

(1899) 12 CAL CK 0008
In the Calcutta High Court

Raj Narain Mitter Receiver to the Paikpara Estate	APPELLANT
Vs	
Ekadasi Bag	RESPONDENT

Date of Decision : 05-12-1899

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 521

Citation : (1900) ILR (Cal) 793

Hon'ble Judges : Wilkins, J; Rampini, J

Bench : Division Bench

Judgement

Rampini and Wilkins, JJ.—This is an appeal against a decision of the Subordinate Judge of Midnapur, dated the 10th March 1898.

2. The suit is one relating to an obstruction on a public road. It is said that the defendant has erected a portion of a wall and a portion of a hut on a public thoroughfare; and the plaintiff sues for their removal.

3. The Lower Appellate Court has found that the plaintiff has not proved any special damage or inconvenience; and, therefore, the road being a public road, he has his remedy under the Code of Criminal Procedure and is not entitled to sue in a Civil Court.

4. We think there is no ground for interfering with the decision of the Court below.

5. The learned pleader for the appellant has argued at very great length that his client, being a zemindar, has a right of ownership in the land; and he has relied upon certain cases decided by the Allahabad High Court and upon certain English authorities. We are of opinion, however, that these decisions of the Allahabad High Court and the English authorities he has cited do not bind us. The law current in this province, and which we are bound to administer, is as laid down in the case cited by the learned Subordinate Judge, namely, that of Baroda Prosad Mostafi v. Gora Chand Mostafi (1869) 3 B.L.R., A.C., 295: 12 W.R., 160. We think that the Subordinate Judge has very correctly laid down the law as current in this province, which is to the effect that in a road which is a public thoroughfare,

unless the plaintiff proves special damage from the obstruction, he is not entitled to bring a suit. This equally applies, whether he is a zemindar or any ordinary member of the community.

6. The only case decided by this Court which can at all be said to be in favour of the contention of the pleader for the appellant is the case of Jaggamoni Dasi v. Nilmoni Ghosal I.L.R(1882) ., 9 Cal., 75. But that was a perfectly different case from the present one. That was a case with regard to a bathing ghat in which it was held that the zemindar had only granted an easement to the public, but had not dedicated the ghat to them; and that the ghat was not a public thoroughfare within the meaning of Section 521 of the Code of Criminal Procedure (Act X of 1872). That being so, it has no application to the present case. For these reasons we think there is no ground to interfere with the decision of the Lower Appellate Court and we dismiss this appeal with costs.