

Gauri Shankar Vs. Emperor

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Court : Allahabad

Decided On : Sep-02-1929

Reported in : AIR1930All26

Appellant : Gauri Shankar

Respondent : Emperor

Judgement :

Sen, J.

1. This is a reference by Mr. Rup Kishan Agha, Officiating Sessions Judge of Allahabad, recommending that the conviction of one Gauri Shankar Singh under Section 265, Municipalities Act, be set aside.

2. This case is a typical example of aggressiveness on the part of a Municipal Board with a view to establish a claim to property, the title to which is in dispute. Section 265, Municipalities Act, has its use; but not unoften the powers conferred by the section are abused. This is to be strongly deprecated. Where there is a clash between a Municipal Board on the one side and a private individual on the other with reference to some property, the matter has got to be adjudicated by the civil Court which is the only forum for determining the title. The straightforward course in such a case is the institution of a suit in the civil Court. The remedy provided by Section 265, Municipalities Act, may be cheap, swift and within a certain range effective. The section, however, was never intended to arm a

Municipal Board with powers to disturb the possession of any person who asserts a lawful title to the property in controversy.

3. Gauri Shankar Singh was convicted by a Bench of Honorary Magistrates on 12th December 1928, under Section 265, Municipalities Act, and sentenced to a fine of Rs. 2. The head and front of his offence is that he tied his cow on a piece of land which is in the immediate vicinity of his house but which the Municipal Board claims as part of a public lane. The title to this piece of land is disputed. Gauri Shankar Singh denied that it was part of a public lane, asserted his own title to the same and alleged that the land belonged to him and was his sahan darwaza. The trial Court describes the property as a blind lane through which other persons pass. The appellate Court agrees with the trial Court that it is a blind lane which is used by the occupants of two other houses bearing the Municipal Nos. 272 and 273. The learned Sessions Judge has very clearly described the position and boundary of the disputed site.

It abuts on a public street on the west and there is a short narrow lane at the south east corner giving access to another open land bounded by houses Nos. 272 on the south, 273 on the east and 274, applicant's house, on the north.

4. The onus of proving that the site in question was a public street or part of a public street lay upon the Crown. The trial Court held in substance that the site formed part of a public lane. Reliance was placed upon the record plan filed on behalf of the municipality. It has not been shown that this document was prepared by a public servant in the discharge of his official duty or by any other person in pursuance of his duty specially enjoined by the law of the country, nor has it been established by evidence that the said document formed the act or record of the act of public officers within the meaning of Section 74, Evidence Act. In the absence of proper evidence and of necessary particulars, the record plan could not be admitted in evidence either under Section 35 or under Section 74, Evidence Act.

5. The site plan prepared for the purposes of the case can have a very little probative value on the question of title. The entries in the aforesaid, documents, in support of the title of the Municipal Board, are no more than admissions in favour of the Board and are not relevant.

6. The fact that the Municipal Board has on certain occasion in the past demolished a chabutra constructed by Gauri Shankar Singh upon this land and realised the cost, does not amount even to an assertion of title on the part of the Municipal Board and is absolutely inconclusive.

7. There was no justification for the finding by the trial Court upon the evidence indicated above that the property was a public lane. The finding is further vitiated by the fact that an important title deed filed by Gauri Shankar Singh was completely ignored by the trial Court. This was a document more than 30 years old and produced from proper custody. The genuineness of this document does not appear to have been challenged either before the trial Court or before the Court of appeal. The latter Court refers to the document; but lays it aside with the observation that:

measurements are not given therein and it is difficult to say how far it covers the land in dispute, supposing it was a genuine transaction.

8. The judgment of the appellate Court is open to a further criticism that it fails to see the distinction between ownership and a mere right of easement. The appellate Court treats the owners or the occupants of the two houses Nos. 272 and 273 as a portion of the public.' From the fact that these occupants had a right to pass along the land in dispute it concludes that the land is a public street. The learned Magistrate fails to see that a right of easement may have been acquired by the occupants of these two houses but the said right is reconcilable with the right of ownership claimed by Gouri Shankar Singh.

9. I accept the reference and set aside the order dated 7th March 1929, affirming: the order passed by a Bench of Honorary Magistrate on 12th December 1928. The fine, if paid, should be refunded.