

**IN THE COURT OF SH. SANJIV JOSHI,
ADDITIONAL. SESSIONS JUDGE, LUDHIANA.
(UID NO.0105)**

**CIS No. CRA/333/2018
CNR No. PBLD010096272018
Date of Decision: 13.02.2024.**

Bhalwant Singh, s/o Raju, son of Sarwan Singh, Assi Kalan, Ludhiana, is currently residing at A-21, Third Floor, Jangpura Extension, New Delhi-110014.

.....Appellant/Complainant

Versus.

1. State of Punjab.
2. Hari Singh son of Sarwan Singh
3. Avtar singh son of Kalyan Singh

Both residents of village Assi Kalan, District Ludhiana.

.....Respondents.

Criminal appeal against the judgment dated 08.03.2018 passed by the Court of Ms.Manpreet Kaur, Judicial Magistrate Ist Class, Ludhiana in case No.CH/39768/2013 of 27.04.2012 in FIR no.148 dated 13.12.2011 under Sections 437, 34 IPC Police Station Dehlon, vide which, the trial Court has wrongly acquitted accused nos.1 and 2 of all charges.

Claims in Appeal:-

1. To accept the Appeal;
2. To set aside the judgment dated: 08.03.2018 passed by the court Manpreet Kaur, JMIC, Ludhiana;
3. To set aside the judgment dated 08.03.2018, whereby, respondents no. 1 and 2 have been acquitted;
4. To convict respondents no.1 and 2 with maximum punishment' AND
5. To provide adequate compensation the complainant/victim

Present : Shri Kuldeep Singh, Advocate, counsel for the appellant.
Ms.Ramandeep Kaur Gill, Addl.Public Prosecutor for the State/
Respondent no.1.
Respondent no.3/accused Avtar Singh on bail with counsel.
Respondent no.2 Hari Singh proceedings abated.

JUDGMENT

This judgment of mine shall dispose of appeal filed by the appellant/complainant (herein after to be referred as “The complainant”) against the judgment dated 08.03.2018 passed by the Court of Ms.Manpreet Kaur, Judicial Magistrate Ist Class, Ludhiana in case No.CH/39768/2013 of 27.04.2012 in FIR no.148 dated 13.12.2011 under Sections 437, 34 IPC Police Station Dehlon, vide which, the trial Court has wrongly acquitted accused nos.1 and 2 of all charges

2. The brief facts of the case, which require consideration for the disposal of present appeal are that on 13.12.2011, one complaint bearing no.3217 dated 05.04.2011 moved by complainant Bhalwant Singh @ Raju was received in the office of ADCP Ludhiana regarding the tress passing by the accused persons on his agricultural land at Village Assi Kalan, Ludhiana. It was alleged in the complaint that he visited their office at Ludhiana in the month of June 2011, it was right there and then directions were given to SHO concerned to take necessary action and sort out the problem of tress passing on his agricultural land. Thereafter, he gave his written complaint alongwith all the supporting documents to ASI Harjeet Singh, Police Station Dehlon, Ludhiana on 20.06.2011 and requested to sort out the problem regarding the tress passing by the accused persons in his agricultural land and requested for taking action against the accused persons. Thereafter, investigation of the present case conducted by ADCP-III Ludhiana

Sh.Jagdev Singh. He mentioned in his report that after hearing both the parties, he came to know that khasra no. 537/1 is in the name of Bhalwant Singh, and he has been in possession of khasra number of the above said property as is clearly mentioned in the jamabandi for the year 2006-07, which was prepared at the time of partition on 27.01.2010 and copy of the same is already on the judicial file, but now Avtar Singh, Hari Singh and Jaswant Singh are in possession of the said property of khasra number 537/1. Prior to that, Shri Naveen Singla IPS visited the spot and made rapat no. 10 on 21.04.2011 and as per report of ADCP-III Ludhiana and rapat no.10 dated 21.04.2011, Commissioner of Police Ludhiana wrote letter to DA Legal for opinion. Thereafter, present case was registered against the accused Hari Singh, Jaswant Singh and Avtar Singh. Investigation was carried out. During investigation, statements of witnesses under Section 161 Cr.PC were recorded. The accused were arrested. After completion of the investigation, challan under Sections 447, 34 IPC was presented against the accused persons.

3. Upon the appearance of the appellants, copies of final report and other documents were supplied to them.

4. Finding a prima facie case for the offence punishable under Sections 447 read with Section 34 of The Indian Penal Code, the accused were charge sheeted by the learned Trial Court, to which, they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined PW1 Resham Pal Singh, Patwari Dehlon, Ludhiana, PW2 Bhalwant Singh complainant, PW3 Navdeep Singh, Record Clerk, Judicial Record Room, Civil Court Ludhiana, PW4 Rajinder Pal Singh, Patwari, Assi Kalan District Ludhiana,

PW5 Amrik Singh, Clerk, Record Room, DC Office Ludhiana, PW6 Harnek Singh and PW7 Harbans Singh. Thereafter, the evidence of the prosecution was closed by order.

