

In Re: Muse Bagas Abheram

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Court : Mumbai

Decided On : Mar-26-1908

Reported in : (1908)10BOMLR563

Judge : Batchelor and ;Heaton, JJ.

Appeal No. : Criminal Application for Revision No. 24 of 1908

Appellant : In Re: Muse Bagas Abheram

Disposition : Appeal allowed

Judgement :

Batchelor, J.

1. We think the order made by the learned Magistrate in this case must be set aside. It purports to be made under Sections 1153 and 137 of the Criminal Procedure Code. But the Magistrate was met at the outset of his inquiry by a claim of ownership on behalf of this petitioner.

2. Now when a claim of that kind is made, the Magistrate has to see whether it is a bona fide claim on the part of the maker or is a mere pretence to oust his jurisdiction. In the latter case of course the jurisdiction will not be ousted, but in the former case the Magistrate's proper course is to stay his hand and to allow the dispute to be settled in the Civil Courts. See for instance Luckhee Narain Banerjee

v. Ramkumar Mukherjee I L R (1888) Cal. 564.

3. In this case the learned Magistrate, instead of considering whether the claim was a bona fide claim from the point of view of the petitioner, proceeded to appreciate the evidence which the petitioner had tendered ; and, in so doing, we think that he has not done justice to the petitioner's case. The Gabhan register seems capable of being used to support the petitioner and the registered sale-deed upon which the petitioner relied, would, we think, if properly considered, turn out to have more importance than the learned Magistrate is inclined to allow it : compare the case of Thama v. Govind : (1907)9BOMLR401 . But the result simply has been this that because the claim was not proved to the Magistrate's satisfaction, therefore, he makes the order under Section 137.

4. The question was not whether the claim was established to the Magistrate's satisfaction, but whether it was advanced in good faith and was supported by prima facie respectable evidence. The line is, no doubt, not always easy to draw, but in this case we are satisfied that the evidence on behalf of the petitioner is entitled to more consideration than it has received, and, when properly appreciated does constitute a case for the determination of the civil Court and should have been held to deprive the Magistrate of jurisdiction under Section 133 of the Criminal Procedure Code. The order made must, therefore, be set aside.

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