

\$~4.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 607/2016 and Crl.M.A. Nos. 17707-708/2016

KANHAYA LAL Petitioner

Through: Mr. Niraj Chaudhry, Advocate.

versus

BUDH RAM & ORS Respondents

Through: SI Praveen Sharma, PS-Ashok Vihar,
for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

30.11.2016

%

1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 08.07.2016 passed in CC No.113/2014, whereby the complaint of the petitioner/ complainant has been dismissed and the respondent/ accused acquitted.

2. The case of the complainant was that he had purchased plot No.C-37, MCD No.70-C, measuring 100 sq. yards situated at Sanwal Nagar, near Sadiq Nagar, New Delhi. He claims to have constructed a house on half of the plot, i.e. 50 sq. yards and the remaining 50 sq. yards was kept open in the front of the house as courtyard. The complainant alleged that the accused persons tried to forcibly and illegally grab half of the said plot, i.e. 50 sq. yards, which was lying vacant. He filed a civil suit for permanent injunction against the accused persons and the accused persons were restrained by the

Civil Court on 03.03.1987. The complainant claimed that on 28.08.1993 at about 06:00 p.m. the accused forcibly entered the said plot of the complainant and started dispossessing him. He attributed different roles to the different five accused persons with regard to his being beating with fists, blows and slaps. He also alleged that his *Charpai* was broken and when he produced the injunction order of the Court, the same was torn. He claimed that the other persons of the locality saved him. His possession of the plot was also restored and his belongings and *Charpai* were kept inside the plot.

3. The Trial Court has held that the petitioner failed to show prima facie case against the accused persons and, consequently, they were discharged. While doing so, the Trial Court has discussed the evidence led by the petitioner/ complainant. The complainant examined himself as CW-1. In his cross-examination, he stated that there were two tenants of the said property and one of them was Sh. Chotte Lal. He claimed that Chotte Lal was present at the time of the incident. However, he was not cited as a witness. The Trial Court also noted that there was a contradiction in the statement of CW-1 inasmuch as he admitted that he was residing at Kotla Mubarakpur. However, he subsequently stated that he was residing at both Kotla Mubarakpur and Sanwal Nagar while admitting that his family was residing at Kotla Mubarakpur. There was no explanation as to why he would reside at two places. The Trial Court also takes note of the fact that CW-1 claimed that he had a tenant Teja, who was staying in the aforesaid property without paying rent. However, the said Teja was not examined as a witness for reasons not disclosed. The petitioner also examined one Harish Batra as CW-2 and Mahendra Rana as CW-3. The Trial Court has not found

their testimonies to be believable since there are lacunas therein. CW-3 Mahendra Rana in his cross-examination could not depose with regard to the construction existing on the property in question while he claims to have witnessed the beating and slapping of the complainant by the accused persons on the same plot. Thus, he was disbelieved. CW-2 Harish Batra claims to have witnessed the incident but he stated that he had not noticed any person reside in the room constructed on the plot. This version was contrary to the version of the complainant that he had tenants in the property.

4. The submission of learned counsel for the petitioner is that the Trial Court has taken into account the fact that the suit for permanent injunction filed by the petitioner was dismissed by the learned Civil Judge on the ground that the petitioner could not establish title. He points out that the first appeal against the said judgment dismissing the suit dated 24.05.2009 is pending. He further submits that the Trial Court has not correctly appreciated the evidence of CW-2 & CW-3. He further submits that Teja was not examined by him as Teja – his tenant, was in dispute with the petitioner on account of non-payment of rent.

5. Having heard learned counsel for the petitioner and perused the impugned judgment as well as the testimonies of the witnesses placed on record, I am of the view that there is no merit in the present petition. The Trial Court has appreciated the evidence led before it. It cannot be said that there is any glaring error in the impugned judgment. It cannot be said that the Trial Court has misread the evidence, or not taken into account the evidence led on record. The view taken by the Trial Court is probable view

and, therefore, the same does not call for interference by this Court.

6. The Trial Court in its discussion in the impugned judgment has, *inter alia*, observed as follows:

“ It is the case of the complainant that on 28.08.1993 at about 06:00 p.m. the accused persons tried to forcibly dispossess the complainant from the aforesaid plot and also gave beatings to him. In order to prove his case, the complainant has examined himself as CW-1. Although, in his cross examination in chief, the complainant has deposed that on the day of the incident, the accused persons had misbehaved with him and they had slapped him and had given a beating him fist and blows, however, the complainant has not placed on record any MLC to show that he had sustained any injuries on the day of the incident. In fact, the complainant has conveniently stated in his testimony that injuries were not of such a nature which would require medical attention.

There are other material inconsistencies in the testimony of complainant himself. The complainant has affirmed the suggestion during his cross examination, that he was residing at Kotla Mubarak Pur, however, he again changed his deposition and stated that he was residing at both K.M. Pur as well as Sawal Nagar. He has further stated that while his family was residing at K.M. Pur, he stayed at Sanwal Nagar. Thus, it appears that the complainant has been prevaricating and it is hard to comprehend that complainant would stay away from his family at Sawal Nagar, while his family would reside at K.M. Pur without any rhyme or reason. In fact, even in the present complaint, he has given his address of K.M. Pur. Furthermore, during his testimony, the complainant himself had admitted that there was a tenant namely Teja residing on the property in question, without paying any rent to him. However, the said tenant has in fact not been examined by him for reason best known to the complainant. The complainant has stated that other tenant Chhote Lal had already expired at the time of recording of pre summoning evidence. Interestingly, Sh.

Chhote Lal had appeared during the stage of pre summoning as CW1 on 06.07.1996 and had deposed as a witness. Thus, it appears that the testimony of the complainant is full of conjecture and surmises.

Even the testimony of the other witnesses examined during pre charge evidence namely CW1 Mahendra Rana & CW2 Harish Batra does not inspire confidence. In fact, CW1 Mahender Rana has stated in his cross examination, he does not know whether plot No. C-37 has two portion. He does not even know whether any construction had been raised on the said plot. It is hard to believe that a person who had seen a quarrel on the plot, would not have seen any construction on the plot. The presence of the said witness is highly doubtful. Even CW2 Harish Batra has stated that in his testimony that he did not see any person residing in the room at the plot. He also stated that he did not know whether the complainant had received any injuries. Thus, from the aforesaid facts, the presence of CW2 Harish Batra at the spot is also doubtful as he is even unable to depose regarding the injuries suffered by the complainant on that day. As already stated, the testimony of the said witnesses cannot be relied upon.

It is a matter of record that the suit filed by the complainant against the accused persons for permanent injunction has been dismissed by the court of Ms. Geetanjali Goel, Ld. Civil Judge vide order dated 25.04.2009. As per the said order, the property in question has already been acquired and the complainant does not have any ownership rights to the same. Thus, it appears that the entire dispute between the parties pertains to the ownership rights of the said property and the present complaint case filed by the complainant is an off shoot of the same.”

7. Dismissed.

VIPIN SANGHI, J

NOVEMBER 30, 2016

B.S. Rohella