

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

**CRM-M-43176-2017
Date of decision: 04.09.2019**

Sarup Singh

...Petitioner

Versus

Bhai Balwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R. D. Bawa, Advocate &
Mr. Rahul Sharma, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of the order dated 23.10.2017 (Annexure P-11), passed by the Additional Sessions Judge, Faridkot, vide which the order dated 25.08.2014 passed by the trial Court discharging the petitioner and other accused has been set-aside and the case has been sent back to the trial Court for deciding the same afresh.

Brief facts of the case, as per complainant, are that complainant Bhai Balwinder Singh had filed a complaint on the allegations that land bearing khasra no.163-(19-11) alongwith other land bearing Sanad Taqseem Aarazi Matruka No. BT.2/82/1 dated 29.03.1957, situated in village Bhagthala Kalan, was allotted to Bhai Balak Ram (***Dharamshala Bhai Mela Ram Faqir***) Zer Sarparasti Narain Singh son of Karam Singh Caste Arora Faqir

Sewa Panthi through Maha Singh chela Bhai Balak Ram Sewa Panthi, vide Sanad dated 04.03.1963, under Section 12 of Displaced Persons (Rehabilitation and Compensation) Act, 1954. Maha Singh Chela Bhai Balak Ram remained in possession of aforesaid land as allottee. After the death of Bhai Maha Singh, his Chela Surjit Singh managed this land. Now complainant Bhai Balwinder Singh Chela Bhai Surjit Singh Chela Bhai Maha Singh has stepped into the shoes of Bhai Maha Singh Chela Balak Ram and is now managing the aforesaid land as allottee/owner. The ownership and possession of Bhai Maha Singh Chela Bhai Balak Ram was duly reflected in the jamabandis for the year 1961-1962 till 1988-1989 of village Bhagthala Kalan, Tehsil Faridkot now District Faridkot. In the year 1993, all the accused along with Gajjan Singh son of Deva Singh, resident of village Bhagthala Kalan (since deceased) entered into a criminal conspiracy to transfer the aforesaid land bearing khasra No. 163(19-11) from the name of Bhai Maha Singh Chela Bhai Balak Ram to the name of Gajjan Singh, by illegal means and by doing illegal acts. Accused No.3 Sarup Singh was posted as Tehsildar-cum-Assistant Collector, IInd Grade, Faridkot at that time and accused No.4 was posted as Revenue Patwari of village Bhagthala Kalan. Accused Nos.3 and 4 being officials were seized of the concerned revenue record in the year 1993. Accused Nos.1 and 2 alongwith their father Gajjan Singh wanted to grab this land by hook or by crook. In order to implement this criminal conspiracy, accused Nos.3 and 4 intentionally, illegally and *malafidely* and in order to cause wrongful gain to accused Nos.1 and 2 and their father Gajjan Singh and to cause wrongful loss to Bhai Maha Singh, prepared Farad Badar No.6. Accused

No.4 with *malafide* intention made false report dated 10.08.1993 in said Farad that this land was wrongly transferred in the name of Maha Singh Chela Bhai Balak Ram and this land should be transferred in the name of Malkeeat Aarazi Matruka and said report was attested as correct by the then Kanungo on 18.08.1993 malafidely, knowing that these jamabandis were not wrong. Accused No.3 Saroop Singh attested this farad badar with *malafide* intention on 28.09.1993 and permitted to change the entries wrongly and illegally. The *malafide* intention and criminal conspiracy between all the accused and Gajjan Singh stood exposed on the same day i.e. 28.09.1993, when mutation No. 2677 was sanctioned by accused No.3 in favour of Gajjan Singh regarding ownership of aforesaid land bearing khasra No.163(19- 11), which became more clear when accused No.4 being Patwari entered the mutation on 13.08.1993 even before the attestation of this farad badar by the then Kanungo on 18.08.1993 and by accused No.3 on 28.09.1993. The then Kanungo made verification on the mutation on 18.08.1993, that is on the same day when he made his attestation of Farad Badar. In this way, accused No. 4 and the then Kanungo acted very fast, when they entered and verified this mutation even before the passing of order on the Farad Badar by accused No.3 on 28.09.1993. Accused Nos. 1 and 2 are sons of Gajjan Singh in whose name the ownership of land was changes. All the accused had done this act just to grab the said land by cheating Maha Singh Chela Bhai Balak Ram. It was further stated in the complaint that the entries regarding ownership of land reflected in the jamabandies are not clerical mistakes and same can be changed only by the orders of the civil courts. The revenue officers have no right to change the entries regarding ownership in the last jamabandies by way

