

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13859 of 2017
Date of Decision: February 01,2018

Mukesh K Vashishtha

.....Petitioner

Versus

Umesh Kumar and Others

.....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:Mr. Arun Yadav, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure,1973 (`Cr.P.C. for short) for setting aside order dated 16.12.2013 (Annexure P19) passed by the trial Court declining to summon respondents No. 2 to 9 in the Criminal complaint filed by him as well as order dated 4.11.2016 (Annexure P21) passed by the Additional Sessions Judge, vide which the revision petition filed by the petitioner, was dismissed.

The brief facts of the case, as noticed by the appellate Court in para 2 of its judgment, are as under:-

“ That the complainant along with his uncle namely Trilok Chand got property bearing House Tax No. 4436-A and House Tax No. 4472-4473 in pursuance

of arbitration agreement and the decree passed vide judgment dated 9.2.1999 in Civil Suit No. 137 of 1988 titled "Surender Kumar and others vs. Kishori Lal and others." It is alleged that, complainant was owner of $\frac{1}{2}$ share of the ancestral land but the Civil Court, Rewari passed a decree of $\frac{1}{3}^{\text{rd}}$ share of the total property in favour of complainant. It is further alleged that aggrieved against the said verdict the complainant had filed RSA No. 325/2008 before Hon'ble Punjab and Haryana High Court at Chandigarh titled as 'Mukesh Kumar vs. Trilok Chand and others and an interim order dated 10.8.2009 was passed restraining the respondents/accused from alienating the suit property till further orders. It is further alleged that Savitri Devi widow of Trilok Chand, accused No.1 was also party in the above said RSA after the death of her husband Trilok Chand and she had full knowledge of the abovesaid stay order dated 10.8.2009. It is further alleged that Savitri Devi, accused No.1, was having an evil eye on the property in dispute; on 6.1.2010, she moved an application with affidavit before Secretary MC Rewari that the real name of Ram Narayan is Sheo

Narayan and property should be changed in her name as mentioned in the Will. It is further averred that on 20.1.2010 she obtained the copy of house tax assessment of property no. 4473 which was in the name of Ram Naryan vide receipt No.1466 dated 20.1.2010 in her name in collusion with Municipal Authorities. It is further alleged that Smt. Savitri Devi, accused No.1 got a sale deed No 6524 dated 25.1.2010 executed in favour of Umesh Kumar, accused no.2 regarding property No.4473 claiming herself to be owner of the said property on the basis of House tax receipt no. 1466. It is further alleged that Savitri Devi also claimed while executing the sale deed that no litigation is pending in any court regarding the property under sale deed, whereas, Hon'ble High Court had restrained the alienation of the suit property till further orders. It is further alleged that after knowledge of execution of sale deed dated 25.1.2010, the complainant inquired from Tarsem Sharma, the then Sub Registrar, Rewari, accused No.8 regarding the documents on the basis of which Savitri Devi is treated as owner in possession of the suit land upon which the Sub Registrar informed him vide his letter

dated 7.4.2011 in two parts firstly that proof of ownership is house tax receipt no. 1466 of Municipal Council, Rewari which is in the name of Savitri Devi along with its house tax assessment in the name of Ram Narayan s/o Ghasi Ram; in the second part it is mentioned that Sarbati d/o Sheo Narain had executed a Will dated 20.10.1987 in favour of Smt.Savitri Devi, the accused No.1 and Sarbati Devi had surrendered her half share in favour of Savitri Devi. It is further alleged that while executing the sale deed, Savitri Devi did not claim her ownership on the basis of Will dated 20.10.1987; rather claimed her ownership on the basis of house tax receipt No.1466 with dishonest intention. It is further alleged that house tax receipt can be obtained by any person from Municipal Authorities and no meticulous scrutiny or verification of record is done by Municipal Authorities while issuing the certificate. It is further alleged that she also moved an application with affidavit on 6.1.2010 before the Secretary, Municipal Council, Rewari that real name of Ram Narayan is Sheo Narayan in order to benefit herself and grab the property of complainant, whereas Ram Narayan and Sheo

