

Siddeswara Vs. Krishna

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Court : Chennai

Decided On : Dec-03-1890

Reported in : (1891)ILR14Mad177

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Siddeswara

Respondent : Krishna

Judgement :

Muttusami Ayyar, J.

1. This was a suit to remove an obstruction in a public street at Bellary. There is a main street in that town called Kamsala street and a lane runs from it north to south. Both the appellant and the respondent reside in that lane and there is a well in it near the house of the former. The respondent and Ors. living in the lane are found to have been using it and getting water from the well at all times, both day and night, for more than 25 years. In May 1888, the appellant obtained permission from the Municipal Council at Bellary, the first defendant in this suit, to build a wall and a gate across a portion of the lane, and accordingly erected a wall and a gate so as to obstruct the respondent and Ors. from freely using the lane and taking water from the well. The respondent then instituted the present suit to establish his right to use the lane and to pass to and from the well for the purpose of drawing water and to compel the appellant to remove the wall and the gate recently

erected by him. His case was that the lane was a public street, that the inhabitants of the town, who live in it and in the neighbouring streets, had a prescriptive right to use the lane and to draw water from the well at their pleasure, and that the obstruction caused by the appellant in violation of that right put them to considerable trouble and inconvenience. The appellant contended, on the other hand, that the well was situated in his own compound, that the lane was not a public street, that the well was his own property, and that he erected the wall and the gate on his own ground. He took also the preliminary objection that the respondent, who asserted that the lane was a public street, was not entitled to maintain this suit on his own behalf.

2. Three issues were recorded for decision by the Court of First Instance, and the first was whether the ground enclosed by the appellant was public property or his private property. The finding is that it belongs to the appellant. The second issue was whether the respondent was entitled to walk on the ground on his way to draw water from the well enclosed by the appellant. Both the Courts find from the evidence of user for a period of 25 or 30 years that the respondent and Ors. have a prescriptive right to do so. The third issue was whether the respondent was entitled to maintain this suit. The District Munsif held that the respondent sought to establish his own prescriptive right and not that of any other parties and that it was not necessary for him to obtain the permission prescribed by Section 30 of the Code of Civil Procedure and the Judge concurred in that opinion. In coming to a finding on the second issue, the District Munsif observed that the plaintiff (respondent) must go on the ground mentioned above to get to the said well and to repair the wall and windows, etc., of his house.

3. With reference to the second issue, the District Judge remarked that he was satisfied upon the evidence that the plaintiff (respondent) had established his right by prescription to the use of the lane at all times of day and night at least as far as the plaintiff well, and that the appellant had no right to block the lane by a gate or door. He accordingly directed that the new gate or door put up by the appellant be removed and confirmed the decree of the District Munsif so far as it allowed the wall to stand on the ground that it was substituted for an old mud wall which had long stood there, and upheld the plaintiff's right to use the lane as far as the well

and to take water from it at his pleasure.

4. The question argued before us is as to the maintainability of the suit. It is urged that the lane at least as far as the well being found to be a public street, and no special damage being alleged and proved, it is not competent to the respondent to maintain this suit on his own behalf, and in support of the contention, our attention is drawn to the decision of this Court in *Adamson v. Arumugam* I.L.R. 9 Mad. 463), which followed the leading case on the subject, viz., *Satku Valad Kadir Sausare v. Ibrahim Aga Valad Mirza Aga* I.L.R. 2 Bom. 457), wherein the question was fully discussed and several English decisions were cited. There is no doubt that the English rule, viz., no action can be maintained by one person against another for obstruction to a highway unless special damage is proved, is applicable in India. As observed by my learned colleague, the principle on which this rule is founded is that of protecting the person causing the obstruction against being harassed by a multiplicity of suits and of providing, at the same time, a remedy for the common injury by indictment. I only desire to add that the special damage which it is necessary to plead and prove in order to take a case out of the rule does not necessarily consist in actual pecuniary loss and in a claim to compensation for the same. It is sufficient to show that the party suing has sustained special injury beyond what is sustained by the general public. In *Dobson v. Blackmore* 9 Q.B. 991, Lord Denman, C.J., explains it as 'a damage brought on the individual complaining, which might perhaps be more properly styled particular damage, or a special damage more than the rest of Her Majesty's subjects' ordinarily sustain in consequence of the obstruction, 'and not that sort of damage only which may or may not ensue from the acts done, but which entitles the plaintiff when it does arise to specific reparation in the form of damages.' The special injury, however, should not be merely consequential nor remote as in *Rickett v. The Metropolitan Railway Company* L.R. 2 E&I; 175; nor should it consist in mere delay in getting to a place as in *Winterbottom v. Lord Derby* L.R. 2 Ex. 316. It should be an injury quite distinct from that of the public in general, and when such is the case, a Court of Equity will grant an injunction and such relief as may compel the wrong-doer to take active measures to discontinue the nuisance,--*Satku Valad Kadir Sausare v. Ibrahim Aga Valad Mirza Aga* I.L.R. 2 Bom. 457.

