

*Privy Council Appeal No. 105 of 1933*

*Patna Appeal No. 22 of 1931*

Ghanshayam Das Jagnani, since deceased (now represented  
by Girdhari Lal and another) - - - - - *Appellant*

*v.*

Ramnarayan Ganeshnarayan (a firm) - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 19TH DECEMBER, 1935.

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*Present at the hearing :*

LORD BLANESBURGH.

LORD ALNESS.

SIR GEORGE RANKIN.

[*Delivered by* LORD ALNESS.]

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This is an appeal from the High Court of Judicature at Patna. That Court, by a judgment dated 2nd June, 1931, dismissed the suit brought by one Ghanshayam Das Jagnani now deceased, but referred to in this judgment as the appellant—for the purpose of restraining an alleged infringement by the respondents of the appellant's Indian letters patent No. 14,245, dated 12th July, 1928. The Court held that the appellant's letters patent were invalid by reason of anticipation and want of subject matter.

Having regard to the course which the discussion upon the appeal took before the Board, their Lordships are absolved from considering the appellant's patent on its merits. The position which the case assumed is this. The respondents contended, *inter alia*, that the appellant's patent was anticipated by a prior English specification of one Martin, No. 5,641 of 1883, and the appellant did not dispute that, if that specification was duly published in India prior to 1928, it anticipated his patent, and his appeal must fail. The appellant, however, strenuously maintained that Martin's specification was not made public in India, and that accordingly it was not in law an anticipation of the appellant's patent. The respondents, on the other hand, with equal vigour, maintained that Martin's specification was publicly known in India before 1928, and that the judgment appealed against should therefore be affirmed.

The materials contained within the four corners of the record on the question of the publication of Martin's patent in India are exiguous in the extreme, and indeed inconclusive. It was not in dispute between the parties that Martin's

specification was in point of fact in the Patent Office in Calcutta before 1928, but the appellant contended that it was filed in a room which was not open to the public. It seemed *prima facie* extraordinary that, in the judgment of the Chief Justice, no reference is made to the question of publication of Martin's patent in India. The respondents, however, maintained that the reason for that omission is to be found in the fact that the appellant in the High Court abandoned his contention that there had not been prior publication of Martin's patent in India, and so absolved the Chief Justice from dealing with that point in his judgment. This, however, the appellant's counsel denied.

Having regard to the meagreness of the information on the topic which the record contains, and to the conflicting contentions of counsel, their Lordships adopted the somewhat unusual course of directing, with the consent of parties, that a cable should be sent to the Registrar of the Patent Office at Calcutta with regard to the alleged publication of Martin's patent, and they also directed *ex proprio motu* that a cable should be sent to the Chief Justice to enquire whether the contention that Martin's patent was not made public in India before 1928 had been abandoned in his Court by the appellant. These cables were sent, and replies to them were in course received.

Their Lordships have duly considered the replies. They find it unnecessary to offer any opinion upon the question of the publication of Martin's patent in the Patent Office in Calcutta prior to the date of the appellant's patent. For they are satisfied, upon the cable from the Chief Justice, that the appellant, in effect, though not expressly, abandoned in Court his contention that Martin's patent had not been duly published in India prior to 1928, that the appellant abstained, in the High Court at Patna, from further pressing his contention of non-publication of Martin's patent in India, that for that reason a witness from the Patent Office who the Chief Justice suggested, in the course of the evidence, should be called from the Patent Office was not called, and further that the respondents, relying on the attitude taken up by the appellant on the matter, abstained from leading substantive evidence of publication. In these circumstances it would, in their Lordships' judgment, be contrary to natural justice that the appellant should now be allowed to maintain a contention which he abstained from arguing in India.

The appellant's counsel having been constrained to admit that, if their Lordships took the view which has just been expressed, he could not maintain his appeal, it follows that, on that ground alone, this appeal must fail. Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed, with costs.



In the Privy Council

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GHANSHAYAM DAS JAGNANI,  
SINCE DECEASED (NOW REPRESENTED  
BY GIRDHARI LAL AND ANOTHER)

v.

RAMNARAYAN GANESHNARAYAN  
(A FIRM)

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DELIVERED BY LORD ALNESS

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