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iqbal Singh Vs. the State and anr.

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Court : Delhi

Decided On : Aug-11-1986

Reported in : 30(1986)DLT438

Judge : Jagdish Chandra, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 482

Appeal No. : Criminal Revision Appeal No. 143 of 1986

Appellant : iqbal Singh

Respondent : The State and anr.

Advocate for Pet/Ap. : Om Prakash,; G.S. Sharma and; Bipin Bihari Lal, Advs

Judgement :

Jagdish Chandra, J.

(1) By means of this revision petition brought by Iqbal Singh the impugned order dated 23rd June, 1986 passed by the learned Sub Divisional Magistrate, Shaldara. Delhi, is sought to be set aside The contesting parties in this case are Iqbal Singh petitioner on the one hand and Hari Kishan Lal respondent No. 2 on the other, The short question posed before the learned S.D.M. and now before this court is as to which party of the two is in possession of the plots in dispute bearing numbers 50 to 53 which form part of abadi known is Vishwas Nagar, Delhi, The learned S.D.M.

found the possession thereof in favor of respondent No. 2 Hari Kishan Lal and feeling aggrieved with the same the petitioner Iqbal Singh has come up in revision now.

(2) The Khasra Girdawari Ext. Pw 5/DB for the year 1980-81 shows the following three khasra numbers in possession of Smt. Shakuntala Devi wife of Hari Kishan Lal: (i) 2685/1772/807/2, (ii) 2685/1772/807/3 and (iii) 2686/1772/807.

(3) The Jamabandi Ext. Pw 5/D for the year 1960.61 shows the ownership of Umrao Singh who is the father of the petitioner to the extent of 1/4th share and the remaining under the ownership of Siri Ram Sarvaria & Sons Ltd. to the extent of 1/2 and Sin Ram Sarvaria and Sons (Pvt) Ltd. to the extent of l/4th regarding the following khasra numbers ; (i) 2685/1772/807 and (ii) 2686/1772/807. -440

(4) This very Jamabandi also shows the sanctioning of some of the mutations and those mutations are numbers 5797 and 5798 both sanctioned on 9th February, 1966 in favor of Smt. Shakuntala Devi wife of Hari Kishan Lal. These mutations further show that the land subject-matter thereof was sold in favor of one Smt. Shakuntala Devi widow of Mool Singh who in turn sold the same in favor of Smt. Shakuntala Devi wife of Hari Kishan Lal. The first of these two mutations further shows that plots number 51 and 52 were comprised in khasra numbers 2685/1772/807/2 (0-4 biswas) and 2685/ I772/807/3 (0-4 biswas) and these two smaller khasra numbers comprising both these plots were carved out of the bigger khasra number 2685/1772/807. Then the second mutation referred to above shows the carving of plot No. 53 comprised in khasra number 2686/1772/807/1 (0-4 biswas) out of bigger khasra number 2686/1772/807. The Jamabandi Ext. Pw 5/DA further shows in its column of cultivator Shri Ram Sarvaria as co-sharer seller in favor of Smt. Shakuntala Devi widow of Mool Singh and specifically mentions the possession of the purchaser i.e. Shakuntala Devi widow of Mool Singh. The aforesaid mutations are then indicative of the sales in favor of Smt. Shakuntala Devi wife of Hari Kishan Lal from Shakuntala Devi widow of Mool Singh on account of the cultivation of Smt. Shakuntala Devi widow of Mool Singh in the aforesaid three smaller carved khasra numbers which constitute plots in dispute namely 51 to 53.

(5) Regarding plot No. 50 in dispute there is in the revenue records no entry as in respect of the three plots in question namely 51 to 53. The learned counsel for respondent No. 2 has invited the attention of the court to the statement of Patwari PW6 Karori Mal of Shahdara wherein he slated that Smt. Shakuntala Devi wife of Hari Kishan Lal was shown as in possession of plots numbers 6/50 to 6/?. Admittedly, these are the plots in dispute. But in the absence of any revenue entry this statement of the Patwari cannot be relied upon as be is to depose only on the basis of the revenue entries. Then the learned counsel for respondent No. 2 invited tic attention of the court that this plot number 50 had been purchased by Smt Shakuntala Devi wife of Rari Kishan Lal on 12th January, 1973 as stater by Hari Kishan Lal himself as Pw 10. This also is not much satisfactory because the question is that of a definite plot braving been carved out of the land previously belonging to Shri Reed Sarvaria and then sold to Smt. Shakuntala Devi widow of Mool Singh and then sold to Smt. Shakuntala Devi wife of Hari Kishan Lal. Regarding this plot which is also part of khasra numbers 2685-86/1772/807/ the possession of the petitioner or his father Umrao Singh is rot shown anywhere in the revenue record PW5/DB or PW5/DA but on the other hand PW5/DB and PW5/DA show this part of the land in the cultivated possession first of Shri Ram Sarvaria and then in favor of the purchaser Smt. Shakuntala Devi widow of Mool Singh. Any how, it does not find itself in possession of Umrao Singh father of the petitioner nor with the petitioner and thus petitioner cannot have any claim over the same.

(6) In view of the aforesaid, the learned S.D.M. appears to have come to the correct conclusion regarding the question of possession and consequently there is no force in the revision petition Rom Sumar Puri Mahant v. State of U. P. and others, : AIR 1985 SC472 which speaks of dropping of the criminal proceedings in the face of a pending civil litigation wherein the question of possession is involved and has been adjudicated upon, is not attracted for the reason that the civil litigation has not beep adjudicated upon 441 as yet and that civil litigation is regarding the grant of permanent injunction which necessarily involves the to ownership.

(7) In view of the above discussion, the criminal revision petition fails and is dismissed.

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