

32 C. 1141 (=2 C. L. J. 569.)

[1141] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K. C. I. E., and Mr. Justice Mitra.

JOGENDRA NARAYAN ROY v. CRAWFORD.*

[3rd March, 1905.]

Jalkar—Fishery, right of—Change in course of river.

Where it was found that a piece of water in dispute, which was at one time a part of the bed of the river Ganges, was still connected with it, although the connection might dry up in the hot weather.

Held, following earlier authorities, that the disputed water having been part of the bed of the Ganges and the two being connected, the plaintiff, who had fishing rights in the adjacent Ganges, was entitled to the fishing rights in the said water.

[Ref. 12 C. W. N. 559; 42 Cal. 489; 12 C. L. J. 216=7 I. C. 140.; 17 C. W. N. 1178 =18 C. L. J. 899.]

APPEAL by the defendants' Rao Jogendra Narayan Roy and others.

The appeal arose out of a suit brought by the plaintiff M. M. Crawford for declaration of his title to a *damos* jalkar appertaining to jalkar Gangapath and for recovery of possession thereof with mesne profits.

The plaintiff alleged that jalkar Gangapath Minkut Jafrabad and jalkar Gangapath dihi Mahalpur with the *damoses* and jalkars appertaining thereto belonged to the defendant Rao Jogendra Narayan Roy, 14 annas in zamindari right and 2 annas in *patni* right; that on the 15th Bhadro 1301 he had granted to Messrs. Jardine, Skinner and Company a *patni* settlement of the 14 annas and a *darpatni* settlement of the 2 annas of the aforesaid jalkars Gangapath, to take effect from the year 1302 under which the said Company was entitled to hold possession of the jalkars and *damoses* described in the pattas and the *damoses* and jalkar which according to the custom of jalkar Gangapath appertain to jalkars Gangapath and the jalkars and *damoses* which according to the said custom should come into existence in [1142] different places within the limits therein mentioned of the river Padma as appertaining to the said jalkars Gangapath, and that the plaintiff on the 27th January 1900, corresponding to Magh 1306, purchased the properties belonging to the aforesaid Company including the said *patni* and *darpatni* rights; that a *damos* jalkar known as "Alatulir Nichar Jalkar" which used nearly to dry up in some years during the dry season was within the limits of the aforesaid jalkars Gangapath and was in the possession of the plaintiff's predecessors in title up to Baisak 1306, when they were wrongfully dispossessed by the defendant.

The plaintiff further alleged that in the year 1304 the river flowed on the site of the said *damos* and that in the year 1305 the river again receded, and the *damos* again formed in that place and that since that time it had been in the same state. The suit was originally brought against the defendant Rao Jogendra Narayan Roy alone, but on an objection as to want of parties being taken, his sons, the defendant Nos. 1 and 2, were added as parties.

The defendants pleaded that the jalkar in suit did not appertain to jalkars Gangapath and was not the "Alatulir Nichar Jalkar" mentioned in the *patni* and *darpatni* pattas, but that it was a separate and distinct

* Appeal from Original Decree No. 345 of 1903, against the decree of J. E. Webster, Offg. District Judge of Murshidabad, dated the 24th July 1903.

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jalkar the two mouths of which were closed and wholly disconnected with Gangapath ; that it belonged to the defendants Nos. 2 and 3 and that the plaintiff had no title thereto.

The District Judge, who tried the suit, found that the jalkar in suit was not the "Alatulir Nichar Jalkar" mentioned in the leases to the plaintiff's predecessor, but that it was "a new channel formed only five years ago out of the bed of the river" and that it lay in villages Durlabh-pur, Raminagar, chur Ram Chunderpur, chur Alatuli and Mal Alatuli which were possessed by the defendants as members of a joint Mitakshara family of which the defendant No. 1 was the manager.

He found that there was no satisfactory evidence that the custom of Gangapath referred to was different from the general law as to river jalkars.

As regards the nature of the communication between the river and the *damos* in dispute, he found as follows: "it (the channel [1143] in dispute) lies in chur land which is annually submerged, and in the rains the current in this channel is strong enough to cut away the bank. When the floods go down the channel continues for a time to be connected with the river, but the connection may dry up in the hot weather."

He held that the *damos* in suit was "in effect still an arm of the river, and that the plaintiff as lessee of the general right of fishery in that part of the Ganges is entitled to the fishery of the disputed channel."

