

**IN THE COURT OF VIMAL SAPRA,
ADDITIONAL SESSIONS JUDGE, MEWAT. (UID-HR-0112)**

Criminal Revision No. : 334 of 2016.
Registration No. : CRR/523/2016.
Date of Institution : 19.12.2016.
Date of Decision : 16.05.2017.

Yunus aged about 52 years, son of Shri Parmal, resident of village Ghasera, P.S. Nuh, District Mewat.

....Revisionist-complainant.

Versus

1. Maqsoodan wife of Shri Aas Mohamed,
2. Aas Mohamed son of Shri Sultan,
3. Abdul Rehman Numberdar Ghasera, Village Ghasera, PS Nuh, District Mewat.
4. Kamru Halqa Patwari, village Ghasera, PS Nuh, District Mewat.

...Respondents-accused.

Criminal revision against the order dated 20.9.2016 passed by the Court of Sh. Tarun Chaudhary, the then learned Judicial Magistrate First Class, Mewat, by which complaint filed by the complainant-revisionist for summoning the respondents-accused, was dismissed.

Argued By:

None for revisionist-complainant.
Shri Subhash Kumar, counsel for the respondents-accused.

ORDER:

This order shall dispose of a revision petition filed by the revisionist-complainant Yunus against the order dated 20.9.2016 passed by the Court of Shri Tarun Chaudhary, the then learned JMFC, Mewat, whereby the complaint of revisionist-complainant was dismissed.

2. Brief facts of the complaint filed by the complainant are that he entered into an agreement to sell with Aas Mohamed in respect of his

9 Kanals 17 Marlas land after paying full and final payment and the possession of the alleged land was delivered to him by the said Aas Mohamed. Name of Rehman son of Shri Shamsheer was recorded in the column of cultivation over Khewat No.960, Khata no.1187, Mustakil No.11, Killa no.13, measuring 6 Kanals 15 Marlas, out of the 9 Kanals 17 Marlas. Further the name of Rehman son of Shri Shamsheer was recorded in the column of cultivation over land bearing Khewat No.959, Khata no.1185, Mustakil No.38, Killa no.19/17, total area 0 Kanal 2 Marlas.

3. It is averred that all the accused after colluding with each other got recorded the statement of Rehman son of Shri Shamsheer before Patwari in which he stated that he has been wrongly shown in revenue record in cultivating possession over 0 Kanal 2 Marlas and same should be changed in the name of Maqsoodan wife of Shri Aas Mohamed, however, Patwari with intention to cheat, added Phool Khan with the name of father of Rehman i.e. Shamsheer, however, the name of the father of above mentioned Rehman was never Phool Khan and statement regarding mustakil no.11, killa no.13(6-15) was wrongly recorded. However, Rehman son of Shri Shamsheer has no concern whatsoever with the alleged Killa numbers and as such fraud and cheating was committed by Kamru Patwari by adding Phool Khan with the name of father of Rehman son of Shri Shamsheer, whereas, Rehman son of shri Phool Khan is another person and there is no such person of the name of Rehman son of Shri Shamsheer @ Phool Khan in the village

Ghasera. Kamru Patwari and Rehman Numberdar after colluding with Maqsoodan got changed the Girdawari regarding the land measuring 0 Kanal 2 Marlas, 6 Kanals 15 Marlas in the name of Maqsoodan by taking undue advantage of illiteracy of Rehman. Rehman son of Shri Shamsher was also tendered an affidavit stating that his father's name was never Shamsher @ Phool Khan. Complainant has moved an application to the police station for taking legal action against the accused, however, no action was taken by the police and as such the revisionist-complainant filed the complaint.

On presentation of the complaint, preliminary evidence of the complainant was taken who produced Rehman son of Shamsher as CW1 and he himself appeared as his own witness as CW2. He tendered certain documents also in his preliminary evidence.

4. After adducing preliminary evidence as well as after hearing the learned counsel for complainant, the Court of Shri Tarun Chaudhary, the then learned JMIC, Mewat, vide his order dated 20.9.2016, had dismissed the complaint.

