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is well-known work on Hindu Law, 7th edition, p. 449, "a son cannot object to alienations validly made by his father before he was born or begotten, because he could only by birth obtain an interest in property which was then existing in his ancestor." Hence, if at the time of the alienation there had been no one in existence whose assent was necessary, or if those who were then in existence had consented, he could not afterwards object on the ground that there was no necessity for the transaction. The same view was held by this court in *Chattarpal Singh* v. *Natha* (1). In that case BLAIR and BURKITT, JJ., held that the plaintiffs, not being in existence at the date of the mortgage which was impugned in that case, had no right or interest in the property and were not therefore entitled to possession of it. As the alienation now in question was made so far back as 1891, the presumption would be, in the absence of any evidence to the contrary, that it was made with the assent of the other co-parceners then alive. This presumption is strengthened by the fact that the plaintiff's father, who is still alive, never questioned the validity of the transaction. Under these circumstances we are of opinion that the view taken by our learned colleague in this case is perfectly correct and is in accordance with Hindu Law. We accordingly dismiss the appeal with costs.

Appeal dismissed.

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November

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

RAM CHANDRA (DEFENDANT) v. JOTI PRASAD AND OTHERS, (PLAINTIFFS).*

Tort—Public nuisance—Closure of public road—Right of suit—Special damage.

Held that stopping a highway, and thereby rendering it necessary for a person to make a detour is such a special damage as would justify him in instituting a suit for removal of the obstruction. *Hart* v. *Bassett* (2) and *Blagrave* v. *The Bristol Waterworks Company* (3) referred to.

THE plaintiffs respondents were owners of the temple of Raghunathji at Rihbi Kesh. Beyond the grounds of the temple was a plot of land, marked R. S., on the survey maps of 1884. Round this plot ran a public road. Across the plot R. S., which belonged to the defendant, was a track which was used as

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* Appeal No. 52 of 1910 under section 10 of the Letters Patent.

(1) Weekly Notes, 1906, p. 26. (2) 13 Jones' Reports, 156.
(3) 1 H. and N., 369.

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a short cut to the temple by pilgrims. The servants and tenants of the plaintiffs also were in the habit of using the track. In 1903, the defendants put up certain huts with fences around them and thus blocked the passage completely. Subsequently, he removed the fences, so that foot passengers could use the path thus left open, but wheeled traffic had to go by the modern and longer road, thus making a circuit of about half a mile.

The plaintiffs sued for a declaration of a right of way over the road R. S. and an injunction for demolition of the huts erected by the defendant on the ground that they inconvenienced them, their tenants, and servants in so far as they had to take a longer route than before.

The first court found that the road R. S. had once been a public way and was still so, and dismissed the suit as no special damage had been made out.

The lower appellate court decreed the suit and its decision was affirmed by KARAMAT HUSAIN, J., who delivered the following judgement :—

"This was a suit for an injunction and for the removal of the obstructions made by the defendant. In paragraph 4 of the plaint the plaintiffs stated as follows :—'This unlawful act is likely to cause great loss to the plaintiffs. The plaintiffs and their servants and tenants and the pilgrims are put to much inconvenience.' It is now admitted that the way regarding the obstruction of which the suit was brought is a public way and not a private one. The finding of the lower appellate court with reference to the particular damages suffered by the plaintiffs is in the following terms :—'It appears that persons coming from the direction of Hardwar and bound for plaintiff's temple and dharamshala would, if cut off from access by the R. S. road, be obliged to go along the more modern road towards the Baghpur turning and then turn to the right and come back through the Rikhi Kesh village to their destination. It would be a longer and more circuitous route than that by R. S. The lower court puts the difference at possibly half a mile, and although the inconvenience is perhaps not very great, still there is substantial damage such as would entitle the plaintiffs to a decree.' The learned advocate for the appellant argues that the finding does not show that the plaintiffs suffer any greater inconvenience than other members of the public, and that therefore the plaintiffs have no cause of action. The plaintiffs, their servants and tenants are residing on the premises of the temple, and so far as the user of the public road is concerned, they have the same right as any other of His Majesty's subjects. But when the plaintiffs, their servants and tenants are obstructed in bringing their carts and ekkas from the short road, R. S., a greater inconvenience and a substantial loss of time must be caused to them, and these to my mind constitute a particular damage beyond that which is suffered by

other members of the public; see *Abdul Miah* v. *Nasir Muhammad* (1) followed in *Gopal Chandra Naskar* v. *Gajadhar Man* (2). See also *Caledonian Railway Co.* v. *Walker's Trustees* (3), where Lord Selborne observes :—'The obstruction by the execution of the work, of a man's direct access to his house or land whether such access be by a public road or by a private way is a proper subject for compensation:' The result is that the appeal fails and is dismissed with costs.'

