

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17595 of 2008 (O&M)

Date of Decision: 16.04.2018

Kuldip Singh

.. Petitioner

Vs.

State of Punjab & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present:- Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Pawan Sharda, Sr. DAG Punjab.
Mr. G.S. Attariwala, Advocate
for respondent No.2.

ANITA CHAUDHRY, J.

The petitioner is challenging the order dated 09.08.2007 passed by the Judicial Magistrate Ist Class, Patiala vide which the articles recovered by the police in FIR No. 370 dated 28.12.2005, under Sections 452, 454, 447 and 380 IPC, Police Station Civil Lines, Patiala, were ordered to be released on Superdari in favour of respondent No.2.

The facts relevant for the disposal of the instant petition are noticed first.

Respondent No.2 and her husband were owners of H. No. 109 (10-A) Raghbir Nagar, Patiala (for brevity, house in dispute) which were purchased by them by dint of different sale-deeds executed during September, 1994 and December, 1994. The whole controversy between the parties revolves around the house in dispute.

As per pleadings, respondent No.2 and her husband sold the part of the house in dispute to Rajinder Pal Singh and Kuldeep Kaur vide

sale-deed dated 22.05.2003. One Jagjit Singh, being the general power of attorney of respondent No.2 executed the sale-deed dated 06.07.2004 in favour of Kuldeep Kaur pertaining to the house in dispute. Kuldeep Kaur later executed the sale-deed dated 27.12.2004 in favour of Bhupinder Singh and Manjit Singh. Further Rajinder Pal Singh and Kuldeep Kaur executed the sale-deed on 28.01.2005, registered on 03.02.2005 in favour of Bhupinder Singh, Kuldeep Singh, Sarbjeet Singh and Arpandeep Singh. Respondent No.2 filed two civil suits, one for injunction restraining the defendants therein-subsequent purchasers from alienating or transferring the house in dispute and in the second suit she challenged the sale-deeds in favour of the persons above. It was alleged that the sale-deeds were the result of fraud being played upon her and her husband who was suffering from Schizophrenia. During pendency, it was claimed that the possession was taken by the defendants forcibly. After contest, the suits were dismissed and it was held that the plaintiff-respondent No.2 and her husband had sold the house in dispute vide valid and registered sale-deeds and it did not lie in their mouth to say that the same were not genuine. It was further held that the defendants therein were the true owners for consideration and their possession was not illegal and they could not be restrained from alienating or transferring it.

The parties went on litigating and appeals were filed by the plaintiff. It has come on record that respondent No.2 and her husband had filed another case against Om Parkash concerning the house in dispute with whom they had also entered into an agreement to sell.

Respondent No.2 got FIR No. 370 dated 28.12.2005 registered against the petitioner and others under Sections 457, 380, 354, 336, 352,

427, 502, 148 and 149 IPC. Another dispute originated between the parties, when during investigation, the police recovered some household articles from the house in dispute. The petitioner as well as respondent No.2 filed applications staking claim to the articles. The police gave no objection for release of articles to respondent No.2 though both the sides failed to prove the ownership in respect of the articles. The trial Court vide order dated 09.08.2007 observed that the release of articles during pendency of trial as an interim arrangement and ordered the release of articles in favour of respondent No.2 subject to her furnishing bonds to the tune of Rs.2.5 lacs. Certain conditions like production of the articles etc. were also imposed. The revision filed by the petitioner was dismissed by the revisional Court vide order dated 06.05.2008. Dis-satisfied with the same, instant petition was filed.

The grievance of the petitioner is that the Civil Court held that the petitioner was the bonafide purchaser of the property and respondent No.2 and her husband had sold the property vide legal and registered sale-deeds, then the household articles recovered from the house in dispute, could not have been released to respondent No.2 who had no right, title or interest therein. It was also urged that an application was filed by respondent No.2 earlier upon which unfavourable report was submitted by the police which was intentionally removed from the records and favourable report was procured by respondent No.2 on the subsequent application, which was allowed by the Court.

The stand of respondent No.2 was that the sale-deeds are result of fraud and are a nullity and the appeals against the dismissal of the suit are pending and the possession was taken by the petitioner and others forcibly

during the time when status quo order was operating in her favour and the household articles recovered, belonged to her and the same were rightly released by the trial Court in her favour. According to learned counsel, stringent conditions were imposed and the same are still being obeyed by respondent No.2. It is also stated that the trial is pending and charge against the accused therein has been framed.

I have heard learned counsel for the parties at length and have gone through the file carefully.

It is not in dispute that respondent No.2 failed to obtain any relief in the suits filed questioning the legality and validity of the sale-deeds executed in favour of petitioner and others. The Court non-suited her in the injunction suit as well. It is also admitted by respondent No.2 that she was not in possession of the house in dispute though she claimed that the petitioner and others took possession by forcibly ousting her. As admitted by respondent No.2, the possession of the house in dispute was taken by the petitioner and others on 09.04.2005 and the household articles were recovered by the police from the house in dispute on 24.05.2006. It is also apparent from records that none of the parties had produced proof regarding ownership of the articles in question. Respondent No.2 lost the case from the Civil Court and the petitioner and others were held to be bonafide purchasers of the house in dispute. The appeals is stated to be pending. There is no stay in favour of respondent No.2. Some other disputes, civil and criminal pertaining to the house in question are still pending between respondent No.2 and other party. Any observation made by this Court may prejudice the merits of the pending case/ appeals. The articles in question are items used daily, a bed, mattress, chairs, clock, kitchen articles and

electronic items, air conditioner and refrigerator etc. The articles in question were recovered from the house in dispute when the petitioner and others were admittedly in possession thereof and there was a considerable time gap between taking the possession and recovery of articles. In this view of the matter, it should not have been released on superdari to respondent No.2. In the considered opinion of this Court, it would be in the fitness of things to ask respondent No.2 to deposit a sum of Rs.2.5 lacs in cash as a security in lieu of the household articles released on superdari to her as by the time the litigation ends they would be of no value.

In view of the above, it is directed that respondent No.2 will deposit cash of Rs.2.5 lacs with the trial Court as security of the household articles which were taken by her on superdari within two months from the date of order. The counsel for respondent No.2 states that they do not have the resources to pay. In case the amount is not deposited, respondent No.2 will return the articles to the Court, which will be thereafter released on superdari to the petitioner on usual terms and conditions. The articles released or the amount which would be deposited would be subject to the final outcome of the pending trial.

The observations made above are without prejudice to the pending cases/ appeals between the parties.

Petition stands allowed in aforesaid terms.

April 16, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No