

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-24465-2014

Date of decision: 20.08.2018

Karamjit Kaur Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

Ms. Sushma Chopra, Advocate for respondent No. 4.

None for respondent No. 5.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing DDR No. 30 dated 13.03.2013 (Annexure P-8); Calendra under Section 145 Cr.P.C. dated 19.03.2013 (Annexure P-9); order dated 21.04.2014 (Annexure P-10) of the Sub Divisional Magistrate, Jagraon, in case titled “State Vs. Sukhdev Singh and Karamjit Kaur” and all the consequential proceedings arising therefrom.

Briefly, Kartar Singh, owner of the land in question detailed in para 2 of petition died leaving behind his widow Jagir Kaur and two sons, namely; Dalvinder Singh and Dalginder Singh. After the death of Jagir Kaur, the land in question was inherited by Dalvinder Singh and Dalginder Singh, in equal shares, who are permanently settled in United Kingdom and now are Non-Resident Indians. Entry qua possession in the revenue record

was made in favour of both the aforesaid sons of Kartar Singh, as co-sharers. Petitioner is the wife and general attorney of Dalginder Singh, whereas Dalvinder Singh has given his general attorney to respondent No. 4-Sukhdev Singh. In the year 2012, Sukhdev Singh, general attorney of Dalvinder Singh got registered FIR No. 223 dated 12.10.2012 (Annexure P-6) under Sections 427, 447, 506 and 120-B IPC, Police Station Dakha, District Ludhiana, which on challenge by the petitioner in CRM-M-2080-2013, vide order dated 03.10.2013 (Annexure P-7) was quashed, holding that since both the sides were co-sharers, therefore, anyone of them could not be held guilty of criminal trespass, inasmuch, as in a land jointly possessed by co-sharers, every co-sharer is deemed to be in possession of every inch of the joint holding.

However, during the pendency of CRM-M-2080-2013, respondent No. 5, in order to help respondent No. 4-Sukhdev Singh, illegally initiated proceedings under Section 145 Cr.P.C. and also recorded DDR (Annexure P-8) against the petitioner, on the allegations that she illegally trespassed and possessed land measuring 7 kanals 5 marlas regarding which aforesaid FIR (Annexure P-6) was registered.

Learned counsel for the petitioner *inter alia* contends that since both the parties are in joint possession of the land in question, therefore, no question of trespassing on the joint holding by the petitioner arises being wife of Dalginder Singh, who is also a co-sharer in the land in question.

On the other hand, learned counsel for respondent No. 4 has strongly refuted the above submissions of learned counsel for the petitioner.

Having considered the rival submissions of both the sides, this

Court finds merit in the instant petition for the reason that joint ownership

of both the sides being sons of Kartar Singh, over the land in question cannot be disputed till Dalvinder Singh S/o Kartar Singh, succeeds in claiming his exclusive title on the basis of some Will, allegedly, executed in his favour by his father-Kartar Singh. That apart, FIR (Annexure P-6) earlier lodged by respondent No. 4, against the petitioner on similar set of allegations in the year 2012, has been quashed by this Court vide order Annexure P-7. Since then no better title of the land in question has been passed in favour of Dalvinder Singh, whose respondent No. 4-Sukhdev Singh, is claiming himself as general attorney. Therefore, DDR (Annexure P-8), Calendra under Section 145 Cr.P.C. (Annexure P-9) order dated 21.04.2014 (Annexure P-10) and all the consequential proceedings arising therefrom, are liable to be quashed.

More so, every co-sharer has a right in every inch of joint holding. Even otherwise, exclusive possession of a co-sharer, unless and until partitioned, has to be treated on behalf of all the co-sharers. Since, the land in question has not been partitioned as yet by meets and bound, therefore, DDR No. 30 dated 13.03.2013 (Annexure P-8), Calendra under Section 145 Cr.P.C. dated 19.03.2013 (Annexure P-9); order dated 21.04.2014 (Annexure P-10) of the Sub Divisional Magistrate, Jagraon, in case titled "State Vs. Sukhdev Singh and Karamjit Kaur" and all the consequential proceedings arising therefrom, are liable to be quashed from this angle too being patently illegal and, thus, the same are quashed.

The instant petition stands allowed, accordingly.

August 20, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No