

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:079044
CRM-M-27772-2019
Date of Decision: May 30, 2023

Karambir and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Balraj Singh Rathee, Advocate with
Mr. Vijay Deep Rathee, Advocate for the petitioners.

Mr. Munish Sharma, DAG, Haryana.

Mr. Ramesh Sindhar, Advocate for respondent No.7.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash FIR No.403 dated 05.06.2019, registered at Police Station Assandh, District Karnal, under Sections 379, 427, 447, 506 and 511 of IPC. Further prayer is made to direct respondent Nos.1 to 3 to get the matter investigated from some higher authorities and to take legal action against respondent Nos.5 and 6, who have allegedly connived with respondent No.7.

2. FIR in question was lodged on the complaint of respondent No.7 Smt. Geeta, as per which she along with her sister Nirmala had purchased a *Haveli* in village Jabhala from Rajneesh S/o Krishan Lal, resident of the village and were in possession of that Haveli. It was alleged that accused Karambir etc. (petitioners) along with 10-15 other people wanted to take possession of the Haveli in 2013, regarding which a panchayati decision went in favour of the complainant. It was alleged further that in their absence, accused persons tried to take illegal

possession of the Haveli, as they demolished the same and caused a lot of damage. They took away the debris and the bricks.

3. According to the petitioners, Smt. Geeta (respondent No.7) and Nirmala had earlier filed civil suit No.391 of 2013 for declaration and permanent injunction claiming to be in possession of 12 marlas of land comprised in khewat No.303/280, khatoni No.366 Rect. No. 118/(0-12) gair mumkin kotha along with adjoining land measuring 18 marlas, in which a Haveli was constructed within the lal dora of village Jabhala. In that suit filed before learned Additional Civil Judge (Sr. Divn.), Assandh, petitioner Nos.1, 2, 7 and 8 were impleaded as defendants. However, said Geeta and Nirmala could not prove their claim upon the property including Haveli and also could not prove their possession and so, the suit was dismissed vide judgment and decree dated 10.03.2015 (Annexure P-1). Civil Appeal filed by them was dismissed by learned Addl. District Judge, Karnal, vide judgment dated 26.07.2018 (Annexure P-2). No further appeal was filed before this High Court.

4. Petitioners further contend that respondent No.7 had earlier also tried to implicate the petitioners in number of false cases in connivance with respondent Nos.5 and 6. Petitioners have given reference of FIR No.476 dated 08.09.2013, registered at Police Station Assandh under Sections 148, 323, 506, 341/354-B IPC, in which they were acquitted on 22.03.2018; and another FIR No.12 dated 07.07.2018, registered at Police Station Women, Assandh, under Sections 323, 354, 452, 506 and 120-B of IPC, which was also found to be false after inquiry. Petitioners further contend that they were owner in possession of

the Haveli and so they decided to demolish the same for reconstruction as it was 60-70 years old. Respondent No.7 in connivance with respondent No.5 made a false complaint. Respondent Nos.5 and 6 demanded bribe from them and instead of taking action against accused-respondent No.7, falsely implicated them in the present case. It is also submitted that though, 19 persons were named by the complainant in the FIR, but 4 have been challaned (wrongly mentioned as convicted).

5. According to police report, during the course of investigation, statement of witnesses were recorded. Incriminating evidence was found against Karambir S/o Phool, Sonu S/o Tilak Raj, Sonu S/o Sardara and Vinod S/o Lal Babu, besides Dharambir S/o Phool Singh and Shilpa W/o Dharambir. They were arrested in accordance with law and case property i.e. pieces of bricks and tractor trolley were recovered from them, which were later on released on Superdari to the complainant of the case. On the basis of investigation, involvement of other persons mentioned in the FIR was not found. It is further submitted in the police report that prior to the registration of the present FIR, respondent No.7 had earlier moved an application bearing complaint No.598-A-Dasti dated 20.05.2019, in which she claimed to have purchased the Haveli in dispute and to be in possession thereof and that the petitioners were trying to take possession of said Haveli from them in illegal manner. On the other hand, petitioner Dharambir had moved an application on 21.05.2019 vide complaint No.0483, wherein he alleged that respondent No.7 along with Nirmala and her husband were trying to take forcible possession of the Haveli. Both the parties were called and

