
(1870) 05 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 2806 of 1869

Harrihar Mandar and
Another

APPELLANT

Vs

Mullick Kurim Baksh

RESPONDENT

Date of Decision: May 6, 1870

Judgement

Sir Richard Couch, Kt., C.J.

The Court has found in this case that there had been an enjoyment for a long time, and, consequently, that the plaintiff had established his right to the use of the water. Now I think we must understand the expression "for a long time" as such a length of time as satisfied the Court that there was a right. No precise period of enjoyment can be said to be required in order to prove the existence of a right of this kind; it is a matter for the Court to determine whether the use has been for such a length of time as to satisfy it that there is a right to it. The cases, as far as I am aware on this side of India, do not go beyond that. The question whether a Judge is bound upon proof of a certain period of user to find that there is a right is a different one from that of whether a Judge who has found a right was justified in doing so. There seems to be no rule of law which says that a certain period of enjoyment is required to establish the right, and therefore, in this case, as the lower Court has found that there has been a use for a very long time, there is no objection to the finding in point of law. With regard to the other question, the plaintiff alleged in his plaint that he had been obstructed in his enjoyment of his right to the water by the erection of a bund. The lower Courts have found that the right, which the parties had, was that the defendant could make use of the water, and that after that the plaintiff would have the right to use it. That is the view which the lower Appellate Court took of the decree of the Munsiff. It may be that it will, on some occasions, be difficult to carry out this decree, and that at times disputes may arise between the parties as to whether the defendant has not done more than exercise the right to which he is so entitled, but that is a difficulty which is inherent in the case, and the nature of the rights possessed by the parties. If at any time the defendant makes use of the water to a greater extent than he has a right to do, and deprives the plaintiff of what he is really entitled to, the question will

have to be tried in another suit. It is to be hoped, however, that a right having now been declared, the parties will exercise it in such a way as not to cause any further litigation. The only question which remains to be determined is whether it is proper to allow the decree of the Munsiff to stand with the construction which has been put upon it in the judgment of the Subordinate Judge. The Subordinate Judge says, "I dismiss the appeal and I uphold the decision of the Munsiff as construed by me." It would be better that he should alter the Munsiff's decree according to what he says is the proper construction of it, so as to make the right declared more defined and precise, but the parties may make an application to him to amend his decree and to word it so that it may be in accordance with what he holds to be the proper construction of the lower Court's decree. It is not a matter for which a special appeal was necessary, and therefore this appeal must be dismissed with costs.