

1971 Present : G. P. A. Silva, S.P.J. and Samerawickrame, J.

B. M. D. PERERA, Appellant, and TOWN COUNCIL,  
MAHARAGAMA, Respondent

*S. C. 9/69 (Special)—D. C. Colombo, 2130/Z*

*Contempt of Court—Interim injunction preventing the carrying on of an unlicensed private market—Quantum of evidence necessary to show that the injunction was disobeyed.*

The defendant-appellant was found guilty by a District Court of the offence of contempt of Court for disobeying an interim injunction restraining him from carrying on an unlicensed private market on his premises.

*Held*, that before the appellant could be convicted there should be positive proof that he was carrying on a market, supported by evidence such as his organizing a market, providing stalls for the traders, charging rents for such stalls and having some control or supervision over such a market.

**A** PPEAL from a judgment of the District Court, Colombo.

*G. E. Chitty, Q. C.*, with *G. E. Chitty (Jnr.)*, for the defendant-appellant.

Plaintiff-respondent absent and unrepresented.

March 31, 1971. G. P. A. SILVA, S.P.J.—

The defendant in this case has been found guilty of a contempt of Court by disobedience to comply with an order issued by the District Judge to the following effect :—

“The plaintiff abovenamed has in the above styled action filed in this Court prayed for among others for an interim injunction and/or enjoining order restraining you the defendant abovenamed and your servants and agents and all persons claiming through or under you from carrying on the private market referred to in his plaint and affidavit (copies of which are annexed) on the said premises without a licence from the plaintiff until the final determination of this action.

And whereas this Court after considering the plaint and affidavit filed by the plaintiff and the submissions made by counsel on that behalf, made order on 25.7.1969 to “issue notice of injunction and enjoining order accordingly for 8.8.1969.”

You the defendant abovenamed, your servants and agents and all persons claiming through or under you are therefore hereby enjoined from carrying on the unauthorised and unlicensed Private Market on premises No. 20, Dehiwela Road, Maharagama, as referred to above until the final determination of this action.

Herein fail not under the penalty of law ensuing.”

Counsel for the defendant-appellant submits that the learned District Judge has misdirected himself, in the first place, in holding that the defendant was carrying on a market in the premises in question. The evidence led on behalf of the party who prayed for an injunction does not disclose that the defendant either organized the market or charged any rent from any particular trader, or had any stalls or even allotted any space on the land on which the market is alleged to have been carried on. In fact the evidence is to the contrary. The evidence rather shows that when the traders had some trouble with one Cicy Perera, they walked into the defendant's land and began to sell their goods in his land; that there was no organiser or “barakaraya” there; that there were no persons to collect any

money ; and that there were no sheds or buildings on the land. Although admittedly the land, on which the traders sold their goods, is the defendant's land, the evidence led on behalf of the defendant, through one K. Soloman, the Secretary of the Traders' Association, Maharagama, disclosed that the arrangements for the laying of the goods were made among the traders themselves ; that it was uncertain whether the defendant was even present on the occasion when such arrangements were made ; that no payments were made by the traders, either to the defendant or to anybody else and that the defendant did not hold a " pola ", and this evidence would clearly go counter to any charge that the defendant was carrying on a market in this place.

In this state of evidence, without affirmative proof of any positive act on the part of the defendant which shows that he was carrying on a market, there is no warrant for holding that he was carrying on a market either on the 26th of July, 1969, on which day the notice of the injunction is stated to have been served on him, or on any other day either prior or subsequent to this day in question.

The learned District Judge appears to have formed the view that the mere abstention on the part of the defendant from taking any steps to turn out those who kept their wares on this land and sold them was sufficient proof of his carrying on a market on this land. He says in the course of his judgment :—

" In my opinion, the act of carrying on the fair does not require anything more than allowing one's premises, owned by one and occupied by one, to be used as a fair. The defendant could have certainly disallowed the traders from holding the fair just as he had allowed them to do so. "

This appears to us to be a misdirection in view of the words of the injunction which enjoined him from carrying on a market in the said premises. Before a person could be convicted of any offence of contempt for contravention of such an injunction or order, there should, in our opinion, be positive proof that he was carrying on a market, supported by evidence such as his organizing a market, providing stalls for the traders, charging rents for such stalls and having some control or supervision over such a market. In this case there is no evidence of any single one of these acts on the part of the defendant, and the finding is therefore not supportable.

We accordingly allow the appeal and set aside the conviction and sentence imposed on the defendant-appellant by the learned District Judge.

SAMERAWICKRAME, J.—I agree.

*Appeal allowed.*