

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: January 23 2024
Pronounced on: January 30, 2024

CRM-M-23446-2018

Avtar Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. H.S. Dhindsa, Advocate for the petitioners.

Mr. Anmol Singh Sandhu, AAG, Punjab.

Mr. Gaurav Kalsi, Advocate for respondent No.2.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioners pray for quashing of complaint No.212/1/05 dated 15.09.2005, titled as '*Ajmer Kaur v. Surjit Singh and another*' (Annexure P-1), under Sections 409, 467, 468, 471, 472, 506 and 423 of IPC, pending in the Court of learned Judicial Magistrate 1st Class, Ludhiana, besides summoning order dated 28.09.2011 (Annexure P-12).

2. Smt. Ajmer Kaur (respondent No.2 herein) filed the impugned complaint (Annexure P-1) to prosecute 05 accused, namely :-

1. Surjit Singh S/o Rai Singh (*respondent No.4 herein*)

2. Gurmail Kaur W/o Surjit Singh (*respondent No.3 herein*)

3. Joginder Kaur widow of Mohinder Singh

4. Avtar Singh S/o Mohinder Singh (*petitioner No.1 herein*)

5. Jasminder Kaur D/o Mohinder Singh (*petitioner No.2 herein*)

It was alleged that complainant - Ajmer Kaur had purchased property No.254, Ward No.8, Mandi Mullanpur Dakha, Tehsil and District Ludhiana, vide a sale deed bearing Sr. No.225 dated 19.05.2004 executed by Hardev Singh, Mukhtiar Singh and Smt. Jeeto, the children of Kapoor Singh. It was claimed that said property was in possession of Hardev Singh for the last about 20 years, on account of some family settlement with other co-sharers; whereas, Surjit Singh – accused N: 1 was in possession thereof as tenant under him and so, after the sale deed in favour of the complainant, Surjit Singh became tenant under her i.e. complainant. It was further alleged that accused Nos.1 and 2, i.e. Surjit Singh and his wife Gurmail Kaur hatched a conspiracy with other accused and got executed a registered sale deed bearing Sr. No.223 dated 19.05.2004, executed by accused Nos.3 to 5, i.e. Joginder Kaur, Avtar Singh and Jasminder Kaur, i.e. legal heirs of Mohinder Singh in favour of accused No.2 Gurmail Kaur wife of accused No.1 Surjit Singh. In the said sale deed, accused Nos.3 to 5 claimed to be owner in possession and to have delivered the possession to accused No.2 Gurmail Kaur. Said sale deed was alleged by the complainant to be forged and fabricated document, as accused Nos.3 to 5 were never reflected to be the owners in the revenue record and so, they had no right to execute the sale deed.

3. After recording the preliminary evidence, impugned

summoning order dated 28.09.2011 (Annexure P-12) was passed by learned Magistrate summoning all the accused to face prosecution under Sections 467, 468, 471 and 423 IPC.

4.1 It is submitted by the petitioners that they are the children of late Mohinder Singh, who was the nephew of late Bara Singh. Mohinder Singh had received the suit property from late Bara Singh through a Will and after the death of Mohinder Singh, petitioners and other heirs inherited the land in their names and later on, sold the same to respondent No.2 Gurmail Kaur through registered sale deed dated 19.05.2004 (Annexure P-2), regarding which mutation was duly sanctioned after contest.

4.2 It is contended further that complaint (Annexure P-1) has already been quashed qua the vendees – respondent Nos.3 and 4 vide order dated 13.11.2017 passed by this Court in CRM-M-2888-2012 (Annexure P-7). Learned counsel also contends that in respect of both the sale deeds both dated 19.05.2004, i.e. one executed by Hardev etc. in favour of Ajmer Kaur; and the other executed by accused i.e. legal heirs of Mohinder Singh, separate mutations were entered, both of which were contested. The mutation No.19929 on the basis of sale deed executed by accused was upheld by the Collector, Ludhiana, against which revision is pending before the Financial Commissioner.