of Farad Badars. Accused Nos.1 and 2 and their father Gajjan Singh made wrongful claim on the land bearing khasra No.163(19-11) of village Bhagthala Kalan on the basis of alleged sale certificate No.5429 dated 04.09.1962 for Rs.840/-, but the said sale certificate is not regarding the land bearing khasra no.163(19-11). This very land was already in possession of Maha Singh Chela Bhai Balak Ram as per Sanad partition dated 29.03.1957 and never remained in possession of accused Nos.1 and 2 or their father Gajjan Singh. The possession of this land was never delivered to them by any lawful authority. In this way, accused alongwith Gajjan Singh, in execution of criminal conspiracy, committed forgery of the revenue record by preparing wrong farad badar and by wrongfully entering and sanctioning mutation no.2677. This Farad Badar and mutation are valuable security which put wrongful cover of ownership and possession regarding aforesaid land in favour of Gajjan Singh and accused Nos. 1 and 2 in connivance with accused Nos. 3 and 4. On the basis of above said forged documents, accused No. 2 wrongfully transferred his share to accused No. 1 in the aforesaid land to defeat and delay the rights of complainant and accused Nos. 1 and 2 have wrongfully dispossessed Bhai Surjeet Singh Chela Bhai Maha Singh from the aforesaid land. It is further stated in the complaint that then Bhai Surjeet Singh filed a civil suit for possession on 25.02.2006. When complainant came to know about the forgery of aforesaid documents at the time of filing of suit, he alongwith Parminder Singh son of Partap Singh r/o village Bhagthala Kalan and Manjit Singh son of Jeevan Singh, went to accused and asked them as to why they have forged these documents, upon which accused stated that they wanted to cheat the predecessor in interest of complainant and

therefore, they had forged the aforesaid documents.

The trial Court, after recording the preliminary evidence, vide order dated 18.11.2010 (Annexure P-2), summoned the petitioner under Sections 420, 465, 467, 468 and 471 of the IPC. Thereafter, the case was fixed for pre-charge evidence and after recording the pre-charge evidence, the trial Court discharged the petitioner and other accused by passing the following order on 25.08.2014 (Annexure P-9):

“7. The complainant has filed the present complaint on the ground that Bhai Balak Ram (Dharamshala Bhai Mela ram Faqir) Zer Sarparasti Narain Singh son of Karam Singh Caste Arora Faqir Sewa Panthi through Maha Singh Chela Bhai Balak Ram Sewa Panthi was allotted the land bearing Khasra No, 163. Complainant has further stated that initially Maha Singh Chela Bhai Balak Ram was in possession of the said land being allottee, thereafter his Chela Surjit Singh and now he himself is in possession of the land. However, learned counsel for the accused has vehemently objected the locus standi on the complainant to file the present complaint that Bhai Balak Ram (Dharamshala Bhai Mela Ram) was owner of the property in dispute. As per revenue record, the ownership in the name of Dharamshala Bhai Mela Ram was depicted through Maha Singh. In the cross-examination complainant was categorically admitted that Balak Ram and thereafter Mela Ram, Surjit Singh and he himself were made Chela by way of Will. However, it is settled proposition of law that mohatmimship of a Dera cannot be transferred by way of Will as has been stated by the complainant. The procedure adopted itself for making the complainant as Chela of the Dharamshala does not appear to be proper. The mohatmimship can only be transferred by way of Bhekh and nothing else. However, there is nothing on record to suggest that complainant has made Chela of Dharamshala Bhai

Mela Ram by way of Bhekh. Reliance in this regard can be placed upon **Abdul Latif Vs. Masjid Patti Niyamatpur, 2009 (1) PLR 686**. Keeping in view the aforesaid facts, complaint was required to be filed through justice person i.e. Dharamshala Bhai Mela Ram through the Mahant of the Dharamshala, but the complaint has been filed in the personal capacity by the alleged Mahant of the Dharamshala. The case of the complainant is also likely to fail on the ground of locus standi.

