

Before Mr. Justice L. S. Jackson and Mr. Justice Markby,

E. G. ROOKE (DEFENDANT.) v PYARI LAL AND CO. (PLAINTIFFS)*

1869
May 5.

*Public Road—Jurisdiction of Civil Court—Act XXV. of 1861, s. 308
—Special Appeal—Presumption.*

Under section 308 of the Criminal Procedure Code, an order was obtained by the defendant from the Magistrate of a district declaring a road to be a public road.

The present suit was brought by the plaintiff to set aside that order, and that the road be closed.

Held, the Civil Court had no jurisdiction to entertain the suit.

Held by MARKBY, J., that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favor of the jurisdiction of the Courts below.

Baboo Jagadmand Mookerjee and Ambika Charan Banerjee for appellant

Mr. M. L. Sandel for respondents.

THE facts are set out in the judgment of

JACKSON, J.—This was a suit brought by a Coal Company, called the Pyari Lal Coal Company, against the defendant, Mr. Rooke, who is the owner of another coal concern, in which it was set forth that the defendant had made application to the Magistrate, and obtained from him an order opening at certain road as a public thoroughfare, and praying that the order of the Magistrate be set aside, and that road be closed. The Moonsiff gave judgment for the plaintiffs, except so far as they claimed that foot passengers should not be allowed to pass either way, which was disallowed, but it was declared that the road should be closed as a road for carts.

Against this decision, which was affirmed by the Subordinate Judge of the district, the defendant has appealed specially. The ground of special appeal, which seems to us to arise in this case, which has not been taken in the petition of special appeal, but which we have allowed to be taken as it affected the jurisdiction of the Courts, and was one which in our judgment ought not to be allowed to pass over, is, that the order made by the Civil Court in this case is one which it was not competent to make. I think the order made is clearly beyond the competency of the Civil Court. The defendant, it seems, has obtained an order from the Magistrate, which was I presume, under the 308th section of the Code of Criminal Procedure, declaring the road in question to be a public thoroughfare, and ordering it to be kept open. It seems to me quite clear that the Civil Court has no jurisdiction to call directly in question, the propriety of such an order. The plaintiff may have civil right, which he may possibly be enabled to enforce in other ways, but it seems to me quite clear, that a Civil Court is not competent to declare a road, which has been opened by the order of the Magistrate, to be no public thoroughfare, and to direct that it be closed by the assistance of the officers of the Court.

*Special Appeal, No. 3094 of 1868, from a decree of the Subordinate Judge of Beerbhoom, dated the 27th April 1868, affirming a decree of the Moonsiff of that district, dated the 23rd September 1867.

1869
 E. G. ROOKE
 v.
 PYABI LAL
 & Co.

I think, therefore, that the decision of the Court below must be set aside and the plaintiff's suit dismissed with costs of the Court below ; but it has been suggested that the ground on which our decision is based, has not been taken in the Court below, while if it had been taken there, special appeal might not have been called for : and the appellant has not pressed for the costs of the special appeal, we therefore make no order for the costs of the special appeal.

MAKBY, J.—I am entirely of the same opinion. I only wish to add one word, with reference to something which I have said in other cases, that whenever an objection is made to the want of jurisdiction for the first time in this Court, on special appeal, I should make every presumption in favor of the jurisdiction of the Courts below ; and if it were possible that under any state of circumstances those Courts could have jurisdiction, I should think that this Court, in special appeal, is bound to presume that those circumstances exist. In this case however an order has been made by the Civil Court, declaring that a road, which is claimed to be a public road, shall be stopped. That appears to me to be an order which, under any state of circumstances, the Civil Court has no power to make. I think it has no more power to make such an order, than it would have to try a man for culpable homicide.

Before Mr. Justice Kemp and Mr. Justice Glover.

LAKHI KUMAR (DEFENDANT.) v. RAM DUTT CHOWDHRY
 (PLAINTIFF)*

Ouster—Twelve Years' Possession—Title.

1869
 May 5.

In a suit for possession of property the plaintiff relied on his previous twelve years' possession, and gave no further evidence of his title. *Held*, that a previous possession for twelve years of the property sought to be recovered, did not dispense with the necessity which lay on the plaintiff to prove his title to that property. He is not on that fact alone entitled to be replaced in possession of the property without regard to any right which may be alleged by the defendant.

Baboo *Kali Krishna Sen* for appellant.

Mr. *C. Gregory*, for respondent.

THE facts sufficiently appear in the judgment of

GLOVER, J.—The plaintiff in this case sued to recover possession of a small portion of land, on which had been built a house, and which his (plaintiff's) father was said to have bought in 1829 at a sale in execution of decree of the rights and interests of one Ram Sing. Plaintiff alleges that the defendant, on the strength of a deed of sale given to her on the 22nd Kartik 1267 by

* Special Appeal, No. 373 of 1869, from a decision of the Subordinate Judge of Shahabad, dated the 25th November 1868, reversing a decree of the Moonisif of that district, dated the 15th April 1868.