Jaddan and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/471705

Court : Allahabad

Decided On : Sep-25-1972

Reported in : 1973CriLJ490

Judge : P.N. Bakshi, J.

Appellant : Jaddan and ors.

Respondent : State

Judgement :
ORDER

P.N. Bakshi, J.

1. Jaddan Maddan Kallu and Bhagwati have been convicted by the 1st Class Magistrate. Mainpuri under Section 451 I.P.C. and sentenced to R.I. for six months. On appeal the III Temporary Civil and Sessions Judge has upheld the conviction and confirmed the sentence passed on the accused. The applicants have now come up to the Court in revision.

2. The case for the prosecution is that Multan and his brother Ghaffar (died subsequently) were in possession and in occupation of a house situated in village Dhanrajpur police station Kuraauli district Mainpuri since the time of their ancestors. Smt. Akhtari W/o Ghaffar along with her children is alleged to be living in the said house, at the time of the occurrence. It is the case for the prosecution

that on 3.3.1968 at about 2 p.m. the accused entered the disputed house when Ghaffar was away in Mainpuri. They ejected Multan and Smt. Akhtari and her children after giving them a beating and throwing out their articles. Ashia Ali. Ant Ram and Bishun Dayal reached the spot. The accused told them that they had purchased the house. It is said that Multan thereafter went to the police station to lodge a report but the report was not taken down. On 5.3.1968 Ghaffar submitted an application Ex. I to the Superintendent of police Mainpuri who directed the police of Karauli to enquire and submit a report. Investigation was conducted and the accused were charge-sheeted. The defence of the accused was that Multan and Ghaffar wanted to purchase the Khandar (house) in question for Rs. 2.000/- but because the accused purchased it from the owners for Rs. 2500/- therefore a false case has been started against them.

3. The Prosecution in support of its case examined Multan (P.W.

1) Ashia Ali (P.W.

2) Ant Ram (P.W.

3) Bishun Dayal (P.W.

4) and H.C. Ram Singh (P.W.

5) Ant Ram and Bishun Dayal turned hostile and did not say a word about the occurrence except that both of them stated that they had seen the articles of the house of Abdul Ghaffar outside the house and that the disputed house was a Khandar since lone. Ant Ram further stated that at the time of occurrence nobody was living in the Khandar as it was not habitable. The accused in support of his case' produced Vipin Behari Lal (D.W.

1) as an attesting witness of the sale deed dated 5.3.1968 alleged to have been executed by Suresh Chandra and others in favour, of Jaddan applicant. Kishan Lal (P.W.

2) Chairman of the Town Area Committee has also been produced in defence to state that the disputed house was a khandar and uninhabitable and none was

living in it prior to the execution of the sale deed. The Magistrate relying upon the testimony of Multan and Ashia Ali held that the accused had raised the house of Ghaffar thrown his articles out of the house, and taken possession thereof after ejecting Multan and his brother's wife and children. He found the act of the accused culpable under Section 451 I.P.C. In appeal the Sessions Judge has discarded the prosecution case to the effect that injuries were caused to the children. He has held that it has not been proved that the children of Ghaffar were beaten. The Sessions Judge has also held that the allegations regarding the taking away by the accused of silver chain and cash were exaggerated. The Sessions Judge has further discarded the plea of the accused that they elected Multan and others in the exercise of their bona fide right or claim to the property in question. He has pointed out that as the occurrence had taken place on 3.3.1968 while the sale deed which is said to form the basis of title of the accused-applicants was executed on 5.3.1968; hence the accused could not have a bona fide claim to the Property in question on the date of occurrence.

4. I have heard counsel for the parties and have also perused the record of the case. To my mind the sole question for determination in this case is as to whether the constructions in dispute could be deemed to be a building within the meaning of Section 442 I.P.C. Section 451 I.P.C. makes an offence of house trespass punishable. Section 442 I.P.C. runs as follows:

Whoever commits criminal trespass by entering into or remaining in any building tent or vessel used as human dwelling or any building used as a place for worship is said to commit house trespass.

In the facts of the Present case, we have to determine as to whether the construction which is said to be in the possession of Multan and his sister-in-law was a building within the meaning of this Section. From a perusal of the statements of the witnesses, it is evident, that the house which is the bone of contention was in a dilapidated condition. The Sessions Judge himself has observed that from the sworn testimony of Multan (P.W. 1) it was well established that the entire house was dilapidated except its Dehlij shown by No. 1 in the site plan. The Investigating Officer found the children of Multan and Ghaffar living in

the Dehlij. The statement of Ant Ram and Kishan Lai (D.W. 2) was that the house in question was uninhabitable. Kishan Lal (D.W. 2) has referred to the disputed house as a Khandar. From all this evidence it cannot but be accepted that the said house had fallen in ruins and could therefore, be properly described as a Khandar. The question however, which remains is whether the Dehlij alone can be said to be a building within the meaning of Section 442 I.P.C.

5. I have consulted the New Hindustani English Dictionary which described Dehlij as a 'threshold.' I have also examined the definition of the word 'building' as laid down in Lewis Stroud Judicial Dictionary. According to the said dictionary 'building' in its ordinary and usual meaning is a block of bricks or stone work covered in by a roof (refer to judgment of Lord Esher M.R. in Moir v. Williams (1892) 1 Q.B. 264. The masonry on the sides of the canal is not sufficient to constitute it a building. The consensus of opinion seems to be that only that structure can be said to be a building which has sot walls and a covered roof and is used as living accommodation. As such Dehlij by itself, to my mind, indicates nothing more than an entrance into a building and it cannot be regarded as the building itself. At the most it can be said that it is an entrance which leads to ingress and egress from the building itself, but it certainly will not constitute a building within the definition of the term as required by Section 442 I.P.C. mentioned above. The constructions in question are dilapidated. They are in ruins. If somebody takes shelter in the Dehlij which is still standing even though the rest of the constructions have completely fallen down such an act of habitation would not change the character e the Dehlij so as to make it a building within the meaning of the aforesaid section.

6. In view of the opinion expressed by me above, it is not possible to hold that merely because Multan and Smt. Akhtari or her children had made the Dehlij a part of their abode they would be deemed to be inhabiting a building. Having regard to the definition of the house, trespass as laid down in Section 442 I.P.C. in my opinion, the accused Cannot be said to have committed an offence under that section.

7. It is urged on behalf of the State that even though an offence under Section 442 I.P.C. may not be made out yet the accused could be convicted for an offence of

mischief under Section 425 I.P.C. in view of the findings of the courts below that they threw away the articles belonging to the complainant. Counsel for the applicants Points out that for the commission of an offence under Section 425 I.P.C. it is necessary to prove that there was wrongful loss or damage to the property in question. He submits that unless it is proved that the property was destroyed or underwent such a change that it diminished the utility or value of the property no offence under Section 425 I.P.C. could be held to have been committed. I am inclined to accept this submission.

8. The result, therefore, is that this application in revision is allowed. Conviction and sentence imposed on the applicants are set aside. The applicants are on bail they need not, surrender. The bail bonds are hereby discharged.