

Anil Kumar Jain and anr. Vs. Paritosh Jain and anr.

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Court : Delhi

Decided On : Sep-11-2013

Judge : S. P. Garg

Appellant : Anil Kumar Jain and anr.

Respondent : Paritosh Jain and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

9. h JULY, 2013 DECIDED ON :

11. h SEPTEMBER, 2013 + CRL.M.C. 558/2013 & CrI.M.A.No.1825/2013 ANIL KUMAR JAIN & ANR. Through : Petitioners Mr.Atul Y.Chitale, Sr.Advocate with Mr.M.S.Rohilla and Mr.Karan Kanwal, Advocates. versus PARITOSH JAIN & ANR. Through : Respondents Mr.R.K.Jain, Advocate with Mr.P.R.Chopra and Mr.Ankur Jain, Advocates for respondent No.1. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Present petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C. has been preferred by the petitioners to set aside a order dated 10.09.2012 of learned Metropolitan Magistrate whereby they were summoned to face proceedings for commission of offence punishable under Section 448 IPC. I have heard the learned counsel for the parties and have examined the record. The petitioners and respondent No.1 are brothers. Property bearing No. A-60,

Gulmohar Park, New Delhi belonged to their father Paras Dass Jain who expired on 30.09.2007. The brothers are claiming share in the said property. Petitioners case is that Paras Dass Jain executed a Will dated 24.07.2006 in their favour and respondent No.1 was disinherited from the property due to his conduct and behavior. The respondent No.1 who was earlier in possession of the second floor of the property in question had left to stay in C-77, Lajpat Nagar, New Delhi. He intended to forcibly take possession of the second floor after the death of their father and the petitioners filed a suit for Permanent Injunction which is pending before the Civil Court. Section 441 IPC is not attracted as the petitioners were owner of the property. Respondents claim is that second floor of the property in question was in his exclusive possession and the petitioners took its possession forcibly and set up a forged Will.

2. Record reveals that complaint case under Section 420/468/471/448/506/380/120 B IPC read with Section 156(3) and 190 Cr.P.C. was lodged by respondent No.1 against the petitioners, L.L.Acha & Surender Kumar Jain. On receiving the complaint, the Metropolitan Magistrate decided to hold an enquiry into the complaint himself and recorded evidence. After hearing arguments and considering the evidence, he by his order dated 10.09.2012 directed process to be issued only against the present petitioners for committing offence under Section 448 IPC. The Metropolitan Magistrate gave cogent reasons for holding that there were sufficient grounds for proceeding against the petitioners. He took into consideration various documents i.e. Ex.CW-1/E (letter written to National Stock Exchange by Paras Dass Jain confirming his possession); Ex.CW-1/F (copy of ICICI Bank letter along with copy of cheque at the address of premises at Gulmohar Park); Ex.CW-1/G (certified copy of membership of Sports Community Center); Ex.CW-1/I (Jain Co-operative Bank confirming the address) besides complaint Ex.CW-1/B lodged by his deceased father. The petitioners have not challenged the genuineness and authenticity of the said documents. The Trial Court also took into consideration the report of the Local Commissioner in Civil Suit filed by the petitioners. The petitioners are not categorical as to on which specific date the respondent No.1 vacated the second floor which was earlier in his exclusive possession. The impugned order issuing process against the petitioners is a very well reasoned one which took into

consideration the allegations in the complaint as also the evidence adduced in support of it. The Metropolitan Magistrate clearly applied his mind and analyzed the evidence minutely. It is not a case where he had passed an order issuing process in a mechanical manner or just by way of routine. The fact that the petitioners were not summoned for committing offence under Section 468/471/506 IPC and no process was ordered to be issued against L.L.Acha and Surender Kumarn Jain reflects that there was application of mind.

3. Section 441 and succeeding provisions are intended to protect possession as distinguished from title or ownership of the property. Title or right of ownership can be decided only by a competent Civil Court. Even a joint owner of land who enters upon the land with the intention and knowledge of doing a wrongful act commits criminal trespass. A joint owner of the property is entitled to have joint possession restored to him in a Civil Court; but he is not justified in taking the law into his own hands to recover possession. If he does so, he is *prima facie*, liable for criminal trespass. Intention to insult or annoy can be inferred when an individual forcibly or clandestinely enters a house which he knew to have been definitely closed and barred against him by the owner / occupier thereof. Such an intention is inherent in the acts of the individual as to form an essential part of the purpose with which entry into the house was effected. It is a legal preposition of law that scope of inquiry under Section 202 Cr.P.C. is extremely limited - limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint on the materials placed by the complaint before the Court in order to determine the question of the issue of process. The Section does not say that a regular trial in adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. In the instant case, the complicated question of ownership of the property in question on the basis of Will, which is disputed by the complainant being forged, cannot be taken into consideration at this stage.

4. In the light of above discussion, the petition is unmerited and is dismissed. It is however made clear that observations in the impugned order and this order shall have no impact on the merits of the case. Pending application also stands

disposed of being infructuous. (S.P.GARG) JUDGE September 11, 2013 tr

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