

(2012) 01 P&H CK 0330

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal M. No. M-18643 of 2010

Harcharan Singh and Others

APPELLANT

Vs

Satvinder Satara

RESPONDENT

Date of Decision: Jan. 3, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 40, 44, 467, 468
- Registration Act, 1908 - Section 81, 82
- Transfer of Property Act, 1882 - Section 44, 45

Citation: (2012) 2 ILR (P&H) 967 : (2012) 2 RCR(Criminal) 136

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: S.S. Dinarpur, for the Appellant; Anil Kshetarpal, for the Respondent

Judgement

Mehinder Singh Sullar, J.

The conspectus of the facts, which needs a necessary mention for a limited purpose of deciding the core controversy, involved in the present petition and emanating from the record is that, petitioners-Harcharan Singh, Jagjeet Singh and Savinder Singh, residents of New Delhi, their brother Pritam Singh and sisters Parkash Kaur and Harjeet Kaur, were the co-owners/co-sharers along with Satvinder Satara son of Daljeet Singh-respondent-complainant (for brevity "the complainant"), Banarsi Lal, Sandeep Kumar and Smt. Nirmal of the joint land in question, measuring 173 Kanals 2 Marla, situated in the village Rajpur, Tehsil Jagadhri, District Yamuna Nagar. It was claimed that the complainant filed a Civil Suit bearing No. 700 dated 27.09.2006, for a decree of permanent injunction, restraining the petitioners and other co-sharers, from alienating the suit land more than their shares or specific portion out of the land in question. The trial Court vide its order dated 16.10.2006 (Annexure P-4) directed the parties to maintain status quo with regard to the possession and

Parkash Kaur and Harjeet Kaur (defendant Nos. 5 and 6 therein) were restrained from alienating any specific khasra number, although, the liberty was granted to them to alienate their shares in it. The petitioners were not served in the civil suit. They sold their shares in the suit land to Banarsi Lal, Sandeep Kumar and Smt. Nirmal, vendees, by means of registered sale-deed dated 13.11.2006 (Annexure R-1). The relevant portion of which is as under:-

We, Harcharan Singh, Jagjit Singh and Savinder Singh sons of Harnam Singh son of Narain Singh, residents of 44, Pusa Road, New Delhi; and proprietors of village Rajpur, Sub Tehsil Sadaura, Tehsil Jagadhri, District Yamuna Nagar are equal owners of the following land:

Land comprising Khewat No. 285, Khatauni No. 332, Khasra Nos. 6//20/2(1-3), 21/1(3-14), 7//16/1(4-18), 16/2(2-0), 24(7-4), 25(8-0) and 9//3(2-2), 9//4/2(5-16), 5(8-0), 6(7-7), 7(5-14) and 21//1/4(3-6), 2(7-5), 8(0-1), 9(5-19), 10(8-0), 11/3(4-0), 21//12(7-14), 13/1(1-15), 13/2(2-16), 14(0-13), 17/3(6-2), 18(8-0), 19/1(4-0), 21//19/2(2-7), 20(7-14), 21/1(0-17), 21/3 (1-13), 22(8-0), 23(8-0), 24/1(2-18), 21//24/3(1-12), 22//6/2(5-0), 7/2(4-10), 14/2(2-2), 15(7-10), 16/1(2-12), 27//3/1(2-18), total Killas 38, total land 173 Kanals 2 Marla - 3/8th share equivalent to 64 Kanal 19 Marla situated in village Rajpur, H.B. No. 152, Sub Tehsil Sadaura, Tehsil Jagadhri, District Yamuna Nagar, as per Jamabandi for the year 2001-02 is owned and possessed by us. The aforesaid land is free from all charges and encumbrances. There is neither any stay nor any litigation pending and we have absolute right to sell the aforesaid property. Now we, with out freewill and volition and on account of requirement of money for household expenses and for purchase of property, have sold the aforesaid land measuring 64 Kanals 19 Marla along with all the rights of ingress and egress, for a sum of Rs. 75,00,000/- half of which is Rs. 37,50,000/- in favour of Banarsi Lal son of Buta Ram, resident of House No. 15, Kashmir Colony, Jagadhri 640/1299th share equivalent to 32 Kanal; and Sandeep Kumar son of Ghanshyam Dass, resident of Jaisico Colony, Jagadhri 226/1299th share equivalent to 11 Kanal 6 Marla; and Smt. Nirmal wife of Satish Kumar, resident of Bawna Road, Jagadhri, Tehsil Jagadhri, District Yamuna Nagar-433/1299th share equivalent to 21 Kanal 13 Marla and possession of land measuring 64 Kanla 19 Marla comprising Khasra No. 6//20/2(1-3), 21/1(3-14), 7//16/1(4-18), 16/2(2-0), 24(7-4), 25(8-0), 9//3(2-2), 4/2(5-16), 9//5(8-0), 6(7-7), 7(5-14), 22//7/2(4-10), 14/2(2-2), 16/1(2-9 out of 2-12) which has come to our share and possession in a family partition, has been actually delivered on the spot in favour of the purchasers. Now the purchasers have become owners in possession of the land referred to above. We or any of our legal heirs has no right, title or interest in the aforesaid property. Whatever rights were available to the sellers have been transferred to the purchasers. If, due to any defect in ownership or any legal defect in charge is found or possession goes out of the hands of the purchasers with respect to aforesaid land, any damages are suffered, we, the sellers and our properties and our legal heirs would remain liable for all expenses and loss. Total sale consideration has been received as detailed above. There is no balance.

