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BABURAM BAG v. MADHAB CHANDRA POLLAY.

JENKINS C.J.

have the fact that this particular agreement was filed prior to the trial, and I cannot read the judgment of the Munsif without feeling that the issue, though in very general terms, was settled in reference to the preceding statement in his judgment where there is an obvious allusion to this contract on which the tenant-defendant now relies. Therefore, we cannot give effect to the suggestion that the plaintiffs were taken by surprise. I accordingly think that the decree of the District Judge should be confirmed and this appeal dismissed with costs, one set payable to the tenant-defendant.

MULLICK J. concurred.

S. M. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Fletcher J.

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Feb. 17.

ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO., LD.

v.

ORIENTAL ASSURANCE CO., LD.*

Trade-name—Similarity of names of Insurance Companies—"Oriental"—Word known in business—Intention to deceive—Injury to plaintiff—Injunction—Provident Insurance Society—Provident Insurance Societies Act (V of 1912), ss. 5 and 6—Indian Life Assurance Companies Act (VI of 1912)—User.

On an application by the plaintiff company, an old, large and well known Insurance Company, registered in Bombay, and having a branch office in Calcutta, for a temporary injunction to restrain the defendant company, which was incorporated in Calcutta in November 1912, with a small share capital, but with the widest powers of doing life and other insurance

* Original Civil Suit No. 115 of 1913.

business, though its present rules limited its life insurance business to the issue of policies for sums not exceeding Rs. 500, from using or carrying on business under the name it had adopted :—

Held, that, inasmuch as the term "Oriental" had become identified with the plaintiff company, an injunction should issue restraining the defendant company from using the term "Oriental" in its name, as such user would be likely to deceive the public, and the defendant company would be a source of danger to, and would be liable to cause damage to, the plaintiff company.

Merchant Banking Company of London v. *Merchants' Joint Stock Bank* (1), *Accident Insurance Company, Ld.*, v. *Accident, Disease and General Insurance Corporation, Ld.* (2), and *Guardian Fire and Life Assurance Company* v. *Guardian and General Insurance Company, Ld.* (3), referred to.

The circumstance that the field of operation of the defendant company was in the Orient did not entitle it to the use of the term "Oriental."

Hendricks v. *Montagu* (4), followed.

Rugby Portland Cement Co., Ld., v. *Rugby and Newbold Portland Cement Co., Ld.* (5), distinguished.

Semble : An Insurance Company, incorporated under the Indian Companies Act, is not a Provident Insurance Society within the scope of the Provident Insurance Societies Act of 1912.

RULE.

The plaintiff Company was a large and well known life insurance company, transacting every description of life insurance business, and was incorporated and established in Bombay in the year 1874, with a capital of Rs. 10,00,000. At the institution of this suit, its accumulated funds amounted to about Rs. 4,00,00,000; its head office was still at the Oriental Buildings in Bombay, but it had several branch offices and agencies in other important towns of India, including Calcutta. The Calcutta branch was at No. 28, Dalhousie Square.

On the 14th November, 1912, the defendant company was incorporated in Calcutta under the Indian Companies Act, with a share-capital of Rs. 20,000, divided

(1) (1878) L. R. 9 Ch. D. 560.
(2) (1884) 54 L. J. Ch. 104.
(3) (1880) 50 L. J. Ch. 253.
(4) (1881) L. R. 17 Ch. D. 638.
(5) (1891) 8 R. P. C. 241 ; (C. A.) 9 R. P. C. 46.

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into 2,000 shares of Rs. 10 each. Its place of business was at No. 20, Cornwallis Street. The prospectus was issued in the Bengali language, and the objects for which the company was established, as appeared from its memorandum of association, were—

"(i) to carry on all forms of life, marriage, birth, *upanayan*, education, dower, fire, marine, accident, transit and other sorts of insurance business, and all business and work connected herewith or likely to promote the same; and

(ii) to carry on business in all matters relating to annuities, guarantee, indemnity, allowance and provident funds by—

(*a*) granting policies, diplomas and bond-certificates;

(*b*) granting loans or other benefits to the policy-holders on the sole security of their policy, diploma or certificate of the company; and

(*c*) arranging and effecting mutual re-assurance with other assurance or provident companies in order to cover its own risks and theirs by a mutual distribution or adjustment of funds, effects, emoluments, profits, liabilities and responsibilities."

