

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M No. 4010 of 2012 (O&M)

Date of Decision: 12.8.2015

Ved Kaur Punia

.....Petitioner

Vs

Karan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms.Neeru Bansal Advocate,
for Mr.Hari Om Attri, Advocate,
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J. (Oral)

1. Prayer in this petition under Section 482 Cr.P.C. for quashing of criminal complaint No.521 of 2007 dated 14.11.2007 under Sections 420, 467, 468, 471, 34 IPC as well as summoning order dated 21.11.2011 passed by Additional Chief Judicial Magistrate, Hisar.

2. Mohinder Singh was owner of land measuring 223 kanals 3 marlas out of total land measuring 1032 kanals 9 marlas to the extent of his share 83/ 384 as per revenue record. Mohinder Singh died on account of illness, leaving behind Ved Kaur (widow), Anita, Renu, Neelima and Poonam (daughters)

and minor son Giriraj. Deceased Mohinder had executed a Will

in favour of petitioner Ved Kaur, thereby giving his entire share of land to her. The said Will was acted upon in the revenue record also. Mutation No.1840 was sanctioned in favour of the petitioner on 21.10.1983 on the basis of Will.

3. Petitioner suffered Civil Court decree in favour of her minor son Giriraj in civil suit No.115 dated 21.3.1986. Mutation No.1920 was also sanctioned on 8.9.1986 in pursuance thereto. Petitioner being guardian of minor Giriraj, was caretaker of his properties. She sold 64 kanals of land to Karan Singh-respondent vide registered sale deed dated 28.8.1993.

4. Two of the daughters, namely Anita and Renu, filed civil suit No.262-C of 1994 seeking possession of 1/3rd share of the land on account of succession in Joint Family Properties. Civil suit was filed against the petitioner, her minor son Giriraj, remaining two daughters Nilima and Poonam and the vendee Karan Singh. Declaration was sought for setting aside mutation in favour of petitioner on the basis of Will, judgment and decree suffered by the petitioner in favour of her minor son Giriraj as well as against sale deed dated 28.8.1993 executed by the petitioner in favour of complainant Karan Singh being illegal and not binding upon the rights of complainants Anita and Renu.

5. In the civil suit, respondent Karan Singh was served but he did not appear and was proceeded ex parte. After due contest, Civil Court disbelieved the Will and accepted the

alternate arguments of the petitioner that even if Will is not to be believed then also Anita and Renu are not entitled to 1/3rd share and their rights are limited to 1/9th share in total. The suit was decreed in favour of Anita and Renu holding them entitled to 1/9th share in total.

6. Anita and Renu challenged the aforesaid judgment and decree dated 17.1.2003 before the lower Appellate Court. Petitioner also challenged the said judgment and decree in separate appeal. In both the appeals, respondent Karan Singh was party. First Appellate Court vide judgment and decree dated 12.11.2005 accepted the appeal of Anita and Renu and dismissed the appeal of the petitioner by holding the Will to be surrounded by suspicious circumstances. Plaintiffs Anita and Renu were held entitled to 1/3rd share in total out of properties left by Late Sh.Mohinder Singh. Accordingly, lower Appellate Court vide judgment and decree dated 12.11.2005 held Anita and Renu to be entitled to 74 kanals 38 marlas of land in total.

7. Aggrieved by the aforesaid judgment and decree of lower Appellate Court, petitioner filed RSA No.1797 of 2006 in this Court challenging the judgments and decrees of both the Courts below on the basis of Will of late Mohinder Singh. Respondent Karan Singh also filed two separate Regular Second Appeal Nos. 2459 of 2006 and 2460 of 2006 claiming himself to be bona fide purchaser of land measuring 64 kanals

vide sale deed dated 28.8.1993. All the appeals came up for final hearing before this Court on 15.1.2010. During the pendency of appeals, consensus arrived between the family members of deceased Mahender Singh, whereby Anita and Renu were agreed to be given 60 kanals of land in total (30 kanals each to Anita and Renu), vide compromise deed dated 14.12.2009. Matter was settled between the family members.

8. Para Nos. 8, 9 and 11 of the compromise deed are necessary to be highlighted here as under:-

“8 . That this has been resolved between the parties and has been agreed upon that the respondents will get the land to the extent of 30 Kanals each (60 kanals in total). The rest of the land shall remain in the hands of the appellants and shall be mutated accordingly. Both the parties shall abide by the aforesaid compromise and revenue record shall be corrected accordingly by giving 30 kanals each (60 kanals in total) to Anita Punia and Renu Kumari daughters of Mohinder whereas, the rest of the property shall remain in the name of appellants Ved Kaur widow of Mohinder Singh son of Late She Nathu, Neelima daughter of Mohinder, Poonam, daughter of MOhinder, Giriraj son of Mohinder.