4.3 Learned counsel contends further that a purely civil dispute has been given the criminal tone and tenure. Complainant had earlier filed a civil suit (copy Annexure P-4) seeking declaration to be owner in

possession of the property in dispute and also to declare the sale deed executed by the petitioners and Joginder Kaur to be null and void. Another civil suit (copy Annexure P-6) was filed by Smt. Gurmail Kaur seeking declaration that she was the owner in possession of the property in dispute on the basis of sale deed executed by the accused-petitioners in her favour and that sale deed in favour of complainant was null and void. Both these suits were clubbed together and the same were dismissed by the Civil Court, vide judgment dated 05.11.2015 (Annexure P-8) by holding both the sale deeds to be null and void. Learned counsel contends further that both the parties had filed separate appeals against aforesaid judgment and decree and those appeals were heard together and disposed of during the pendency of this petition, vide judgment dated 19.10.2019 (Annexure A-1), copy of which was taken on record, pursuant to the order passed in CRM-7920-2020. Vide this judgment dated 19.10.2019, both the sale deeds were held to be legal and valid documents. The Court further found Ajmer Kaur and Gurmail Kaur to be co-sharers in the entire land.

4.4 Learned counsel for the petitioners contends that in the aforesaid facts and circumstances, when the dispute is purely of civil nature, that Civil Court has already returned its findings, continuation of criminal complaint is gross misuse of the process of law and so, the impugned complaint and the summoning order and subsequent proceedings be quashed.

5. Learned counsel for respondent No.2-complainant Ajmer

Kaur, on the other hand, alleged that the petitioners committed fraud and forgery with the complainant by executing the sale deed in favour of Smt. Gurmail Kaur regarding the property, which was in possession of Hardev, who along with other co-sharers had sold the same to the complainant.

6. Having considered submissions of both the sides, this Court finds that continuation of the complaint in question shall be gross misuse of process of the law.

7. It is not in dispute that petitioners inherited the land in dispute from their father Mohinder Singh, who in turn had got it by virtue of a Will from his uncle Bara Singh. It is after inheriting the property from their father that petitioners executed the sale deed dated 19.05.2004 (Annexure P-2) in favour of accused Smt. Gurmail Kaur. Petitioners in no manner can be said to have forged the sale deed in respect of the property, which they had inherited from their father more than 08 years ago and as such, they could not be a part of any fraudulent document or instrument on basis of which deceased father had acquired the property.

8. Apart from above, this Court vide order dated 13.11.2017 (Annexure P-7) passed in CRM-M-2888-2012 has already quashed the impugned complaint qua respondent Nos.3 and 4, i.e. the vendees of the sale deed executed by the petitioners.

9. It is further found that civil suit filed by complainant-respondent No.2 – Ajmer Kaur challenging the sale deed in favour of Smt. Gurmail Kaur; and another civil suit filed by Smt. Gurmail Kaur

challenging the sale deed in favour of complainant – Ajmer Kaur were though initially dismissed by the Civil Court, vide a judgment dated 05.11.2015 (Annexure P-8) by declaring both the sale deeds to be null and void, but in the appeals filed both of them, both of the sale deed were held to be legal and valid documents, vide judgment dated 19.10.2019 (Annexure A-1) and complainant – Ajmer Kaur as well as respondent No.3- Gurmail Kaur have been found to be co-sharers.

10. In the light of all the aforesaid discussion, there can be no hitch in holding that dispute is purely civil in nature. No criminal element can be found, so as to invoke any of the provisions of IPC. The impugned summoning order is bad in law. Complaint appears to have been filed to put pressure upon accused-petitioners.

11. Consequently, complaint No.212/1/05 dated 15.09.2005 titled as ‘*Ajmer Kaur v. Surjit Singh and another*’ (Annexure P-1), under Sections 409, 467, 468, 471, 472, 506 and 423 of IPC, pending in the Court of learned Judicial Magistrate 1st Class, Ludhiana, summoning order dated 28.09.2011 (Annexure P-12) and all the subsequent proceedings arising therefrom are hereby quashed.

Allowed.

January 30, 2024

Sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No