According to its rules its life insurance business was conducted as follows: a premium of Re. 1 per month was payable by the assured for a period not exceeding fifteen years, and on the death of the assured a sum varying from Rs. 100 to Rs. 500 would become payable by the company, the figure being dependent on the actual period during which the premium had been paid.

On the 2nd December, 1912, the plaintiff company called upon the defendant company forthwith to take steps to change its name, on the ground that the

adoption of the particular name was calculated and intended to lead the public to deal with the defendant company under the impression that they were dealing with the plaintiff company, and threatened legal proceedings in default of compliance with its request. The defendant company replied, on the 9th December, that it was purely a provident fund, and that its scheme and the nature of its transactions were essentially different from those of the plaintiff company, and denied the motives ascribed to the adoption of the name.

On the 30th January, 1913, this suit was instituted by the plaintiff company, praying for a perpetual injunction, and a Rule was obtained calling upon the defendant company to show cause why a temporary injunction should not be awarded against them, restraining them from carrying on business under the name of "The Oriental Assurance Company, Limited," or any other name likely to mislead or deceive the public into the belief that the defendant company was the same as the plaintiff company, and from using the name "The Oriental Assurance Company, Limited," or any such name, and from inviting and receiving applications for shares, and from inviting applications for policies or issuing policies and from receiving monies under the name of "The Oriental Assurance Company, Limited," or any such name.

It was alleged in the plaint that the plaintiff company was commonly known and spoken of as "The Oriental" or "The Oriental Assurance Company," and apprehension was expressed that, by the use of so similar a name, the defendant company would be enabled to trade upon and use the credit and reputation of the plaintiff company and to induce persons to subscribe for shares, to insure their lives

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and otherwise to do business with the defendant company in the belief that they were dealing with the plaintiff company. Apprehension was further expressed that the plaintiff company would be injured by such use, more specially in the event of the defendant company failing to meet its obligations owing to the insufficiency of its capital which, even if fully subscribed, would be wholly inadequate for the purpose of conducting any genuine insurance business.

The application for the Rule was supported by several affidavits sworn by officers of the plaintiff company and others, to the effect that the plaintiff company was ordinarily known and addressed by abbreviated names, as "the Oriental Life Assurance Company," "the Oriental Life Office," "the Oriental Office," "the Oriental," "the Oriental Assurance Company" and "the Oriental Life Insurance Company." In an affidavit sworn by one of the Directors of the defendant company, in opposition to the Rule, it was urged that the name adopted by the defendant company was merely descriptive of the locality of its operations, that the defendant company was purely a provident insurance society, that its business was essentially different from that of the plaintiff company, and that it was impossible for any mistake or confusion to arise in the mind of the public or for the plaintiff company to be injured or prejudiced in any way.

No written statement had been filed by the defendant company when the Rule came on for disposal on the 17th February, 1913.

Mr. P. R. Das (with him *Mr. B. C. Mitter*), for the defendant company, showing cause. It is submitted this matter falls within the ruling in *Merchant Banking Company of London* v. *Merchants'*

Joint Stock Bank (1) where an injunction was refused. The mere similarity of the names is not sufficient to show any intention to appropriate, or any possibility of appropriating, the plaintiff company's business. No one could possibly be decieved into identifying the defendant company's business with the plaintiff company's business. The head offices are in different towns. The scheme and nature of the business are essentially different. It is impossible for the defendant company at the present moment to do the business of the plaintiff company, namely, life insurance business, properly so called, as it would necessitate a deposit of Rs. 25,000 under the Indian Life Assurance Companies Act of 1912, and the whole capital of the defendant company amounts to only Rs. 20,000. The defendant company is working under the Provident Insurance Societes Act of 1912.

[FLETCHER J. The defendant company cannot be a provident insurance society, as a provident society is not incorporated under the Companies Act, but registered or inscribed under the Provident Insurance Societies Act.]

