

Kadhori Vs. Emperor

Kadhori Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/480830

Court : Allahabad

Decided On : Aug-26-1925

Reported in : 92Ind.Cas.452

Judge : Kanhaiya Lal, J.

Appellant : Kadhori

Respondent : Emperor

Judgement :

Kanhaiya Lal, J.

1. Alongside a small public lane Kadhori has a house, and opposite that house stands the house of Mata Din. The house of Mata Din had a chabutra in front of it which he is said to have extended. Kadhori has also built a shop, which, according to his allegation, was built in the place of an old chapper, and according to Mata Din on the land forming part of the lane or pathway. The effect of these two constructions, it is stated, was that the lane was considerably narrowed. The Trying Magistrate found that both these constructions were encroachments newly made on the land and directed both of them to be removed. The evidence produced by Kadhori to show that he had built the shop on the site of an old chapper appears to have been disbelieved. Certain panches were asked by the Magistrate to make a local investigation and their report was that the shop had been newly built on land which formed a part of the lane or public pathway. The

Magistrate examined Tewari Sheocharan Lal, the Sarpanch, who is also an Honorary Magistrate, and acting on the report of the panches he directed the removal of both the constructions.

2. The procedure adopted by the learned Magistrate was somewhat irregular. He had power under Section 72 of the U.P. Village Panchayat Act, VI of 1920, to make a local enquiry into an offence or charge covered by Section 202, Cr. P.C., but in a case like the present he had to follow the procedure laid down by Sections 133 to 143 of the Code and determine on the evidence adduced whether any unlawful obstruction had been made over a public pathway or other public place. He could not have acted outside such evidence solely on the report of the panches or on their local investigation to determine whether any old chapper existed in the placed where the shop had been built and, if not, how far the encroachment extended. Beyond verifying his report Tewari Sheocharan Lal does not say whether he had any personal knowledge about the matter.

3. The case is, therefore, sent back to the Trying Magistrate with a direction to enquire afresh into the matter from the stage up to which the enquiry had last proceeded, and to determine how far the land or public pathway extended, and whether the encroachments had been newly made thereon, so as to obstruct the pathway and whether the public had suffered in consequence.