

(2012) 07 UK CK 0026

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 470 of 2007

Smt. Shashibala Srivastava and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2012) 2 NCC 832

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Advocate : Ramji Srivastava, for the Appellant; Vinod Sharma, D.A.G. (Crl.), for the Respondent No. 1 and Mr. M.C. Pandey assisted by Mr. Devesh Upreti and Mrs. Pooja Shah, Advocates, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Servesesh Kumar Gupta, J.—By means of this petition, moved u/s 482 Cr.P.C., the challenge is to the submission of chargesheet no. 44/2007 filed against all the petitioners, who were the accused for the offences u/s 420/ 467/ 468/ 471 IPC. They have been asked to stand trial for the said offences, by way of criminal case no. 1256 of 2007, State Vs. Shashibala Srivastava & others, pending in the court of Judicial Magistrate, Rudrapur, District U.S. Nagar and the prayer has also been made to quash the proceedings of the said criminal case. Having heard learned counsel for the parties, it transpires that the dispute pertains to a vast agricultural land, admeasuring 15 acres, situated in village Naranpur (Lohari, Tehsil Kichha, District U.S. Nagar). The said land was admittedly allotted by the government in favour of one Harish Chandra Lal Verma in lieu of his sacrifice contributed towards the nation as a freedom fighter. Mr. Verma was a government servant, posted as an accountant in Central Labour Department, and originally, hailed from District Gorakhpur, Uttar Pradesh. He did not have any son but only had a daughter, named, Shanti @ Pratibha Devi, who is the mother of

respondent no. 2 Rakesh Srivastava. As per the version of private respondent, his maternal grand father Harish Chandra Lal Verma executed a registered will on 19.6.1992 in the office of Sub-Registrar, Kichha, District U.S. Nagar, distributing the said agricultural land among his favourites, whereby five acres of land was allotted to his mother Shanti @ Pratibha Devi, five acres of land was allotted in favour of his cousin maternal uncle Shyama Charan Verma, while rest of the land was also distributed amongst other maternal cousin uncles, namely, Satya Charan Verma and Shailendra Kumar Srivastava. Mr. Harish Chandra Lal Verma breathed his last on 30.6.2004 in the Gorakhpur Medical College at the age of 100 years. Thus, as per the distribution of land in the said will, all his successors occupied the same and began to do agricultural work. When they all applied for mutation on their respective shares, as per the registered will, Smt. Shashi Bala Srivastava (daughter of cousin brother of Harish Chandra Lal Verma), R/o. village Pratapur, within the territorial jurisdiction of P.S. Kichha, filed her objections and claimed her own succession over the land on the ground of an alleged un-registered will dated 21.8.2003. As per the contents of that will, Smt. Shashi Bala Srivastava and Shanti Devi were allotted seven acres of land each. This Court has been apprised that still the mutation proceedings have not been finalized in the revenue courts and are still pending adjudication.

2. Feeling bewildered by the act of Shashi Bala Srivastava, respondent no. 2 (S/o. Shanti Devi) lodged an FIR on 31.7.2006 against all the petitioners, making allegation of preparation of the forged will by Shashi Bala Srivastava, with the aid and assistance of petitioner A.K. Srivastava (son-in-law of Shashi Bala Srivastava, who is a stamp vendor at Tehsil Headquarter Kichha), Naim Ansari and Ramadhir Lal (witnesses of the will). The investigation was conducted which culminated into the submission of a chargesheet under challenge.

3. It has been argued on behalf of petitioners that Shanti Devi and other so-called successors of the will dated 19.6.1992, filed a suit no. 54/2007 in the court of Civil Judge (S.D.) Rudrapur, U.S. Nagar, wherein the permanent injunction against Shashi Bala Srivastava, Om Prakash Srivastava and Vinay Kumar Srivastava was sought for restraining them not to interfere in the peaceful possession of Shanti Devi over the land, in question, nay the declaration of the alleged forged will dated 21.8.2003 as null and void. This suit was withdrawn just after four days of its filing, i.e. on 29.5.2007, on the ground that some mechanical defect had to be remedied, thus, the liberty was sought to file it afresh. Accordingly, the suit was permitted to be dismissed by learned Judge after granting the said liberty. In August, 2007, another suit bearing no. 82/2007 was filed, which was duly answered by defendants Shashi Bala Srivastava and others, by way of filing a written statement. This suit was dismissed by Civil Judge (S.D.) U.S. Nagar on 10.12.2008 on the ground of lack of jurisdiction. Learned Judge was of the view that a suit for injunction and declaration, on the agricultural land, could be entertained by the civil court u/s 9 of C.P.C. only when the mutation proceedings have been finalized and the name of plaintiff exists in the revenue record. Subsequently, Shanti Devi filed a revision no. 1/2009 against

the said judgment of dismissal which too was dismissed by the District Judge on 24.8.2009, thereby maintaining the findings of the civil court.

4. In the opinion of this Court, dismissal of civil suit, filed by Shanti Devi, has no bearing at all on the merits of the chargesheet because firstly, the said suit was not dismissed on merits but it was dismissed on the ground of lack of jurisdiction; secondly, to prosecute for a criminal offence, no way stunts the course of revenue or civil court while deciding the rights between the parties. It is an independent offence allegedly committed by the petitioners. It is pertinent to mention here that the registered will dated 19.6.1992, in favour of Shanti Devi and others, bears even the signature of Om Prakash Srivastava (husband of Shashi Bala Srivastava) and it has been on the record that Harish Chand Lal Verma was a very old man and had almost become infirm while he was a nonagenarian. For this reason, on 29.8.2002, even his bank account, for pensionary purposes, was converted to be an illiterate account since he was even unable to put his signatures for drawing his pension from the bank. Rather, he used to withdraw his pension from the treasury/bank by way of putting his thumb impression on the requisite papers. So, it was quite amazing as to how on 21.8.2003, he could execute such an unregistered will and that too, after traveling, all along, from Gorakhpur to Kichha. Besides, being a freedom fighter, he was issued a railway air-conditioned pass for traveling but he did not get the same renewed after 1995. It prima facie appears to be true that he used to reside at Gorakhpur under the care and supervision of his nephew Shyama Charan Verma, who happened to be a doctor. So, in view of what has been stated above, the Court feels that there is a force in the submission of chargesheet by the investigating officer against all the petitioners. This petition is devoid of any merit and liable to be dismissed. It is, accordingly, dismissed. Interim order dated 18.7.2007 passed by this Court is hereby vacated. Inform the court below to proceed ahead with the trial.