6. When examined under Section 313 of the Code of Criminal Procedure, the accused denied all the circumstances appearing against them in the prosecution evidence and pleaded false implication and innocence. They further stated that they have not committed any offence. They have been cultivating joint property since long and the complainant lodged a false complaint with an intention to grab their property.

7. In defence, learned counsel for the accused tendered into evidence copies of sale deeds as Ex.PA to Ex.PC and later closed the defence evidence.

8. After hearing the arguments of the prosecution and the defence and considering the above discussed prosecution evidence, learned Trial Court acquitted all the accused of the charges framed against them, vide judgment dated 08.03.2018.

9. Feeling aggrieved, the appellant/complainant preferred the present Criminal Appeal challenging impugned judgment dated 08.03.2018.

10. I have heard arguments advanced by learned counsel for the appellant as well as learned defence counsel for the respondents and have gone through the judgment of Trial court and record of learned Trial Court.

11. Learned counsel for the appellant submitted that the order of acquittal of the accused/respondents passed by the learned Trial Court is wrong, illegal and perverse. Learned Trial Court erred in deciding the issue of possession and overlooked the documentary evidence. The decision of learned Trial Court is based on surmises and conjectures. Learned Trial

Court failed to consider the fact that the accused have not taken any specific plea in statement recorded under Section 313 Cr.P.C. nor they denied their presence at the relevant time on the site. The accused failed to adduce any defence evidence in support of their case.

12. Contesting the arguments, learned Addl.P.P. for the state and learned counsel for the accused/respondents submitted that the order of acquittal of accused passed by the learned Trial Court is perfectly legal and valid, which was passed after correct appreciation of evidence of the parties. The prosecution failed to adduce any cogent and convincing evidence to prove its version that complainant Bhalwant Singh has been in possession over khasra No.537/1 as per Jamabandi for the year 2006-07, which was prepared at the time of partition.

13. After hearing the rival contentions of the parties and perusing the evidence with their valuable assistance, I am of the considered opinion that the contentions advanced by the learned counsel for the appellant are devoid of any merit. The only dispute which abegs adjudication in the present case is whether the complainant has been in exclusive possession over khasra No.537/1 or the same has been in possession of the accused. Version of prosecution is that the accused persons committed the offence of criminal trespass in Khasra No.537 belonging to the complainant and took the possession of the same forcibly in the year 2010. To prove its version, prosecution examined complainant Bhalwant Singh as PW2, Resham Pal Singh Patwari as PW2, Rajinder Pal Singh Patwari as PW3, Harnek Singh, Lumbardar as PW6 and Harbans Singh, co- villager of the complainant as PW7. PW2 Bhalwant Singh deposed on the lines of case of the prosecution and testified that his father had solemnized three marriages. All the brothers

entered into compromise with his father in the year 1971-72 and thereby became joint owners of the land measuring 18 acres at Village Assi Kalan. His mother has been looking after the property till June, 2006. Thereafter, his brother Tarlochan Singh was taking care of the joint property. One oral partition took place between the parties in the month of July, 2009 and in pursuance of which, one partition suit was filed before the revenue authorities and the revenue authorities executed the said oral partition on 27.01.2010 and partition was effected as per the possession of each legal heir.

14. The complainant further stated that the accused party started interfering in his possession, due to which, he has to file civil suit seeking perpetual injunction. But the accused did not resist from their act and conduct despite passing of injunction order Ex.PW2/A and started interfering in his possession, due to which, he was compelled to move complaint Ex.PW2/B to the police regarding trespass by the accused. He further submitted that the accused interfered in his peaceful possession over the disputed property. Prosecution examined PW7 Harbans Singh, who is the owner of land bearing Khasra No.538/1,2 and 3 and Khasra No.537 adjoining to the disputed land, which is being cultivated by Hari Singh, Jaswant Singh and Avtar Singh adjoining to the land of respondents/accused Hari Singh, Jaswant Singh and Avtar Singh. He went to the extent of saying that the said property has been in possession of Hari Singh and others. He also stated that he used to cultivate said land on lease. He also stated that he used to pay the lease amount to Jaswant Singh during the lifetime of Kartar Kaur wife of Sarvan Singh. Prior to that, he used to pay the lease amount to Kartar Kaur. He also conceded that Jaswant Singh has not been cultivating

