

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.02.05 11:30
I attest to the accuracy and
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CRM No. M-38140 of 2012 (O/M)
Date of decision : 2.2.2015

Prem Kumar and another

..... Petitioners

Versus

Phool Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Sharma, Advocate, for the petitioners.

Mr. Rajesh Lamba, Advocate, for respondent No. 1.

Mr. Gautam Kaile, Advocate, for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

In this petition under Section 482 Cr.P.C., petitioners (respondents before the appellate Court) seek quashing of the impugned judgment dated 17.10.2012 (Annexure-P-2), passed by the learned Sessions Judge, Fatehabad, whereby the petitioners/respondents have been directed to remove the alleged encroachment within 15 days from the date of receipt of order, failing which legal consequences would follow.

Brief facts of the case are that Phool Singh/respondent No. 1 filed an application under Section 133 Cr.P.C. before the Sub Divisional Magistrate, Fatehabad, stating that a public street situated

in the *Abadi Deh* of the village, which is 15 ft. 9 inch wide abutting the north wall of the temple, has been closed by respondents No. 1 and 2/petitioners herein by constructing houses, thereby causing hindrance to the inhabitants of the village and is also creating nuisance. It is stated that respondents No. 1 and 2/petitioners herein took the possession of the street in 1998. The Gram Panchayat passed a Resolution on 20.2.1998 to take action against respondents No. 1 and 2/petitioners herein. The Sarpanch of the village had promised to file a suit against respondents No. 1 and 2/petitioners herein in the Civil Court. Thus, Ram Murti, the then Sarpanch of the village was authorised, vide Resolution dated 27.2.1998, to take action against respondents No. 1 and 2/petitioners herein for getting the encroachment removed.

Upon notice, respondents No. 1 and 2/petitioners herein had stated that they are in possession of the disputed site, which is part of *Gair Mumkin Abadi* of the village, for the last 60 years. No objection was raised by anybody. They further stated that they had constructed their houses about 60 years back.

During proceedings, the learned Sub Divisional Magistrate, Fatehabad, got inspected the spot through Junior Engineer, Municipal Council and Junior Engineer, PWD (B and R) Department and inquiry was also made from the public. The Sub Divisional Magistrate, Fatehabad, came to the conclusion that respondents No. 1 and 2/petitioners herein had constructed their

houses about 60 years back and place is part of *Gair Mumkin Abadi*.

The temple was constructed after the construction of the houses of the respondents No. 1 and 2/petitioners herein. The main door of the temple opens towards north side of the main street. Therefore, the illegal possession of the respondents No. 1 and 2/petitioners herein on the disputed land cannot be considered. Nor there is an indication regarding any nuisance. Otherwise also, the disputed land is part of *Gair Mumkin Abadi* of the village. The applicant (Phool Singh/respondent No. 1 herein) should have filed this application under the Punjab Village Common Land Act qua the disputed land. Therefore, the proceedings under Section 133 Cr.P.C. are not admissible.

In the appeal filed before the learned Sessions Judge, Fatehabad, the learned Sessions Judge, reversed the findings. The learned Sessions Judge, Fatehabad, has taken into consideration several facts. He has taken into consideration the Resolution of year 1998, passed by Gram Panchayat, vide which Ram Murti, the then Sarpanch of the village, was authorised to take action against respondents No. 1 and 2/petitioners herein. It was further noticed that a civil litigation against respondents No. 1 and 2/petitioners herein decided by Shri Vinod Jain, the then Sub Judge 1st Class, Fatehabad, was terminated in favour of the applicant. Two site plans (Ex.P5 and Ex.P6) produced in the civil litigation were also taken into consideration to hold that there was no encroachment and

it was done subsequently. It was further noticed that the report of two expert witnesses i.e. JEs of Municipal Council and PWD (B and R) were not produced on file. It was concluded that the disputed site is part of public street. Therefore, the impugned order was passed.

I have heard learned counsel for the parties and have also carefully gone through the file.

After going through the file, I am of the view that the order dated 26.4.2010 (Annexure-P-1), passed by the Sub Divisional Magistrate, Fatehabad, was rightly set aside by the learned Sessions Judge, Fatehabad, vide order dated 17.10.2012 (Annexure-P-2). In the said case, the spot was got inspected in the presence of two junior engineers and the Sub Divisional Magistrate, Fatehabad, washed off his hands by saying that the construction was raised 60 years back. There is no evidence in this regard. The learned Sessions Judge, Fatehabad, has specifically taken into consideration the site plans (Ex.P5 and Ex.P6), produced in the earlier civil suit with the respondents wherein such encroachment was missing. He also took into consideration the Resolution of the Gram Panchayat, passed in year 1998, for removal of said encroachment. The civil suit was decided in the year 1986, which shows that the encroachment was done subsequently. The order passed by the learned Sessions Judge, Fatehabad, on 17.10.2012 (Annexure-P-2) is a well reasoned and his finding of fact that there is encroachment over the street cannot be interfered into by this Court.

Learned counsel for the petitioners has relied upon the authority of the Hon'ble Supreme Court in Vasant Manga Nikumba and others Versus Baburao Bhikanna Naidu (deceased) By Lrs and another, 1995 Supp. (4) Supreme Court Cases, 54 as well as the authority of Single Bench of this Court in Makhan Lal Versus Buta Singh, 2003 (2) RCR (Criminal), 416, and it is stated that where the nuisance or obstruction has been existing for a long period, the remedy available to the parties is to move the Civil Court. However, it comes out that in the present case, when the encroachment was made in 1998, a dispute started with the Gram Panchayat and the Gram Panchayat started taking action in the matter. Later on, the applicant/respondent No. 1 filed an application under Section 133 Cr.P.C. on 1.4.2008. It goes to show that the dispute was continuing. Infact, there is a street around the temple, part of which has been encroached by respondents No. 1 and 2/petitioners herein. Therefore, no fault can be found with the judgment dated 17.10.2012 (Annexure-P-2), passed by the learned Sessions Judge, Fatehabad.

Accordingly, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

2.2.2015
sjks