



IN THE HIGH COURT OF CHHATTISGARH

AT: BILASPUR

Single Bench

CR. R. No. 632 OF 2013

-APPLICANT: Laxmi Singh Gaur, aged 58 years, wife of Shri
(Complainant) Radheshyam Singh Gaur, resident of village and
P.S. Bhakhara, tahsil Kurud, district Dhamtari
(C.G.)

VERSUS

RESPONDENTS:

1. Komal Singh alias Inderman Singh, aged 65 years, son of late Shri Prayag Singh Gaur,
2. Laxmi Bai alias Munni Bai, aged 55 years, wife of Komal Singh Gaur,
3. Sagar, aged 18 years, son of Komal Singh Gaur,

All above are residents of village & P.S. Bhakhara,
tahsil Kurud, district Dhamtari (C.G.)

4. Ganesh Ram Mouryawanshi, aged 70 years,
5. Khomeshwar, aged about 40 years, son of Ganeshram Mouryawanshi,

Both are residents of village Semra, P.S. Bhakhara,
tahsil Kurud, district Dhamtari (C.G.)

(Accused)

CRIMINAL REVISION UNDER SECTION 397 R/W 401
OF THE CODE OF CRIMINAL PROCEDURE, 1973.

Against the judgment/order of discharge passed in CR. R. No. 5/2013 (Komal Singh & others v. Laxmi Singh) on 16.7.2013 by the Additional Session Judge (F.T.C.), Dhamtari.

Arising from CR. Complaint Case No. 667/2012 (Laxmi Singh v. Komal Singh & others) order passed on 19.12.2012 by J.M.F.C. Kurud, district Dhamtari (C.G.).

[Signature]

R. No. 632/13
Presented by Shri. Rishabh Verma
dated 27/12/13



41

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 632 OF 2013

APPLICANT

Laxmi Singh Gaur

VERSUS

RESPONDENTS

Komal Singh *alias*
Inderman Singh & others

**REVISION UNDER SECTION 397 READ WITH SECTION 401 OF
THE CODE OF CRIMINAL PROCEDURE, 1973**

Present:

Mr. Somnath Verma, Advocate, for the Applicant.

Mrs. Anju Ahuja, Advocate, for Respondents No.1, 2, 3 & 5.

(Single Bench : Hon'ble Mr. P. Sam Koshy, J.)

ORAL ORDER

(04-03-2014)

(1) Heard finally.

(2) By way of instant criminal revision, the applicant has challenged the order dated 16.7.2013 passed by Additional Sessions Judge (F.T.C.), Dhamtari, in Cr.R. No.5/2013.

(3) Brief facts of the case are that the husband of the applicant, namely Radheshyam Singh Gaur, is the real brother of respondent No.1 - Komal Singh. That there is a dispute in respect of the suit property in Khasra No.713, Rakba 7.48 hectare, out of which the dispute is in relation to 1980 Sq. Ft. of land in the above said Khasra number. As regards the dispute between the two brothers, a suit being Civil Suit No.61-A/2009 has already been filed by the respondents and that civil suit is still pending consideration before the Civil Court to be finally adjudicated upon.

(3.1) In the said civil suit, on 7.11.2009 the Civil Court initially granted a temporary injunction in favour of the plaintiffs (respondents herein) of restraining the respondents from entering into the said suit property. Against the said temporary injunction granted on 7.11.2009, the applicant herein had preferred an appeal being M.C.A. No.13/2010 and the appellate Court vide its order dated 8.9.2010 had quashed the said order of temporary injunction granted by the Civil Court.

(3.2) Against the said order dated 8.9.2010, the respondents had preferred a writ petition being W.P. (227) No.143/2011 and in the said writ petition on 12.1.2011 this Court had passed an order to maintain *status quo* as obtained today with regard to the suit property. The said writ petition is also still pending before this Court for consideration.

(3.3) In between it is alleged that on 13.12.2009, the respondents/plaintiffs entered upon the suit premises (in respect of the share allegedly claimed by the present applicant to be her land) and broke open the lock put on the door of the said building and entered into the room and dismantled the wooden fixtures, windows, doors etc., and also took away the agricultural produces, seeds and equipments stored in the said room, and the said articles removed from the said suit premises were later on kept at the premises of respondent No.4 - Ganesh Ram Mouryawanshi.

