
(1886) 04 CAL CK 0013
In the Calcutta High Court

The Shamnugger Jute Factory Co., Ltd. and Another APPELLANT
Vs
Ram Narain Chatterjee and Others RESPONDENT

Date of Decision : 20-04-1886

Acts Referred:

Specific Relief Act, 1877 — Section 54, 55

Citation : (1887) ILR (Cal) 189

Hon'ble Judges : Wilson, J;Porter, J

Bench : Division Bench

Judgement

1. The next question argued was whether the taking of these putni leases was ultra vires on the part of the plaintiff-Company. The District Judge has answered this question in the affirmative (here followed certain passages from the judgment of the District Judge). The learned District Judge has not found in express terms for what purpose the pottas were taken; but we think what he intended to find appears with sufficient clearness. If we rightly understand the District Judge, what he finds is that the Company, being largely dependent for the work of its mill upon the supply of labour drawn from the other side of the river and from the neighbourhood of the lands in question, took these putnis in order to prevent if they could, the erection of a rival mill upon these lands, which would naturally cut off their labour-supply. We have to say whether this transaction was ultra vires on the part of the Company (here followed the objects for which the Company was formed as set out in the Memorandum of Association).

2. The general principles of law applicable to this question were not-disputed. They are authoritatively laid down by the House of Lords in the Ashbury Railway Carriage & Iron Co. v. Riche L.R. 7 H.L. 653 and Attorney-General v. Great Eastern Railway Company L.R. 5 App. Cas. 473. For the present purpose we think the result may be sufficiently stated by saying that the powers of a Company depend upon its Memorandum of Association or other instrument of incorporation, and it can do nothing which that document does not warrant

expressly or impliedly. A Company, therefore, formed to carry on one trade cannot engage in another. But, on the other hand, this doctrine must be reasonably understood and applied. And a Company, in carrying on the trade for which it is constituted, and in whatever may be fairly regarded as incidental to, or consequential; upon, that trade, "is free to enter into any transaction not expressly prohibited.

3. In the present case we take the finding to be that the Company took the putnis, not for the purpose of engaging in some new business but for the purpose of endeavouring to secure the continuance of the sup-ply of labour for its jute business. The maintenance of a supply of labour must, we think, be regarded as incidental to, or consequential upon, the carrying on a manufacture of this nature. It would be a serious thing to lay down that an Assam Tea Company could not import labour or contract for the supply of labour, or take land for dwellings for labourers, or to grow food for them. Could it be said that this Company could not buy land across the river for a landing ghat for its workpeople, or to make a road for them to the river bank ? Might it not buy land to prevent some one building a wall which would bar the road to the river for the labourers ? And it is difficult to see a difference in principle between doing this and buying an interest in land in order to try and prevent the lands being used for a purpose which, if carried out, would practically divert the labour-supply. It is what a prudent man, aiming only at carrying on the business profitably, would try to do, and, if so, can it be said that it is not reasonably incidental to, or consequential upon, the business of the Company ? We are unable to agree with the District Judge in thinking that the taking of these putnis was ultra vires on the part of the Company under the Memorandum of Association.

4. It is unnecessary for us to express an opinion on the further question considered in the Court below, and argued before us, whether the question of ultra vires can be raised in this form and under the circumstances, by persons in the position of the defendants, or whether, even if this purchase were ultra vires, the title of the plaintiff-Company must not be held good as against the defendants, until the transaction be set aside at the instance of some one having a better right to do so than the defendants.

5. The next question is, whether, under the circumstances, what the defendants contemplated doing, and have now done, amounts to a wrong towards, and gives a right of action to, the plaintiffs. To see what the question is here precisely, it is necessary to see what the facts found are. The case put in the plaint was that the lands in question were agricultural and horticultural. This was denied, and the fourth issue was "what is the nature of the lands in dispute? Are they agricultural or horticultural lands? Can the defendants convert them into building or manufacturing purposes?" The finding of the first Court is at the close of its judgment : "It is in evidence that the chur lands were used by tenants for agricultural and horticultural purposes. This being so, Mr. Luke has legally no right to convert them into building purposes without the consent of the plaintiff-

Company, who own an undivided five annas share." Mr. Gasper, one of the learned Counsel who argued this case for the defendants, and who appeared also before the District Judge, told us that he urged the District Judge to reverse the finding of the first Court as to the land being agricultural or horticultural. The District Judge does not say in terms what his view on this point was. But he mentions the allegations on the one side and the other, and refers to the issues. And then he goes on to state the question in appeal. The meaning of this, we think, is that he rejects Mr. Gasper's contention on this point, and affirms the finding of the first Court. We take it, therefore, to be found that the lands in question were agricultural or horticultural lands, and there is no doubt that a jute mill has been built upon them. On the other hand, there is a distinct finding by the District Judge that the plaintiffs have sustained no injury. He says : "There is nothing to prevent plaintiffs from continuing to collect their share of the rent, the existence of the mill notwithstanding. Thus they have suffered no injury." And it is obvious that the value of the land has been largely increased.