5. Aggrieved by the impugned order, the revisionist has filed the present revision with the averments that the impugned order passed by the trial Court is against law and facts on the case file and the same is liable to be set aside. He contended that one Rehman son of Shri Shamsher was recorded as tenant in the column of cultivation over the land measuring 6 Kanals 15 Marlas and he had executed an affidavit dated 27.3.2007 in favour of the complainant wherein he had disclosed

the name of his father as Shamsher and not Phool Khan, but the accused in collusion with each other had got prepared a bogus Rapat Roznamcha Ex.C4 by fraudulently showing the name of father of Rehman as Phool Khan. He contended that the said Rehman son of Shri Shamsher had appeared as CW1 and had supported the version of the complainant and proved his affidavit Ex.C3. The originals of said documents were produced during recording statements of CW1 & CW2, but the trial Court had wrongly held that non-production of the original documents had resulted in injustice to the accused. He contended that the trial Court had not appreciated the documents proved on record with the preliminary evidence by the complainant and had wrongly dismissed the complaint of revisionist-complainant. With these submissions, he lastly prayed for acceptance of revision petition and summoning of the respondents-accused.

6. Although the revisionist-complainant had not appeared but as revision petition could not have been dismissed in default, I proceed to decide it on merits.

7. I have heard the learned counsel for the respondents-accused and have also perused the trial Court record carefully and minutely.

8. The complainant had claimed that the respondent Aas Mohamed had executed an agreement to sell with him regarding land measuring 9 Kanals 17 Marlas and he had paid full and final payment of sale consideration and possession was also delivered by Aas

Mohamed to him. At that time, the name of Rehman son of Shri Phool Khan was recorded in the column of cultivation over the land measuring 6 Kanals 15 Marlas out of the total land measuring 9 Kanals 17 Marlas and the name of Rehman son of Shri Shamsher was recorded in the column of cultivation in the land measuring 2 Marlas Gair Mumkin Gadda. As per him, the respondents-accused, in collusion with each other, had got the name of Rehman son of Shri Phool Khan and Rehman son of Shri Shamsher deleted by showing two persons as one and by showing Rehman as son of Shri Shamsher @ Phool Khan. He had contended that Rehman was son of Shri Shamsher and Shamsher had no alias name of Phool Khan. He contended that thus, the accused persons had committed fraud with the revenue officials as well as with the complainant and committed forgery in record. To prove his version, the complainant himself had appeared as CW2 and reiterated the version stated in the complaint and also produced Rehman son of Shri Shamsher, who had deposed that he is son of Shri Shamsher and not of Phool Khan.

9. A perusal of trial Court record shows that in the Rapat Roznamcha Ex.C4, Rehman has been described as Shamsher @ Phool Khan, which shows that Shamsher and Phool Khan were names of one and same person. Although, photocopy of affidavit of Rehman son of Shri Shamsher, has been proved on record as Ex.C3, but the original of the same has not been produced on record by the complainant. He has contended that the original was produced at the time of recording

statement, but there is no such endorsement in the statement of CW1 or CW2, which could prove the original was ever produced in the Court. Further more, the complainant in no manner is affected by change in entry in the column of possession. He has claimed his right on the basis of agreement to sell, but it is settled proposition of law that an agreement to sell does not create any right, title or interest in favour of the complainant. He has further claimed that the possession was delivered to him as per agreement to sell but as the said agreement to sell is not a registered document, presumption of delivery of possession cannot be taken on the basis of said document. He has claimed that Rehman son of Shri Phool Khan is another person who resides in village, but he has not produced said Rehman son of Shri Phool Khan, in his evidence.

10. On the other hand, the sale deed has already been executed in favour of the respondent no.1 Maqsoodan and possession is already with the respondent no.1. It appears that the present complaint was filed by the complainant just to harass the respondent no.2 and to involve the respondent no.1 in a false protracted litigation. Instead of filing a suit for specific performance of contract on the basis of agreement to sell in his favour, the complainant has filed the present complaint. It is sheer misuse of provisions of Criminal Law. The trial Court had considered all aspects of the case and had rightly dismissed the complaint.

11. For the discussion foregoing, I do not find any illegality and irregularity in the impugned order dated 20.9.2016 passed by the

trial Court and hence, the revision petition filed by revisionist-complainant is hereby dismissed. The copy of this order alongwith trial court record be sent back to the trial Court. Revision file record be consigned to the record room.

Announced in open Court.

Dated: 16.05.2017

(sunil kaushik)
Executive Asst.

(Vimal Sapra)
Additional Sessions Judge,
Nuh.16.05.2017.
(UID-HR-0112)