Mutation would be got entered or the purchasers can get the same entered on the basis of the present sale deed and we shall not have any objection. Expenses of the sale deed have been borne by the purchasers. The sale deed has been written in the presence of the attesting witnesses with respect to land measuring 64 Kanals 19 Maria, so that it can be used at appropriate time.

The complainant did not reconcile with the sale-deed (Annexure R-1) and filed a criminal complaint dated 02.12.2006 (Annexure P-1) against the petitioners and their vendees, for the commission of offence punishable under Sections 467, 468 and 120-B IPC and u/s 82 of The Indian Registration Act, 1908 (hereinafter to be referred as "the Registration Act"), inter alia, pleading that the pendency of the civil suit and the interim order was in the knowledge of the accused at the time of registration of the sale-deed, but they have wrongly mentioned in it that no civil suit is pending, nor there is any stay granted by any court. According to the complainant that, since the petitioners have incorporated the specific khasra number in the sale-deed and have mentioned that no civil suit is pending, nor there is any stay from the court in the sale-deed in question, so, they have committed the offence punishable under Sections 467, 468 and 120-B of the Indian Penal Code (for short "the IPC") and u/s 82 of the Registration Act. That being so, the complainant filed the impugned criminal complaint (Annexure P-1) against the petitioners and their vendees in this regard.

2. Taking cognizance of the complaint, the Judicial Magistrate 1st Class summoned the accused to face the trial of the indicated offence by virtue of impugned summoning order dated 01.12.2009 (Annexure P-3).

3. The petitioners-accused did not feel satisfied and preferred the present petition for quashing the impugned complaint (Annexure P-1) and the summoning order (Annexure P-3), invoking the provisions of Section 482 Cr.P.C.

4. The case set-up by the petitioners, in brief, insofar as relevant was that, they did not sell any specific portion/khasra number and they have only alienated their shares in the joint land in dispute by way of sale-deed (Annexure R-1). They were neither served, nor have the knowledge of pendency of the civil suit/stay order at the time of registration of the sale-deed. The complainant was stated to have forged the Memo/Power of Attorney of their sisters, namely, Parkash Kaur and Harjeet Kaur filed in the civil suit, whereas they have never appeared in pursuance of summons issued by the court, which is clear from the affidavit (Annexure P-5) of Harjeet Kaur. According to the petitioners that neither they have sold excess land beyond their shares, nor sold any specific portion/khasra number. There is no law, which can restrain a co-sharer from selling his share and from parting the possession. Their rights in the land were transferred to the vendees and would convey all such rights that were available to the vendor/co-sharer. After the sale, a vendee from a co-sharer/joint owner in the entire joint khewat would be entitled to the same right of vendor, irrespective of the reference to specific khasra/Killa Numbers, in view of the law laid down by a Full Bench judgment of this Court in case [Bhartu Vs. Ram](#)

Sarup . The petitioners pleaded that they have committed no offence at all, as wrongly alleged against them by the complainant.

5. Levelling a variety of allegations and narrating the sequence of events, in all, the petitioners claimed that, although no offence under Sections 467, 468 and 120-B IPC and u/s 82 of the Registration Act, is made out against them, but the complainant filed a false complaint, in which the Judicial Magistrate 1st Class has illegally summoned them to face the trial vide impugned order (Annexure P-3). On the basis of aforesaid allegations, the petitioners preferred the present petition for quashing the impugned complaint (Annexure P-1) and the summoning order (Annexure P-3), in the manner depicted hereinabove.

6. The complainant refuted the prayer of the petitioners and filed the reply, taking certain preliminary objections of maintainability of the petition and cause of action. Instead of reproducing the entire contents of the reply and in order to avoid the repetition, suffice it to say that the complainant has reiterated his claim, as pleaded in the complaint (Annexure P-1). However, it will not be out of place to mention here that he (complainant) has stoutly denied all other allegations contained in the petition and prayed for its dismissal. That is how, I am seized of the matter.

7. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant petition deserves to be accepted in this context.

8. What cannot possibly be disputed here is that, the petitioners were co/joint owners in the land in dispute before the sale. They have every right & title and rightly alienated their shares in the joint land to the vendees by virtue of registered sale-deed. The bare perusal of the contents of the sale-deed (Annexure R-1) would go to show that the petitioners did not sell any specific portion, but they have sold their shares as per entitlement in the suit land as per law.

