

## APPELLATE CIVIL.

Before Mallik and M. C. Ghose J.J.

MAHAMMAD ZAHADUR RAHIM

v.

SATYENDRANARAYAN MUKHOPADHYAY.\*

1934

March 2, 6, 8.

*Injunction—Melâ.*

Where the defendant used intimidation and threats in making shopkeepers go from plaintiff's *melâ* to defendant's new *melâ*,

*held* that, as it was an actionable wrong, there was nothing illegal in granting an injunction, that would restrain the defendant from doing it.

But an injunction should not be granted restraining the defendant from exercising his rights in a lawful manner : such an injunction would be an invasion on the defendant's legitimate rights to use his own proprietary rights, which he is justified in exercising so long as he does not exercise them in an illegal way.

*Sorrell v. Smith* (1) referred to.

SECOND APPEAL by one of the defendants.

The facts of the case and the arguments advanced at the hearing of the appeal appear sufficiently in the judgment.

*Atulchandra Gupta* and *Farhat Ali* for the appellant.

*Brajatal Chakrabarti Shastri*, *Santoshkumar Basu* and *Parimal Mukherji* for the respondents.

*Cur. adv. vult.*

MALLIK J. The plaintiff, respondent, is a *patnidâr* of village Dadhiyâ, while defendant No. 1 is a *patnidâr* of village Ayârpur, which is contiguous to

\*Appeal from Appellate Decree, No. 356 of 1932, against the decree of Naranath Mukherji, Additional Subordinate Judge of Burdwan, dated July 11, 1931, affirming the decree of Nalininath Das Gupta, First Munsif of Burdwan, dated Dec. 23, 1927.

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Dadhiyâ. A *melâ* is held on some land in Dadhiyâ on the 3rd, 4th and 5th day after *Sreepanchami* every year. According to the plaintiff, defendant No. 1, along with the other defendants, has been trying to set up a rival *melâ* on his land in Ayârpur on the three identical days by taking shopkeepers there by the use of force, violence, intimidation and threats for some time past. On these allegations, the plaintiff instituted the suit, that has given rise to the present appeal, for a declaration of his right to hold a *melâ* on his land in Dadhiyâ, for damages as compensation for the loss caused to him by the defendants' disturbance and interference with the plaintiff's right and also for a permanent injunction restraining the defendants from holding a rival *melâ* or setting up shops on their land in Ayârpur at the time of the Dadhiyâ *melâ*. The plaintiff's claim was resisted by the defendants on various grounds. These grounds were overruled by the court of first instance and the trial judge gave a decree to the plaintiff, declaring the plaintiff's right to hold a *melâ* on his land in Dadhiyâ, giving him damages for Rs. 100 and granting the permanent injunction as prayed for. This decision was affirmed on appeal. Defendant No. 1 is the appellant before us.

A preliminary objection was raised that the appeal is incompetent, inasmuch as the heirs of respondent No. 7, who was dead, had not been substituted and the appellant did not want to proceed against respondents Nos. 8 and 9 and the appeal has been dismissed as against these three respondents. I do not think that there is any substance in this preliminary objection. The appeal may have been dismissed as against these three respondents, who, with the appellant, had been made defendants in the suit, but it cannot be contended that the present appeal cannot proceed in the absence of those respondents.

Mr. Gupta for the appellant had no exception to take to that part of the decree of the lower appellate

court, by which the plaintiff had obtained a declaration of his title and also damages. But he strenuously attacked the part, by which an absolute permanent injunction had been granted. His contention was that the grant of an absolute injunction in the present case, whereby the defendant appellant has been restrained from enjoying his own land, is wholly illegal. This contention, in my opinion, is well founded and must, therefore, prevail. It is an unassailable proposition of law that an act, which is not unlawful in itself, does not become unlawful merely because it interferes with other people's business or merely because the motive of the act is bad. [See *Sorrell v. Smith* (1)]. The appellant is the owner of village Ayârpur and, as such owner, he has every right to hold a *melâ* on his land in Ayârpur on any day he likes, just in the same way as the plaintiff has a right to hold a *melâ* on his land in Dadhiyâ. The defendants' action in holding such a *melâ* would not be unlawful, merely because it may interfere with the plaintiff's *melâ* or merely because the defendant in holding his *melâ* had a bad motive for his act. But such an act on his part would be an actionable wrong, if he would exercise his right of using his land by the employment of illegal means, by diverting shopkeepers from the plaintiff's land to his own by the use of force or violence or intimidation or threats. In the present case the lower appellate court has found that the defendant did use intimidation and threats in making the shopkeepers come to his land. This was certainly an actionable wrong and there would have been nothing illegal in granting an injunction that would restrain the defendant from doing it. But the injunction, that has been made in the present case, restrained the defendant not only from using his land and exercising his rights by illegal means but restrained him also from exercising those rights even in a lawful manner. The effect of the injunction granted in the case has been to make an

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(1) [1925] A. C. 700, 718, 719, 728 and 734.

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invasion on the defendant's legitimate rights to use his own proprietary rights, which he is perfectly justified in exercising so long as he does not exercise them in an illegal way.

Mr. Shastri contended that, in order to make the injunction effective, it was necessary to give it in an absolute form—his contention being that it would not be possible to distinguish the exercise of defendant's rights to use his land by employing illegal means from an exercise of those rights by means that are not unlawful. This contention, I need hardly say, is not worthy of any serious consideration. There can be no difficulty in saying whether a man, when he exercises his rights, exercises them by illegal means or in a way, in which there is nothing unlawful.

The decree of the lower appellate court cannot, therefore, in my opinion, be maintained in its entirety. I would, accordingly, maintain it so far as it relates to the declaration of the plaintiff's right and also to damages. But I would set aside the order of injunction that has been made and grant in its place an injunction restraining the defendant from holding a *melâ* on his land in Ayârpur by the employment of illegal means, by the use of force or violence or intimidation or threats.

I would make no order as to costs in this appeal.

GHOSE J. The decree given by the trial court was to this effect—

The plaintiff's right to hold the *melâ* in their Dadhiyâ *melâ* ground peaceably and without interruption by the defendants is established. The defendants, against whom the suit is decreed, are restrained permanently from holding a rival *melâ* in their village Ayârpur or in any land close to the Dadhiyâ *melâ* of the plaintiff or setting up any shop in any such land on the *saptami*, *ashtami* and *nabami* days following the *Saraswati Puja*. The plaintiffs will also get Rs. 100 from these defendants by way of damages.

I agree with my learned brother that the first and the third portions of the decree are correct and should stand but the second portion, whereby the defendants

are restrained permanently from holding a lawful *melâ* in their own village, is not in accordance with law. The defendants may be lawfully restrained from illegally preventing people from attending the plaintiffs' *melâ*. But they should not be restrained from holding a *melâ* or setting up shops on their own land in a peaceful manner. I, therefore, agree with my learned brother that the wording of the injunction should be altered in the manner indicated by him.

*Appeal allowed; decree modified.*

G. S.

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