the land. He further stated in unequivocal terms that Bhalwant Singh has never been in possession over any part of the property. Rather in the next breath, he stated clearly that Balwant Singh and Tarlochan Singh have not been in possession over any part of the land. PW1 Resham Pal Singh, Patwari merely proved the jamabandi for the year 2006-07 pertaining to khasra No.537/1 having area of 4B-12B-16B vide Ex.PA. PW4 Rajinder Pal Singh, Patwari proved the certified copy of mutation of the disputed property in the name of Bhalwant Singh vide Ex.PW4/A, certified copy of Girdawari for the year 2012-13 pertaining to khasra No.537/1 vide Ex.PW4/B in his deposition. However, he conceded in his cross examination that he was not Patwari, when mutation Ex.PW4/A was entered or sanctioned. He also feigned ignorance regarding the delivery of possession as per the partition. Moreover, perusal of jamabandi for the year 2006-07 reveals that the appellant and the respondents are depicted as co-owners in possession over the disputed property bearing khasra No.537 in the jamabandi for the year 2006-07 Ex.PA. Even perusal of khasra Girdwaries for the year 2007 to 2012 also goes to prove that appellant and respondents are depicted in joint possession being co-owners/co-sharers.

15. Having regards to my discussion above, it is held that the prosecution miserably failed to prove the exclusive possession of complainant Bhalwant Singh over khasra No.537/1. From the documentary evidence adduced on the file, it transpires that the appellant and respondents are depicted as co-owners/co-sharers in the disputed property in the revenue records. Thus, oral testimony of the prosecution has no meanings in the eyes of law, when the complainant and the accused are shown to be in joint possession over the disputed property as co- owners/co-sharers. Moreover,

the onus was on the prosecution to prove the criminal trespass committed by the accused persons in the disputed property. If version of the prosecution that the complainant was delivered possession of khasra No.537 in the partition proceedings by the revenue authorities. However, perusal of testimony of PW2 reveals that he failed to utter a single word in his deposition as to when the accused tried to dispossess the complainant from the disputed property in connivance with other co-accused and took possession of the disputed property forcibly and thus, committed the offence of criminal trespass. Rather, complainant merely alleged in his deposition that the accused persons interfered in his peaceful possession over the disputed property. From the cross examination of PW2 and PW7, it transpires that the complainant has never been in exclusive possession over the disputed property. As per the prosecution version, order of partition of joint land was executed on 25.11.2010 by the revenue authorities. It was incumbent on the prosecution to prove the possession of complainant Bhalwant Singh before and after 25.11.2010. No doubt in the jamabandi for the year 2006-07 Ex.PA, one report No.169 is incorporated regarding the implementation of partition order between the parties. It is also mentioned in the said report that possession of khasra No.537/1 was already with Bhalwant Singh, due to which, only symbolic possession of the said property was delivered to him. From the said report, it transpires that the complainant was already in possession over khasra No.537/1 being co-sharer. However, the prosecution failed to adduce any worthwhile evidence to prove the possession of complainant prior to 2010. Ex.DZ khasra girdawari of khasra No.537/1 from the years 2007 to 2012 goes to falsify the version of the prosecution as Kalyan Singh, Bhalwant Singh, Tarlochan

Singh, Jaswant Singh, Hari Singh and Jagjit Singh are depicted in joint possession of khasra No.537/1. When the complainant was not shown in exclusive possession over khasra No.537/1 prior to 2010, therefore, report No.169 cannot be believed regarding the exclusive possession of the complainant over Khasra No.537/1 prior to the implementation of order of partition. Though, the prosecution has placed on the file khasra girdawari for the year 2012-13 Ex.PW4/B, where the complainant is shown to be in exclusive possession over the disputed property. But the said girdawari pertains to the period after the occurrence. Therefore, it is held that the prosecution has miserably failed to prove that the complainant was in exclusive possession over the disputed property prior to 2010. Rather from the oral and documentary evidence, it stands proved that the complainant and the accused have been in joint possession over the disputed property bearing khasra No.537/1 as depicted in khasra girdawari for the years 2007 to 2012 Ex.DX. When the complainant has miserably failed to prove his exclusive possession over the disputed property, therefore the question of commission of offence of criminal trespass by the accused over the said property does not arise.

16. In view of the above discussion, it is held that learned Trial Court correctly and legally acquitted the accused. There is no merit in this appeal and hence, the same is dismissed. Trial Court record be sent back along with the copy of this judgment forthwith. Appeal file be consigned to the Record Room.

Pronounced in the open Court
on 13.02.2024

Sanjiv Joshi
Addl. Sessions Judge,
Ludhiana.
UID No.PB0105