The defendant appealed.

Mr. *Sham Nath Mushran* (with him the Hon'ble Pand *Moti Lal Nehru*), for the appellant:—

In so far as the road was a public one, no civil suit was maintainable unless special damages were proved. Mere inconvenience was no ground; *Satku valad Kadir Sausare* v. *Ibrahim Aga valad Mirza Aga* (4), *Mahomed Alam* v. *Dilbar Khan* (5), *Siddeswara* v. *Krishna* (6), *Bhawan Singh* v. *Narottam Singh* (7), *Hubert* v. *Groves* (8) and *Ricket* v. *The Metropolitan Ry. Co.*, (9).

The little inconvenience that the plaintiff suffered here he suffered with the other members of the public. Special damage meant damage particular to the position of the plaintiff in his relation to the obstruction.

Mr. *B. E. O'Conor* (with him Mr. *W. Wallach*), for the respondent, was not called on.

STANLEY, C. J. and BANERJI, J.—This is an appeal under the Letters Patent. The plaintiffs respondents are the managers of the temple of Lachmi Narain and of lands and shops appertaining thereto and also of another temple, all situate at Rikhi Kesh. The defendant appellant is Mahant of the Bharatji temple at Rikhi Kesh and the zamindar of Rikhi Kesh. There is a public road leading from the temple of the plaintiffs which was obstructed by the defendant, he having erected thereon some buildings. The suit out of which this appeal has arisen was instituted for the purpose of having the obstruction removed and of obtaining a perpetual injunction restraining the defendants from obstructing the way in future. The court of first instance dismissed the plaintiffs' claim, but upon appeal the lower appellate

(1) (1895) I. L. R., 22 Calc., 551.
(2) 11 C. L. J. Notes, 27.
(3) L. R., 7 App. Cas., 259 (276).
(4) (1877) I. L. R., 2 Bom., 457.
(5) (1901) 5 C. W. N., 285.
(6) (1890) I. L. R., 14 Mad., 177.
(7) (1909) I. L. R., 31 All., 444.
(8) 1 Esp., 148.
(9) L. R., 2 H. L., 188.

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court reversed that decision. A second appeal was then preferred which came before the learned Judge against whose decision this appeal has been preferred. He held that as the plaintiffs, their servants and tenants, who lived on the premises connected with the temple, were obstructed in bringing their carts and *ekkas* by the road in question, which was a shorter route, the plaintiffs thereby suffered greater inconvenience and more substantial loss of time than would be suffered by the ordinary members of the public.

The grounds upon which this appeal under the Letters Patent is supported are that it is not shown that the plaintiffs suffered any special inconvenience or injury from the obstruction. It is well-settled law that in the case of a public road a private action cannot be maintained in respect of an obstruction to it by a person, unless he suffers particular damage beyond what is suffered by him in common with all other persons affected by the nuisance; see *Bhawan Singh* v. *Narrotam Singh* (1), also *Gehanaji bin Kes Patil* v. *Ganpati bin Lakshuman* (2). In this case it is found by the lower appellate court that the plaintiff did suffer special inconvenience and injury from the obstruction, and it is obvious that this is so; they occupy the premises belonging to the temple, and it is necessary for them to use carts for the supply of provisions and ekkas for their servants and tenants and the detour which they were obliged to make by reason of the obstruction caused to them not merely loss of time but particular inconvenience. In view of this we think that our learned brother was right in the decision at which he arrived. He upheld the view of the lower appellate court. The cases of *Hart* v. *Bassett* (3) and *Blagrave* v. *The Bristol Waterworks Company* (4) show that the stopping of a highway and thereby rendering it necessary for a person to make a detour was such special damage as justified him in instituting a suit for the removal of the obstruction. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1909) I. L. R., 31 All., 444.
(2) (1875) I. L. R., 2 Bom., 469.
(3) 13 Jones' Reports, 156.
(4) (1856) 1 H. and N., 369.