Narayana were two brothers and Sheo Narayan died issueless. It is further alleged that Surrender Kumar is son of Savitri Devi widow of Trilok Chand. It is further alleged that Savitri Devi had falsely claimed herself to be owner of the property in dispute and executed the sale deed fraudulently. It is further alleged that Will dated 20.10.1987 is a forged document and no women in the name of Sarbati has ever born in the family of Sheo Narayan. It is further alleged that Savitri Devi accused No.1 had hatched a conspiracy with Umesh Kumar, accused No.2, Rameshwar Singh son of Nand Lal, Mahabir Numberdar, Vikram Singh Yadav, Advocate, Om Parkash, Registration Clerk, Sh. Satroop Sharma, Sub Registrar, Rewari and Sh.Tarsem Sharma, the then Sub Registrar, Rewari at present DRO, Palwal (accused no. 3 to 8) to deprive the complainant of his property by executing the sale deed no. 6524 dated 25.1.2010. It is further alleged that the matter regarding the sale deed no.6524 dated 25.1.2010 executed merely on a house tax receipt no. 1466 and alleged will was reported to the Deputy Commissioner, Rewari who conducted an enquiry and found that the said sale

deed is not executed on the basis of Will. It is further alleged that the complainant had moved an application dated 22.8.2012 before the Superintendent of Police Rewari, but no action was taken. Hence, the present complaint.”

After petitioner-complainant led his preliminary evidence, the trial Court vide order dated 16.12.2013 summoned only respondent No.1-Savitri Devi since deceased. Thereafter, the petitioner filed the revision petition challenging the aforesaid order and praying that the respondents No. 2 to 8 be also summoned in the criminal complaint. The Additional Sessions Judge vide impugned order dated 4.11.2016 dismissed the revision.

Learned counsel for the petitioner has submitted that from the statement of the complainant-Mukesh, who appeared as CW1, it is proved that he along with co-accused, namely, Trilok Chand has received the property in dispute vide Civil Court judgment passed in Civil Suit No. 137 of 1988 titled as Surender Kumar vs. Krishan Lal. As per the decision of the Arbitrator, he was owner to the extent of the half share in the property. However, the Civil Court as well as the appellate Court has wrongly held him owner to the extent of 1/3rd share. It is also submitted that the judgment passed by the Civil Court is now under challenge in RSA No. 325 of 2008 titled as Mukesh Kumar vs. Trilok Chand and Others and the same is pending in this Court. Learned counsel for the petitioner has led

much stress on the fact that during the pendency of this RSA, on 10.8.2009, the respondents (in RSA) were restrained from alienating the suit land till further orders and, therefore, Savitri Devi has alienated the property in violation of this order. Learned counsel for the petitioner further submitted that accused No.1-Savitri Devi and her legal heirs are parties in the suit and, therefore, the action of respondent No.1 for moving the application dated 6.1.2010 for change of the name in the house tax register regarding the property in dispute from Ram Narayan @ Sheo Narayan to the name of Savitri Devi is an illegal action and when the name of Savitri Devi was corrected subsequent sale deed dated 25.1.2010 executed in favour of accused No.2 in connivance with accused Nos. 2 to 7 is also illegal act and, therefore, all the respondents had committed offence and they are liable to be summoned along with accused No.1-Savitri Devi under Section 420 IPC.

After hearing the learned counsel for the petitioner, I find no merit in the present petition. Firstly, there is nothing on record to show that respondents No. 2 to 8 were party to the civil suit or that they had any knowledge about the said order dated 10.8.2009 passed in the aforesaid RSA No.325 of 2008. Secondly, it is own case of the petitioner that as per the arbitrator award, he was owner to the extent of half share, whereas, the Civil Court granted a decree of 1/3rd share which was upheld by the appellate Court and the RSA is still pending. Therefore, there is nothing on record to hold that the

petitioner is owner to the extent of half share. As per the averments of the petitioner itself, Savitri Devi got the property transferred in her name in the Municipal record and, thereafter, she had executed the sale deed dated 25.1.2010 in favour of accused No.2. Accused Nos. 3 to 5 are the attesting witnesses of the sale deed and are not beneficiary, whereas, accused No.6 is a Clerk in the Office of Sub Registrar and accused Nos. 7 to 8 are the Sub Registrar. There is no allegations against accused Nos. 3 to 7 that they have acted in any illegal manner.

I find no force in the argument raised by the learned counsel for the petitioner that accused No.1-Savitri Devi was not competent to execute the sale deed only on the basis of change of her name in the house tax record, forming basis of the execution of the sale deed. Though Savitri Devi has executed the sale deed despite fact that the aforesaid RSA in which the interim injunction restraining alienation of property was granted is still pending. however, as the matter of fact Savitri Devi, accused No.1 has since expired and there is no evidence that accused No.2 has any knowledge about the pendency of the said RSA.

In view of the above, I do not find any illegality or irregularity in the impugned orders dated 16.12.2013 and 4.11.2016 passed by the Courts below warranting interference in the present petition.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

February 01,2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No