

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.515 OF 2020
(Arising out of SLP (Criminal) No.2652 of 2020)

HARBHAJAN SINGH Appellant

VERSUS

SANT HARBANS SINGH & OTHERS Respondents

WITH

CRIMINAL APPEAL NO.516 OF 2020
(Arising out of SLP (Criminal) No.3664 of 2020
Arising out of Diary No.15031 of 2020)

SANT HARBANS SINGH & ANOTHER Appellants

VERSUS

STATE OF PUNJAB & OTHERS Respondents

O R D E R

Leave granted.

These cross appeals arise out of the judgment and order dated 28.11.2019 passed by the High Court of Punjab & Haryana at Chandigarh in CRM-M No.10933 of 2018.

One Baba Virsa Singh, who owned and possessed various properties died in December 2007 whereafter Sant Harbans Singh claiming to be his brother, filed Civil Suit (CS) No.1370 of 2008 in the High Court of Delhi seeking permanent injunction against the defendants in said suit from alienating, letting or creating any third party interest in any manner with respect to the property named Gobind Sadan, New Delhi.

Thereafter, Civil Suit No.136 was filed on 15.04.2008 in the Court of Additional Civil Judge (Senior Division), Malout, Punjab by "Gobind Sadan Management Committee through its Trustee Gurdev Singh" ('The Committee' for short) tracing its right under the Will of said Baba Virsa Singh. It claimed permanent injunction restraining said Harbans Singh and others from entering into and taking possession of the properties described in the Schedule. Pertinently, the property in New Delhi, subject matter of the Civil Suit filed in the High Court of Delhi was not part of the Schedule. This Civil Suit was dismissed by the Trial Court vide its order dated 28.02.2014 with following observations:-

"After hearing arguments, I am of the view that plaintiff has claimed his possession of suit land on the basis of will dated 20.2.07, but said will has not been proved as per law. PW4 alleged witness of will has stated in his cross examination that he has not produced the will. He also admitted that Baba Virsa Singh and his family members was residing in a joint family and the land of Village Sarwan Bodla was allotted to Baba Virsa Singh in exchange of land of village RajaJago (Lahore). This fact is proved that Baba Virsa Singh inherited the land from his parents. PW3 who is plaintiff and member of committee admitted that he has not seen the will and he does not know that who produced the will. After the death of Baba Virsa Singh, no meeting was held to constitute committee of 11 members. It was constituted on the basis of will. Plaintiff has not proved by way of oral as well as documentary evidence that he is in possession of suit property. It is proved that Baba Virsa Singh has purchased land through sale deed Ex.Pw11/1 to Ex.Pw11/14. But, as per jamabandi EX.D1, Khasra Girdawari Ex.D2, mutation Ex.D3, defendant no.1 is shown in possession of suit property. So, plaintiff has failed to prove that plaintiff is in possession of suit land. As such, issues are decided against the plaintiff and in favour of defendants.

Civil Appeal No.RT-39/2014 filed by the Committee against the dismissal of said Suit, was also dismissed by the Additional District Judge, Sri Muktsar Sahib by his order dated 11.03.2006 as under:

"21. In the light of above facts and circumstances, when the plaintiff has failed to establish their possession on the basis of alleged Will set up by them in the suit property, whereas on the other defendants have been able to prove their possession qua suit property, then, the learned lower Court has rightly placed reliance upon the documents in favour of defendants, which were in the shape of jamabandi, khasra girdawari etc. As such, the law referred by learned counsel for respondents in *Ghurbu and others Vs. Satiram*, 2014(3) Civil Court Cases 91 and *Bihari Lal and others Vs. Bihari Lal s/o Gela Ram and others*, 2011(3) Civil Court Cases 17 covers to the matter in controversy, because when the plaintiff has failed to establish their possession then, their suit is not maintainable in the present form. Consequently, the findings recorded by learned lower Court are on proper appreciation and evaluation of oral as well as documentary evidence on record on issues No.1, 3 and 4, which are hereby affirmed."

