
(1993) 08 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2962 of 1992

Nareadra Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145
Penal Code, 1860 (IPC) — Section 420, 467, 468, 506

Citation : (1994) 1 AWC 138 : (1993) 1 UPLBEC 347

Hon'ble Judges : Virendra Sara, J;N.L. Ganguly, J

Bench : Division Bench

Advocate : R.R. Pandey, for the Appellant; Surendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—This writ petition has been filed by Narendra Singh and two others for a writ of certiorari and direction for quashing of the FIR dated 12-4-1992 in case crime No. 102 of 1992, u/s 467, 468, 420 & 506 IPC, P.S. Dhata, District Fatehpur. The further relief claimed is a direction to the Respondents Police Authorities not to arrest the Petitioners on the basis of aforementioned FIR.

2. The Petitioners have annexed the copy of the FIR as Annexure 6 to the writ petition. The brief facts as disclosed in the F.I.R is that opposite-party Smt. Phulpatiya is the widow of one Chandra Pal Singh. He stated in the FIR that she is an old helpless lady. After the death of her husband she had started living with her "Jeth" (husband's elder brother Vijai Bahadur Singh) and "Dewars" (Husband's younger brothers Chhotelal Singh, Narendra Singh and Amritlal Singh) jointly as a member of a joint family. Three years before the date of lodging of the FIR there was a family partition and the land which had come in the shape of the opposite party Smt. Phulpatiya was given to her and she started living on basis of the yields of her land. It has been categorically stated that on

10-9-90 Narendra Singh S/o. Vijai Bahadur Singh obtained a fictitious sale deed registered in the name of his minor sons Praphul Kumar and Praveen Kumar by setting up some other woman as imposter in place of Smt. Phulpatiya. After getting the fictitious sale-deed registered stealthily, mutation of the names of minor sons Praphul Kumar and Praveen Kumar was also done. The complainant-informant, Smt. Phulpatiya stated in the FIR that neither she sold her land nor put any thumb-impression on any such sale-deed. The alleged sale deed is wholly fictitious and forged one. In the sale-deed Kanchan Singh. S/o the "Maama" (Maternal uncle) resident of "Mohanpur" P.S. Kakhori: Jagatpal Singh S/o Brijpal resident of Rampurwa, P.S. Dhata are shown to be witnesses in the sale-deed. Ramesh Singh Chauhan Advocate, Tehsil Khaga is said to have attested the signatures of the witnesses. In the course of enquiry Sri Jagatpal Singh stated before the Tehsildar that Smt. Phulpatiya had not executed any sale-deed, some imposter woman was made to sign and appear before the Registrar at the time of registration of the sale-deed. It is also stated in the FIR that the mutation of the name of the alleged purchasers Praphul Kumar and Praveen Kumar was also cancelled.

3. The complainant Smt. Phulpatiya stated that opposite-party Narendra Singh threatens her and also wants to harvest the crop of sugar-cane from her field by force. Narendra Singh himself wants to harvest the crop standing in the plots and he had been threatening the complainant and creating hurdles in getting the crops harvested from her own field. On basis of these allegations the case has been registered for investigation. The Petitioners approached this Court for quashing the FIR and other reliefs already mentioned in the fore-going paragraphs.

4. The Petitioners annexed the copy of the order dated 19-3-1991 as Annexure I to the writ petition showing that the names of the Petitioners have already been mutated. The contesting opposite party has filed a counter affidavit and order dated 4-2-1992 passed by the Tehsildar, Fatehpur showing that the entry of the names of alleged purchasers of the land in question (sic) ordered to be deleted. The order dated 19-3-1991 mutating the names of the purchasers was recalled and vacated. This fact that the mutation order obtained by opposite-parties have been recalled is not disputed by the Petitioners in their rejoinder affidavit.

5. The Petitioners pleaded that opposite party No. 3 filed a Civil Suit No. 176 of 1991 before the Civil Judge, Fatehpur for cancellation of the sale deed dated 10-9-1990. The Petitioners also filed a Suit No. 88 of 1992 (Praveen Kumar and others v. Dharamveer Singh and others) in the Court of Munsif Magistrate, Khaga, District Fatehpur for a permanent injunction with a specific prayer that the Defendant-Respondent be restrained from interfering with the peaceful possession of the Petitioners over the land in dispute. The interim injunction was refused by the Civil Court. In the matter of mutation the name of Praveen Kumar and another has been refused. Revision No. 49 of 1992 was preferred by the Petitioners before the Addl. District Judge (II), Fatehpur and interim order dated

30-4-1992 was passed restraining the Respondents not to interfere with the possession of the Petitioners.

