

(1931) 02 PAT CK 0002
In the Patna High Court

Muhmmad Din Mian and Others

APPELLANT

Vs

Mt. Atirajo Kuer and Others

RESPONDENT

Date of Decision : 06-02-1931

Acts Referred:

Citation : AIR 1931 Patna 418

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—The causa of action alleged by the plaintiffs was that the defendants encroached on a public highway and it appears that before action was brought, permission was obtained under Order 1. Rule 8, Civil P.C., to enable the plaintiffs to bring the action. Now in my judgment it is quite clear in the first instance that Order 1, Rule 8, does not apply to the facts of the case; the rule on its proper construction will show that. The rule is:

Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit on behalf of or for the benefit of all persons so interested.

2. That rule and order appears to have been taken from the rules made under the Judicature Act of England and the purpose of those rules is well understood. The obvious class of cases to which the rule refers is such as one shareholder suing on behalf of all the other share-holders of a company: that of course is a clear case in which the persons have the same interest in the suit. It is impossible to say in this case that all the members of the public had the same interest in the subject-matter of this suit. It is quite impossible to discover to what extent they are interested in the encroachment which is the cause of action alleged. But apart from the provisions of Order 1, Rule 8, it seems to me quite clear that this action is not maintainable. The rule of the Common law in England is that no action can be maintained by one member of the public for the obstruction of a highway without proof of special damage and that rule has been

applied in numerous cases in India, as the rule of equity, justice and good conscience.

3. The first case to which I make reference is *Adamson v. Arumugam* [1886] 9 Mad. 463. The next case is the case of the Calcutta High Court, *Rajkumar Singh v. Sahebzada Roy* [1877] 3 Cal. 20 (F.B.); there the decision of the Full Bench was that as the obstruction had caused a special injury to the plaintiff, the plaintiff was entitled to bring an action. In neither of these cases is any reference made; and indeed it is unnecessary to make any reference to the provisions of Order 1, Rule 8, because the action lay in spite of the noncompliance with that order and rule. The most exhaustive judgment however was delivered in the Bombay High Court in the case of *Satku v. Ibrahim Aga* [1877] 2 Bom. 457 and was followed again by a case *Gehanaji v. Ganpati* [1875] 2 Bom. 469. The only case relied upon by the learned advocate on behalf of the respondents is the case of *Harihar Das v. Chandra Kumar Guha* [1918] 49 I.C. 79. That was a case in which villagers brought an action for a declaration with regard to the right of way in a pathway; but that case does not assist the respondents in this action as the learned Judges in deciding that case clearly distinguished it from the class of the case which I have before me and in the course of their judgment they stated:

If the case of special damage is established and the way be a public way, then the case is a clear one. The case however found by the learned Judge was this: In his view the pathway in dispute was a village pathway in which the plaintiff had got a right with the other villagers by reason of a grant implied from long user.

and they go on to state that:

an infringement of a right of that nature does not require proof of special damage,

4. The case of a single Judge, *Harish Chandra Saha Vs. Pran Nath Chakraverty and Others*, followed the previous decision.

5. Now that being so, it is clear that the learned trial Judge misconceived the scope of Order 1, Rule 8, and indeed when he came to try the action he did not address his mind to the fact which was essential before the plaintiff could have established his cause of action; the same must be said regarding the appellate Court. Now the encroachment on the public highway in this case was on the other side of the road from the land of the plaintiffs. In those circumstances, although it might be said that the plaintiffs ought to have an opportunity to bring their case, they must be assumed to have known the law although they made some allegation in their plaint as regards damage. They made no attempt to prove it nor indeed did they claim it in their prayer in the plaint. In those circumstances it does not seem to me to be a case in which they ought to have an opportunity to support what on the facts before me is a case which could not possibly succeed.

6. I might add in connexion with Order 1, Rule 8, that the matter is not cured by the learned Judge having given leave under Order 1, Rule 8, Civil P.C., to the plaintiffs to bring this action. I have already said that the case has nothing to do with that order or rule, that special damage was necessary in order to enable the plaintiffs to succeed, and as they have not proved this their action must necessarily fail. On the question of Order 1, Rule 8, I make special reference to the case of Adamson v. Arumugum [1886] 9 Mad. 463 which I have already referred to.

7. In the circumstances the appeal is allowed and the plaintiffs action is dismissed with costs throughout to the appellants.