

(1889) 05 CAL CK 0011
In the Calcutta High Court

Ram Coomar Ghose

APPELLANT

Vs

Prosonna Coomar Singha

RESPONDENT

Date of Decision : 28-05-1889

Acts Referred:

Citation : (1889) ILR (Cal) 640

Hon'ble Judges : W. Comer Petheram, C.J.;Gordon, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—This is a suit by the plaintiff to have his rights declared under a contract made between him and the defendants, and to obtain an injunction against the defendants restraining them from breaking the contract.

2. The contract is in respect of some land as to the ownership of which some years ago there was a dispute between the plaintiff and the defendants That dispute was finally settled by the present plaintiff giving up all claim to the land, and admitting that it was the property of the defendants, and in consideration of his doing so the defendants agreed to allow him to go on to the land at all times for the purpose of using a particular corner of it as a privy. That went on for a great number of years apparently, but in course of time the defendants used this land for purposes inconsistent with its continued user in this way, and though the plaintiff might have gone on to the land and used it in the same way, he would have become a nuisance, and what he did would have become a nuisance, and it was under these circumstances that the defendants refused to allow him to go there any more for that purpose, and it is to assert this right that this action has been brought.

3. This action has been defended in the two lower Courts on various grounds. I should say that no claim was advanced for damages, but only for an injunction to compel the defendants to allow the plaintiff to use the land in this way. But the point was never made, until the matter came to this Court, that this was a license which was revocable at any time subject to the liability to pay damages. That point has been taken here, and we think it is a perfectly good one. The law,

so far as we have been able to ascertain, is the same in this country as it is in England, there being so far as we can see no common law in this country on the subject and no statutory law either. The law in England is clearly laid down in the case of *Wood v. Leadbitter* 13 M. & W. 838. The Courts have acted upon the law as there laid down ever since, and it has always been held to be good law and binding upon them. That case decided that the license to go upon another man's land, unless coupled with a grant, was revocable at the will of the grantor, subject to the right of the other to damages if the license were revoked contrary to the terms of any express or implied contract.

4. That being so, we think that the Munsif and the learned Judge were both wrong in granting an injunction in this suit, but inasmuch as this point was not taken below, and there is no doubt about it that the defendant has acted in this case in a high-handed manner, he has revoked this license and has prohibited the plaintiff from using the land without offering compensation; therefore, although we think that this appeal must be decreed and the suit dismissed, we think that each party ought to bear his own costs all through. In the result then, this appeal will be decreed and the plaintiff's suit dismissed without costs.