

Kamla vs State Through Ram Bahal on 6 February, 1953

Equivalent citations: AIR1953ALL523, AIR 1953 ALLAHABAD 523

JUDGMENT

Agarwala, J.

1. This is a revision arising out of proceedings under Section 133, Criminal P. C. Ram Bahal Tewari complained that the applicant Kamla and others had constructed a drain and a cesspool on a public thoroughfare and thus narrowed and obstructed the passage through which carts and lorries used to pass. A notice under Section 133, Criminal P. C. was issued by the Sub-divisional Officer of Deoria to the applicant and others on which, they filed an objection that there was no public thoroughfare at all at the place in question.

Under the provisions of Section 139A, Criminal P. C. the Magistrate is required to hold an enquiry whether there is reliable evidence in support of the denial of the existence of public way. The learned Sub-divisional Magistrate accordingly held a preliminary enquiry as directed by that section. It is admitted before us by learned counsel appearing for the applicant that the only evidence which the applicant could produce before the learned Sub-divisional Magistrate in support of his denial was a copy of the Patwari's record. This record did not contain any entry about the existence of the public way in dispute. If matters had stood at this and there was nothing further to be seen, this document could be considered to be reliable evidence in support of the denial of the right of public way and the Magistrate could very properly have stayed his hands and left the parties to agitate the matter in the civil Court. But as it happened, it was admitted by the applicant that two other roads which admittedly existed at the place were not shown in the document filed by them. This fact takes away all the evidentiary value from the document with the result that no reliable evidence in support of the denial of the right of way is left. In the circumstance, the learned Magistrate was perfectly justified in holding that there was no reliable evidence in support of such a denial.

2. Against this order the applicant went up in revision to the Additional Sessions Judge. The learned Additional Sessions Judge considered the question whether the copy of the Patwari's records which was adduced in evidence by the applicant was sufficient evidence in support of the denial of the right of way. He referred to --'Satish Chandra v. Krishna Kumar', AIR 1931 Cal 2 (A), in which it was held that the Record of Rights is a very valuable piece of evidence which raises a presumption of correctness of the entries therein. He then referred to a Calcutta case, --'Muzaffar Aham-mad v. Khitindra Bhusan', AIR 1946 Cal 302 (B), in which it was held that when the Magistrate comes to the conclusion that there is no reliable evidence in support of the denial, it is not for the High Court to interfere in revision. This Calcutta case was a Division Bench ruling. Lastly the learned Judge referred to a single Judge ruling of this Court, --'Kundan Lal v. Emperor', AIR 1939 All 187 (C). In that case Allsop J. held that unless the evidence produced in support of the denial of the right of way is frivolous, the matter is one which can properly be decided by a competent civil Court. The learned

Judge brushed aside the single Judge decision of this Court on the ground that a later Division Bench ruling of the Calcutta High Court favoured the opposite view. In doing so the learned Additional Sessions Judge was obviously in error. Even a single Judge ruling of this Court of an earlier date is binding on the Courts below in preference to a later ruling of another Court. The learned Judge further did not apply his mind to the rulings cited before, him.

In fact, the rulings were not contradictory at 311. All of them were reconcilable In --'AIR 1931 Cal 2 (A)', the Record of Rights did not contain an entry about the existence of the public right of way which was claimed by the applicants. There was nothing to show that the record did not mention even the admitted existing public ways. In those circumstances it was held that the Record of Rights was a reliable piece of evidence in, support of the denial of public right of way. The ruling did not apply to the present case, because of the circumstance that admittedly the Record of Rights here did not record the existence of admitted public ways.

3. In --'AIR 1946 Cal 302 (B)', the learned Judges laid down the obvious proposition that where the Magistrate makes an enquiry and comes to the conclusion that there was no reliable evidence in support of the denial, it is not for the High Court to interfere. It does not appear from the report of that case that there was any reliable evidence which the Magistrate refused to take into consideration. The ruling has no application to a case in which there was reliable evidence and it was wrongly omitted to be taken into consideration by the Magistrate. The ruling of this Court in --'AIR 1939 All 187 (C)', was in no way contradictory to the Calcutta case. That case also does not apply to the present case because in that case there was evidence in support of the denial of public way and the evidence was not frivolous. Here, as already stated, there is no reliable evidence in support of the denial.

4. The result, therefore, is that we find no force in this application. It is accordingly dismissed.