

(1881) 03 CAL CK 0032

Calcutta High Court

Case No: None

Doorga Churn Dhur
and Another

APPELLANT

Vs

Kally Coomar Sen

RESPONDENT

Date of Decision: March 17, 1881

Citation: (1881) ILR (Cal) 145

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The plaintiffs claim a prescriptive right of passage for boats over a certain water-channel belonging to the defendant ; and they say that the defendant has wrongfully obstructed that passage.

2. The Courts below have divided the plaintiffs" claim into two portions. As to the first, the lower Appellate Court has found it to be perfectly true, that the plaintiffs have a right of passage for their boats over that part of the defendant"s channel; but then it has also found, that what the defendant has done has not interfered with the plaintiffs" right. The defendant has merely raised an embankment and done certain other acts which have confined the width of the channel by a few feet; but this admittedly leaves ample room for the passage for the plaintiffs" boats, even those of the largest size.

3. With regard to the other portion of the claim, the lower Courts find, that the plaintiffs have not proved any right of passage. Their evidence, if it proves anything, goes to show, that the plaintiffs" boats used to traverse the defendant"s water in all directions, and in no particular line ; and the lower Court therefore finds, that the right of passage is not proved in the particular direction indicated by the plaintiffs.

4. The plaintiffs complain before us of both these findings.

5. As regards the first part of the claim, they contend that, if they have been exercising a right of passage over a channel of a particular breadth, and that breadth is interfered with by the defendant even by a single foot, they have a right to have the whole breadth restored, though the channel that remains is amply sufficient for all their requirements. We think it clear that this is not the law. A right of passage for boats over another man's channel, is analogous to a right of way claimed over another man's road. And we believe that the law upon the subject is thus correctly laid down in *Goddard on Basements*:

It may be mentioned here, that a right of way along a private road belonging to another person does not give the dominant owner a right, that the road shall, in no respect, be altered, or the width decreased ; for his right does not entitle him to the use of the whole of the road, unless the whole width of the road is necessary for his purpose ; but it is merely a right to pass with the convenience to which he has been accustomed. The right, therefore, merely extends to that portion of the centre of the road, which is necessary for the due exercise of the right of passage. The only obligation upon the servient owner is, that he shall not unreasonably contract the width of the road, or render the exercise of the right of passing less easy than it was at the time of the grant.

6. We consider, therefore, that the lower Court has taken a correct view of this part of the case.

7. Then, with regard to the second point, we think it clear, that the Court below was right in holding, that the plaintiffs could not claim a right of way in every direction over the defendant's water. They could claim such a right only in a particular direction, and this they have not proved.

8. We think, therefore, that the judgment of the lower Court was right, and that the appeal must be dismissed with costs.