9. That both the parties have agreed that the present Regular Second Appeal be disposed of in terms of the compromise stated above. It is further resolved that none

of the parties shall have any claim against each other beyond this deed of compromise.

11. That the land already sold in favour of Karan Singh s/o Kanhaya vide sale deed 28.8.1993 by Appellant Ved Kaur shall not be apportioned from the share of respondents Ani ta Poonia and Renu Kumari which has been settled as 30 Kanals for each of them (60 Kanal in total). The said Karan Singh shall get his share from the land in the hands of appellants Ved Kaur, Giriraj, Neelima and Poonam.”

9. Vide decision dated 15.1.2010, this Court accepted the compromise. The relevant observations of this Court are reproduced here as under:-

“In RSA No.1757 of 2006, CM No.150-C of 2010 has filed for permission to place on record documents (Annexure A-1 and A-2) and CM NO.151-CI of 2010 has been filed under Order 23 Rule 3 read with Section 151 CPC for passing appropriate judgment and decree in terms of the compromise dated 14.12.2009 (Annexure A-1) arrived at between the parties to the appeal. CM NO.150-C of 2010 is allowed and compromise deed (Annexure A-1 and A-2 is taken on record. Notice of the application bearing CM No.151-C of 2010 is issued. At this stage, Mr.Amit Jain, Advocate appearing on behalf of contesting respondents along with Sh.B.R.Mahajan, Advocate appearing for respondent. Sh.B.R.Mahajan,

Advocate has submitted that he is not a party to the agreement and is only concerned with the protection of the sale deed EX.P11 executed in his favour. Since it is a dispute between the family members of the deceased Mahinder Singh and if a compromise has been arrived at between them, then he has no objection if it does not effect his rights. Learned counsel appearing for respondents No1 and 2 (plaintiffs' Anita Poonia and Renu Kumari) had submitted that the terms and conditions of the compromise are acceptable to him, According to the compromise, as orally stated by the counsel for the parties that the compromise has no effect on the rights of the subsequent purchaser, namely Karan Singh as it has been specifically provided in para 11 of the compromise that the land already sold in favour of Karan singh son of Kanhaya vide sale deed dated 28.8.1993 by appellant Ved Kaur shall not be apportioned from the share of respondents Anita Poonia and Renu Kumari which has been settled as 30 kanals for each of them (60 kanals in total). The said Karan shall ge his share from the land in the hands of appellants Ved Kaur, Giriraj, Neelima and Poonam.

In view of the above, CM No.151-C of 2010 is allowed and in terms of the compromise (Annexure A-1), the judgment and decree of the trial Court is modified. It is directed that a decree be drawn as per the terms and

conditions of the compromise between the parties, The aforesaid three appeals are thus, disposed of.”

10. In the present case, notice of motion was issued on 10.2.2012 on the basis of compromise. On 2.4.2012, respondent appeared through Sh.M.L.Dhawan, Advocate and sought time to file reply. On 17.10.2012, Mrs.Maninder Kaur, Advocate appeared on behalf of the respondent and also sought time to file reply. Thereafter, none appeared on behalf of respondent despite issuance of notices to the advocate, who appeared on behalf of the respondent on earlier two occasions. Non appearance on behalf of the respondent at a subsequent stage appears to be on account of satisfaction of his claim in Regular Second Appeal before this Court. This Court cannot allow this petition to be pending un-necessarily without there being any lawful contest by the respondent. Even if order of summoning is revisable, this Court can rely upon decision of the Apex Court in **Dhariwal Tobacco Production Ltd. vs. State of Maharashtra and another** (2009) 2 SCC 370 to take cognizance on the issue and quash the proceedings on the basis of compromise. No lis is subsisting between the parties after full and final settlement of the claim of the respondent before this Court in Regular Second Appeal.

11. In view of aforesaid, I am of the considered view that inherent powers of this Court in terms of Section 482 Cr.P.C. can

be invoked in quashing the criminal complaint along with entire subsequent proceedings, if any undertaken by the Court, in order to prevent abuse of process of law and to achieve ends of justice.

12. Hence, this petition is allowed. Resultantly, criminal complaint No.521 of 2007 dated 14.11.2007 under Sections 420, 467, 468, 471, 34 IPC as well as summoning order dated 21.11.2011 passed by Additional Chief Judicial Magistrate, Hisar. and all the subsequent proceedings arising therefrom, are quashed.

August 12, 2015
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(RAJ MOHAN SINGH)
JUDGE