

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202. CRM-M No.26302 of 2019 (O&M)
Date of Decision:07.03.2024

Sukhwinder Singh and others ... Petitioners

Versus

State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitin Meel, Advocate for
Mr. K.B. Raheja, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

None for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.49 dated 08.05.2019 registered under Section 447, 511 IPC read with Section 34 IPC at Police Station Chhajali, District Sangrur.

2. In brief, the facts are that respondent No.2 is the brother of petitioner No.1. On 08.05.2019 at about 9 AM, respondent No.2 received a phone call from his nephew Jasbir Singh son of Balwinder Singh, who told him that his uncle Sukhwinder Singh and his son Pritpal Singh, residents of village Nilowal and Ajaib Singh, resident of village Killa Bharia are cultivating his land with their Swaraj 855 tractor with an intention to take possession of the same. On the complaint of respondent No.2, FIR (supra) was registered against the petitioners.

3. Learned counsel for the petitioners *inter alia* contends that the allegations levelled in the FIR are vague as it *sans* any description of the land. In fact, the petitioners are co-sharers in possession and therefore, they were lawfully

cultivating the land. It is further contended that every co-sharer is owner in possession of every inch of joint holding and therefore, no case of trespass is made out against the petitioners. In support of his contention, he relies upon Full Bench judgments of this Court in *Ram Chand Vs. Bhim Singh 2008(3) RCR (Civil) 685*, *Bhartu Vs. Ram Sarup 1981 PLJ 204* and *Ram Chander Vs. Bhim Singh and others 2008 (3) RCR (Civil) 685*. It is also contended that registration of FIR (supra) is nothing but an abuse of the process of law due to which petitioners are gravely suffering and therefore, the same is liable to be quashed.

3. Per contra, learned State counsel submits that 10 acres of land came in the share of respondent No.2-complainant and he gave said land on lease to Gurtej Singh son of Gora Singh, resident of Nilowal. Out of aforesaid 10 acres, 4 acres of land was given to him by his mother in the year 2019 and remaining 6 acres of land came to his share from the joint holding. Respondent No.2 in his complaint alleged that petitioners had cultivated four acres of land with the intention to take possession over it. During investigation, statement of registry clerk of the office of Sub Registrar, Sunam was recorded under Section 161 Cr.P.C. on 04.07.2019 in which it was stated that vide document No.2018-19/123/1/1402 Dalip Kaur wife of late Gurjant Singh had transferred 2/3rd share of her land in the name of her son Buta Singh and 1/3rd share to her grandsons Jasvir Singh and Rachhpal Singh. The Fard Clerk also corroborated the said fact in his statement recorded on 02.07.2019. Therefore, petitioners had tried to take forcible possession of the said land and thus, the FIR has rightly been registered against them.

4. I have heard learned counsel for the parties and perused the paper book with their able assistance. A perusal of the FIR reveals that there is no description of the land given to corroborate the fact that the land in dispute was

in exclusive possession of the complainant. It is trite law that till the land is not partitioned by metes and bounds, it remains a joint holding and every co-sharer is owner of every inch of the land. Furthermore, a perusal of the reply filed by the respondent-State reveals that there is no specific denial to the fact that the land in dispute is a joint holding and not partitioned and the same was in exclusive possession of the complainant in pursuance to the said partition. The only stand taken in the reply is that a co-sharer cannot cultivate the land or take possession over the same, which comes to the share of complainant from joint holding, meaning thereby, the holding is joint. A Full Bench of this Court in **Ram Chander's case** (supra) has held that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.

5. A Division Bench of this Court in **Sant Ram Nagina Ram v. Deva Ram Nagina Ram AIR 1961 PB 528** while setting out the *inter se* rights and liabilities of co-sharers has held as under:-

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption

of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.

9. Where a portion of the joint property is by common consent of the co-owners reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered. Case law reviewed."

6. The Hon'ble Supreme Court in ***Kochkunju Nair Vs. Koshi Alexander and others 1999 (III) SLT 183*** has held 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-owner or 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 quality of his interest to be in possession of every part and parcel of the property jointly with others.

7. The Hon’ble Supreme Court in *Rajender Singh Katoch Vs. Chandigarh Administration and others AIR 2008* has held that right of a co-sharer to enjoy the joint family property is a civil right. Such a right, if denied by the other co-sharers for one reason or the other, must be enforced by taking recourse to the remedies available under the civil laws. Criminal proceedings cannot be taken recourse to for enforcing such a civil right.

8. In the aforesaid facts and circumstances, the petitioner, who is a co-sharer in the joint land, cannot be said to have committed an offence of criminal trespass. Consequently, FIR No.49 dated 08.05.2019 registered under Section 447, 511 IPC read with Section 34 IPC at Police Station Chhajali, District Sangrur and all subsequent proceedings arising therefrom are quashed qua petitioners.

9. The instant petition stands allowed.

(HARPREET SINGH BRAR)
JUDGE

March 07, 2024
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes