

(1934) 12 AHC CK 0013
In the Allahabad High Court

Ram Sakal Mullah and Another

APPELLANT

Vs

Nageshar Mullah and Another

RESPONDENT

Date of Decision : 10-12-1934

Acts Referred:

Easements Act, 1882 — Section 44

Citation : AIR 1935 All 481 : 157 Ind. Cas. 333

Hon'ble Judges : Sulajmasn, C.J;Sulaiman, C.J;Rachhpal Singh, J

Bench : Full Bench

Judgement

Rachhpal Singh, J.—This is a Letters Patent appeal by the plaintiffs against the decision of a learned Single Judge of this Court dismissing their appeal arising out of a suit for an injunction.

2. The plaintiffs instituted a suit in the trial Court claiming an exclusive right to ferry across the river Sarju between two ghats. One of these ghats is situate on the land belonging to the zamindars of Bansthana village while the other is across the river on the land belonging to the zamindans of Mobarakpur.

3. The plaintiffs came to Court on the allegations that they, and before them their ancestors, had been plying a ferry between the aforesaid two ghats and had thus had acquired an exclusive right to it as against every one, that the defendants had started a rival ferry without any right and were preventing the plaintiffs from carrying on their trade. It may be stated here that the plaintiffs are licencees from the zamindars of Bansthana.

4. The defendants denied that they had set up a new ferry. Their case was that their ferry, which had been started with the permission of the zamindars of Mobarakpur, had been in existence since a very long time, that this, ferry was worked between two ghats situate on the lands belonging to the zamindans of Mobarakpur and Taranpur, that some years ago, the Taranpur village disappeared through the action of the river Ganges when on both sides of the river Sarju the land of the zamindars of village Mobarakpur appeared and that they have been

plying their ferry between ghats on the land owned by the zamindars of Mobarakpur which they are entitled to. The trial Court found that the plaintiffs had been plying a ferry between) the ghat on the Basthana land and the ghat on the land of the Mobarakpur for over 20 years and had thus acquired a right in the nature of an easement as against the owners of Mobarakpur. It decreed the suit. The learned Subordinate Judge who heard the appeal did not give any finding on the question as to whether or not the plaintiffs had acquired an easement to ply their ferry between the two ghats. He however held that a right by way of monopoly could only be acquired by a grant from the Crown and therefore; the plaintiffs, who had no such grant in their favour, could not claim an, exclusive right as against the whole world or against the zamindars of Mobarakpur. He therefore dismissed the suit of the plaintiffs.

5. Against that decree, the plaintiffs, preferred a second appeal to this. Court which was heard by a Single Judge. The learned Judge came to the conclusion that the plaintiffs had acquired an easement to ply their ferry between the two ghats, but as the river had changed its course and there had been a permanent alteration of the servient as well as the dominant heritage, the easement was extinguished under the provisions of Section 44, Easement Act, of 1882. He therefore dismissed the appeal and the present appeal has been preferred against his decision.

6. Before we proceed further, it is necessary to understand what is the nature of a right of ferry. A ferry is created by royal grant, or in modern days by Act of Parliament; or exists by prescription, which implies a royal grant. Halsbury's Laws of England, Vol. 14 p. 557 (Edn. 1). A public ferry is a public highway of a special description whose termini must be in places where the public have rights, such as towns or vills, or highways leading to towns or vills. Halsbury. Vol. 14 pp. 555 and 556. The owner of the ferry has the right to levy toll from passengers. In England there are no private ferries as we have them here in India. That is to say, there can be no private ferry the owner of which would be (entitled to exact toll from passengers.

7. Two cases decided by the House of Lords will be very helpful in understanding the nature of the right of ferry and in deciding under what circumstances a monopoly can be claimed for the exclusive right of ferry. The first case is *Hammerton v. Dysart* 1 A.C. 57. The plaintiffs in that case owned a ferry under a franchise from the Crown. The defendants opened a new ferry for new traffic at a distance of 600 yards from the old ferry. The decision was that the defendants' ferry was for "new and different traffic" and therefore the defendants' ferry was not a disturbance of the plaintiffs. In this case, some very important observations relating to the right of ferry were made and they may be quoted here with advantage. At p. 68 of the Report Lord Haldane observed:

What is the legal character of this right? The question of what principle underlies and defines the right of exclusive ferry is not an easy one. The expression monopoly has been used in this connexion. Of course, in one sense the ferryman

has a monopoly. The right of the ferryman is to carry and to take a toll for carriage, and his right is coupled with an onerous obligation to maintain the ferry. It may well be that his exclusive right is given to him as a consideration for his undertaking this obligation, and that it is thus that he becomes entitled to what has been popularly called a monopoly. The origin of the right is the prerogative of the Crown, which is the guardian of the public interest.

8. At p. 76. the rights of a ferryman holding a Crown grant are thus described:

He is entitled to a monopoly of his line of ferry, and he has a cause of action against any one who carries either in that line or in another line of ferry so near as to make it an alternative way of carrying between substantially the same point

9. At p. 77. there are observations as regards the limit to be placed on the, right of the ferryman claiming a monopoly. Lord Haldane observes:

But every such monopoly ought to be strictly construed. Just as it does not preclude the setting up of a bridge to serve new though, adjacent traffic, because such an interference with what the convenience of the public requires under the new conditions is held not to have been within its purview, so if there is a sufficiently large and defined class, containing a substantial number of people who would naturally cross the river at points and with objects different from those which obtained with the class of people who frequented the old ferry, the former class would be outside the monopoly.

10. At p. 104. Lord Sumner quotes with approval the observations made by, Story, J., in the case *Charles River Bridge at Boston, Mass (1837)* 11 Pet : (36 U.S.) 618. They are:

How stands the law, in relation to grant by Crown of fairs, market and ferries?... The authorities are abundant to establish, that the King cannot make any second grant which shall prejudice the profits of the former grant And why not? Because the grant imposes public burden on the grantee, and subjects him to public charges, and the profits constitute his only means of remuneration, and the Crown should not be at liberty directly to impair, much less to destroy the whole object of its grant. When the Crown grants a ferry from A to B without using any words which import it to be an exclusive ferry, why is it... that by the common law the grant is construed to be exclusive of all other ferries between the same places or termini; at least, if such ferries are so near that they are injurious to the first ferry, and tend to a direct diminution of its receipts? Plainly, it must be because, from the very nature of such a franchise, it can have no permanent value, unless it is exclusive; and the circumstances that during the existence of the grant, the grantee has public burdens imposed upon him, raises the implication that nothing shall be done to the prejudice of it, while it is a subsisting franchise.

11. The next case to which I wish to make a reference is *Bournemouth Swange Motor Road and Ferry Co. v. Harvey and Sons (1930)* A.C. 549. I quote the

following passages from the judgment of Lord Maemillan at pp. 552 and 553:

My Lords, the question of the precise legal character of ferry is discussed with much learning in the case of *Hammerton B. Earl of Dysart*. Although it may be inaccurate to describe the right of the grantee as a monopoly in the strict legal sense, it was fully recognized in that case that a franchise of ferry entitles the owner to protection from the competition of rivals who seek to disturb him in the enjoyment of his privilege by diverting traffic which he would otherwise convey... The ferryman has undertaken a public burden in consideration of the Crown's grant of the right to take tolls, and he would have a legitimate grievance if the public, while enjoying the benefit of the obligation, were allowed to destroy the consideration for which it was undertaken.

12. Thus it will be seen that the law in England on the point is quite clear. According to it, an exclusive right of ferry can only be claimed by a person holding a grant from, the Crown. The foundation of that right, which is in the nature of a monopoly, is the obligation undertaken by the ferryman to the public and in consideration of that the Crown grants him the exclusive right which cannot be disturbed.

13. In India also an exclusive right of ferry in the nature of a monopoly can be claimed if there is a franchise by the Crown. One of the earliest cases on the point is *Luchamssur Singh v. Lellanund singh* (1879) 4 Cal. 599. The next case in which such a right was recognised is *Nityahari Roy v. Dunne* (1891) 18 Cal. 652. A very recent case on the point is *Dhanpat Pandey v. Pasput Pratap Singh* 1931 All. 587. All these cases related to rights under Crown grants and it was held that where a Crown grant was established, an exclusive right of ferry by way of monopoly could be successfully asserted. The right to own private ferries has been recognised in India, since a very long time. As regards the public ferries, the law relating to them is enacted in Bengal Regulations 6 of 1819 and the Northern India Ferries Act (Act 17 of 1878). Sections 19 and 20 of the latter confer certain powers upon the Local Government over private ferries in connection with the safety of passengers.

14. Private ferries may be of two kinds One is a ferry plied by an owner on his own land on either side of the river. Such a right is a "right of property." The land on both sides of river is owned by zamindars and they can ply private ferries on their own land and levy tolls. The other ferries are those started by a person who is the owner of the land on one side of the river. He may run a ferry and use the land, on the other side of the river belonging to another under a grant by the latter. Or, he may acquire that right by easement. In addition to these two kinds of ferries, there may be a ferry worked by a stranger who owns no land on either side of the river but who may have been plying a ferry between two points from a very long time without the permission of the zamindars owning lands on both the banks of a river and without any objection on their part.

15. The principal question which we have to consider is whether a person owning

a private ferry in India can claim an exclusive right of ferry by way of monopoly? After a consideration of the question, I have come to the conclusion that the answer to the question must be in the negative. I have explained above that in England, a person plying a ferry under a royal grant can claim such a right for the reason that when the grant is made to him he undertakes certain obligations and the grant is made in consideration of the duties which he undertakes to discharge for the convenience of the public. The case of a private ferry in India stands on a different footing altogether. Unlike the owner of a ferry under a royal grant, he undertakes no duties towards the public. He may work the ferry for a short time and then stop it or work it whenever he likes. There is, as already mentioned statute law in India regarding public ferries, but there is no law denning the mode of acquisition of ferry rights relating to private ferries. All that we can say is that in the Northern India Ferries Act of 1878, the existence of private ferries is recognised.

16. One of the earliest cases on the point is *Rajiblochun Roy v. Kumri Bibi* (1854) 10 S D A (Cal.) 153. The facts were these: A zamindar had made a ferry bridge in substitution of a private ferry. A theka was given to another person of this ferry bridge. The plaintiff sued for the theka money. The defence was that, no toll could be collected unless sanctioned by law. The majority of the learned Judges expressed the following opinion:

...private ferries are recognized as legal by Section 13, Regn. 6 of 1819. We therefore see no reason why a zamindar... should not receive the ferry fee which is legally leviable upon transit by water...

17. All that this case decides is that the owner of a private ferry can levy toll which is a point now well settled. The next case on the point is *Hur Kishor Das v. Gokool Joogul Kishor Sah.* (1871) 16 W.R. 281. The learned Judges who decided this case held that:

it is recognized that there are proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom as would be the result by running a boat if not exactly on the same line, at least within such a distance as for all practical purposes would be the same as it were on the same line.

18. The facts of the case are not stated in the judgment. The learned Judges give no reasons for holding that the owner of a private ferry has a monopoly. After this, we come to the case of *Narain Singh Roy v. Nurendro Narain Roy* (1874) 22 W.R. 296, in which it was held that a rival ferry cannot be set up so as to interfere with the proprietary rights in an existing ferry, that is to say, under circumstances involving direct competition with such ferry. The next case on the point is *Parmeshari Proshad Narain Singh v. Mahomed Syud* (1881) 6 Cal. 608. In this case it was held that an exclusive right in the nature of a monopoly could be acquired by the owner of a private ferry as an easement. I may however quote here certain observations made by Garth, C. J., which are to be found at p.

610 of the Report. He observed:

I confess, if the question had been *res Integra*, I should have doubted whether such an extensive and an exclusive right as the plaintiffs claim is not illegal, as being contrary to public policy. But I find that such rights have long been recognized as private property, from times anterior to the Permanent Settlement, and I therefore forbear to throw any doubt upon their legal validity.

19. The next important case on the point is *Nityahari Roy v. Dunne* (1891) 18 Cal. 652, in which all the rulings referred to above were considered. The question as to whether a person owning a private ferry could claim a monopoly was discussed at great length. At pp. 661, 662 and 663 the learned Judges made the following observations:

But whether we search the law as it was before the acquisition by the British Government, or the Regulations before or after the year 1793, there is no indication that any person was entitled to claim a right of ferry, that is to say, to a monopoly, by prescription or by any means other than a grant from the Crown. Since then the only law under which a person can acquire ownership by prescription is that in Part 4, Act 15 of 1877, but that portion of the law we think would hardly apply to a right such as is claimed in the present suit, that is to say, not a right merely to land, or water, or air, nor a right to ask for payment of ferrying a traveller across a river, but an additional right, namely a right to a monopoly, a right to prevent other people from exercising a right which they would ordinarily possess.... But in *Hur Kishor Das v. Gokool Joogul Kishor Sah.* (1871) 16 W.R. 281, it was said that the Legislature recognized proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom as would be the result by running a boat, if not exactly on the same line, at least within such a distance as, for all practical purposes, would be the same as if it were on the same line. No doubt that would be so in the case of a Crown grant, but no such distinction of the kind has been made in this case, and the declaration is without any limitation. There is no authority given for the general proposition, and we do not know of any... No doubt that the Dewani and the Regulations recognized ferries in the sense that engagements to pay tolls were not absolutely illegal, and so they did in regard to ground rents in the markets; but not in the sense that the owners possessed a monopoly...

20. It appears to me that the view taken by the learned Judges who decided the case reported in *Nityahari Roy v. Dunne* (1891) 18 Cal. 652, as regards the claim of a private ferry owner to a monopoly is correct, and should be followed: I wish to respectfully dissent from the contrary view taken in the cases reported in *Hur Kishor Das v. Gokool Joogul Kishor Sah.* (1871) 16 W.R. 281. *Narain Singh Roy v. Nurendro Narain Roy* (1874) 22 W.R. 296 and *Parmeshari Proshad Narain Singh v. Mahomed Syud* (1881) 6 Cal. 608. In the case before us, we are not dealing with the rights of an owner of a private ferry who is the owner of lands on both banks of the river. Here, we have a case where on one side there are the

zamindars of Bansthana who owned land on one of the banks of the river. The land on the other side of the river is owned by the zamindars of Mobarakpur. The plaintiffs", as licencees from the zamindans of Bansthana, claim a right of ferry as an easement between the two ghats. The defendant as licencees from the zamindars of Mobarakpur, claim a right to run a rival ferry. For the purpose of disposing of this case, we may assume that the zamindans of Bansthana, through the plaintiffs, have acquired an easement to run a ferry between the two ghatis mentioned in the plaint. The question is what is the nature of the right acquired under such an easement. Before we proceed further, I wish to state that the franchise of a ferry is not indissolubly connected with land, and a franchise can be given to a person independently of it. But when a right to ferry is acquired as an easement, then, it would be a right appurtenant to land. In *Hammerton v. Dysart* to which a reference has already been made, Lord Haldane pointed out the distinction between a right to ferry under a franchise and a right claimed under an easement at p. 68 of the Report thus:

The title (under a Crown grant) is not like that to easement, which pertains to one tenement and affects another..

21. An easement is defined in Section 4, Easement Act (Act 5 of 1882) as follows:

An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of the land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon or in respect of, certain other land not his own.

22. One of the essential features of a right of easement, is that the person of inherence must be the owner or occupier of certain land for the beneficial enjoyment of which the right is claimed. In the case before us we assume that the zamindars of Bansthana owned land on one side of the river Sarju. On the other side there was the land of the zamindars of Mobarakpur. We further assume that the zamindars of Bansthana acquired a right by easement as against the zamindars of Mobarakpur to embark and disembark passengers on their land. We also assume that, the effect of this acquisition was that they got a right to ply a ferry between the two ghats mentioned in the plaint. Did the zamindans of Bansthana acquire a right of monopoly as against the zamindars of neighbouring villages or even against the zamindars of Mobarakpur entitling them to prevent them from starting rival ferries? I am not aware of any rule of law under which such an extensive and exclusive right, can be claimed against all the neighbouring owners or against the whole world. In the case reported in *Parmeshari Proshad Narain Singh v. Mahomed Syud* (1881) 6 Cal. 608; White. J., made the following observation's which are to be found at p. 613:

Now, as any man may set up a ferry over a river which passes between his own village and that of another riparian owner, no one who works such a ferry can exclude his neighbour from doing the like thing, unless the former has acquired the right of property in the working of his ferry. This right may be acquired as

against his neighbour by proving a grant from him or his predecessor in title, granting the right of embarking and disembarking passengers on his land or it may be acquired, as against all the world, by proof of long uninterrupted user.

23. Now, if these observations mean (that the ferry owner obtains a exclusive right to run a ferry between his two ghats and to embark and disembark passengers on the land of another across the river, then, I am in agreement with the view. I also agree that this right acquired by an easement can be asserted by him against all the world. By this I mean that no other person can set up a rival ferry between the two points between which the person claiming has been running his ferry. And no one can interfere with his right to embark and disembark passengers on the landing place for his boats. On the other hand, if these observations mean that no neighbouring owner of the land can start a rival ferry, not between these two points, but between different points, then, I regret that I find myself unable to agree with them. In other words I am not prepared to hold that a person who has obtained an easement to ply a ferry between two points can treat the land owned by all the neighbouring owners for miles and miles around his ferry as servient tenement, The Indian Easements Act does not recognise any easement of such an extensive and exclusive nature under which the rights of neighbouring owners may be adversely affected.

24. One of the essential conditions of an easement is that there must "be a dominant and a servient heritage. No servitude could exist, unless the dominant and the servient tenements were sufficiently near to allow the one to receive a benefit from the subjection of the other. Gale on Easements, Eda. 10, p. 18.

25. Now, let us suppose that a man proves that he has been plying a ferry between his own land and the land belonging to another across the river for over 20 years. What is the nature of the easement which he acquires? In my opinion he acquires the following rights: (1) A right to ply his ferry between the two points. (2) A right to embark or disembark passengers across the river on the land of another. (3) An exclusive right to ply his ferry between the two points. It appears to me that these are the only rights which he acquires under his easement. It was contended before us that in addition to the above mentioned rights, he acquires another which is to prevent all others from starting a rival ferry near his ferry. I find myself unable to agree with this contention. An easement acquired as against the owner of Mobarakpur in respect of embarking and disembarking passengers on their land, can never adversely affect the rights of another riparian owner owning land on both sides of a river at a distance of say three miles from the ferry of the person claiming an easement. The question for consideration in such a case would be this. Has the plaintiff, who has been plying a ferry between two points, acquired an easement entitling him to prevent another man owning lands on both the banks on arrive to sep up a rival ferry at a distance of three miles between his own land. I am clearly of opinion that there can be no such right. You cannot assert an easement as against a person against whom you have never attempted to assert a right. The plaintiffs, when they

started to run a ferry, began to assert a right against the owners of Mobarakpur to embark and disembark passengers on their land on the opposite side. The owners of the neighbouring lands were not in any manner affected by this. It was matter of indifference to them. They have every right to start ferries on their own.

