

Present : Dalton and Driberg JJ.

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JINADASA v. WEERASINGHE.

208—D. C. (Inty.) Matara, 3,418.

Injunction—Application for interim order—Good grounds—Limitation of order—When injunctions should issue.

An interim injunction should not be granted *ex parte*, unless it is supported on strong grounds and all the necessary facts are disclosed.

Where such an application is granted, it should as a rule be limited to a certain date to allow notice to be given to the other side.

Injunctions cannot be obtained for actionable wrongs, for which damages are the proper remedy.

A PPEAL from an order of the District Judge of Matara.

Zoysa, K. C. (with *Speldwinde*), for plaintiff, appellant.

H. V. Perera (with *Keuneman*), for defendant, respondent.

May 1, 1929. DALTON J.—

These are two appeals : (1) against an order dated August 20 last dissolving an injunction granted in this action on December 20, 1927 ; (2) against an order of the trial Judge allowing certain issues to be tried at the inquiry as to whether the injunction should be dissolved or not.

A simple matter has been most unnecessarily complicated by the procedure followed by the parties and the Court below. It is necessary to state what has taken place to understand how the matter now comes before this Court.

The appellant is the plaintiff in the action. He launched his plaint on December 17, 1927. The defendant, be it noted, has not yet filed his answer. The claim sets out that plaintiff is the lessee of 70 coir husk pits from the Crown, these pits we are informed being fenced off portions of a lagoon. Adjoining these pits, it is pleaded, is a strip of land reclaimed from the lagoon which has been used from time immemorial for the purpose of beating coir husks. Adjoining this strip of land is land belonging to defendant, across which it is stated from time immemorial has existed a public road leading from the Matara-Tangalla road to the husk pits. Plaintiff pleads that this public road over defendant's land has been obstructed by defendant, the obstruction being the erection of a fence across it, and he is prevented from using the public road and the strip of land

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adjoining his pits, and from access to his pits. He claimed an interim injunction directing the defendant to allow him to use the road and the strip of land, and also damages.

In support of this application for the interim injunction one affidavit by himself was produced setting out very briefly his claim. The principal ground urged in support of the application is clearly the alleged wrongful and unlawful obstruction of a public road preventing, it is alleged, access to the strip of land and the coir pits. On this affidavit alone the District Judge allowed the *ex parte* application. In my opinion his order was not in any way justified by the material before him. Further, even if he thought there was ground for granting an injunction on the plaintiff's case as set out in his plaint, he should have applied the provisions of section 664 of the Civil Procedure Code and directed that notice be served on the other side. A party must have very strong grounds and put all the necessary facts before the Court to obtain an interim injunction on an *ex parte* application, and even if granted it should as a general rule only be to a certain date to allow of notice to the other side. On the next day, December 21, also on an *ex parte* application, the injunction was amended and the Fiscal was directed to remove the alleged obstruction across the road. Defendant thereupon moved that the injunction be discharged under the provisions of section 666 of the Code. After most informal proceedings which are described in the judgment of this Court under date April 30, 1928, the District Judge "suspended" the injunction and appointed a date to go into the question whether it should be granted or not *de novo*. Naturally plaintiff objected to this, appealed, and was successful. The Appeal Court held (April 30, 1928) that he had obtained his interim injunction to last apparently until the case should be determined, and it could only be discharged by following the procedure laid down by law. The matter thereupon went back to the District Court for defendant's application to discharge the injunction to be properly heard.

It came before another Judge thereafter. On July 18 when the matter was called issues for the purpose of determining whether the injunction should be discharged or not were suggested by both sides and by the Court. Certain issues suggested by defendant were objected to by plaintiff. In so far as they raise the question whether plaintiff had any substantial ground for his claim they were rightly allowed. In such a matter the Court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that plaintiff is entitled to relief (*Preston v. Luck*¹). Plaintiff however wished to restrict the inquiry to the question of convenience and to his own solvency in case he should fail and be ordered to pay damages as a result of his obtaining the interim injunction.

¹ 27 Ch. D. at page 506.

As I have stated, the issues objected to were rightly allowed by the trial Judge, but only for the limited purpose I have mentioned. The Judge however goes on in effect to decide plaintiff's action. Evidence is led by both sides not on affidavit, but numerous witnesses are put into the box, examined and cross-examined at length, plaintiff beginning. Then in a very long and diffuse judgment the learned Judge in effect decides plaintiff's action. He holds that there is no public road over defendant's land as plaintiff pleads. If that finding is correct it is clear plaintiff's action must fail, for it is obstruction of a public road, thereby preventing access to the strip of land and pits, that is the basis of the claim.

Plaintiff naturally objects to his action being heard and determined in this indirect way. Defendant has not even yet filed his answer. If the learned Judge had confined his inquiry on defendant's application to discharge the injunction to the question whether there was a serious matter to be tried at the hearing, he may or may not have directed that the injunction be discharged. He might, however, urge that he was in the unfortunate position of not having obtained real assistance from Counsel before him. If it had been advanced on behalf of defendant that from the very facts set out in the plaint this was no case for an injunction at all and that the injunction must therefore be discharged, it seems to me the Judge must have taken that view. In his plaint plaintiff has himself fixed at a definite figure all the damage he has suffered and will suffer at the hand of defendant, even if the alleged obstruction of which he complains continues. He will not be concerned, so far as his claim here is concerned, beyond the time limit of his leases to the pits. That date, it may be noted here, a most material fact, is nowhere disclosed. As pointed out by Lindley L.J. in *London and Blackwall Railway Co. v. Cross*,¹ the very first principle of injunction law is that you do not obtain injunctions for actionable wrongs for which damages are the proper remedy. Plaintiff has himself assessed all his damages which presumably in his view will recompense him for the alleged infringement of his rights.

There is, in my opinion, a further reason why this injunction must be dissolved. This again is not a reason advanced in the lower Court. Assuming for the moment it is on the face of the plaint a proper case for an interlocutory injunction, the application must be supported by sufficient material, and all necessary facts must be disclosed. An obstruction of a public road is an offence under the Penal Code. If it be thought inadvisable to take any action under the Penal Code, it can be dealt with as a public nuisance under section 105 of the Criminal Procedure Code which gave the plaintiff a simple remedy for the removal of the obstruction. Was any

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action of this nature taken? If not, why not? There was in addition not a tittle of evidence produced by him when he asked for his interlocutory injunction from any public officer or public body that any public road had been obstructed. All the Court had was the meagre affidavit of plaintiff himself to which I have already referred. It has come to my notice more than once before that there is a tendency in some District Courts to grant injunctions on quite inadequate material.

It is not necessary in the circumstances to say anything about the suppression of facts by the plaintiff to which the trial Judge refers. For the reasons set out which are sufficient, I am of opinion that the order discharging the interim injunction was correct and the appeals must be dismissed. I think I have also stated sufficient to justify an order that the costs of these two appeals and of the proceedings in the lower Court from which these appeals are taken should follow the event in the action. I so order.

DRIEBERG J.—I agree.

Appeal dismissed.