It is submitted that the defendant company is a provident insurance society, as the definition of a provident insurance society, in section 2 of the Act, includes corporate as well as incorporate bodies. The name merely correctly describes the defendant company's business.

Mr. B. C. Mitter (following). An injunction was refused in similar cases in respect of insurance companies: *London and Provincial Law Assurance Society* v. *London and Provincial Joint Stock Assurance Company* (2), and *Colonial Life Assurance Company* v. *Home and Colonial Assurance Company, Ld.* (3). In

(1) (1878) L. R. 9 Ch. D. 560. (2) (1847) 17 L. J. Ch. (N.S.) 37.
(3) (1864) 33 Beav. 548.

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the latter case it was held that a monopoly could not be acquired in the user of the word "Colonial" which was a fair descriptive word: see also *India and China Tea Company* v. *Teede* (1) and Sebastian on Trade Marks, 5th edition, p. 287. *Manchester Brewery Co., Ld.*, v. *North Cheshire and Manchester Brewery Co., Ld.* (2), *Guardian Fire and Life Assurance Co.* v. *Guardian and General Insurance Co., Ld.* (3), and *Hendricks* v. *Montagu* (4) are distinguishable.

Mr. Pugh, for the plaintiff company, in support of the Rule, though not called upon, referred to *Walter* v. *Ashton* (5).

FLETCHER J. This is a Rule obtained by the plaintiff company, the Oriental Government Security Life Assurance Co., Ld., against the defendants, the Oriental Assurance Co., Ld., asking that an injunction may be granted against the defendants, restraining them, their servants and agents, until the final determination of this suit, from carrying on business under the name of the Oriental Assurance Co., Ld., or any other name, likely to mislead or deceive the public into the belief that the defendant company is the same as the plaintiff company, and from using the name "The Oriental Assurance Co., Ld.", or any such other name as aforesaid, and from inviting and receiving applications for the shares, and from inviting or issuing policies, and from receiving monies under the name of the Oriental Life Assurance Co., Ld., or any such other name as aforesaid.

Now, the plaintiff company is an old well-established firm, whose head office is in Bombay, but which has a branch office in Calcutta, and for many years

(1) (1871) W. N. 241.
(2) [1898] 1 Ch. 539.
(3) (1880) 50 L. J. Ch. 253.
(4) (1881) L. R. 17 Ch. D. 638.
(5) [1902] 2 Ch. 282.

past has carried on business both in Bombay and in Calcutta. The defendant company was incorporated on the 14th November, 1912, under the provisions of the Indian Companies Act with a share-capital of Rs. 20,000, divided into 2,000 shares of Rs. 10 each, and the objects for which this company was established are, amongst other objects, to carry on all forms of life, marriage, birth, education, fire, marine, accident, transit and other sorts of insurance business and work connected therewith or likely to promote the same. It has also power to grant annuities, and issue guarantee and indemnity policies. These are very wide powers, as wide as any insurance company could possibly want, and the share-capital with which this defendant company is going to carry on this large and important business is the sum of Rs. 20,000, divided into 2,000 shares of Rs. 10 each. How many shares have, in fact, been subscribed for, out of these 2,000 shares, and how much of this Rs. 20,000 has been paid up in cash, I do not know. Now, no one has any information as to whether the whole of Rs. 20,000 or a small portion of the amount has been paid for. In order to carry on a life assurance company, that is a life assurance business, or the undertaking of liability under policies of insurance in respect of human lives, it is provided by Act VI of 1912 (Indian Life Assurance Companies Act, 1912), that an amount which would be in excess of the whole of the capital of this company has to be deposited in Government securities with the Governor-General in Council. So on the threshhold of its existence this company would have to make a deposit of Rs. 25,000, that is in excess of the whole of its capital, if subscribed and paid for, with the Governor-General in Council, before it had authority to do business in accordance with the terms of its memorandum of association. It was noticed by the persons