5. The substantial question then for determination is whether, upon the facts found, this case falls under the general rule or forms an exception to it. The finding that the lane obstructed is a public street as far as the well, discloses only a common injury. The finding that the obstruction in the lane obstructs also the exercise of the right of those living in the lane and near it to take water from the well suggests an injury not special to the respondent but common to him and to the general public, though the inconvenience arising from it may be felt more by those living near the well than those living at a distance. There is no averment in the plaint that by deprivation of the use of the well, the beneficial enjoyment of the respondent's house is materially interfered with or its value is lowered. There is, however, the observation of the District Munsif, in paragraph 10 of his judgment, that the plaintiff must enter and go upon the ground enclosed by the appellant to repair the wall, the windows, &c;, of his house, but there is no averment in the plaint that any right of easement has been disturbed, nor is any relief claimed in respect of such easement. I thought, at first, that further inquiry was perhaps desirable to ascertain whether the obstruction, in any way, interfered with the beneficial enjoyment of the respondent's house, but, upon further consideration, I agree with my learned colleague that we might thereby vary the case disclosed by the plaint and go beyond the averments in it. The conclusion I come to is that upon the facts found by the Judge there is no special injury such as the law requires to sustain the suit. I concur, therefore, in the decree proposed by my learned colleague.

Best, J.

6. It is contended, on behalf of the appellant, that the suit by the plaintiff is not maintainable as the right to use the plaint lane and well is, according to his own showing, a public right. In support of this contention, reference is made to the ruling of this Court in *Adamson v. Arumugam* I.L.R. 9 Mad. 463), in which it was held that the rule of English law that no action can be maintained by one person against another for obstruction to a highway without proof of special damage would be enforced in India as a rule of 'equity and good conscience.'

7. A further contention is that if the plaintiff claims the right to the use of the well in question as an easement to which he is entitled as occupant of the house in which he is now living, his suit must fail by reason of his failure to prove that the well has been used by the occupants of this house for a period of twenty years.

8. So far as the plaintiff claims the right to use the well as occupant of his present house, his claim must be held to be invalid, as admittedly he has resided in this house only for a period of about 12 years, and there is no proof or even allegation that the right claimed is an easement attached to this particular house. On the contrary, the plaintiff makes up the prescriptive period of 20 years by adding to the period during which he has occupied his present house, the time of which he was the occupant of a neighbouring house. He does this on the ground that the right of using the well and the lane leading to it belongs to the public of that particular neighbourhood. Such being the case, the plaintiff's suit, even though it purports to be a personal one intended to establish his individual right, is not maintainable in the absence of proof or even allegation of special damage to himself over and above the general inconvenience occasioned to the public. The rule in question is applicable to any public right, the reason of the rule being the avoidance of multiplicity of suits, for, to use the words of Lord Coke, 'if any one man might have action, all men might have the like.'

9. In my opinion, therefore, the appeal must be allowed, and both the lower Courts' decisions being set aside, the suit dismissed, but under the circumstances, each party should be directed to bear his own costs throughout.