

Chaudhri Risal Singh Vs. Baljit Singh and ors.

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Court : Allahabad

Decided On : Apr-10-1929

Reported in : 126Ind.Cas.352

Judge : Dalal, J.

Appellant : Chaudhri Risal Singh

Respondent : Baljit Singh and ors.

Judgement :

Dalal, J.

1. As I have previously remarked in several judgments Chap. X of the Code of Criminal Procedure was not revised with care in 1923 when additions were made to it in accordance with certain rulings of certain High Courts. In Section 139-A it is not stated who is to have the matter of the existence of a right decided by a competent Civil Court and what order the Magistrate has to pass in order to reach an end to the criminal litigation. Under Clause (2) of that section the Magistrate has to stay proceedings, and obviously the proceedings are not meant to be stayed indefinitely. There should be some period of the stay, and the Magistrate ought to have the power of dismissing the application on the right not being decided by a Civil Court on motion by a particular party within a certain time. In the present case the question of the authority of the Magistrate to direct a party to take proceedings in the Civil Court has not been questioned by Mr. Nehal Chand, and

argument was addressed to me only on the particular facts of the present case as to whether Risal Singh or Baljit Singh should, he directed to take proceedings in the Civil Court. I think that this is the right view taken of the law by Mr. Nihal Chand and of the deduction that is to be made both from statute-law and from cases decided by this Court.

2. Coming to the, particular facts of this case, Risal Singh desired that there should be a public road over a particular area of land which is claimed by Baljit Singh as his own. The finding of the Magistrate is 'Taking all the facts in view, it seems to me that there is reliable evidence in support of the denial of the defendants that, for some considerable time past, there has been no existence of any public right of way as claimed by the complainant.' The present decision, therefore, is in favour of the defendant, and if no action were taken the result would be that the complainant's application would be dismissed. Under the circumstances I direct that Risal Singh shall prove the existence of a public right of way over the land in dispute within one year of to-day's date, in default of which the Magistrate will be at liberty to dismiss his application.

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