He accordingly decreed the suit in favour of the plaintiff.

The defendants appealed to the High Court.

Babu Lal Mohan Das and Babu Hemendra Nath Sen for the appellants.

Dr. Rashbehary Ghosh and Babu Jogesh Chundra Roy for the respondents.

MACLEAN C. J. This is a suit in which the plaintiff claims that he is entitled to certain jalkar rights over the long piece of water, which is coloured *blue* on plan 2. The plaintiff has an undoubted right of fishery in the adjacent portion of the river Ganges, which is connected with the piece of water, the jalkar rights in respect of which are in dispute. The plaintiff contends that, having jalkar rights in the adjacent river Ganges, inasmuch as this sheet of water is connected with the Ganges, he is equally entitled to jalkar rights over this piece or sheet of water. The District Judge has gone carefully into the matter and has found in favour of the plaintiff. The defendants have appealed. The learned Judge has found as follows:—We find then that five or six years ago the channel in dispute was part of the bed of the river ; it lies in chur land, which is annually submerged and in the rains, the current through this channel is strong enough to cut away the bank (*vide* evidence of the Tashildar D. W. 13). When floods go down the channel continues for a time to be connected with the river, but the connection may dry up in the hot weather. The *Damos* is still so far a part of the river system that it may in a single year form a new mouth or channel of [1144] connection with the river, as it did in 1309. In such circumstances I consider that it is in effect still an arm of the river and that the plaintiff as lessee of the general right of fishery in that part of the Ganges is entitled to the fishery of the disputed channel."

Although we have been referred to portions of the evidence, I do not think that that finding of fact has been seriously challenged by the appellants in this case. At any rate, if it has, it has not been successfully challenged. The disputed water then having been part of the bed of the river, and the plaintiff having fishery rights in the adjacent Ganges and the

two being connected, a long current of authority would appear to establish that the plaintiff is entitled to the fishery rights he now claims. I scarcely think it is necessary to go through the various authorities; they are collected in a well-known work (the Law of Riparian Rights, Tagore Law Lectures, 1889 by Lal Mohun Das, p. 374, and they appear to substantiate that, upon the facts as found in this case by the District Judge, the plaintiff is entitled to succeed.

Whether, if the matter had been *res integra* and there had been no such current of authority, we should have come to the same conclusion is not worth further consideration.

The appeal is dismissed with costs.

MITRA J. I am of the same opinion

Appeal dismissed.

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32 C. 1145.

[1145] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Geia

KHURKUN SAHA v. DHATIA DAS.*

[4th July, 1905.]

Principal and agent—Liability of principal—Right of suit—Agent's right to sue principal for price of goods purchased.

Where the plaintiffs, as agent of the defendants, purchased goods for the defendants from whole sale dealers, and it was not their case as set out in the plaint that they had done so by pledging their own personal credit or that the pledging of their own credit was within the scope of the agency.

Held that they would have no cause of action against the defendants for the amount due to the wholesale dealers, until they were compelled to pay their demands.

SECOND APPEAL by the plaintiff Khurkun Saha.

Khurkun Saha and his brother Janak instituted this suit, out of which this appeal arose, against three persons Dhatia Das and the two sons of his deceased brother Katia Das on the following allegations: that Dhatia Das and Katia Das had entered into a contract with the plaintiffs to the effect that the latter would supply them with such goods as they would require, and that the former would pay the plaintiffs a commission of 1 per cent. and interest at the rate of 1 per cent. per mensem; that according to the contract Dhatia Das and Khatia Das purchased goods on credit through the plaintiff to the value of Rs. 19,035; that the plaintiff had been paid only Rs. 16,859 and that a sum of Rs. 2,645 was due to the plaintiffs from the defendants on account of the balance of the price of goods together with commission and interest.

The present suit was for the recovery of this amount.

[1146] The defendants denied the contract and pleaded that the plaintiff Khurkun, who was their agent in respect of certain *jotedari* and other business, had omitted to submit the accounts of his period of agency and put the plaintiffs to strict proof of all their allegations.

The second plaintiff Janak having died, the first plaintiff Khurkun Saha was substituted in his place as his legal representative.

* Appeal from Appellate Decree No. 1814 of 1903 against the decree of C. Fisher, District Judge of Dinajpur, dated the 16th June 1903, reversing the decree of H. H. Heard, Subordinate Judge of Darjeeling, dated the 24th of April 1903.