(1869) 07 CAL CK 0009

Calcutta High Court

Case No: Special Appeal No. 692 of 1869

Radhanath Sugracharji and Another		APPELLANT
	Vs	
Baidonath Seal Kabiraj		RESPONDENT

Date of Decision: July 5, 1869

Judgement

Hobhouse, J.

This was a suit for a declaration of right of way over certain lands, the property of the defendants; the plaintiffs claiming to have that right by a particular line. The first Court held that the plaintiffs had failed to prove their right of way by user over that particular line; but it held that the plaintiffs had proved generally a right by user to pass over the lands, and therefore gave the plaintiff a decree. The plaintiffs themselves appealed against this decision as did also the defendants, and the plaintiffs'' appeal was on the ground that they had proved their right of user by the particular line over which they claimed the right.

2. Looking to the whole case before it, the lower appellate Court found as a fact that the plaintiffs had failed to prove their right of user over the particular line in question, and dismissed the plaintiffs'' suit. This finding is not disputed as a good finding of fact on the evidence; but in special appeal it is said that as the plaintiffs proved their general right by user to pass over the lands, so the first Court''s judgment was right and ought to have been affirmed by the lower appellate Court. Now this was not the plaintiffs'' case down below, and on this ground alone we are not quite sure that we should not be justified in dismissing this special appeal; but in addition to this we think that the lower appellate Court was right in its law in the case before it. We are in accordance with the dictum of the majority of the Judges in Goluck Chunder Chowdhry v. Tariny Churn Chuckerbutty 4 W.R. 49, that the plaintiffs having set up a particular right of way by a particular route were bound to prove that right, and that if they failed to do so, they could not succeed an proof of an entirely different right. The special appeal is dismissed with costs.