

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-26766-2010
Reserved on 30.9.2022
Pronounced on : 20.10.2022

Jagroop Singh and others

....Petitioners

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Arihant Jain, Advocate and
Mr. Rishav Jain, Advocate,
for the petitioners.

Ms. Promila Nain, Advocate and
Mr. Amit Thakur, Advocate,
for respondent No.2.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioners seeking quashing of FIR No.157 dated 19.08.2008 registered under Sections 447, 511, 506, 148, 149 IPC at Police Station Samrala, Police District Khanna (Annexure P-1) and all the subsequent proceedings arising thereto.

The impugned FIR was registered on the basis of the statement of respondent No.2 Hari Singh wherein he alleged that about 4 months back his son Gurmeet Singh and daughter in law Ranjit Kaur, purchased one acre of land situated on the road in the revenue estate of village of Koaba Police Station Samrala, from Surinder Pal Singh and Inderjit Singh sons of Jai Pal Singh resident of village Lalkala for sum of Rs.26,00,000/- (Twenty Six Lakhs) vide sale deed dated 25.04.2008. The mutation was also sanctioned in favour of the vendees on the basis of aforementioned sale deed.

Thereafter, they raised small boundary wall around the purchased land. That earlier aforesaid Surinder Pal Singh was having some dispute with his cousin Manpreet Singh (petitioner No.12 herein) with regard to oral partition of joint land which was effected amongst all the co-sharers. The aforesaid land was purchased by Gurmeet Singh and Ranjit Kaur with the consent of said Manpreet Singh. On 17.08.2008 respondent No.2 was going from Chandigarh to Ludhiana and at about 10.00 pm when he reached near Police Chowki Rani Kalan, he saw that the light was on in aforesaid land (plot) and some people were raising construction of Kotha. When he reached near the said plot, he saw that petitioner No.12 Manpreet Singh was present there along with other petitioners and they were raising construction with intention to take illegal possession of aforesaid plot owned by the son and daughter in law of respondent No.2. When respondent No.2 confronted the petitioners, they started abusing him and threatened to kill him and on this respondent No.2 went away from there and later on reported the matter to police. Consequently, the impugned FIR was registered against the petitioners with regard to the aforesaid incident and in the said FIR, it was also alleged that the petitioners demolished the boundary wall raised by the vendees and also committed theft of 1000 bricks belonging to the vendees which were lying at the spot.

The counsel for the petitioners submitted that no such incident as alleged in the FIR had ever taken place. The counsel for the petitioners further submitted that the real facts are that petitioner No.12 Manpreet Singh is co-sharer in the land in question which is jointly owned and possessed by him with Surinder Pal Singh, Inderjit Singh and some other persons. The counsel for the petitioners further submitted that no such

family/oral partition of the joint land had ever taken place as has been alleged by the complainant/respondent No.2. The counsel for the petitioners further submitted that the sale deed dated 25.04.2008 was not executed by Surinder Pal Singh and Inderjit Singh, with the consent of petitioner No.12 Manpreet Singh. The counsel for the petitioners further submitted that the land in question being jointly owned and possessed by petitioner No.12 Manpreet Singh, Surinder Pal Singh, Inderjit Singh and some other persons, there was no occasion for Surinder Pal Singh and Inderjit Singh to handover the exclusive possession of the same to the vendees at the time of execution of aforesaid sale deed. The counsel for the petitioners further submitted that it is a settled law that a co-sharer has an interest in whole of joint property and also in every parcel of it and the possession of joint property even by one co-sharer, is in eye of law, possession of all co-sharers even if all but one are actually out of possession. In this context the counsel for the petitioners has placed reliance on **Bhartu v. Ram Saroop** 1981 PLJ 204 wherein the full Bench of this Court has enumerated the rights and liabilities of co-sharers inter-se. The counsel for the petitioners further submitted that as at the time of alleged occurrence the land in question was joint and the interest of each co-sharers was not separated, all the co-owners including petitioner No.12 were having equal rights in each inch of the said land. The counsel for the petitioners further submitted that it being so, petitioner No.12 and his companions i.e. remaining petitioners cannot be held guilty of criminal trespass qua the land in question and thus, the impugned FIR deserves to be quashed. To substantiate his contention the counsel for the petitioners referred to **Karamjit Kaur Singh v. State of Punjab and**

and others, 2013 (5) RCR Criminal, 822 and judgment dated 01.05.2013 in **CRM-M-1379 of 2012 Balwinder Singh and another v. State of Punjab**, wherein this Court quashed the impugned FIRs on the ground that the petitioners therein were co-sharers of land in question and thus, they could not be held guilty of criminal trespass qua the said land.

