

(1909) 06 CAL CK 0042

Calcutta High Court

Case No: None

Madon Mohan Chattopadhyaya

APPELLANT

Vs

Akshoy Kumar Baruri and Others

RESPONDENT

Date of Decision: June 9, 1909

Judgement

1. This case has been argued before us by Mr. Chatterjee who has placed the conduct of the appellant in its most favourable light; and he has sought to remove the impression created by a perusal of the judgment of the lower Court, that his client was not deserving of much sympathy in a Court when he asked for the grant of an injunction. But notwithstanding his argument we feel that the judgment of Mr. Justice Brett should not be disturbed. To begin with there is the initial difficulty that we have not before us all the servient owners, and how we can pass a decree based on easement in that state of the record it is difficult to see. Even if that difficulty be got over and it be conceded for the purpose of argument that the right of the plaintiff has been infringed, still it is clear that this is a case in which the plaintiff is not entitled to the remedy of injunction and that is the only remedy he seeks so that on that ground it would be impossible to confirm the decree of the lower appellate Court. In our opinion, the plaintiffs' suit has been rightly dismissed and we dismiss the appeal with costs.