6. It was pressed upon us on behalf of the defendants, chiefly on the authority of English cases, that no exercise of rights of ownership by one co-owner is a wrong towards, or gives a right of action to, another co-owner, unless what is done amounts to a destruction of the subject-matter, or an actual eviction of the co-owner, or waste attended by substantial damage. On the other side, it was contended, chiefly on the authority of Indian decisions, that every act of one part owner of land by which he permanently alters the character and condition of the land, as by building upon it, excavating a tank, or changing the nature of the cultivation, is a wrong to the other part owners and gives them a right of action. Had it been necessary to determine what the true rule of law is on this subject in India, we should have had to examine with care the decided cases which bear upon the matter. But it is unnecessary to do so, for this reason. The District Judge has given damages to the plaintiff, and the defendants' counsel elected not to urge their objections to the awarding of damages or to the quantum awarded, if our opinion were against them on the questions already considered.

7. The remaining question is an important one, whether a mandatory injunction should issue, or whether the plaintiffs should be left to the remedy in the form of damages which has been given to them by the District Judge, or to claim partition. On the part of the plaintiffs it was contended that where a part owner of land permanently alters its character, as by building on it, at any rate where he does so after notice of objection from his co-owners (as the defendants certainly did in this case) an injunction ought to go as a matter of course. It was contended, on the other hand, that in every such case the Courts must exercise a judicial discretion, and particularly must compare the possible injury on the one side and the other, the injury to the plaintiffs if the injunction is refused, and that to the defendants if it is granted. The question is obviously important to the parties to this suit, because if the plaintiffs have the absolute right which they claim, merely by reason of their part ownership and without regard to any other circumstance, they are not bound to give their reasons, but may use their rights

as putnidars of Telinipara to protect their interests as owners of the Shamnugger Factory on the other side of the river ; whereas, if the Court is to exercise a judicial discretion, it can only take into account the injuries they have sustained or may sustain as putnidars of Telinipara. The granting of injunctions is now regulated by Sections 54 and 55 of the Specific Relief Act. But those Sections have never been understood as introducing new principles of law into India, but rather as an attempt to express in general terms the rules acted upon by Courts of Equity in England, and long since introduced in this country, not because they were English law, but because they were in accordance with equity and good conscience. It is necessary, therefore, to inquire on what principle the Courts have acted in England and in India.

8. In England injunctions have been sought for the protection of various kinds of proprietary rights, such as to restrain the infringement of easements, to protect the interests of landlords against their tenants, and of tenants" in common against their co-tenants. And the principle is well settled that, in granting or withholding an injunction, the Courts exercise a judicial discretion, and weigh the amount of substantial mischief done or threatened to the plaintiff and compare it with that which the injunction, if granted, would inflict upon the defendant. The doctrine is very clearly explained in *Doherty v. Allman* L.R. 3 App. Cas. 709. And the fact that the plaintiff has given notice of objection to what is threatened before it has been carried out does not make the injunction a thing of course. This appears from the case just cited, and from *Isenberg v. East Indian-House Estate Co.* 3 DeGex. J. & Section 263. English Courts have certainly not shown any special facility in granting injunctions between co-tenants ; such injunctions are of very rare occurrence. In this country, as might be expected, questions of this nature arise much more frequently between co-owners than in England, and the decided cases are numerous. We do not think it necessary to examine the whole series of cases in detail. It is enough to say that there are many cases in which an injunction has been granted; and in some cases very general language has been used as to the right of a part owner to restrain his co-owner. It is enough to refer to *Jankee Singh v. Bukhooree Singh* S.D.A. (1856) 761 ; *Inderdeonarain Singh v. Toolseenaarain Singh* S.D.A. (1857) 765 ; *Gurudas Dhur v. Bijoy Gobind Sural* 1 B.L.R.A.C. 108 : 10 W.R. 171; *Holloway v. Mahomed Ali* 12 B.L.R. 191 (note) : 16 W.R. 140 ; *Stalkartt v. Gopal Panday* 12 B.L.R. 197.

9. But we are not aware of any decision which establishes the broad proposition contended for by the plaintiffs, that one co-owner is entitled to an injunction restraining another co-owner from exceeding his rights, absolutely, and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction.

10. On the other hand, a rule in conformity with the English decisions has been acted upon in a number of cases--*Lala Biswambhar Lal v. Rajaram* 3 B.L.R. App. 67 : 13 W.R. 337 (note); *Dwarkanath Bhooyea v. Gopeenath Bhooyea* 12 B.L.R. 189 (note) ; *Sree Chand v. Nim Chand Sahoo* 5 B.L.R. Ap. 25 : 13 W.R. 337 ;

Crowdy v. Inder Roy 18 W.R. 408 ; Massim Mollah v. Panjoo Ghoramee 21 W.R. 373 ; Nicholl v. Tarinee Churn Bose 23 W.R. 298 ; Mohima Chander Ghose v. Madhub Chunder Nag 24 W.R. 80 ; Rajendro Lall Gossami v. Shama Churn Lahori 5 C. 188 ; Nocury Lall Chuckerbutty v. Bindabun Chunder Ckuckerbutty 8 C. 708.

11. We think that the granting of an injunction is a matter in the judicial discretion of the Court, and that the District Judge took a correct view of the law applicable to the case.

12. We think also that having regard to the facts of the case, he exercised his discretion rightly in refusing the injunction asked for. The appeal will, therefore, be dismissed with costs.