

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-2080 of 2017

Date of Decision: July 17, 2018

Bhagwant Kaur and others

.....Petitioners

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Sameer Sachdeva, Advocate
for the petitioners

Mr. Kirat Singh Sidhu, DAG Punjab

None for respondent No. 2

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Sudhir Mittal, J. (Oral)

One Niranjana Singh was owner of approximately 25 kanals of land situated in village Bir Kishan Singh, Tehsil Kharar, District Ludhiana. He died some time in the year 1970. Thereafter, all his legal heirs were jointly managing the property. On 09.07.2009, mutation No. 305 was entered in favour of the second respondent on the basis of a Will dated 14.03.1968 allegedly executed by said Niranjana Singh. Some of the legal heirs of Niranjana Singh challenged the mutation vide a civil suit and also laid challenge to the Will dated 14.03.1968. The suit was decreed vide judgment and decree dated 23.08.2016 and the Will was held to be an illegal document as neither the original nor photocopy thereof had been placed on record nor any attesting witness was produced in support thereof. Meanwhile the petitioners submitted complaint dated 14.03.2013 against respondent No. 2, her husband and her son, which resulted in the lodging of the FIR No. 263 dated 02.12.2013 under Sections 420, 120-B IPC. Respondent No. 2 filed a private

complaint dated 28.10.2013 against the petitioners alleging that they have removed

the Will dated 14.03.1968 from the record of the revenue department. Based thereupon, summoning order dated 03.07.2015 was issued and the same are under challenge in the present petition. It is also relevant to mention that a quashing petition seeking quashing of FIR No. 263 dated 02.12.2013 was dismissed vide order dated 18.01.2016.

Learned counsel for the petitioners submits that the summoning of the petitioners vide order dated 03.07.2015 as well as the complaint dated 28.10.2013 are an abuse of the process of law. The alleged Will dated 14.03.1968 never saw the light of the day till mutation was sanctioned on 09.07.2009, which was allegedly done behind the back of the petitioners. The judgment and decree dated 23.08.2016 shows that the original of the Will or a photocopy thereof was not produced before the Civil Court and the witnesses of the revenue department examined in favour of the complainant-respondent No. 2 could not establish the existence of the said will. Thus, when the existence of the Will dated 14.03.1968 has not been established on the record, there was no question of the petitioners getting the same removed from the office of the revenue department. Infact, the finding of the Civil Court is that the Will is not in existence and, therefore, the summoning of the petitioners is not sustainable in law.

Learned State counsel placed reliance upon statements of witnesses produced from the revenue department in support of Mutation No. 305.

The complainant is not represented today.

It is not in dispute that vide judgment and decree dated 23.08.2016, the Civil Court has held that the alleged Will set up by respondent No. 2 is a fictitious document. The officials of the revenue department have expressed their ignorance regarding the existence of the said document and have only proved Mutation No. 305. The Will is alleged to be a registered document but no efforts were made by

before the Civil Court or before the Criminal Court in the present complaint. Thus, the existence of the Will dated 14.03.1963 has not been proved and, therefore, summoning of the petitioners on the allegations that they had conspired and got the same removed from the record of the revenue department, would be an abuse of the process of law.

In view of the above, the revision petition is allowed and criminal complaint No. 253 of 28.10.2013, under Sections 406, 420, 467, 468, 471, 201/34 and 120-B IPC, titled as “*Surjit Kaur vs. Avtar Singh and others*” (Annexure P-6), pending before JMIC Fatehgarh Sahib, alongwith summoning order dated 03.07.2015 (Annexure P-10) are quashed.

July 17, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No