

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

**CRM-M-26921-2021
Date of decision: 28.07.2021**

Surain Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kartik Gupta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

None for respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No. 58 dated 09.03.2020, registered under Section 420 IPC at Police Station City Hoshiarpur, District Hoshiarpur.

Learned counsel for the petitioner submits that the FIR was registered at the instance of complainant Malkiat Singh with the allegations that petitioner has entered into an agreement to sell for the sale of 12 Kanals and 13 Marlas of land. In pursuance thereof, the petitioner received the earnest money and thereafter, he registered the sale deed on 22.04.2019 in the name of Kulwant Kaur, wife of the complainant on receiving balance payment. Thereafter, the possession of the land was handed over, however, the complainant came to know that a case is pending before this Court with regard to said land and this fact was not disclosed and, therefore, the petitioner has played a fraud with complainant.

Learned counsel for the petitioner further submits it is

undisputed fact that in pursuance to sale deed, the possession was delivered to the wife of the complainant in whose favour the sale deed was executed.

Learned counsel further submits that even the mutation regarding transfer of the said land based on the sale deed was entered into.

Learned counsel refers to a civil litigation by referring to the judgment and decree dated 02.08.2005, wherein one Jit Singh has filed a suit for declaration against 13 defendants. The primary basis of filing the said suit was that a Will dated 03.10.1975 was executed in favour of Jit Singh and by virtue of the said Will, he has become owner of the property.

Learned counsel further submits that petitioner, who was arrayed as defendant No. 3, never contested the suit and he was proceeded ex-parte and, therefore, he had no knowledge of the pendency of the suit. The trial Court decreed the suit in favour of Jit Singh and thereafter, one Gurmail Singh, LR of one of the defendants, challenged the said judgment before the lower appellate Court and the same was dismissed on 09.09.2011. The petitioner was not even served in those proceedings.

Learned counsel further refers to RSA-2444-2012 and submits that during the pendency of these proceedings, the service upon petitioner, being a performa respondent, was dispensed with on 31.03.2014.

It is further submitted that while deciding the main appeal, vide judgment dated 23.04.2019, this Court has held that the Will set up by plaintiff Jit Singh is not proved on record in terms of Section 69 of the Evidence Act and, therefore, while allowing the appeal, it was directed that property left behind by the deceased will be inherited by his class one heir on the basis of natural succession.

Learned counsel for the petitioner candidly argues that the

property sold to the wife of the complainant is not more than the property, which is inherited by the petitioner by way of natural succession and, therefore, mere fact that there was some litigation between the other co-sharers had no bearing on the sale deed executed by the petitioner as the petitioner throughout remained the owner of the property till the time it was sold to the wife of the complainant.

In pursuance of notice of motion, respondent No.2 has been served, however, there is not representation on his behalf.

Learned State counsel has not disputed the factual position.

It is also not disputed that while deciding the aforesaid RSA, this Court has set aside the judgment and decree passed by the trial Court as well as lower appellate Court and it is directed that property will be inherited by way of natural succession. It is also not disputed that the sale deed was executed in favour of the wife of the complainant without any hindrance and the possession was delivered and even mutation was entered into on the same day.

Accordingly, considering the aforesaid facts and circumstances, the present petition is allowed. The petitioner is granted concession of anticipatory bail, subject to the conditions envisaged under Section 438(2) Cr.P.C.

However, it will be open for the Investigating Officer to call upon the petitioner to join investigation, if so required, by issuing him a written notice in this regard.

28.07.2021

Waseem Ansari

*Whether speaking/reasoned
Whether reportable*

**(ARVIND SINGH SANGWAN)
JUDGE**

*Yes/No
Yes/No*