9. As is clear that, Section 44 of The Transfer of Property Act, 1882 (for short "the T.P. Act") postulates that where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

10. Sequelly, Section 45 of the T.P. Act further posits that where immoveable property is transferred for consideration of two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of

separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

11. A conjoint and meaningful reading of these provisions viz-&-viz sale deed (Annexure R-1) would reveal that the sale by the petitioners was not a sale of any specific khasra number, but a sale of shares in the joint land and the vendees would step into the shoes of the vendor and become co-owners in the joint land after the sale in the same very right and capacity.

12. As is evident from the record that, the petitioners did not sell any specific portion and have legally sold their shares as per entitlement in the joint property to the vendees by means of registered sale-deed (Annexure R-1). Therefore, the question of committing any offence punishable under Sections 467, 468 and 120-B IPC did not arise at all under the present set of circumstances.

13. As regards, the offence under The Registration Act is concerned, Section 81 of the Registration Act envisages that every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury, as defined in the IPC, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both. According to Section 44 of the IPC, the word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

14. Not only that, according to Section 82 of the Registration Act whoever intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; shall be punishable under this Section.

15. Meaning thereby, a person can be prosecuted under Sections 81 /82 of the Registration Act only, if all the essential ingredients contained therein are complete and not otherwise, which are totally lacking in the present case. In the instant case, the only allegations against the petitioners in this regard are that they have illegally incorporated the specific khasra number in the sale-deed and have mentioned that no civil suit is pending, nor there is any stay from the court and nothing else. There is not an iota of material, much less cogent, even to suggest remotely that the petitioners were either served or had the knowledge of pendency of the civil suit at the relevant time. Even the perusal of the affidavit (Annexure P-5) would reveal that

the complainant has forged the signatures of Harjeet Kaur (defendant No. 6 therein) on the Power of Attorney and in fact none of the defendants was ever served in the civil suit.

16. Moreover, the complainant in order to prove the criminal offence was required to show that the accused had fraudulent and dishonest intention of forgery and cheating at the time of registration of the sale-deed. The same is miserably missing in the case in hand. In the absence of culpable intention at the relevant time, it cannot possibly be saith that the petitioners have committed any offence, as alleged against them, in view of the provisions of Sections 40, 52, 79 and 80 of the IPC.

17. There is another aspect of the matter which can be viewed from a different angle. If the crux of the contents of the impugned complaint (Annexure P-1) is perused and put together, then it give rise purely to a civil dispute. It is now well-settled principle of law that the matter, which essentially involves the dispute of civil nature cannot legally be allowed to become subject matter of criminal proceeding, which may be resorted to as a short-cut method to execute a non-existent decree. It is not a matter of dispute that the jurisdiction of civil and criminal courts is entirely different and distinct from each other. The matter which squarely falls within the ambit and jurisdiction of the civil court cannot legally be permitted to be re-agitated in parallel proceedings in the criminal court. As the civil suit is already pending between the parties with regard to the same subject matter, therefore, the complainant cannot legally be again permitted to re-agitate the same very dispute in the garb of criminal prosecution by way of impugned complaint. Otherwise, there will be no end of unwarranted litigation and it will inculcate and perpetuate injustice to the petitioners in this relevant connection.

18. Above all, the rights of the petitioners, to deal with their shares in the joint property cannot be taken away by way of initiation of unwarranted criminal proceedings. The right of a co-sharer to enjoy the joint land is a civil right. Such a right cannot be jeopardised by other co-sharers for one reason or the other even by bringing criminal complaints. Likewise, the criminal proceedings cannot be taken recourse, to enforce such a civil right. If the complainant, in any manner, is aggrieved by the civil action of the petitioners, in that eventuality, he may redress his grievance in the civil court and not otherwise. Be that as it may, to my mind, the complainant cannot, in any manner, be permitted to launch frivolous criminal proceedings against the petitioners. The initiation and continuation of such criminal prosecution is nothing, but sheer and complete misuse/abuse of process of criminal law. Similarly, the summoning Magistrate has just ignored these vital aspects of the matter with impunity and summoned the petitioners as accused in a very routine manner, which is not legally permissible. Therefore, to me, the impugned complaint (Annexure P-1) and the summoning order (Annexure P-3) deserve to be set aside in the obtaining circumstances of the case.

19. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

20. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the civil suit, the instant petition is accepted. The impugned complaint (Annexure P-1) and the summoning order (Annexure P-3) are hereby quashed. Consequently, the petitioners-accused are discharged from the criminal prosecution in this relevant behalf. Needless to mention that, nothing observed here-in-above, would reflect, in any manner, on the merits of the civil suit, as the same has been so recorded for a limited purpose of deciding the instant petition.