

Noor Bibi Vs. Ashanulla

Noor Bibi Vs. Ashanulla

SooperKanoon Citation : sooperkanoon.com/870334

Court : Kolkata

Decided On : Feb-04-1920

Reported in : 55Ind.Cas.435

Judge : Newbould, J.

Appellant : Noor Bibi

Respondent : Ashanulla

Judgement :

Newbould, J.

1. These two appeals arise out of two connected suits brought by the plaintiff to establish her right of way over two pieces of land. The suits were decreed by the first Court but were dismissed by the lower Appellate Court on appeal.

2. It is conceded by the learned Vakil for the appellant that in second appeal, he cannot attack the findings of the lower Appellate Court that the plaintiff has failed to establish her right of way based on user from time immemorial.

3. It is contended, however, that the plaintiff also based her claim upon an implied grant and an easement of necessity and that the lower Appellate Court has come to no findings on these aspects of the case, and that the case should be remanded for a fresh decision, The pleadings have not been translated. But from a summary

given in the Munsif's judgment and also in the judgment of the lower Appellate Court, it would appear that no claim of a right of way was based either on an implied grant or on an easement of necessity.

4. My attention has been drawn to a statement in the judgment of the Munsif that 'The former path was said to be the only means of communication between the plaintiff's house and the public road and the latter path as the only path for communication with the old tank.' This statement does not amount to a claim of a right of way by easement of necessity. It is clear from the judgment of the lower Court that the right of way was never claimed on any other ground than that of an immemorial user. I am not willing to remand the case for re-trial on issues which were not raised in the lower Courts.

5. I accordingly dismiss these appeals, No. 1308 with costs and No. 1182 in which respondents did not appear without costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com