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

CRM-M-40868 of 2014

Date of decision: January 12, 2015

Jagdev Singh

.....Petitioner

Versus

Bhagwant Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Shamsheer Singh Gill, Advocate
for petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 22.12.2009 (Annexure P-3) and 25.08.2014 (Annexure P-11).

Learned counsel for the petitioner has submitted that record relating to civil suit pending between Avtar Singh and Bhagwant Kaur could not be produced on record due to inadvertence by the petitioner while leading his preliminary evidence. The said record pertaining to the civil suit was very necessary to be brought on record for the just decision of the case. In fact, respondents No.2 and 3 were also liable to be summoned to face the trial as accused. Respondents No.2 and 3 had connived with their mother respondent No.1 at the time of execution of sale deed in question.

The case of the petitioner, as per complaint Annexure P-1 in brief is that respondent No.1-Bhagwant Kaur was recorded as co-owner qua the land in question. Bhagwant Kaur

agreed to sell 10 Bighas of land out of the land in question to the petitioner. Agreement to Sell was executed on 30.11.2000 between Charan Singh uncle of the petitioner and respondent No.1. Respondent No.1 received ₹3,75,000/- by way of earnest money from Charan Singh. Respondent No.2 had also signed the Agreement to Sell. Sale deed was to be executed on 30.11.2001. The date for execution of the sale deed was extended to 03.12.2001. On the basis of the Agreement to Sell dated 30.11.2000, sale deed was executed by respondent No.1 in favour of the petitioner and his family members. The sale deed was attested by respondent No.3. However, later petitioner came to know that with regard to the property in question, respondent No.1 had executed Agreement to Sell in favour of Avtar Singh and the said purchaser had filed suit for possession by way of specific performance of Agreement to Sell executed by respondent No.1 in his favour. The suit was decreed on 16.01.2001. However, the factum of the decision of the suit filed by Avtar Singh was not disclosed by the respondents to the petitioner or his uncle Charan Singh at the time of execution of the sale deed.

In support of his case, petitioner led his preliminary evidence. The trial Court vide impugned order dated 22.12.2009 ordered the summoning of respondent No.1 to face the trial qua commission of offence punishable under Section 420 IPC. However, the complaint was dismissed qua respondents No.2 and 3. Revision petition filed by the petitioner against the said

Order was dismissed vide order dated 10.01.2013 (Annexure P-

4).

Trial Court while dismissing the complaint against the respondents No.2 and 3 held that the said respondents could not be summoned to face the trial merely because they had witnessed the sale deed or the Agreement to Sell in question. In fact, Avtar Singh had filed suit against respondent No.1 and the knowledge qua the pendency or decision of the suit, could only be attributed to respondent No.1 at the time of execution of Agreement to Sell/sale deed. So far as respondents No.2 and 3 are concerned, they were not party to the civil suit and could not be attributed the knowledge or criminal liability merely because they were sons of respondent No.1. The reasons given by the trial Court while dismissing the complaint qua respondents No.2 and 3 are sound reasons. Consequently, the order passed by the trial Court dated 22.12.2009 dismissing the complaint qua respondents No.2 and 3 was rightly upheld by the Court of revision vide order dated 10.01.2013.

Thereafter, petitioner moved an application Annexure P-8 seeking permission to summon the clerk to prove the record relating to civil suit No.281 on 17.12.1998, decided on 16.01.2001. The said application was dismissed vide order dated 25.08.2014 (Annexure P-11). While dismissing the application, the trial Court had observed as under:-

“Perusal of judicial file reveals that the present complaint has been filed against three persons. But out of three persons, ld. Predecessor court vide order dated 22.12.2009 summoned only Bhagwant Kaur accused no.1 under Section 420 IPC. Thereafter

complainant filed revision against the order dated 22.12.2009, whereby the order of the trial Court was upheld by the Ld Appellate Court and revision was dismissed. Perusal of judicial file further reveals that accused no.1 Bhagwant Kaur has been died and proceedings against accused Bhagwant Kaur stands abated. Now, by way of present application complainant wants to examine the clerk of the judicial record room as complainant witness. When the only accused summoned by the ld. Court is died then no use of examining any witness. By examining the concerned clerk and by summoning the judicial record. Ld. Counsel for the complainant wants the court to reconsider the matter afresh so that remaining two accused be also summoned to whom the court was not summoned.”

The reasons given by the trial Court while dismissing the application, are sound reasons. At this stage, no useful purpose would have been served by examining the clerk to prove file record relating to the civil suit as the compliant in question had already been dismissed by the trial Court qua respondents No.2 and 3. Moreover, the order whereby the complaint had been dismissed by the trial Court qua respondents No.2 and 3 had been upheld by the Court of revision.

No ground for interference by this Court, is made out.

Dismissed.

January 12, 2015
m.singh

(SABINA)
JUDGE