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who assisted in giving birth to this company that there were certain exceptions to the provisions of the Indian Life Assurance Companies Act of 1912, and one of the exceptions was that nothing in the Act was applicable to any societies to which the Provident Assurance Societies Act of 1912 applies. That was an Act which was passed immediately prior to the Indian Life Insurance Companies Act, but received the assent of the Governor-General on the same day as the Life Assurance Companies Act; both received the assent of the Governor-General on the 18th March 1912. So having found out apparently that provident societies were exempted from the provisions of the Indian Life Assurance Act, the promoters of this company apparently turned back to the Provident Assurance Societies Act, and there found another exception, that nothing in that Act was to apply to societies which undertook to pay on any life policy an annuity not exceeding Rs. 50 or a gross sum not exceeding Rs. 500. They considered that by issuing policies not exceeding Rs. 500 they could bring themselves under the heading of a Provident Insurance Company and were entitled to carry on business untrammelled by the provisions of the law. That is not so, because under the Provident Insurance Societies Act the registration is to be made subject to certain conditions, which are set out in the Act, and which have to be approved of by the Registrar, and these provisions do not apply to a company which has a share-capital divided into shares. This is provided by sections 5 and 6 of the Provident Insurance Societies Act, 1912, and it is quite obvious to anybody looking at the form of the policy which this company has issued that they have simply been trying to avoid the provisions of the Indian Life Assurance Companies Act of 1912, which were intended

to prevent a company from embarking in the business of life insurance, unless and until they had the amount of cash that was necessary for them to deposit with the Governor-General in Council in order to meet their obligations. Now, the policies of this company are obviously life assurance policies, because they undertake the risk on human lives, and it does not matter whether they run for a term of 15 years or whether they are terminable by death, it is obviously a life assurance business. The plaintiff company is a life assurance company doing all classes of life business. The plaintiff company is a company with an old established business, and with a reputation which, of course, if the defendant company can take a name which will lead the public to believe that it is the plaintiff company, it is a not unfavourable asset for the defendant company to commence their business with. Probably the right to use the words "Oriental Assurance Company" is worth more than the Rs. 20,000 capital which the defendant company has. What are the grounds on which this company say they are entitled to use the words "Oriental Assurance Company"? First of all they say their company is situate in the Orient. I dare say that is so. Then, if that be so, every company in India already established now or hereafter may describe itself as "Oriental", because it is doing business in the Orient. That seems to be absurd. In *Hendricks* v. *Montagu* (1) a company was held not entitled to use the name "Universe." Of course, so far as every life insurance company is concerned, it must do business in the Universe; similarly every life insurance company in India must do business in the Orient. It seems to me that any argument that, because you are doing business in the Orient, you

(1) (1881) L. R. 17 Ch. D. 638.

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are entitled to call yourselves "Oriental," without reference to what may be the rights of others, is not well-founded. There is a class of case, as the *Rugby Portland Cement Company, Ld.*, v. *Rugby and Newbold Portland Cement Company, Ld.* (1), where the word "Rugby" was held to be a geographical definition of the place from where the goods had come. That is a totally different case to a case where you call yourselves an Oriental company, which includes the whole of Asia. The word "Oriental" is a much wider term than the word "Rugby". That being so, on what grounds does this company say that they are entitled to carry on this Oriental Assurance Company. They say, first of all, at present, that their business is of such a small nature that they cannot possibly affect the business of the plaintiff company. That may be so for the present; until they can obtain their Rs. 25,000 to deposit with the Governor-General under the terms of the Life Assurance Act they are not entitled to issue any policies exceeding Rs. 500, but this company, if it exists, must be a source of danger to the plaintiff company. At any time, if they can obtain from any source the sum of Rs. 25,000 to deposit with the Governor-General under the Life Assurance Act, the defendant company would be able under the terms of its memorandum of association to blossom out into a fully blown life assurance company and compete with the plaintiff company, and with a name so similar that people would be likely to consider that the defendant company was in fact the plaintiff company. That is a risk which I think the plaintiff company ought not to be liable to. The defendant company says it has an Oriental origin or existence, and for that reason they are using the word "Oriental." There are heaps of other words, if they wish to show that it is of an

(1) (1891) 8 R P. C. 241; (C A.) 9 R. P. C. 46.

Indian origin, and one cannot say why the words "Oriental Assurance Company" have been hit upon, except that there is a well-known and well-established business which has gained the confidence of the people of this country, and the defendant company hope that that reputation would descend to them under the title of the Oriental Assurance Company.

