

CRM-M-25468 of 2017

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-25468 of 2017
Date of Decision: 11.03.2019

Amar Singh

...Petitioner

Versus

Mal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Ajit Singh Sodhi, Advocate, for the petitioner.
Mr. Vinod Khunger, Advocate, for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through instant petition under Section 482 Cr.P.C., petitioner has laid challenge to order dated 11.09.2015 (Annexure P-1) of the Sub Divisional Magistrate, Jalalabad, accepting application under Section 133 Cr.P.C. of the respondents and further order dated 26.08.2016 (Annexure P-2) of the Appellate Court, dismissing his revision.

Briefly, during consolidation of Village Prabhat Singh Wala Uttar, Tehsil Jalalabad, District Fazilka, consolidation/revenue authorities carved out a 5 karam wide common passage in khasra Nos.89 and 30 passing, through rectangle No.16, killa No.2 and rectangle No.9 killa No.23. According to the petitioner, said passage was however, never carved out at the spot. Instead, in place of the said passage, with mutual understanding another passage was carved out from different khasra numbers of the petitioner and others, whose fields were situated adjacent to the same. Petitioner was sowing his crop in the said passage for last 40-50 years.

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Respondents with mala fide and dishonest intention moved application under Section 133 Cr.P.C. before the SDM, Jalalabad, against the petitioner to take possession of the said passage from the petitioner.

Sub Divisional Magistrate, Jalalabad initially vide order dated 05.06.2013, directed the petitioner to vacate the said passage, whereupon he along with some other affected persons approached the Appellate Court, who setting aside the said order of the SDM, remanded the case with direction to the SDM to pass a fresh order after hearing the parties. Resultantly, after recording evidence, counter-evidence and hearing both the sides, SDM, Jalalabad passed order dated 11.09.2015, again directing the petitioner to vacate the passage in 30 days.

Being aggrieved, petitioner and three others again approached the Appellate Court, who after hearing both the sides, upholding the aforesaid order of the SDM, Jalalabad, dismissed their appeal.

Learned counsel for the petitioner drawing attention of this Court towards impugned order of SDM, Jalalbad inter alia contends that he himself had admitted long possession of the petitioner over the disputed passage. Provisions of Section 133 Cr.P.C. can only be invoked when there is a recent overt act and encroachment on a public property. But, since in the instant case, petitioner was using the disputed passage since last 40-50 years, therefore, the SDM was not competent to entertain the application of respondents under Section 133 Cr.P.C. In support of his contention, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in ***Suhelkhan Khudyarkhan and another v. State of Maharashtra and others***, 2009(3) R.C.R.(Criminal) 36.

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On the other hand, learned counsel for the respondents, refuting above submissions, pleading the legality and validity of the impugned orders urged that petitioner along with other persons had recently encroached upon the disputed passage in the year 2012 i.e. i.e. one year prior to filing of the application by respondents under Section 133 Cr.P.C. before SDM, Jalalabad. Therefore, same was very much maintainable and has rightly been accepted. Passage in dispute exists in the revenue record. Petitioner and his other associates could not prove that they were using the passage in dispute since last 40-50 years by leading any evidence, what to talk of cogent and convincing.

Having given thoughtful consideration to the rival submissions of both the sides, this Court finds the instant petition completely devoid of any merit for the reasons to follow.

No iota of evidence was led by the petitioner or his associates to prove their contention that they were using the passage in dispute and sowing their crop in the same for last 40-50 years. Admittedly, passage in dispute was carved out during consolidation and is existing in the revenue record. Therefore, it was required for the petitioner to approach the consolidation authorities to change the disputed passage into his own land, by carving out any passage from some other land. Since, according to the respondents, encroachment over the disputed passage was recent and petitioner did not lead any definite evidence about his alleged possession over the same for last 40-50 years, therefore, no benefit of the authority referred to above by learned counsel for the petitioner can be extended to him inasmuch as facts and circumstances of the same are not identical to the

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facts of the present case.

In view of discussion made above, instant petition is dismissed.

March 11, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No