
(1871) 05 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 56 of 1871

Dinanath Mandal and
Others

APPELLANT

Vs

Ramtarak Karati

RESPONDENT

Date of Decision: May 12, 1871

Final Decision: Allowed

Judgement

Glover, J.

A preliminary objection was taken by the special appellant's pleader, that this being a suit for removing an obstruction on a public road, the Civil Court had no jurisdiction. It is contended by the pleader for the special respondents, in the first place, that this objection was never taken at any stage of the case in the Courts below, and next that there is nothing on the record to show that the road which is sought to be opened is a public road. It is no doubt true that the objection was not taken in any particular form until the special appeal stage; but as it is a point of law upon which several decisions of this Court have been passed, we do not think we should be justified in ignoring it even although it was not taken, as it ought to have been, earlier in the proceedings. As to the fact whether the road is or is not a public road, we observe that the plaintiffs in their plaint call it a public road. The Munsiff has decided the case on that understanding; and, although his decision does not go on that point, he clearly considered it to be a public road. Moreover, in the evidence of one of the plaintiffs, Rup Chand Roy, he speaks of it distinctly as a road used by the public. It is, therefore, impossible to say that this road is not, to all intents and purposes, a public road. We remark, moreover, that the road was once before the subject of an application to the Magistrate u/s 318 of the Code of Criminal Procedure, which would of itself show that it must have been treated by the then petitioner and the present plaintiffs as a public road, otherwise no such application could have been made. If then it be a fact that the road is a public road, the objection raised by the special appellant is a good one, and must be allowed.

2. In the case of [Baroda Prasad Mostafi Vs. Gora Chand Mostafi and Others](#) , it has been distinctly laid down that no one has the right to sue for obstructing a public thoroughfare, without showing that he has sustained some particular inconvenience from that obstruction, and the proper course to be pursued in cases where injury has been done to the public by the obstruction of a road is pointed out in the latter part of that decision. In this case there has been no attempt to show that the plaintiffs have sustained any particular inconvenience from the obstruction complained of, and therefore this decision is exactly in point. There is another decision in the case of [Pyari Lal and Co. Vs. E.G. Rooke](#) , in which it was laid down that a Civil Court had no jurisdiction to enquire abstractedly into a public right, otherwise than as collaterally to a suit arising out of a private injury; and again, in the case of [Hira Chand Banerjee Vs. Shama Charan Chatterjee and Others](#) , it was laid down that any question as to the opening or closing of a public road belongs to the Criminal, and not to the Civil Court, and that such question can only be enquired into in a Civil Court as ancillary to the question whether or not any damage has been done to the plaintiff. It appears to us clear on these rulings that, if it be shown that the road in question in this case is a public road, and that there is no allegation of any special injury or inconvenience, the plaintiffs had no right to bring the present action. We think, as above stated, that the road is shown to be a public one, and that, therefore, under the circumstances, the Civil Court had no jurisdiction to try the case. The judgment of the Subordinate Judge must be reversed, and the plaintiffs' suit dismissed with costs.