The present petition is resisted by the State counsel as well as the counsel for respondent No.2, both of whom have submitted that initially the land in question was joint but in 1975 the said land was partitioned and in this regard partition deed dated 01.04.1975 was prepared and that the said partition deed was scribed by regular deed writer and the relevant entry of the register of the deed writer is Annexure R-2/2. The counsel for respondent No.2 has further contended that at the time of said partition the shares of all the co-owners were separated and consequently Surinder Pal Singh and his brother Inderjit Singh became the exclusive owners in possession of the land in question which was later on sold by them to son and daughter in law of respondent No.2 Hari Singh vide registered sale deed dated 25.04.2008 and the copy of the said sale deed is Annexure P-4. The counsel has further contended that at the time of the execution of the said sale deed the possession of the land so sold was also handed over to the vendees by aforesaid Surinder Pal Singh and Inderjit Singh and accordingly the vendees became exclusive owner in possession of the land in question. The counsel for respondent No.2 has further contended that petitioner No.12 Manpreet Singh and his accomplices tried to take forcible possession of the land in question and at that time they also committed theft of bricks and demolished the boundary wall belonging to the vendees and the matter was

registered against petitioner No.12 and his companions. The counsel for respondent No.2 has further contended that plea taken by petitioner No.12 to the effect that he was co-sharer in the aforesaid land at the time of registration of the FIR Annexure P-1 is not tenable as the land already stood partitioned in 1975. Counsel for respondent No.2 has further contended that in the given circumstances no ground is made out to quash the impugned FIR.

I have considered the submissions made by the counsel for the parties.

As per *jamabandi* Annexure P-2 for the year 2004-05, Surinder Pal Singh and Inderjit Singh sons of Jaipal Singh were recorded to be co-owners of the land in question to the extent of 1/3rd share, whereas Mohinder Kaur @ Rupender Kaur was recorded as co-owner to the extent of 1/3rd share while petitioner No.12 Manpreet Singh and his brother Inderpal Singh were recorded to be co-owners in the land in question to the extent of 1/12th share. No revenue record has been produced by the State counsel as well as the counsel for respondent No.2 to rebut the aforesaid entries recorded in *jamabandi* Annexure P-2. The case of the complainant is that the land in question was partitioned in 1975 and in this regard, reliance has been placed on partition deed dated 01.04.1975, but the same is not reflected in the subsequent revenue record of the land in question. Further, from the perusal of Annexure P-3 it appears that in 2006 Surinder Pal Singh and Inderjit Singh sons of Jaipal Singh filed suit for declaration with regard to the land in question against petitioner No.12 and his brother, on the basis of the alleged partition deed dated 01.04.1975 but the same was not

believed by the Court of Additional Civil Judge (Sr. Divn.), Samrala while dismissing the injunction application filed in the said suit by Surinder Pal Singh and his brother and finally the said suit was dismissed by the Civil Court vide judgment and decree dated 23.09.2015 and the appeal filed against the said judgment and decree was also dismissed by the Appellate Court vide judgment dated 8.12.2018 as is evident from Annexure P-10. Further from the perusal of Annexure P-9 it appears that the Assistant Collector Grade I Samrala passed order of partition with regard to land in question vide order dated 14.07.2016 and *sanad taqsim* was issued on 06.09.2016 and the appeal filed by Surinder Pal Singh and Inderjit Singh against the said order was dismissed by the Collector, Samrala vide order dated 12.10.2016 and the revision petition filed against the said order was dismissed by Financial Commissioner (Appeals) Punjab vide order dated 06.09.2018.

In the light of the above, it *prima facie* stands proved that the alleged family partition dated 01.04.1975 was neither acted upon nor incorporated in the revenue record and finally the land in question was partitioned by the revenue authorities in 2016 and the said order has been upheld by the Financial Commissioner (Appeals) Punjab. So, it is evident that at the time of the alleged occurrence in the year 2008 the land in question was jointly owned and possessed by all the co-sharers including petitioner No.12. In **Bhartu's case** (supra), the Full Bench of this Court has held as follows :-

“That all co-owners have equal rights and coordinate interest in the property though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoyment and possession equal to that of the other co-owners. Each co-owner

has in theory interest in every infinitesimal portion of the subject-matter and each has the right irrespective of the quantity of his interest to be in possession of every part and parcel of the property jointly with others.”

The same view has been reiterated by this Court in the case law cited by the counsel for the petitioner. This being the position, petitioner No.12 who at the relevant time, was co-sharer in the suit land cannot be held guilty of criminal trespass. Further, as at the relevant time, the land in question was joint, there was no occasion for vendors namely Surinder Pal Singh and Inderjit Singh to handover exclusive possession of the land in question to the vendees, at the time of execution of the sale deed dated 25.4.2008 (Annexure P-4). Thus, the respondents have *prima facie* failed to prove charges under Sections 447, 511, 506, 148, 149 IPC. So, to continue with further proceedings on the basis of the impugned FIR, would be an abuse of the process of the Court.

In view of above, the present petition is allowed and impugned FIR No.157 dated 19.08.2008 registered under Sections 447, 511, 506, 148, 149 IPC at Police Station Samrala, Police District Khanna (Annexure P-1) and all the subsequent proceedings arising therefrom are hereby quashed qua the petitioners.

(KARAMJIT SINGH)
JUDGE

20th of October, 2022

Gaurav/Jiten/Paritosh

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No