

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-22134-2007 (O&M)

Dr. SM Bose and another

..... Petitioners

Versus

GS Bhullar

..... Respondent

2 CRM-M-22907-2000 (O&M)

Dr. Shashanka Mohan Bose and another

..... Petitioners

Versus

Babu Barwa and others

..... Respondents

Date of decision: 14.11.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Shifali Goyal, Advocate for
Mr. MS Nain, Advocate for the petitioners (in both cases).

Mr. Piyush Khanna, Advocate
for the respondent(in CRM-M-22134-2007) and
for respondents No. 1 to 3 (in CRM-M-22907-2000).

Ms. Ashima Mor, APP, U.T. Chandigarh,
for respondent No. 4 (in CRM-M-22907-2000).

RAMENDRA JAIN, J. (ORAL)

Through this common judgment, two above titled petitions filed by the petitioners under Section 482 Cr.P.C., are being disposed of as similar facts are involved therein i.e. CRM-M-22134-2007, for quashing Criminal Complaint titled “GS Bhullar Vs. S.M. Bose and another” under Sections 448, 452, 380, 506, 511 and 120-B IPC dated 06.12.2004 (Annexure P-1) and summoning order dated 14.11.2005

(Annexure P-2) and CRM-M-22907-2000, for quashing Calaendra under Section 145 Cr.P.C. (Annexure P-1) regarding House No. 589, Sector-16-D, Chandigarh filed on 12.08.1999, order dated 18.08.1999 (Annexure P-2) of the Sub Divisional Magistrate, Chandigarh and all the subsequent proceedings arising therefrom. For brevity, the facts are being extracted from CRM-M-22134-2007.

Briefly, deceased-Sudha Sen, a retired teacher was owner of House No. 589, Sector-16D, Chandigarh, who died issueless being un-married on 16.04.1999, at her native place Calcutta. The petitioners on the basis of registered Will dated 15.03.1995 (Annexure P-3), allegedly executed by Ms. Sudha Sen, claiming their title over the house in question, got transferred its ownership in their favour after her death and also took possession on 11.06.1999, from the Estate Officer, Chandigarh Administration. Simultaneously, the legal heirs of Ms. Sudha Sen, claiming their title over the said house by virtue of another Will dated 09.02.1997, approached the Estate Officer to transfer its title in their favour, who by ignoring the Will Annexure P-3 in favour of the petitioners, ordered to transfer the house in question, in favour of legal heirs of deceased-Sudha Sen, vide order dated 24.08.2000.

Thereafter, on 17.09.2002, legal heirs of Sudha Sen, executed a General Attorney, besides a Special Power of Attorney and agreement to sell qua the house in question, in favour of respondent. When he went to take possession of the house in dispute, the petitioners resisted and by creating a scene threatened the respondent with dire consequences. Consequently, respondent filed complaint (Annexure P-1)

against the petitioners pleading the aforesaid facts and levelling some more allegations that on 21.11.2004, the petitioners had tried to break open the lock put by respondent at the main door of the house in question for which a DDR of even date was got recorded for house trespass. Earlier also, on 11.06.1999, the petitioners, had broke open the locks of house in question and taken its possession forcibly by removing all the articles belonging to one Ms. Pooja Khanna, care taker of the house.

After recording preliminary evidence, the petitioners were summoned vide summoning order dated 14.11.2005 (Annexure P-2). Simultaneously, the legal heirs of Sudha Sen, filed Civil Suit No. 1603 dated 04.03.2006, against the petitioners for possession of the house in question through their attorney Ms. Manjit Kaur wife of respondent-GS Bhullar, which after contest was dismissed by the Civil Court vide judgment and decree dated 07.08.2014 (Annexure P-16). The petitioners have also filed a Civil Suit No. 351 dated 04.12.2000, for permanent injunction against the legal heirs of deceased-Sudha Sen, which was decreed by the Civil Court, vide judgment and decree dated 09.12.2011 (Annexure P-15).

Appeals filed by the legal heirs of Sudha Sen and respondent against both the judgments Annexures P-15 and P-16, were dismissed by the Ist Appellate Court, which automatically proves that respondent was dislodged by the Civil Court, twice qua claim of ownership over the house in question which is the main bone of contention in between the parties.

Heard.

The respondent had not brought any record that any further Regular Second Appeal, was ever filed by him against the dismissal of appeals by the Ist Appellate Court. Resultantly, it can safely be presumed that the judgments of Civil Court, Annexures P-15 and P-16 against the respondent have attained finality. Therefore, raising the same grouse in the impugned complaint (Annexure P-1), the respondent have tried to give a criminal colour to a civil dispute which cannot be held to be sustainable.

Resultantly, both the petitions are allowed and Criminal Complaint titled “GS Bhullar Vs. S.M. Bose and another”, under Sections 448, 452, 380, 506, 511 and 120-B IPC dated 06.12.2004 (Annexure P-1); summoning order dated 14.11.2005 (Annexure P-2) (in CRM-M-22134-2007); Calaendra under Section 145 Cr.P.C. (Annexure P-1) and order dated 18.08.1999 (Annexure P-2) of the Sub Divisional Magistrate, Chandigarh (in CRM-M-22907-2000) and all the subsequent proceedings arising therefrom qua the petitioners are quashed.

November 14, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No