8. Complainant in his cross-examination has further admitted that he came to know about the fact that the alleged forgery has been committed by the accused in connivance with each other in the year 1992-93, whereafter he filed the civil suit. However, when the fact came into the knowledge of the complainant at that time, one falls to understand as to why there took place a delay of almost 17years in filing the present complaint. The complainant has been unable to convince this Court as to why this delay was caused in setting the criminal law in motion. The reply to the said question is answer by the documents that were put to the complainant at the time of his cross-examination. Complainant has vehemently denied in his cross-examination that he does not know Parminder Singh son of Partap Singh. However, in the complaint filed by him, it has been categorically stated by the complainant that he alongwith said Parminder Singh went to the accused and asked them as to why they had committed the said forgery, whereby the accused allegedly stated that they wanted to cheat the complainant and have successful in doing so. The complainant in his cross-examination has admitted the photo copy of judgment and decree dated 11.09.1995 passed in Civil Suit NO. 1000 dated 18.12.1991, for permanent injunction, titled as Parminder Singh and others Versus Mukhtiar Singh and others as Ex.D1 and Ex. D2. It is pertinent to mention that the suit property of the said civil suit included the property which is arrayed in the present

complaint. While deciding the said suit, it was categorically held by the learned Civil Court that defendants in the said case i.e. accused Mukhtiar Singh and Mohar Singh were owners of Khasra No. 163 (19-11) and consequently, the suit filed by Parminder Singh was dismissed. The complainant has further admitted the order dated 10.12.1997 passed in appeal title Parminder Singh Versus Mukhtiar Singh against the aforesaid judgment and decree, which was dismissed in default for non-prosecution, as Ex.D3. The said Parminder Singh is none other than the son of Partap Singh, who is reflected to be in possession of Khasra NO. 1163 (19-11) as per jamabandis proved on record by complainant himself as Ex. C5, Ex. C6, Ex. C7 and Ex. C8. The complainant has further admitted that he filed a suit for possession against accused No. 1 and 2 of the khasra No. 163 before the court of Sh. S.S. Jossan, the then Civil Judge, (Jr. Divn.), Faridkot, but same was withdrawn. He further admitted that accused Mohar Singh and Mukhtiar Singh had filed appeal against the order of withdrawal before Hon'ble Punjab and Haryana High Court and the proceedings of the suit were stayed by the Hon'ble High Court. After going through these admissions made by complainant in his cross-examination, it is categorically clear that initially he has been fighting a proxy war against accused No. 1 and 2 by getting the suit filed through Parminder Singh son of Partap Singh and thereafter being unsuccessful, he filed suit for possession against accused No. 1 and 2 and when the same was adjourned sine die being stayed by Hon'ble Punjab and Haryana High Court against the order of withdrawal of suit by complainant, the present complaint has been filed. Needless to say the complainant has to lead cogent evidence to prove a case beyond reasonable shadow of doubt against the accused and the evidence led in civil suit cannot be read on the same point of controversy in the criminal complaint. However, vide judgment

Ex. D1 and decree sheet Ex. D2, it is sufficiently clear that rights of accused No. 1 and 2 were upheld by the learned Civil Court over the property, but the complainant having lost all the battles in the civil arena has tried to redress his grievance by filing the present complaint. On the other hand, complainant has been unable to prove as to how the name of Dharamshala Bahi Mela Ram was entered in the jamabandi for the year 1961-62. Needless to say the entries in the revenue record cannot prove title, but in order to prove the title, the concerned party is required to adduce cogent evidence with regard to document vide which title was achieved by the said party. However, in the present case, the order of allotment or mutation in favour of Dharamshala Bhai Mela Ram has not seen the light of the day. Moreover, as per rule 7.29 of Punjab Land Record Manual, the variation in the revenue record can be made by Farad Badar. For this, it is important to revert back to the cross-examination of CW3, who has admitted therein that if there is any wrong entry in the revenue record, then Halqa Patwari puts up that before Halqa Kanungo, who further puts up the same before Circle Revenue Officer by way of written request and thereafter with permission, the correction is made in the revenue record and the same has been done in this case vide Farad Badar. He has categorically admitted that the said procedure was adopted in the present case while making entry of Farad Badar no. 6 Ex. D5. The said testimony has come out of the mouth of the witness of complainant himself.

