(1918) 06 CAL CK 0004

Calcutta High Court

Case No: None

Nagendra Nath Mazumdar and Others	APPELLANT
Vs	
Banwari Lal Das and Another	RESPONDENT

Date of Decision: June 12, 1918

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 91
- Limitation Act, 1908 - Section 26

Citation: 46 Ind. Cas. 970

Hon'ble Judges: Syed Shamsul Huda, J; Fletcher, J

Bench: Division Bench

Judgement

1. This is an appeal by the defendants against the decision of the learned District Judge of Burdwan, dated the 1st December 1916, affirming the decision of the Munsif of Katwa. The plaintiffs sued on behalf of themselves and the other members of the village in which they reside for a, declaration of the right of the inhabitants of the village to the use or the village pathway lying to the east of the defendants'' premises. The pathway claimed is said to be an ancient one. Both the Courts below have decreed the suit. In this appeal, the following points have been urged: First of all, it is said that a suit relating to a village pathway is governed by the provisions of Section 91, Code of Civil Procedure, relating to public nuisances. A village pathway is obviously not a public nuisance, nor are the public at large affected by the obstruction of the pathway which only the inhabitants of the particular village have the right to use. It is quite clear that Section 91, Code of Civil Procedure, has nothing to do with the suit at all.

2. Then, it is said that, if it is not public, it is private and that there is nothing else that the right can be excepting a public nuisance or a private easement and that, therefore, u/s 26 of the Indian Limitation Act, the suit is barred by limitation. But the

definitions of public right and private right are not absolutely exclusive. There are other sub-divisions of these rights; such as the right to a pathway used by the inhabitants of a particular village or town. Obviously, Section 26 of the Limitation Act has nothing to do with an ancient village pathway used by the inhabitants of a particular village from time immemorial. There is nothing in this point.

3. The third point relates to the form of the decree. The learned Judge of the lower Appellate Court said that the defendants were mistaken in the view they took with reference to what the decree passed by the learned Judge of the primary Court was. When one looks at the decree of the first Court in this case, one finds that the learned Judge of the lower Appellate Court was right. The decree drawn up by the Munsif strictly followed the words of the judgment which he pronounced in Court. There is nothing wrong in the form of the decree.

4. The appeal fails and is dismissed with costs.