26. Now can the plaintiffs say that they have a right to prevent the neighbouring owners of the land to start their own ferries? The only ruling which lends support to the contention raised by the appellants is the case reported in *Parmeshari Proshad Narain Singh v. Mahomed Syud* (1881) 6 Cal. 608. The two points decided in that case were: (1) The right of establishing a private ferry and levying tolls is recognized in India. (2) 20 years is the shortest period within which such a right of ferry can be established. Now, in the case before us, there is no difference between the parties on these two points. The difficulty arises because of certain observations made by Garth, C.J., and White, J., to the effect that such an exclusive right can be obtained against the whole world. Now, let us examine what the facts were in that case. The plaintiffs in that case owned a ghat on one side of the river which was situate on the land of village such on the eastern bank. On the western bank was the ghat of the defendant in village Kishtwara. The plaintiffs claimed that they had been plying a ferry between those two ghats for a number of years and had thus acquired an exclusive right of ferry. The defendants denied the right of the plaintiffs and set up a case that they were entitled to carry passengers between the two ghats. The learned Judges who decided the case held that in case it was found that the plaintiffs had been plying a ferry between the two ghats for over twenty years, it was not open to the defendants to start a similar ferry. It will be clear from these facts that the real question in that case as to which of the two parties had the right to ply a ferry between the same points. The general question as to whether the person acquiring a right of ferry between the two points could prevent other neighbouring owners of land from starting ferries of their own at other point was never in the issue. It would therefore appear that the "observations made by the learned Judges to the effect that such an exclusive right could be claimed against every one were obiter dicta and not binding. The learned Judges say that the right acquired becomes a "right of property." This may be. But the question is what is the extent of that "right of property?" That right is a right to embark and disembark passengers on the land belonging to the servient owner on the opposite bank of the river. But it will be too much to say that it entitles the plaintiffs to prevent neighbouring owners from exercising their own right to start ferries between the lands owned by them. AS Pointed out by the learned Judges who decided the case reported in *Dhanpat Pandey v. Pasput Pratap Singh* 1931 All. 587, it is one thing to say that you have acquired a right to ply a ferry between two points and to exercise that right against the servient owner. But it is a totally different thing to say that you have acquired a monopoly entitling you to prevent other neighbouring owners of the land from their exercising their undoubted right from starting new ferries.

27. It was argued that if a rival ferry is started near the ferry of the plaintiffs, then, their profits would be decreased. This may be. But the important question which has to be considered is whether by acquiring a right of easement to ply a ferry between two points the plaintiffs have got a right entitling them to exclude other owners from exercising their own right. Before a person can ask that another person should be prevented from exercising his own right he must show that he did something owing to which the right of the latter has been lost for ever.

28. Right of ferry is a very valuable right to the riparian owners in India and it appears to me that, there is no warrant for saying that that right is lost because some one in the neighbourhood has been plying a ferry between the land of others with which they have no concern. On behalf of the appellants reliance was placed on a ruling of their Lordships of the Privy Council *Lachmeswar Singh v. Manowar Hossein* (1892) 19 Cal. 253. their Lordships made the following observations:

It is recognised law in India that a man set up a terry on his own property, and takes toll from strangers for carrying them across, and may acquire such a right by grant or by user over the property of others.

29. This is a proposition of law which is beyond dispute. At another place their Lordships on the same page observed:

...he can only set up an exclusive right against the plaintiffs by snowing that either he had dispossessed them for twelve years, or that he has held adversely to them for more than twelve years, or that he has enjoyed what he claims, for twelve years, as an easement and as of right.

30. On the strength of these observation"s it is contended that an exclusive right of ferry in the nature or a monopoly can be acquired in India. I do not think that these passages lay down that an exclusive right of ferry by way of monopoly can be acquired in India. In fact there are observations of their Lordships in this case which make it abundantly clear that in that case no right of monopoly, like the right claimed before us, was asserted. At p. 262 their Lordships observed:

Whatever the defendant may think himself entitled to, he has not in this suit claimed to possess in such a sense as would entitle him to restrain competition.