(3.4) Against the said incident occurred on 13.12.2009, the present applicant had filed a complaint case on 24.12.2009 before the J.M.F.C., Kurud, which was registered as Criminal Complaint Case No.667/2012. The J.M.F.C., Kurud, vide its order dated 19.12.2012 framed charges against the respondents for having committed the offences punishable under Sections 451, 379, 427 read with Section 34 of IPC.

(3.5) The said order dated 19.12.2012 was put to challenge by the respondents in a criminal revision being Cr.R. No.5/2013 before the Court of Additional Sessions Judge (F.T.C.), Dhamtari, and the said Court vide its order dated 16.7.2013 has quashed the order dated 19.12.2012 passed by J.M.F.C., Kurud, and has discharged the respondents from the offences punishable under Sections 451, 379, 427 read with Section 34 of IPC.

(4) It is this order dated 16.7.2013 passed by Additional Sessions Judge (F.T.C), Dhamtari, which has been challenged by the present applicant by way of instant criminal revision.

(5) Learned counsel for the applicant submits that the reasons given by the Additional Sessions Judge (F.T.C.), Dhamtari, in passing the impugned order, is not sustainable for the reason that the Court below has given a reason of a temporary injunction having been passed in favour of the respondents and that the nature of the dispute being of civil nature, no offence is made out thereby the impugned order dated 16.7.2013 discharging the respondents from the offences punishable under Sections 451, 379, 427 read with Section 34 of IPC was passed.

(6) Learned counsel for the applicant further submits that a civil dispute is entirely different from that of a criminal case and that both, the civil suit and the criminal case, can go simultaneously.

(7) Learned counsel for the applicant also submits that in spite of the fact that there might have been an order of injunction in favour of the respondents but that by itself does not allow them to enter into the house of the applicant and take away the articles stored in the room as well as dismantle the room and take away the wooden fixtures to the said room also. The said act on the part of the respondents clearly is an act of trespass as well as of theft. Therefore, it was for this reason that the applicant had filed a criminal complaint and of which the J.M.F.C., Kurud, had taken cognizance and charges were framed against the respondents.

(8) On the other hand, learned counsel for the respondents, opposing the instant criminal revision, submits that in spite of the fact that the appellate Court has set aside the order of temporary injunction dated 7.11.2009 vide its order dated 8.9.2010, but this Court in W.P. (227) No.143/2011 has already ordered that the parties shall maintain *status quo* as obtained today in respect of the suit property. The said writ petition is still pending consideration before this Court.

(9) Learned counsel for the respondents further submits that even otherwise all that the respondents have done in the suit premises is that the portion of house which got damaged on account of the widening of the road had to be reconstructed and it was for this reason that the respondents had constructed a small toilet in the said area which was necessary and that whatever articles and fixtures which have been removed from the said room, have been placed safely in the premises of respondent No.4 and which is also an admitted fact as per the contents made in the complaint case itself by the present applicant. Learned counsel for the respondents also submits that these properties are still lying in the premises of respondent No.4 and that they had never intended of selling the same or have sold it rather it is kept safely in the premises of respondent No.4.

(10) Taking into consideration the submissions put forth by the counsel appearing for the either side, the fact which appears is that admittedly there is a dispute between the parties in respect of the title over the suit property and for that a Civil Suit No.61-A/2009 has already been filed and is pending consideration before the Civil Court. At the same time, a dispute which arose from the order passed in application under Order 39 (1) (2) wherein initially the Civil Court had passed an order of temporary injunction in favour of the plaintiffs, which has been challenged before this Court and this Court had also ceased the matter in W.P. (227) No.143/2011. Thus, a dispute in respect of the title of the suit premises as well as the veracity and validity of the order of temporary injunction passed by the Civil Court on 7.11.2009, both are under consideration before the Civil court as well as in this Court.

(11) In my opinion the order passed by the Court below in passing of the order dated 16.7.2013 though not properly worded but the order is correct to the extent that since there is a dispute in respect of the title and ownership of the suit property and that

the dispute is pending consideration both at the Civil Court level as well as in the writ petition before this Court, it would not have been appropriate at that juncture for the trial Court for having initiated a case against the respondents for offences punishable under Sections 451, 379, 427 read with Section 34 of IPC. Moreover, the complainant in her complaint itself has admitted the fact that whatever articles that have been removed from the suit premises are still kept in the premises of respondent No.4- Ganesh Ram Mouryawanshi, which itself *prima facie* establishes the fact that there is no case of theft and for that matter the properties have also not been sold.

(12) In view of the above, the criminal revision being devoid of merits is dismissed at motion stage itself. No order as to costs.

Sd/-
P. Sam Koshy
Judge