' income as pujaris is diminished by the erection of the new temple they cannot complain. The principle invoked on behalf of the defendants which is well known is *damnum absque injuria*. It cannot be denied that no action would lie unless there is a threatened or actual infringement of a legal right, and that mere loss of emoluments or of money would not constitute damage. Instances can be given of acts which are harmful in themselves but which give no right of action. But the point is whether the building of a new temple of Balia Kaka in the vicinity of the plaintiffs' temple can be regarded as a lawful act legally done in the exercise of a legal right, so that it can be said that if harm is caused to the plaintiffs, it could be described as a damage without injury. As I have stated, ordinarily the law would not recognise a claim to prevent a person from building with a view to profit on his own land a temple dedicated to a particular idol even if there were a similar ancient temple in the same locality. But the question is; whether on the particular facts, there is a special significance attached to the worship of this particular idol, which would not yield to spurious imitation inviting the application of the rule enforced against the infringement of trade name. As I have stated, the evidence establishes that this idol in the plaintiffs' temple has acquired considerable fame in the whole of

Gujarat. People outside Lambha, even according to the defendants, take vows to this image of Balia Kaka, and pilgrims from various parts of the country come to fulfil their vows to this temple with offerings which are valuable. The vows are taken to Lambha's (lambhona) Balia Kaka. The defendant admits that if two temples were built in the same locality, people will be embarrassed. This is what he says : " If a stranger comes there he will have to question where the great Balia Kaka stood. How could he go to a temple without questioning others ? " But he thinks there is no possibility of illusion for any one would direct the pilgrims to the right temple. It is important to note that he foresees the consequences of building a new temple. This is what he has stated " The new temple which I propose to build will be known as Lambha's Balia Kaka." That is because it will be built in Lambha. The question is whether there is imminent danger that the defendants would on that account be trading upon the reputation of the plaintiffs' image. As to why the defendants are building this new temple it is not difficult to see. The reason now given is that defendant No. 1 took a vow when his son was ill in 1921 to build a temple. But that vow was not fulfilled for twelve years. That vow finds no place in the written statement of defendant No. 1, and the reason is not clear for that omission. In these circumstances there can be no misgiving of the defendant's intention.

13. I shall attempt to examine some of the decisions of the Indian Courts cited before us. The cases dealing with hereditary or priestly office and those relating to " vritti" rights in this Presidency are well known, but they have no bearing on the present question and therefore need not be considered. There are others which yield an important principle. In *Lachman Lal Pathak v. Baldeo Lal Thathwari* (1917) 2 P.L.J. 705 the right connected with the gaddi of Gayawal was regarded as a business and property capable of being inherited, and a person who was using: the name of the occupant of the gaddi of a Gayawal with the express object of benefiting himself at the latter's expense was restrained by an injunction. In *Beni Madho Pragwal v. Hira Lal* ILR (1920) All. 20 a pragwal who had a right to make use of a flag of a particular design was enabled to sue for an injunction any other pragwal making use of a flag with a similar design for the purpose of diverting pilgrims from the original owner on the ground that the flag set up by the rival defendant was calculated to mislead pilgrims into the belief that he was the representative of a particular pragwal. The reason for the decision was not that honest trade rivalry could not be permitted but that the use of the emblem, which in effect served as a notice to the illiterate pilgrims to utilise the services of a particular pragwal, was calculated to mislead them into believing that by going to the spurious flag holder they were doing what they intended to do originally, that is to visit the pragwal with the emblem, and therefore actionable. This is what the Court said (p. 25) :-

In the present case the question is simply whether the plaintiff has or has not a right to carry on a certain business in or about a particular locality,) and whether the defendant has or has not given him a cause of action by unlawful interference with his conduct of that business. We think that these questions

must be answered in the affirmative.

14. Can it be equally said in this case that there is a distinguishing symbol or emblem represented by the image of Balia Kaka installed in the temple at Lambha ? Undoubtedly the pilgrims gravitate to this place not because there are no other Balia Kaka images in other villages or nearer their homes. They do so on account of the fame acquired by this particular image of Balia Kaka of Lambha. If another institution installing an idol of the same description were erected in the vicinity, we think the analogy will hold good, for the establishment of such a temple would in all probability deceive the pilgrims into making offerings to the temple to which they perhaps did not intend to make vows. It is not suggested that the defendants would not take any offerings if made to the new temple; in fact the suggestion is to the contrary. It is said that inasmuch as the offerings are free or voluntary, there could be no invasion of the right of the plaintiffs by setting up a competitive temple. That argument is opposed to the principle of the acquisition of property in a name or trade mark or a business, whether secular or religious, by virtue of its antiquity and reputation. As we think the pilgrims are likely to be deceived into making offerings to the Balia Kaka of the defendants, when they intended to make them to the old Balia Kaka of Lambha, the Court must interfere to prevent the deception.

15. We think that if an imminent threat of invasion of the plaintiffs' right were present and established, the right of action could not be denied. Considerable argument has been advanced on the question as to whether the action of the defendants can be regarded as such a threat as to necessitate an action by way of injunction. It is a common place that a party need not wait until actual damage is caused. An injunction can be obtained quia timet to prevent a commission of injury in the future when the defendant threatens invasion of the plaintiffs' right. In connection with threatened invasion of a right the following passage occurs in " Kerr on Injunctions " (6th edn., p. 16) :-

The mere prospect or apprehension of injury or the mere belief that the act complained of may or will be done, is not sufficient; but if an intention to do the act complained of can be shown to exist, or if a man insists on his right to do, or begins to do, or threatens to do, or gives notice of his intention to do, an act which must, in the opinion of the Court, if completed, give a ground of action, there is a foundation for the exercise of the jurisdiction.

16. Here on the facts, which I have set out, it must be said that there is an imminent invasion of the plaintiffs' right in the contemplation of the defendants. We do not therefore think that the suit is premature or the claim to injunction unwarranted. Undoubtedly the defendant is the owner of the land which he has purchased and is entitled to make use of it in a lawful manner and could build a temple and install a deity of his own choice. But if he installs " Balia Kaka " which upon his own showing is likely to be known as the " Balia Kaka of Lambha," and which name and reputation the plaintiff's Balia Kaka holds, I think the only way of preventing the possibility of deception is to direct him to take sufficient

precaution to prevent it.

17. The alternative case of conspiracy, on which Mr. Thakor also relies, cannot, I think, be sustained upon the record. It is true that where an element of combination or conspiracy exists, the law might regard it as an illegal action. But that is a question of fact, and besides the bare word of the plaintiff that the villagers as a body conspired maliciously to threaten the pilgrims not to pay offerings to their temple, there¹ is no reliable independent evidence upon which conspiracy to intimidate can be held proved. It is therefore not necessary to discuss the principle established in *Quinn v. Leathern* (1901) A.C. 495 and *Allen v. Flood* (1898) A.C. 1 and other cases on the subject.

18. In considering the form in which preventive relief can be given, which the plaintiffs are entitled to, we think that the order of the lower Court goes much beyond the requirements of this case, for that order if maintained would be a fruitful source of unnecessary litigation. We direct that defendant No. 1 or the other defendants, if and when he or they erect a temple of Balia Kaka in this village either on the land purchased by defendant No. 1 or anywhere else, should take the necessary precaution of preventing deception to the intending pilgrims by putting in a conspicuous place outside the wall of the new building a stone slab showing the year in which it is built and that it is a " new temple of Balia Kaka." There; shall be no order as to costs in this appeal. Defendants Nos. 1 to 3 shall pay half the costs of the plaintiffs in the trial Court. Defendants Nos. 4 and 5 shall bear their own costs.