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Court : Allahabad

Decided On : Apr-19-1922

Reported in : 95Ind.Cas.944

Judge : Stuart, J.

Appellant : ismail and ors.

Respondent : BundA.

Judgement :

1. This matter under Section 133 of the Cr. P. C. has been dragging on since June of 1920, and its handling by the Court has not been creditable.
2. I have been taken through all the history of the case, but I do not think it is necessary to repeat it in this order. The proceedings were instituted on the application of one Bunda, who complained to the Court that the present applicants had built a wall and had thereby obstructed a public road.
2. This was on 23rd June, 1920. Bunda's statement was recorded on the back of the application and, so far as I can gather, that was the last occasion on which he appeared in the Court. Thereafter, reports were called for and submitted by the Qanungo, the Naib-Tahsildar and the Tahsildar. The last report was submitted by the Tahsildar on 3rd January, 1922, and two days later, the Court passed the following order:

The Tahsildar has inspected the spot and reports that the wall built by Chhoten is the cause of the trouble. Notice to issue under Section 140, Cr. P. C. (More than one notice-had been issued by the Court under Section 133). It is pleaded before me that the Court's order quoted above was not a legal and valid order, inasmuch as the provisions of Section 137 of the Cr. P. C. were not complied with. In my opinion this contention is sound. The applicants had appeared and shown cause in fact they had filed no less than three written objections on different occasions) and had filed documentary evidence. But the Court has recorded no findings on those objections, and there is nothing to show that it gave even a perfunctory glance at the documents. Section 137 (1) of the Cr. P. C. lays down that 'If he (i.e., the opposite party) appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case'.

3. It was thus clearly intended by the Legislature that the Court should itself go into evidence before making a preliminary order final and should give a judicial decision in the matter. But in the case before me, the Court has not taken any evidence on behalf of Bunda (the original applicant for proceedings under Section 133) and has not considered the evidence put in by the applicants. Nor does it appear that they or their Counsel were heard before the final order was passed. In my opinion the order of the Court contains no judicial decision, such as is required by the law, and I, therefore, direct that the record, together with this order, be submitted to the Hon'ble High Court with a recommendation that the order of the Court below be set aside.

4. I agree with the view taken by the learned Sessions Judge, and I direct the order in question to be set aside.