9. From the aforesaid discussion and totality of the facts, there is no prima facie case made out against the accused necessitating this Court to frame charge against them under any of the offence under Section 420, 465, 467, 468, 471 read with Section 120-B of IPC. Accused are discharged. Bail bond and surety bonds of accused also stands discharged. File be consigned to record room.”

The respondent/complainant, thereafter, preferred a revision before the revisional Court and the same was allowed by the Additional Sessions Judge, vide impugned order dated 23.10.2017 (Annexure P-11) and the case was remanded back to the trial Court for framing of charge against the petitioner and other accused.

It is worth noticing here that in pursuance to notice of motion, the respondent/complainant was served, however, nobody has appeared on his behalf.

Learned counsel for the petitioner has argued that the matter in dispute is with regard to rights over 19 Kanal 11 Marlas of land which has already been settled by the Civil Court and the petitioner has placed on record these documents before the trial as Ex. D1 to Ex. D5 and the same were duly considered by the trial Court while discharging the petitioner and other accused.

Learned counsel for the petitioner has further submitted that initially, vide sale certificate dated 04.09.1962 (Annexure P-5), the land measuring 12 Kanal 15 Marlas comprising Khasra No. 1035/322 was allotted to Gajjan Singh son of Deva Singh which was duly entered into rapat No. 6 dated 06.09.1964. Later on, the said area was converted into new Khasra No. 163 and the area was also converted into 19 Kanal 11 Marlas during the consolidation proceedings.

Learned counsel for the petitioner further submits that thereafter, one Parminder Singh and Harminder Singh filed a civil suit on 18.12.1991 praying for a decree of declaration regarding ownership of the land against the petitioner and others and the said suit was dismissed and photocopy of the order was placed on record before the trial Court as Ex. D1 and Ex. D2.

Learned counsel for the petitioner further submitted that thereafter, one Surjit Singh, predecessor of the complainant, again filed a suit on

25.02.2016 which was dismissed as withdrawn and the second suit filed by the complainant i.e. Civil Suit No. 412 of 2011 was also dismissed on 03.01.2018 i.e. during the pendency of the present petition. Learned counsel for the petitioner has placed on record the said judgment as Annexure P-12 and has submitted that while deciding the suit, the Civil Court has recorded a categorical finding that Bhai Balwinder Singh, the plaintiff in the said suit as well as the complainant in the present petition, has failed to lead any evidence to prove his right or title over the property in dispute.

Learned counsel for the petitioner has further argued that the revisional Court, while reversing the order of the trial Court, has taken into consideration only one aspect that the documents produced by the petitioner in defence as Ex. D1 to Ex. D5 cannot be taken into consideration at the time of framing of charge, whereas the trial Court has passed a well reasoned judgment by taking into consideration all these documents.

Learned counsel for the petitioner has lastly argued that even subsequent to passing of the impugned order by the revisional Court, vide judgment of the Civil Court dated 03.01.2018, the complainant has again lost his civil suit.

As noticed above, there is no representation on behalf of the respondent despite being served.

After hearing learned counsel for the petitioner, I find merit in the present petition.

The petitioner stands discharged from the trial Court and the revisional Court, while reversing the said judgment, has nowhere recorded a finding that the said judgment suffers from any perversity or illegality. The only

reason given by the revisional Court in the impugned order is that the evidence led by the petitioner, i.e. Ex. D1 to Ex. D5, has wrongly been relied upon by the trial Court, which cannot be a ground to reverse the finding of the trial Court unless the revisional Court records a specific finding for such reversal.

Apart from this, even subsequently, the civil suit filed by the complainant Bhai Balwinder Singh staking the claim over the title of the property as well as praying for decree of possession stands dismissed by the Civil Court, vide judgment dated 03.01.2018, by recording a categoric finding that he has failed to lead any evidence to support his case.

In view of the above, this petition is allowed and the order dated 23.10.2017 (Annexure P-11), passed by the Additional Sessions Judge, Faridkot is hereby set aside.

04.09.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>