

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45064 of 2016(O&M)

Date of decision: 16.10.2019

Darshan Singh and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ravi Malik, Advocate for
Mr. Sudesh Kumar, Advocate for the petitioners
Mr. Vikas Chopra, DAG, Haryana

ANIL KSHETARPAL, J. (ORAL)

This is yet another case where a civil dispute has been given a colour of criminal prosecution. Prehlad s/o Rimal was owner of 20 kanals 8 marlas of land. His three grandsons-plaintiffs (Monu, Sonu and Kapil minor sons of Late Sukki @ Sukhbir) had filed a suit for declaration, impleading Prehlad as a defendant claiming that in a family settlement took place on 23.12.1999 in which Sh. Prehlad had relinquished his rights, title and interest in the property in favour of the plaintiffs i.e Monu, Sonu and Kapil. The aforesaid suit was decided by passing a conditional decree, operative part thereof is:-

“The decree, shall, however be executable subject to payment of stamp duty and registration charges. Parties are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.”

As per the case of the petitioner, the aforesaid decree never

became enforceable as the stamp duty and registration charges were not deposited by the parties to the suit. Thus, the property continued to be recorded and depicted in the name of Sh. Prehlad, as owner.

Sh. Prehlad sold the property in question through a registered sale deed dated 4.3.2009 in favour of petitioners-accused. In the aforesaid sale deed, petitioners paid a sum of Rs.15,50,000/- to Sh. Prehlad. Monu, Sonu and Kapil as noticed above, filed a civil suit seeking a decree of declaration questioning correctness and validity of two sale deeds i.e 4.3.2009 in favour of the petitioners and another dated 13.1.2010. Prayer made in the aforesaid suit is extracted as under:-

“It is therefore, prayed that a decree of declaration to the effect that the sale deed document No. 25968 dated 4.3.2009 and sale deed No. 17660 dated 13.1.2010 registered in the office of Sub Registrar, Faridabad as well as pattanama which is showing in the revenue record in the name of the defendant No.1 may kindly be declared null and void and is not binding upon the rights of the plaintiffs may kindly be passed in favour of the plaintiff and against the defendants.

A decree of mandatory injunction thereby directing the defendants No. 3 not to execute any sale deeds regarding the suit property which is fully mentioned in para No.1 (a) and 1 (b) of the plaint to any other person except the plaintiffs and also directing the defendant No.4 to take the legal action if the defendant No. 1 & 2 dispossess the plaintiff from the suit property

and giving directing to the defendant No. 1 & 2 to handover the possession of the suit property if they illegally and forcibly take the possession of the suit property may kindly be passed in favour of the plaintiffs and against the defendants.

A decree of permanent injunction restraining the defendants No. 1 & 2 not to sell/alienate the suit property which is mentioned in para No.1 (a) and 1 (b) of the plaint to any other persons on the basis of the alleged sale deed document No. 25968 dated 4.3.2009 and 17.660 dated 13.1.2010 registered in the office of Sub-Registrar, Faridabad as well as pattaname which is showing in the revenue record in the name of the defendant No.1 and also restraining the defendant No. 1 & 2 from dispossessing the plaintiffs and also restraining defendant No.1 from mortgage/leasing renting out the suit property or creating any third person interest in the suit property which is mentioned in para No.1(a) and 1 (b) of the plaint illegally and forcibly may kindly be passed in favour of the plaintiffs and against the defendants with costs of the suit.”

The aforesaid suit is pending. On the complaint of Sonu an FIR No. 183 dated 30.3.2016 has been registered against the petitioners-accused. Relevant extract of the aforesaid FIR is extracted as under:-

“1. That the complainant along with his two brothers namely Monu and Kapil are the absolute

owner and in possession of the land 2 kanal describe as 40/128 share (eastern side) out of land bearing Khewat no. 466/480, khatoni no.930, Rect. No. 4, killa no. 16/2(6-8) situated within the revenue estate of village Mangar, Tehsil and Distt- Faridabad and also of land 2 kanal describe as 40/149 shares (western side) out of land bearing khewat no. 199/202, khatoni no. 445/442, Rect. No. 5, killa no. 20/2(7-9) situated within the revenue estate of village Mangar, and District Faridabad, total land 4 kanal. The said land is transferred in the name of the complainant and his brothers through court decree passed vide order dated 9.10.2000 by the Hon'ble Court of Sh. A.K.Sharma Civil Judge, Faridabad. It is pertinent to mention here that the said property was given by the Grandfather of the complainant in their name in a family settlement and the accused are the part and parcel of the same family being the real uncles of the complainant and in the said civil suit the grandfather had admitted everything and on the basis of admissions the said civil suit was decreed. 3. That after the decree of the said suit the Grandfather of the complainant had started living with the accused persons and under influence of the accused persons the late grandfather had got transferred by playing fraud in conspiracy with the accused persons forged sale deeds vale vasika no. 25968 dated 4.3.2009 and vide vasika no. 17660 dated 11.1.2010 both are

registered before the sub-Registrar Faridabad and in the sale deeds both the accused persons are real brothers and are real uncles of the complainant and are accused no. 1 is shown as purchaser and the accused no.2 is shown as witness in the said forged sale deeds. 4. That after the death of the grandfather the accused kept mum for some time and then started threatening to complainant and his brothers for forcibly getting the possession and to get vacated the property as they are claiming themselves as owner and when the complainant had stated that they the owner through court decree but the accused had refused to accept the legitimate request of the complainant and the accused had stated that they have got the sale deed in favour and have no concern to you and at the same time the accused had threatened the complainant with criminal intimidation. The above said offence is committed by the accused with criminal conspiracy to each other. 5. That the above said offence is committed by the accused only with the intention get the wrongful gain and to give wrongful loss to the complainant and even the court decree was very well in the knowledge the accused and only with the intention to grab the property of the complainant. 6. That the complainant had lodged to the police however when no action was taken the same was lodged to police, Faridabad till date no action has been taken on the said complaint by the police, therefore, the

complainant is constrained to file the present complaint before this Hon'ble Court. Prayer It is, therefore, respectfully prayed that the accused persons be kindly summoned, tried and punished for the commission of offences punishable under sections 420, 467, 468, 471, 120-B, 506 IPC.”

On careful reading of the aforesaid FIR it is apparent that gravamen of the allegations are that Sh. Prehlad after acknowledging in the civil suit that the property belongs to the grandsons has illegally transferred the same in favour of petitioners-accused under their influence and therefore, fraud has been played.

In the considered view of this Court, the dispute between the parties is of civil nature. It is yet to be proved by the complainant-first informant that in compliance of the decree passed by the Civil Court, necessary stamp duty and registration charges has been deposited or not. Prosecution has failed to draw attention of the Court to such material. Further civil suit in this regard is pending. Further the offence, if any, is alleged to have been committed by late Sh. Prehlad who has already died. Petitioners are purchasers through a registered sale deed. Validity and correctness of the aforesaid sale deed has been assailed by the first informant and others before a civil Court in a pending suit.

In view of the aforesaid un-disputed facts, this Court is of the view that the dispute between the parties being of civil nature and continuation of criminal process would result in abuse of process of law, therefore, this Court in exercise of its power under Section 482 Cr.P.C

orders quashing of the FIR and all consequential proceedings arising

therefrom at this stage. However, first informant shall be at liberty to file a fresh complaint after the decision of the civil Court, if the civil Court sets aside the sale deed and records any findings with regard to sale deed being result of undue influence or fraud.

Petition stands allowed.

16.10. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No