It appears that Regular Second Appeal No.3158 of 2017 challenging the aforesaid decision was filed in the High Court of Punjab and Haryana at Chandigarh on 01.06.2016 and said appeal is still pending consideration.

Two other actions initiated by the parties were:-

A. Civil Suit No.817 of 2017 was filed by said Harbans Singh in the Court of Civil Judge, Malout, Punjab. The application seeking temporary injunction in said Suit was disposed of by the Trial Court by its order dated 08.11.2017 as under:

"... Therefore, the *prima facie* case is made out in favour of the plaintiff and I deem it fit case to grant ad-interim injunction and if ad-interim injunction is not granted, the purpose of ad-interim injunction will be vitiated. Therefore, defendants are restrained to interfere into peaceful possession over only qua the numbers which are in exclusive possession of the plaintiff as according to the Khasra and Girdawari placed on the file by the plaintiff, till further order. However, this order of mine shall nowhere restrained to the defendants to enjoy of the possession of the land in which they are in exclusive possession. Applicant is directed to comply the provision of Order 39 Rule 3 CPC within 48 hours of passing this order, failing which this order shall vacate

automatically. Now, notice of the suit as well as application under Order 39 Rule 1 and 2 CPC be issued to defendants for 22.11.2017, on depositing of PF, copy of the plaint etc."

B. The Committee initiated proceedings under Section 107 read with Section 151 of the Code of Criminal Procedure, 1973, (for short "Cr.P.C.") registered as Rapat No.23 dated 10.11.2017 with Police Station Kabarwala, whereafter Kalandra No.38 was registered on 22.11.2017 under Section 145 of the Cr.P.C.

Said Harbans Singh being aggrieved approached the High Court seeking quashing of the Kalandra under Section 145 Cr.P.C. While considering the challenge, the High Court observed:

"In view of the above, learned State counsel submits that the SDM concerned would look into the matter. Necessary corrections would be carried out in the order passed under Section 146 Cr.P.C., if the land of any private individual, including the petitioners, is found involved in the said order. Such property of private individuals, if any, would be released from the order. Qua the other properties, which have been left by Sant Baba Virsa Singh, the State would initiate the proceedings for taking over the said properties of Sant Baba Virsa Singh escheat."

Being aggrieved by the aforesaid order passed by the High Court, these two cross appeals have been filed.

It is evident from the record that the proceedings seeking injunction against said Harbans Singh did not result in any success. Though the second appeal is pending consideration before the High Court, no orders have yet been passed in said Second Appeal.

The suit filed by said Harbans Singh in the High Court of Delhi pertained to the property in Delhi and the action initiated by said Harbans Singh in the form of Civil Suit No.817 of 2017 is still pending, which resulted in interim order dated 08.11.2017.

What are the implication of the orders passed by the Civil Courts and the correctness thereof will certainly be looked into by the appropriate appellate/revisional authorities in the proceedings filed in accordance with law. However, in the face of these proceedings and the orders passed by the Civil Courts, the initiation of proceedings under Section 145 Cr.P.C. was not called for.

Instead of quashing the proceedings, the High Court made certain observations which, in our view, were completely erroneous.

In the circumstances, we allow Criminal Appeal No.516 of 2020 preferred by Harbans Singh and quash the proceedings initiated under Section 145 Cr.P.C.

Since we have allowed the appeal filed by said Harbans Singh, no further orders are called for in Criminal Appeal No.515 of 2020 filed by Harbhajan Singh and said Appeal stands disposed of.

It is needless to state that the parties shall act in terms of the orders passed by the Civil Courts.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
AUGUST 11, 2020

Criminal Appeal No.516 of 2020 arising out of SLP (Criminal) No.3664 of 2020 (arising out of Diary No.15031 of 2020) is allowed and Criminal Appeal No.515 of 2020 arising out of SLP (Criminal) No.2652 of 2020 is disposed of, in terms of the Signed order.

Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed Order is placed on the File)