
(1876) 06 AHC CK 0008

Allahabad High Court

Case No: None

Karim Baksh and
Another

APPELLANT

Vs

Budha

RESPONDENT

Date of Decision: June 9, 1876

Citation: (1875) ILR (All) 249

Hon'ble Judges: Turner, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. If the road is a public thoroughfare, then, inasmuch as the plaintiffs alleged no special injury, the suit for the removal of the encroachment cannot be maintained--Baroda Prasad Mostafi v. Gora Chand Mostafi⁺ Pyari Lal v. Rooke 3 C.L.R. A.C. 30 : 3 B.L.R. App. 543 : S.C. 11 W.R. 434; Hira Chand Banerjee v. Shama Charan Chatterjee 3 B.L.R. A.C. 351. There is, it is true, a decision to the contrary--Jina Ranchod v. Jodha Ghella 1 Bom. H.C. 11. 1, but the weight of authority supports the view taken by the Judge, which accords with the English law on the subject and is based on principles well understood. But it must be determined whether the road in suit is a public thoroughfare.

-----Foot Note-----

+ 3 B.L.R. A.C. 295 : S.C. 12 W.R. 160, followed in Raj Lukhee Debia v. Chunder Kant Chowdry 14 W.R. 173; Bhageeruth Rishee v. Gokool Chunder Mandal 18 W.R. 58; Bhageeruth Doss v. Chundee Churn 22 W.R. 462; Ramtarak Karati v. Dinanath Mandal 7 B.L.R. 184 : S.C. 24 W.R. 414; and Parbati Charan v. Kali Nath 6 B.L.R. App. 73.