having apprehension of breach of peace, preventive action under Section 107/150 Cr.P.C. was initiated against both the parties. Police report further refers to other complaints, which had been made by both the parties against each other and which were enquired into from time to time. It is submitted further that in the civil litigation referred by the petitioners, they were not held as owner of the suit property, rather it was observed that Gram Panchayat was owner of the property in dispute. With these submissions, prayer has been made for dismissing the petition.

6. Heard. Main emphasis of Ld. counsel for the petitioners is the result of the civil litigation, which was initiated by respondent No.7 Geeta and her sister Nirmala, which went against them.

7. A perusal of the judgment dated 10.03.2015 passed in civil suit No.391 of 2013, titled as "*Geeta and another v. Dharambir and others*" reveal the plaintiffs of that case had claimed to have purchased the suit property measuring 12 marlas comprised in Rect. No.118 (0-12) besides adjoining land measuring 18 marlas in which Haveli was constructed within lal dora from one Rajneesh Kumar S/o Krishan Lal, vide an agreement to sell dated 03.07.2013 and that possession was delivered to them. It was claimed further that earlier 12 marlas of land comprised in Rect. No.118(0-12) was owned by Abha S/o Chandan, forefather of Rajneesh Kumar. Rajneesh Kumar had filed a civil suit No.153 of 2010, titled as "*Rajneesh Kumar etc. v. Gram Panchayat, Jabhala*", which was decreed in his favour on 15.10.2012; whereas land measuring 18 marlas was adjoining to the land measuring 12 marlas.

Defendants of the suit (some of the petitioners of this case) were alleged to be the strangers. It is revealed further that defendants of that suit (who include four of the petitioners) pleaded that suit property (disputed property of 12 marlas) was owned by Gram Panchayat and so plaintiffs of the case did not have any concern therewith, whereas answering defendants were in possession of 18 marlas of land, i.e. Haveli, which had been constructed by them, in which they were living peacefully. Necessary issues were framed and it was found by the Court that plaintiffs could not prove the title of their alleged vendor Rajneesh Kumar over the Haveli in question and that both the parties had made counter assertions to be in possession of the Haveli. Learned Court also observed that Gram Panchayat was the owner of 12 marlas of land, in which Abha S/o Chandan used to be in possession as gair marusi, but said Gram Panchayat had not been impleaded as party. It was observed that since the right of true owner was likely to be materially effected, so in its absence, necessary declaration could not be granted. With this reasoning, the suit of the plaintiffs i.e. Geeta and Nirmala seeking declaration regarding possession, without impleading Gram Panchayat on the basis of an unregistered agreement to sell, was dismissed, as there was no cogent evidence to prove the possession by Geeta and Nirmala over the Haveli. Said dismissal was approved by the Appellate Court. It is important to notice that though Geeta and Nirmala were held to have not been able to prove their possession, but at the same time, it was nowhere held that defendants of that case, who include the four petitioners, were in possession of the disputed Haveli.

8. Interestingly, in the present case, petitioners themselves contended that they had purchased 36 marlas of land from Rai Singh and Lal Singh S/o Neki Ram and that family of respondent No.7 had taken illegal possession of the said land.

9. It is, thus, clear that possession over the property in dispute is highly disputed. In the civil litigation, it was nowhere held that which of the party was in possession. The allegations made in the FIR cannot be stated to be false or unfounded and therefore, the FIR in question, without holding trial, cannot be quashed.

Consequently, present petition is dismissed.

May 30, 2023

sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No