It seems to me in this case, notwithstanding the cases that have been cited by Mr. Mitter and his learned junior, that an injunction ought to be granted. No doubt there are cases where injunctions have not been granted, but there are other cases where, the company being an insurance company, injunctions have been granted, as the case of *Merchant Banking Company of London* v. *Merchants' Joint Stock Bank* (1). There is the case of *Accident Insurance Company, Limited* v. *The Accident, Disease and General Insurance Corporation, Ld.* (2). There is also a case of *Guardian Fire and Life Assurance Company, Ld.*, v. *Guardian and General Insurance Company, Ld.* (3). Both these cases are cases where a portion of the title of a well-known insurance company was taken by a new company, and there cannot be much doubt why those names were taken. It seems to me in this present case that this small company, brought into existence in this way, and starting this business in this manner, to avoid responsibility that was cast upon it by law before it can commence business contemplated in the articles of association, is liable to deceive people that it is the old and well-established company. It is said that people make a very careful examination into the affairs of the life insurance companies before they insure their lives. That may be so with reference to some cases. In the case of companies

(1) (1878) L. R. 9 Ch. D. 560. (2) (1884) 54 L. J. Ch. 104.
(3) (1880) 50 L. J. Ch. 253.

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like the Law Life and the Equity and Law Life, which appeal to a certain class of persons, viz., the members of the legal profession, persons intending to assure probably investigate more carefully into the affairs of the companies than the class of people to whom the Oriental Assurance Company would appeal, and who take Re. 1 per month for a period of fifteen years from the persons taking out policies. They must obviously be Indians in more or less humble positions, at any rate not of a highly educated class, probably men in the ordinary walks in life, and who probably do not know the meaning of the word "Oriental," but who, knowing that there is a well-established office in Calcutta of the plaintiff company, might be liable to think that this new form of policy was being issued by the plaintiff company. It seems to me that, taking into consideration also the risk that there is of this company blossoming out as a full grown life assurance company, issuing life policies to any amount, the plaintiffs are right in thinking that there is a real danger of their suffering irreparable loss if this company is not restrained by an injunction.

Then the other point made by Mr. Mitter is that this small company is carrying on business at No. 20, Cornwallis Street, and that nobody is likely to think that this small company, in No. 20, Cornwallis Street, is likely to be the old and well-established concern in Dalhousie Square. So far as that goes, the Oriental Assurance Company, that is, the defendant company, on its policies very carefully conceals its address, and it gives no address at all, but dresses up the matter in this way. At one corner of the policy there is a blank for the number, and at another corner the word "Agency", as if this company of No. 20, Cornwallis Street has several agencies throughout British India, obviously intending the public to think that it was a

big company with several agencies. It is quite obvious that the defendant company carrying on business in this way is liable to cause damage to the plaintiff company. It seems to me, so far as I can see, that the word "Oriental" has become identified, when applied to a life assurance company, with the plaintiff company, which has now been in existence for many years, and they are now known as the "Oriental Office." In the circumstances, I think the present Rule ought to be made absolute, and the defendant company restrained from using the name "Oriental" until the trial of the suit. There is nothing to prevent the defendant company from applying to the Registrar of Joint Stock Companies to alter its name, so that it may show that it is a company of an Indian origin carrying on a sort of life assurance business; but, as I have already said, the business carried on by the defendant company is illegal, and not in accordance with Acts V and VI of 1912. In my opinion it ought to make a deposit of Rs. 25,000 with the Governor-General, under Act VI of 1912, before it can issue the policies that it is now issuing. On these grounds the present Rule should be made absolute, and the defendant company restrained until the trial of the action from using the words "Oriental Assurance Company." Costs of the present application to be made costs in the suit, and the plaintiff company must give an undertaking as to damages.

Rule absolute.

Attorneys for the plaintiff company: *Orr, Dignam & Co.*

Attorney for the defendant company: *J. N. Mitter.*

J. C.

[The defendant company failed to appear at the hearing of the suit, and a decree was made ordering a perpetual injunction. ED.]