Subbata Nadan Vs. Aiyavoo Reddi Alias Sanga Reddi and ors.

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SooperKanoon Citation : sooperkanoon.com/809708

Court : Chennai

Decided On : Oct-03-1916

Reported in : 37Ind.Cas.977

Judge : William Ayling and ;Napier, JJ.

Appellant : Subbata Nadan

Respondent : Aiyavoo Reddi Alias Sanga Reddi and ors.

Judgement :

William Ayling, J.

1.The sole cause of action alleged in the plaint is the obstruction by defendants of plaintiff's marriage procession on 6th December 1909. Both the lower Courts have fourd against the fact of obstruction. On this ground alone this second appeal must be dismissed with costs, although I am in general agreement with the conclusions of my learned brother in the judgment which he is about to pronounce.

Napier, J.

2.This second appeal arises out of a judgment of the Subordinate Judge of Tinnevelly reversing the decree of the District Munsif of Kovilpatti in a suit brought under Order I, Rule 8, of the Code of Civil Procedure by the plaintiff on behalf of himself and other Nadars, his fellow-castemen, for a declaration that he and they

are entitled to take their marriage processions along certain roads in the village of Mela Chaitalai and for an injunction to restrain the defendants, certain Reddis, Naickers and Asaris, from interfering with them. The District Munsif gave them a declaratory decree which has been set aside by the Subordinate Judge

3.The first point taken by the Advocate-General for the appellant is that the Subordinate Judge has misunderstood the law applicable to the case. On this point I am clear that the appellant is entitled to succeed. The Subordinate Judge in paragraph 6 introduces a distinction between classes of public roads for which there is no authority to be found in the decisions of this Court or in English Law. He speaks of ' public paths or highways in the largest sense.' He quotes the well-known decision in Sada-gopachariar v. Rama Eao 26 M.s 376. and reads the words in the largest sense' into it. This manner of dealing with decisions of this Court is most improper. It is his duty to follow them I without reservations. He relies on the judgment of the Full Bench of Calcutta High Court in the case of Ghunilal v. Ram Kishen Sahu 15 C.s 460. If their Lordships in that case intended to lay down that there were public roads limited to a class, I can find no authority for such a classification, nor is any authority quoted for the proposition and with great respect, I think that the method of classification is unfortunate. Public highways stand in a class by themselves. All other rights over other persons' property are private, whether they belong to a class or to an individual and whether they arise by grant, license, easement, customary right or any other origin. To call them village rights and village ways seems to me to use geographical and not legal terminology. There may doubtless be rights of user limited to the inhabitants of a village just as there may be rights limited to the members of a caste or the inhabitants of a street, but they are all private rights. This was clearly laid down in Brochlebanh v. Thompson (1903) 2 Ch. 344: 19 T. L.R. 285., where Joyce, J., speaking of a right of way to a church or a market vested in the inhabitants of a parish, describes it as in law a private, not a public, way having its origin in custom. A later case, Farquhar v. Newburg Rural District Council (1909) 1 Ch. D.12 : 73 J. P. 1. decided by the Court of Appeal, re-states this proposition and adds that no public highway can be dedicated with such limited rights. ' It is impossible to confer on this (public) road such rights and such rights only as existed over the cburchway.' This latter statement has reference to

the well-established proposition that an attempt to dedicate a highway to a limited portion of the public is no dedication at all. [Vide Poole v. Huskinson (1843) 11 M. & W. 827 : 152 E. R. 1039. and Vestry of Bermondsey v. Brown (1865) 35 Beav. 226 : 13 L.T. 574. If, therefore, these are public roads as found by the District Munsif, there is no question that the appellant and his castemen are entitled to use them for their religious and ceremonial processions. That is settled law in this country [Vide Sadagopachariar v. Rama Rao 26 M.d 376., upheld by the Privy Council in SadagopaOhariar y. Krishnamoorthy Boo 30 M.s 185 : 2 M.L.T. 204 : 34 I.A. 93 Kanda-sawmy Mudali v. Subraya Mudali 1 Ind. Cas. 716 and other cases.]

4.Mr. Grovindaraghava Aiyar next contended that the Subordinate Judge intended to find that these roads are private roads over which a limited class have a right to pass by custom. The short answer is that he has not found anything of the sort and he could not. There is no evidence that the soil of the roads is vested in the adjacent owners. The ownership is unknown and in such a case dedication to the public will be presumed from user. Further, he has not considered the question whether such a customary right vested in the adjacent owners exists, he has only considered the question-whether the plaintiff has proved a custom, a matter that does not arise. Nor is this custom pleaded. What is pleaded is that the roads belong to the adjacent owners and that the plaintiff and his castemen have no customary right to use them. The first contention has not been made out and this being so, the District Munsif on his finding on the evidence has properly held that the roads are public dedicated as highways, with the further result that even if there is no evidence of user for Religious or coremonial processions by the plaintiff and his castemen, the right so to use them at any time is legally vested in them, because as laid down by the Privy Council in Sadagopa Ohariar v. Krishnamoorthy Bao 30 M.s 185: 17 M. L.J. 240 (P. C).' all members of the public have equal rights in them.' That disposes of the first question. The next objection taken by the respondents is that the suit must be dismissed, the cause of action not having been made out. It is conceded that if an order under Section 145 or Section 147 of the Code of the Criminal Procedure had been pleaded as the cause of action, the suit would have lain subject to any question of limitation; but it is contended that the cause of action has been found to be false by both Courts, and that even if true, there is no evidence of such special damages as is required by law. We are

told that the mere obstruction of a procession is not enough, that loss of property or personal injury must be proved. There is certainly authority for this proposition, vide Kandasawmy Mudali v. Subraya Mudali 1 Ind. Cas. 716 : 19 M. L.J. 617, but there are observations in a later case, Andi Moopan v. Muthuvi-rama Reddy 29 Ind. Cas. 248. and in Baslingappa v. Dharmappa 12 Bom. L.R. 586. which seem to be inconsistent with that view. It certainly seems to me strange that the offence of wrongful restraint should not give a cause of action and if the matter arose for decision, I should certainly desire to refer the question to a Full Bench. But in this case, both Courts have held that the story of the obstructed procession is false. Now this is the sole cause of action alleged. (Vide paragraph 12 of the plaint.) It is, argued for the appellant that certain orders of the District Magistrate and the Head Assistant Magistrate, Exhibits II and III, are proved and that they are referred to in paragraph 7 of the plaint. That is partly true; but paragraph 7 does not refer to them specifically, but only alleges that some temporary orders are not binding on the plaintiff, and these orders were not put in by the plaintiff but by the defendants. There is only one cause of action alleged, which has been found against. The last contention is that the defendants have denied or are interested to deny the plaintiff & right within the meaning of Section 42 of the Specific Relief Act. No such denial is pleaded as a cause of action, and I think it would not be proper to allow the plaintiff to substitute at the last - moment a new cause of action for the one alleged and found to be false. The appeal must, therefore, be dismissed with costs.