

(1873) 04 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 1012 of 1872

Meechoo Chunder
Sarcar and Others

APPELLANT

Vs

J.H. Ravenshaw

RESPONDENT

Date of Decision: April 18, 1873

Final Decision: Dismissed

Judgement

Sir Richard Couch, Kt., C.J.

In this case it appears that the Magistrate, considering there was an unlawful obstruction or nuisance on a public thoroughfare by the buildings which are called in this suit the plaintiffs" mud kothi, made an order under s. 308 of the Code of Criminal Procedure. The plaintiffs dissatisfied with the order availed themselves of the power given to them by s. 310, and applied to have it tried by a jury whether the order of the Magistrate was a right and proper one. A jury was appointed, and their finding was that the order was reasonable and proper. They also found that this building of the plaintiffs was an obstruction to the public thoroughfare. The present suit is brought against the Magistrate, the plaintiffs complaining that by his order the building had been demolished, and the earth had been taken away for the purpose of repairing the adjacent public road, and claiming 200 rupees for the value of the materials of the building, and asking for the recovery of the land, as to which the suit is valued at 800 rupees. Now s. 311 says, that "no suit or action shall be entertained in any Court in respect of anything necessarily or reasonably done to give effect to the order" of the Magistrate after the finding of the jury, where there is a jury; and where no jury is applied for, after the passing of such order. In regard to the damages claimed for the demolition of the building, they are clearly claimed for something which was necessarily and reasonably done to give effect to the order for removing the obstruction. It is plainly within the terms of s. 311, and no action can be brought for it. Then, in regard to the part of the claim which is for the recovery of the land, although it is put in that shape, it is in reality an action against the Magistrate on account of the plaintiffs having been dispossessed of what they say is their land in carrying out this order. If there is any cause of action against the Magistrate, it is that he has

dispossessed the plaintiffs of their land, and he has only done so in giving effect to an order made under s. 308 of the Code of Criminal Procedure. State the nature of the plaintiff's claim in any way you may, it comes within that section. There is another objection to the plaintiffs being allowed to sue for the recovery of the land; they say, in fact, the land is our private property; there is no public road or way over it, and it is no part of a thorough-fare, and so we claim to have possession of it given to us. But the question as to whether it is part of a public thoroughfare has been tried in the manner which the law has provided in the Code of Criminal Procedure, namely, by a jury, and it has been found against them. I say nothing as to the propriety of that decision (probably it is a very right and proper one), as we have nothing to do with that now. The plaintiffs have had what the law gives them, the right to have the question determined by a jury partly selected by themselves, and a majority of the jury has found against them. They are not at liberty to bring a suit in the Civil Court to have the question tried again, and in fact to have the order of the Magistrate under s. 308, and the finding of the jury, reversed, and the whole matter reopened. The consequence of that, as pointed out by the Legal Remembrancer, would be that there might be another order by the Magistrate, another jury appointed, another similar finding, and then another suit, and so on. The law does not allow that. There are no grounds therefore for this appeal, which must be dismissed with costs.