6. It has been stated that the Civil Suit No. 176 of 1991 is still pending for final decision.

7. We have heard learned counsel for the Petitioners Sri R. K. Pandey and also the learned counsel for the Respondent No. 3 Sri Surendra Singh and perused the record.

8. Learned counsel for the Petitioners submitted firstly that the dispute between the parties is in fact a civil dispute which is drawing the attention of the Court in the Civil Suit mentioned above. Secondly it has been submitted that the perusal of the FIR clearly shows that the action taken by the Respondent No. 3 is malicious, mischievous and no criminal case is made out against the Petitioners. Thirdly it has been argued that the filing of the FIR and the subsequent investigation and proceedings which may take place is nothing but abuse of process of Court. The learned counsel for the Petitioners also cited *Ram Sumer Puri Mahant Vs. State of U.P. and Others*, This authority is for the proposition that when a Civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated initiation of a parallel criminal proceeding u/s 145 Code of Criminal Procedure would not be justified. The emphasis is that parallel proceedings should not be permitted to continue and in the event of decree of Civil Court the criminal Court should not be allowed to invoke its jurisdiction when possession is being examined by the Civil Court and parties are in a position to approach the Civil Court for interim order. As such injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is neither in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

9. We have given our thoughtful consideration to the facts as alleged in the F.LR- and pleadings of the parties. Controversy in the present case is wholly different from the factual and legal aspect of the case law cited by the learned counsel for the Petitioners. The perusal of the FIR clearly shows that there is a specific case of the complainant-informant that the Petitioner who got the sale-deed dated 10-9-1990 executed in the name of his minor sons was by setting up of an imposter in place of the complainant informant who got the fictitious and forged . sale-deed prepared and registered for the benefit of his own sons. The mutation proceedings were also stealthily taken. Perusal of Annexure 1 to the counter affidavit shows that in the mutation proceedings the necessary proclamation in the name of the co-tenure holders was also not issued by the Revenue Court. The mutation order dated 23-1-1992 thus was recalled by the Court of Teshildar, Khaga. The Petitioners had also filed an appeal before the Sub-Divisional Officer, Khaga for-recalling the order dated 15-2-1991 passed by the Tehsildar. The appeal was also dismissed by order dated 30-3-1992. A revision was also preferred before the Commissioner Allahabad Division, Allahabad, a copy of

which has also been annexed as Annexure 3 to the counter affidavit which shows that the petitioners' revision was also dismissed by Additional Commissioner (Administration), Allahabad.

10. The opposite-party No. 3 has categorically stated that in the Civil Suit she is not a party nor she was a party in the Revision No. 49 of 1992 before the Addl. District Judge (II), Fatehpur filed by the Petitioners on behalf of his minor sons refusing to grant injunction. The Petitioner cannot say that a Civil Suit is pending between the Petitioners and the Respondents.

11. A careful examination of the facts of the present case and the Supreme Court decision cited Supra also make it clear that in the present case it is not the dispute for possession over the land, but is for obtaining the forged and fictitious sale-deed by setting up an imposter by the Petitioners in place of the opposite-party No. 3, the complainant informant. The opposite-party if is successful in proving her case that the sale-deed alleged to have been executed in favour of Praveen Kumar and Praphul Kumar -- sons of Petitioner No. 1 was not executed by her and the alleged thumb impression on the sale-deed and Register of the Registry are proved to be of some other person, i.e. imposter, in that circumstances the co-Petitioner, who attested the signature of the same imposter as the signature of opposite party No. 3, would be criminally liable for conviction and sentence under cognizance of the Indian Penal Code. We are thus of the opinion that the Petitioners have no ease for interference under Article 226 of the Constitution. The petition is liable to be dismissed.

12. The writ petition is dismissed.

13. The interim order dated 23-10-1992 is vacated.