31. Again, at p. 253, their Lordships observed:

He has not excluded any cosharer. It is not alleged that he has used the river for passage in any such way as to interfere with the passage of other people. It is not alleged that, even in the time of the bridge, there has been any obstruction at the landing places. It is not alleged that the defendants proceedings have prevented anyone else from setting up a boat for himself or his men, or even from carrying strangers for payment.

32. These observations of their Lordships very clearly show that no right of monopoly, as is claimed before us, was set up by the defendant in that case. The

facts of that case go to show that no such question was involved. The dispute in that case was between co-sharers in respect of profits which one of them had realised by plying a ferry between two points. The facts of that case were these: There is a river called Bagmati. This river runs through the land of village Baigra. The plaintiffs owned fourteen anna share in the aforesaid village while the defendant owned the remaining two anna share. On the western bank of the river, there was a factory situate in Komtowl village styled Kotowl indigo factory. This factory had been purchased by the defendant. The predecessor of the defendant, who owned a two-anna share in village Baigra had started a ferry which had been in existence for a long time. The defendant and his predecessors had been realising the tolls and had been appropriating the same to the exclusion of the other cosharers of the village. In reply to the suit the defendant asserted that he had acquired Article exclusive right to the ferry by prescription. On the facts found in that case, their Lordships came to the conclusions that the defendant had failed to make out a case that he had acquired an easement. But nevertheless their Lordships held that the claim of the plaintiffs must fail because one cosharer in an undivided state was perfectly entitled to use a portion of joint property and earn profits on the ground that he had incurred expenditure or risk for that purpose. At p. 262 their Lordships were only considering the question as to whether or no a co-sharer could set up an exclusive right: of ferry against his other cosharer on the ground that he had acquired that right as an easement. It was in connection with this matter that they used", the words "exclusive right." These words were not used in the sense that, the defendant was setting up a right: of monopoly, but were used in reference to the plea of the defendant that:, as he had acquired a right of easement so his cosharers could not claim:, to prevent him from appropriating those profits exclusively or to restrain, him from plying the ferry. In my opinion, therefore this ruling of their" Lordships of the Privy Council does not help the plaintiffs.

33. The next case on which reliance was placed on behalf of the appellant is. *Jwala Singh v. Abdul Razaq* 1915 All. 270. In that case it was found that the defendants, the proprietors of village Bahiana had been plying a ferry between their village and village Rampur since over twenty years. The plaintiffs in that case who were the owners of village Rampur started a rival ferry. A learned Judge of this Court following the case reported in *Nityahari Roy v. Dunne* (1891) 18 Cal. 652, dismissed the suit of the plaintiffs. The following observations in that judgment clearly go to show that the case before us is distinguishable from it:

The case, in my opinion, resolves itself into the question whether the plaintiffs have acquired any right to an easement or to a right in the nature of an easement on the Bahiana side of the river, when that right involves a right to embark or disembark passengers on another's land.

34. The defendants in that case had acquired a right by easement to. embark

and disembark passengers on the land of the plaintiffs (the proprietors of Rampur). The plaintiffs started a rival ferry which was plied between their own land and the land on the opposite bank of the river which belonged to the defendants. They further wanted to use the land belonging to the defendants for the purpose of embarking and disembarking passengers. The Court held that the plaintiffs had not been able to prove that they had acquired such a right either under a Crown grant or by prescription and SO" their claim was dismissed.

35. Another case cited on behalf of the appellants is Pardip Singh v. Secy of State 1920 Pat. 38. All that is necessary to say is that it in too way helps the appellants. The case lays down that a right of ferry can be established by acquisition of an easement and this as a point about which there is no controversy between the parties to the suit before us.

