

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1687-MA of 2015

.....

Date of decision:22.9.2016

Shri Bhagwan

...Applicant

v.

Kaushlya Devi and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ram Darshan Yadav, Advocate for the applicant.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed by the complainant/applicant under Section 378(4) Cr.P.C. against Kaushlya Devi and others for grant of leave to appeal against the judgment dated 30.7.2015 passed by learned Judicial Magistrate Ist Class, Bahadurgarh, vide which the accused have been acquitted of the charges framed against them.

It has been mainly stated in the application that the accompanying appeal is being preferred by the appellant against the judgment dated 30.7.2015 passed by learned Judicial Magistrate Ist Class, Bahadurgarh, which is likely to succeed on the basis of grounds taken therein. It has been stated that vide the judgment dated 30.7.2015, the respondents were ordered to be acquitted by the learned trial Court and there are many legal arguable points involved in the present appeal, therefore, it has been prayed that leave to file appeal may be granted.

I have heard learned counsel for the applicant and have gone

through the record.

From the record, I find that Shri Bhagwan-complainant filed the complaint against Smt. Kaushlya Devi, Krishan Lal, Ramesh, Sanjay, Surender, Karpal Meason, Ashok Meason, Mukesh Meason, Rajbir and Wazir Singh Rathi under Sections 420, 447, 448, 452, 467, 471 and 506 IPC.

The brief facts of the case as mentioned in the judgment dated 30.7.2015 by the learned Judicial Magistrate Ist Class, Bahadurgarh, are as under:-

“Brief facts of the present complaint are that the complainant & his father purchased 3/10th share in the agricultural land measuring 12 Bigha 5 Biswa vide sale deed no.1095 dated 27.1.1976, which includes khasra no.5317/823 measuring 0 Bigha 4 Biswa. In the year 1997, the father of complainant purchased the land comprised in khasra No.5316/823 (0-6B) from Smt. Kiran vide sale deed dated 13.8.1997. The complainant constructed the boundary wall of the land comprised in khasra no.5317/823 & 5316/823 in the year 1999 and the said fact has also been duly reflected in the revenue record. In addition to this, the complainant has also constructed some rooms and a shed for animals on the aforesaid land. On 2.2.2009, the accused trespassed into the land owned by complainant and dismantled the structure constructed thereupon. The complainant tried to convince the accused that

he was the owner of disputed land as it falls in khasra no.823 and not khasra no.822/1 of which the accused No.1 was owner vide sale deed executed in her favour by vendor Nisha Jain but despite that the accused did not refrain from encroaching & raising construction upon the disputed land. The father of the complainant filed a civil suit against the accused wherein the civil Court passed an order thereby restraining the defendant i.e. accused No.1 from interfering in his peaceful possession over the property in dispute but the accused persons intentionally violated the said order passed by the civil Court and continued raising construction over the disputed land. The complainant came to know that the accused No.10 namely Wazir Singh Rathi had carved out plots and prepared the site plan of the different properties sold by way of sale deeds executed by the father of complainant. Wazir Singh had intentionally prepared false site plan and mentioned wrong khasra number in the sale deeds got executed by him through the father of complainant. It was clearly evidence that the remaining accused were well aware of the act & conduct of Wazir Singh and they had tried to encroach upon the khasra number 823 owned and possessed by complainant on the basis of forged documents. Finally, a prayer was made to summon the accused to face the trial and punish in accordance with law.”

On the basis of preliminary evidence only five accused, namely, Kaushlya Devi, Krishan Lal, Ramesh, Sanjay and Surrender were summoned. On the basis of pre-charge evidence, the charges for the offences under Sections 447, 448, 452 & 506 IPC were framed, to which they pleaded not guilty and claimed trial. At the close of the complainant's evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence of the complainant, but they denied the correctness of the evidence and pleaded themselves innocent. Copies of Sale Deeds Ex.D.1 to D.7 were tendered and the accused closed the defence evidence.

The learned Judicial Magistrate Ist Class, Bahadurgarh, after appreciating the evidence acquitted the accused. I have gone through the judgment passed by the learned Judicial Magistrate Ist Class, Bahadurgarh, which is correct as per evidence and law. The evidence has been appreciated in right perspective. Nothing has been pointed out as to what illegality has been committed by the Court below. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to what material evidence has not been considered by the Court below.

A perusal of the record shows that the complainant is owner of khasra No.823, whereas accused No.1 was owner of khasra No.822/1. The allegations are that the accused have encroached upon the property of the complainant and had raised construction whereas the case of the defence is that they had raised the residential house on the property owned by them. A perusal of the record shows that no demarcation as per law had been taken

in the present case to show that the accused had raised the construction in the property owned and possessed by the complainant. Without the demarcation, it cannot be held that whether the residential house had been constructed in the property of accused No.1 or of the complainant. Therefore, a reasonable doubt exists in the complainant's case. The complainant is to prove his case beyond a reasonable doubt. Further more, the Court has discussed the sale deed which is in favour of accused No.1 qua khasra No.822/1 in which dimension has been mentioned and the property in dispute has same dimensions. As regards the sale deed in favour of the complainant, no dimension of the property has been mentioned. Otherwise also, the Court held that in the complaint also no dimensions etc. have been mentioned regarding the property in dispute. Therefore, in view of the findings given by the Court below, I find that these are as per evidence and law and do not require any interference from this Court.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

September 22, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No