

(1869) 05 CAL CK 0028

Calcutta High Court

Case No: Special Appeal No. 3094 of 1868

Pyari Lal and Co.

APPELLANT

Vs

E.G. Rooke

RESPONDENT

Date of Decision: May 5, 1869

Judgement

L.S. Jackson, J.

This was a suit brought by a Coal Company, called the Pyari Lal Coal Company, against the defendant, Mr. Rooke, who

is the owner of another coal concern, in which it was set forth that the defendant had made application to the Magistrate, and obtained from him an

order opening a certain road as a public thoroughfare, and praying that the order of the Magistrate be set aside, and that road be closed. The

Munsiff gave judgment for the plaintiffs, except so far as they claimed that foot passengers should not be allowed to pass either way, which was

disallowed, but it was declared that the road should be closed as a road for carts. Against this decision, which was affirmed by the Subordinate

Judge of the district, the defendant has appealed specially. The ground of special appeal, which seems to us to arise in this case, which has not

been taken in the petition of special appeal, but which we have allowed to be taken as it affected the jurisdiction of the Courts, and was one which

in our judgment ought not to be allowed to pass over, is, that the order made by the Civil Court in this case is one which it was not competent to

make. I think the order made is clearly beyond the competency of the Civil Court. The defendant, it seems, has obtained an order from the

Magistrate, which was I presume, under the 308th section of the Code of Criminal Procedure, declaring the road in question to be a public thoroughfare, and ordering it to be kept open. It seems to me quite clear that the Civil Court has no jurisdiction to call directly in question, the propriety of such an order. The plaintiff may have civil right, which he may possibly be enabled to enforce in other ways, but it seems to me quite clear, that a Civil Court is not competent to declare a road, which has been opened by the order of the Magistrate, to be no public thoroughfare, and to direct that it be closed by the assistance of the officers of the Court.

2. I think, therefore, that the decision of the Court below must be set aside and the plaintiff's suit dismissed with costs of the Court below; but it has been suggested that the ground on which our decision is based, has not been taken in the Court below, while if it had been taken there, special appeal might not have been called for : and the appellant has not pressed for the costs of the special appeal, we therefore make no order for the costs of the special appeal.

Markby, J.

I am entirely of the same opinion. I only wish to add one word, with reference to something which I have said in other cases, that whenever an objection is made to the want of jurisdiction for the first time in this Court, on special appeal, I should make every presumption in favor of the jurisdiction of the Courts below; and if it were possible that under any state of circumstances those Courts could have jurisdiction, I should think that this Court, in special appeal, is bound to presume that those circumstances exist. In this case however an order has been made by the Civil Court, declaring that a road, which is claimed to be a public road, shall be stopped. That appears to me to be an order which, under any state of circumstances, the Civil Court has no power to make. I think it has no more power to make such an order, than it would have to try a man for culpable homicide.