

CRR-12-2022

2023:PHHC:049707
-1-

**(240) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-12-2022
Date of Decision: 11.04.2023

RAJINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.S. Swaich, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the judgment dated 24.03.2021 passed by the Additional Sessions Judge, Fatehgarh Sahib, whereby the judgment of acquittal dated 05.11.2016 passed by the Chief Judicial Magistrate, Fatehgarh Sahib has been affirmed.

2. Briefly stated the prosecution version is that one application was moved by the complainant-Rajinder Singh son of Balwant Singh caste Jatt resident of village Kheri Vir Singh against Balwinder Singh, Dharminder Singh, Joginder Kaur and Bhupinder Singh. On the basis of the complaint received, ASI Karamjit Singh along with HC Jasbir Singh and C Davinder Singh reached the spot to investigate the matter. The complainant-Rajinder Singh stated that the accused persons had illegally and forcibly taken possession of the agricultural land in his (complainant's) possession and had forcibly cultivated the same in the mid night of 02-03 November, 2014. The complainant had purchased 14 kanals of land in dispute bearing Khatoni no.

CRR-12-2022

55/99 Khasra no. 16//16 (4-0), 17 min (2-0), 17//20 min (4- 0), 17//26 min (0-10) through registered sale deed no. 630 dated 17.06.03. The complainant prayed that the criminal action be taken against the accused persons for forcibly and illegally taking the possession of land from him. On the basis of statement suffered by the complainant, the FIR was registered against the accused. The site plan was prepared and statement of witnesses were recorded. After completion of investigation the challan was presented in the Court.

3. On appearance of the accused before the court, copies of the challan and other documents as relied upon by the prosecution were supplied to the accused free of cost as envisaged u/s 207 Cr. P.C.

4. Finding a *prima facie* case against the accused, charge was framed against them under Section 447 of IPC, to which the accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined Rajinder Singh as PW1, Himmat Singh Jr. Assistant DTO Office, Fatehgarh Sahib as PW2, HC Paramjeet Singh as PW3, Gurmukh Singh Nambardar, ASI Ashok Kumar as PW5, Balbir Kaur from the office of DTO, Mohali as PW6. Sukhjit Singh Patwari as PW7, Kuldeep Kumar Malhotra as PW8, Gurjeet Singh as PW9, ASI Karamjeet Singh as PW10 and Kaka Singh as PW11. Thereafter the APP closed the prosecution evidence vide his separate statement.

6. The statements of the accused were recorded u/s 313 Cr.P.C wherein the entire incriminating circumstances appearing in prosecution evidence against the accused was put to them to which they pleaded innocence and claimed false implication. The accused stated that they had

CRR-12-2022

never cultivated the land of the complainant to take the possession of the same and that there was a dispute of inheritance of the land of Prem Singh who was related to them by blood and the complainant had forged a Will of Prem Singh in favour of his sons. Mutation of inheritance of Prem Singh was sanctioned in favour of the father of the accused namely Sewa Singh. However, the said proceedings were challenged by the complainant and his sons in the Appellate Court and the said proceedings were still pending. They further stated that the Jamabandi of the said land was still joint. However, the accused did not lead any evidence in defence and closed the same after tendering some documents.

7. Based on the evidence led, the accused/respondents came to be acquitted vide judgment dated 05.11.2016 passed by the Chief Judicial Magistrate, Fatehgarh Sahib.

8. The petitioner/complainant preferred an appeal which came to be dismissed vide judgment dated 24.03.2021 passed by the Additional Sessions Judge, Fatehgarh Sahib.

The aforementioned judgments of acquittal are under challenge in the present petition.

9. The learned counsel for the petitioner contends that the offence against the respondents/accused is well-established from the deposition of the prosecution witnesses. The ownership and exclusive possession of the petitioner/complainant over the land in question had been proved on record by way of documentary and ocular evidence. The Courts below had erred by misreading the testimony of the eye-witness Kaka Singh (PW-11). Similarly, the testimony of the complainant-PW1 had also been misread. He thus

contends that the respondent Nos.2 to 5 had committed the offence of criminal trespass and there was sufficient evidence to convict them for the same.

10. I have heard the learned counsel for the parties at length.

11. A perusal of the record would reveal that PW11-Kaka Singh is stated to be the eye-witness of the occurrence. Apparently, he is a procured witness. Firstly, he was not aware of the number of the tractor purportedly used by the accused to cultivate the land. Secondly, he did not make any attempt to stop the commission of the offence of trespass despite being present at the spot. Therefore, PW-11 quite apparently has not witnessed the occurrence as has been sought to be made out.

Further, multiple civil litigations are between the parties regarding the land in question and therefore the false implication of the accused cannot be ruled out. Even otherwise, as the land is a joint *Khata*, there cannot be a case for trespass.

12. In view of the above discussion, I find no merit in the present petition and the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

11.04.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No