

Muhammad Khalil Vs. Emperor

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Court : Allahabad

Decided On : Dec-03-1935

Reported in : AIR1936All356; 160Ind.Cas.854

Appellant : Muhammad Khalil

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. This is a reference by the learned Sessions Judge of Azamgarh recommending that an order passed by a Magistrate under the provisions of Section 133, Criminal P C., should be set aside in appeal. An application was made to the Magistrate that one Muhammad Khalil had gathered materials for building a house on a public place used by the public for recreation in the town of Mau. The Magistrate issued a provisional order under Section 133, Criminal P.C. Muhammad Khalil then appeared and denied that the place was a public place at all. He said that the land was his own and that he had bought it from the zamindar. The Magistrate purported then to hold an inquiry under Section 139-A, Criminal P.C. Muhammad Khalil produced the karinda of the zamindar and proved that he had bought the land.

2. It may be that the Magistrate is right in thinking that Muhammad Khalil had no right whatsoever to this land and that the land was really the property of the public or that the public was entitled to use it, but it seems to me that the learned Magistrate has misdirected himself by thinking that it was his business in an inquiry under Section 139-A, Criminal P.C. to decide whether Muhammad Khalil had established that the land was not public land. It is obvious that questions of title of this kind are not intended to be decided in summary inquiries before a Magistrate. These are matters which should be left to the decision of the civil Court where the case can be properly fought out. The duty of a Magistrate under Section 139-A, Criminal P.C., as I understand it, is merely to see whether the denial of the public right is frivolous or not. If the person who denies that right is able to produce some evidence which prima facie there is no reason to disbelieve, it is not for the Magistrate to examine evidence on the other side by way of rebuttal and so forth and attempt to arrive at some final decision. There does not appear any prima facie reason for thinking that the witnesses produced by Muhammad Khalil were absolutely unworthy of belief. I set aside the order by which the learned Magistrate confirmed his provisional order under Section 133, Criminal P.C., and direct that proceedings shall be stayed until the matter of existence of the public right shall be decided by a competent civil Court.