

Mohammed Ashrafuddin and ors. Vs. Sheikh Kareem Buksh

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Court : Kolkata

Decided On : Apr-23-1914

Reported in : AIR1915Cal118(2),24Ind.Cas.603

Judge : Holmwood and ;Sharfuddin, JJ.

Appellant : Mohammed Ashrafuddin and ors.

Respondent : Sheikh Kareem Buksh

Judgement :

ORDER

1. We do not think that this is a case which calls for our interference. If there has been any technical irregularity, which we do not say there has been, it is clear from the findings on the evidence recorded before the Jury that there was a bona fide claim of private right raised by the second party, and where that is the case, the Magistrate cannot make an order under Section 133 but should leave the determination of the question to the Civil Court. See Queen-Empress v. Bissesar Sahu 17 C. 562. This is a case where the second party who raised the question of private right is supporting the order of the lower Court, and the person who originally asked for the obstruction to be removed as detrimental to the public interests, is now strenuously arguing before us that we ought to allow the Magistrate to enter into a second enquiry to establish what really amounts to his private right to take carts along the alleged road. It is not as if there was no evidence on the record. The effect of the Jury's enquiry was to give the Magistrate

sufficient material to enable him to judge for himself that this was a case of civil dispute, and the Jury made their procedure perfectly correct by declining to decide the question themselves as it involved the question of private or public right. They cited several authorities of this Court, and there seems to be nothing in those authorities which would militate against the course which has been followed in this case. When once a party who raised a private right has asked for a Jury and has had the case referred to the Jury, the Jury are bound to hear the parties and such witnesses as they may desire to be heard. Then again the Jury have held on the authority of the same case, in *Kailash Chunder Sen v. Ram Lall Mittra* 26 C. 869., that it is beyond their scope to decide whether the way obstructed is or is not a public way, and there are still stronger authorities in two cases, in *Askar Mea v. Sabdar Mea* 12 C. 137, *Lal Miah v. Nazir Khalashi* 12 C. 698, that when the second party raises a question of title the case then becomes one for the Civil Courts. The section contains only an inquiry as to the existence or non-existence of the obstruction complained of and not an inquiry into a disputed question of title. Against this we have cited before us the case of *Dulalram Deb v. Baishnab Charan Deb* 10 C.W.N. 845 : 4 Cr. L.J. 42. There is no authorized report of the facts of this case, but from the judgment, a copy of which appears at page 846 of the report, it would seem that the question there was one where the Jury had been directed by the Magistrate to decide the question of public or private right in opposition to the objection of the second party who objected that he had a private right, and it has always been held in this Court that where the second party raises such a question and insists on having it decided, that the Magistrate should look into the bona fides of that claim before submitting the case to a Jury, and that is where the irregularity if any has occurred in this case. The Magistrate submitted the case to the Jury upon the application of the second party who had the power to object to his doing so but did not object, and had the Jury come to a decision upon the point and the Magistrate had come to no decision it might have been necessary in the interests of justice to send the matter back. But it is clear in this case that the Jury collected the evidence and then very properly found that they had no jurisdiction to decide the civil question. The matter was referred to the Magistrate, who we presume perused what was before the Jury and the maps which also go to show that there were other ways to approach the complainant's

house and he decided that this was a matter for the Civil Courts. We think that he is quite justified in doing so and we decline to interfere. The Rule is discharged.

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