

(2010) 10 JH CK 0012

Jharkhand High Court

Case No: S.A. No. 289 of 2006

Dwarika Prasad and Dr.
Surendra Nath Tiwary

APPELLANT

Vs

Tata Iron and Steel Company
Ltd. and Others

RESPONDENT

Date of Decision: Oct. 25, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107

Citation: (2011) 1 JLR 291

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Narendra Nath Tiwari, J.

The Plaintiffs, who are the Appellants, having lost in two courts below, have filed Second Appeal against the concurrent findings of learned two courts below.

2. The Plaintiffs-Appellants had filed suit in the representative capacity praying for declaration that the road around Bagakudar Lake is a public road and the TISCO had no right to obstruct the passage. They had also prayed for decree for permanent injunction restraining the defendant from obstructing passage of public around the said lake on foot or through vehicle.

3. According to the Plaintiffs, there was public circular road, running around a lake known as "Bagakudar Lake", which is within the Jubilee Park of Jamshedpur. The people of the area had been using the said road since the time immemorial. Vehicles were also plying on the road. The road was also used by the public for going to the river side, Bagakudar Lake, Circuit House area and Sonari Basti. A Park known as "Jubilee Park" came up during the period 1955-58 on the occasion of Golden Jubilee of TISCO. The defendant No. 1 started digging foundation for

erecting wall with pillars on both sides of the road in January, 1992 to obstruct the road around Bagakudar Lake with a view to install two iron gates. The local people including Plaintiffs objected to the said construction and a dispute arose leading to proceeding u/s 107 Code of Criminal Procedure , but the defendant was able to install two iron gages at the said point in order to block the public thoroughfare around the Bagakudar Lake. The defendant had no right over the land as the lease granted to the TISCO expired and the land vested in the State of Bihar.

4. The defendant's case was that the TISCO Limited is an industrial undertaking, having its work and township at Jamshedpur keeping in view of its responsibility for civic amenities to its employees and the people of the town. A park know as "Jubilee Park" was established with a pucca compound wall on all sides with gates for controlling entrance and exit of the visitors to the Park. The defendant was lessee of the State Government on payment of rent determined by the State. A Zoological Park was also established within the Jubilee Park. There was no public road within the Park. The suit is frivolous and instituted at the instance of Ramdas Singh, who happened to be ex-licensee. His licence was terminated. Aggrieved by the termination of his licence, the said Ramdas Singh had set up the Plaintiffs to institute a frivolous suit with ulterior malafide motive. The claim of the Plaintiffs is wholly false and baseless and the suit is liable to be dismissed.

5. In the trial court, the Plaintiffs had adduced five witnesses in support of their suit. No evidence was adduced on behalf of the defendant. Learned trial court after thorough appraisal of the evidences on record came to the finding that the alleged road is not a public road. The defendant-TISCO is a lessee under the State and the defendant has right to restrict movement within the Park for providing better civic amenities to its employees as well as to others. The Plaintiffs have only right to movement in the Park for enjoyment of civic amenities regulated by the defendant-Company. Learned trial court found no merit in the suit and the same was dismissed.

6. The Plaintiffs-Appellants thereafter preferred appeal in the court of District Judge, Jamshedpur being Title Appeal No. 5 of 2004.

7. The said appeal was finally heard and decided by 1st Additional District Judge, Jamshedpur. Learned lower appellate court considered all the relevant aspects, discussed the evidences and on due scrutiny, concurred with the finding of learned trial court holding that the road around Bagakudar Lake is not a public road within the meaning of statute and that the defendant being lessee under the State Government has right to restrict movement over it for administrative control and the Plaintiffs have only right to movement in the Park for enjoyment of civic amenities in accordance with rules prescribed by defendant No. 1. Learned lower appellate court, thus, upheld the finding of learned trial court and dismissed the appeal.

8. In this appeal, the same grounds have been taken by the Plaintiffs, which have been considered by learned courts below and properly answered on the basis of the facts and material on record by recording sound reasons.
9. The concurrent findings recorded by learned courts below are binding on this Court in second appeal. I find no error in the impugned judgment and decree giving rise to any substantial questions of law to be decided in this second appeal.
10. This appeal is, accordingly, dismissed.