36. For the reasons given above, I hold that in India, a person owning land on one bank of a river can acquire a right by easement which would entitle him to use the land belonging to another owner on the other side of the river for the purpose of embarking and disembarking passengers. There is however no law in this country which would entitle him to restrain competition. He cannot prevent the owner of the land on the other side of the river from starting a rival ferry which is run between lands owned by him on both banks of the river. In other words, there is no right to a monopoly. Such an exclusive right can be claimed only under a I Crown grant.

37. Having considered the legal aspect of the case, it is now necessary to determine whether the case before us, has been correctly decided. A perusal of the plaint shows that the case of the plaintiffs was that the defendants were attempting to ply a ferry between the same points, and on the same line between which the plaintiffs had been plying a ferry. For the purpose of deciding this case it may be as sumed that the plaintiffs have got a right, by easement, to run a ferry between point A (land of Bansthana) and Mobarakpur as shown in the plan attached to the plaint. The question for our consideration is whether the defendants have started a new ferry: between the same points. In my opinion, on this point the finding of the learned Judge of the lower appellate-Court is against the plaintiffs. He has remarked that:

The plaintiffs" case was that they had two ferries which they used to ply.

38. He referred to the evidence of Ram Sihukal, plaintiff who deposed that he plied two ferries, one from ghats between Bansthana and Nazirabad and the other between ghats at Bansthana and Sagarpali. He held that the ghat in dispute (between Bansthana from point marked A and Mobarakpur) was other than the ghats that the plaintiffs had laid claim to. The learned Subordinate Judge referred to the evidence of one Ram Lakhan Raj who later on wanted to deny the existence of ghats between Bansthana and Sagarpali unsuccessfully. The learned: Subordinate Judge believed the evidence which was produced on behalf of the defendants to the effect that the defendants had been plying a ferry

with the permission of the zamindars of Mobarakpur between the ghats in suit which are both situate on the land, belonging to the zamindars of Mobarakpur. As according to the finding of the Judge of the lower appellate Court, it is found that the defendants are working a ferry between points from those between which the plaintiffs claimed to have been plying a ferry, the suit must fail.

39. For the reasons given above, I would dismiss the appeal with costs.

Sulajmasn, C.J.

40. I concur in the conclusion of my learned brother and" would like to add only a few words.

41. The right to ply a boat can be acquired by easement or by custom as-well as by grant, express or implied. But the exclusive right of ferry over a land can be by grant only. The owner of lands on the one side of the river cannot by mere user acquire an exclusive right of ferry across the river, when the land on the other side belongs to other zamindars. The right of ferry is a right to embark and disembark passengers on the two-sides of the bank. Such a right obviously cannot be restricted to particular spots so as to be destroyed if the level of the water sinks or rises. So long as the parts of the banks of the river lie on a public way across which passengers are entitled to travel, the exclusive right of ferry can be enjoyed irrespective of the exact height of the water level. But such a right of ferry does not in my opinion, include a right to land passengers at other places on the opposite bank belonging to other people, away from the track of the public way. So long as the person possessing a right of ferry lands his passengers on any part of the public way, he is well within his rights. But he cannot claim a right to land passengers on other people's lands over which a right of way does not exist.

42. It follows that if a river changes its course the right of ferry may be seriously affected. The right to go along a public high way includes the right to go across a river or a stream which intercepts it. So long therefore as the track of the public way is identical, the shifting of the river course makes no difference. But" if the result of a change in the course of the river is to alter the landing places which would require the chalking out of a new pathway, the right must be deemed to be non-existent.

43. But a franchise of a ferry is not necessarily connected with the proprietorship of the land; but where acquired as an easement it must, of course, be appurtenant to the land. The exclusive right of ferry would ordinarily imply a right to prevent other people from plying boats between certain parts of the banks on both sides of the river even "though the lands belong to them. Without proof of a right acquired by grant, it would be not possible for a claimant to prevent others from plying boats between their own lands, even if their lands happen to be quite close to the land over which the right of ferry exists.