

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 10th OF JULY, 2024

CRIMINAL APPEAL No. 4772 of 2023

BRAHMANAND

Versus

ARUN BHIMAVAD AND OTHERS

Appearance:

***SHRI MANISH YADAV - ADVOCATE APPEARING THROUGH VIDEO
CONFERENCING ASSISTED BY SHRI ATUL K. SHUKLA - ADVOCATE
PRESENT IN PERSON FOR THE APPELLANT.***

SHRI SHAFIQULLAH - ADVOCATE FOR THE RESPONDENTS.

ORDER

Per: Vivek Agarwal, J.

This criminal appeal is received on transfer from the Indore Bench of this High Court. It is informed by Shri Manish Yadav, learned counsel for the appellant that matters pertaining to MP/MLAs are to be heard at the Principal Seat. On nomination, this case has been assigned to this Court.

2. This application for leave to appeal by appellant is filed being aggrieved of the judgment dated 28.01.2023 passed by the learned 22nd Additional Sessions Judge and Special Judge (M.P./M.L.A), Indore (M.P.), whereby in a private complaint which was filed by the complainant/appellant Brahmanand under Sections 420, 463, 464, 465, 467, 468, 471, 475 and 120-B read with Section 149 of IPC which was registered as criminal case No.1317/2012 (*Brahmanand Choudhary Vs. Arun Bhimavad and others*) and was committed by the Judicial Magistrate First Class, Shajapur vide order dated

03.12.2013, passed the judgment of acquittal in favour of the accused persons.

3. Shri Manish Yadav, learned counsel for the appellant submits that the appellant is owner of three plots contained in Survey No.97. They are measuring 1800 sq. feet, 2700 sq. feet and 2250 sq. feet, respectively. Allegation is that his plots are on the main Agra-Bombay road, whereas the accused persons whose land is situated 300 meters behind the land of the appellant/complainant, represented their land to be available on Agra-Bombay road and sold them in favour of other persons, causing loss to the present appellant.

4. It is submitted that this act of the accused persons constitute an offence under Sections 420, 463, 464, 465, 467, 468, 471, 475, 120-B read with Section 149 of IPC and, therefore, the trial Court erred in recording a finding in para 70 of the judgment to the effect that the boundaries of the plots which were sold by the accused persons, have been wrongly mentioned but, after recording such finding, it erred in holding that merely mentioning of incorrect boundaries of the property sold, will not amount to fabrication of documents and the nature of the case is civil and thus, wrongly placing reliance on the judgment of Hon'ble Supreme Court in **Mohammed Ibrahim and others Vs. State of Bihar and another, (2009) 8 SCC 751**, has dismissed the case.

5. Shri Shafiqullah, learned counsel for the respondents, in his turn, supports the impugned judgment.

6. When this Court wanted to know from Shri Manish Yadav as to when Naksha Tarmeem had taken place i.e. correction of revenue map was applied for and when had it taken place, he places reliance on Ex.D-31 and Ex.P-30, which are in fact the maps enclosed with the sale-deed and not an entry by the revenue authorities. Though Shri Manish Yadav submits that Patwari was

examined and he has admitted that the boundaries of the lands which were sold by the accused persons are inappropriate, but Shri Manish Yadav could not satisfy this Court that after Naksha Tarmeem, position of each of the Sub divisions of Khasra No.97, which was sold in favour of multiple persons, was brought on record and the boundaries of each of the plots were clarified so that each of the parties aggrieved could have sought removal of encroachment of the other party, if there was any such encroachment on account of execution of sale-deeds.

7. Thus, it is evident that the trial Court has erred in recording a finding that the boundaries in the sale-deeds which are subject matter of dispute, have been wrongly mentioned because that finding could not have been recorded without there being evidence of correction of revenue map and demarcation of individual plot holder's land, coupled with recording of finding as to which party has encroached upon land of which party and what is the extent of encroachment. That would have also clarified as to whether the boundaries of the property sold were wrongly marked or not?

8. Thus, when all these aspects are taken into consideration, then in the light of the judgment of Hon'ble Supreme Court in **Mohammed Ibrahim** (supra), this Court is of the opinion that appellant Brahmanand is trying to convert a pure civil dispute into a criminal case, which has rightly not been accepted by the trial Court. There is no error apparent in the judgment of the trial Court, calling for interference.

9. In view of above, leave to appeal under Section 378 (4) of the Cr.PC. is not granted and, therefore, appeal fails and is dismissed. Parties to bear their own costs.

(VIVEK AGARWAL)
JUDGE

4

CRA-4772-2023
(DEVNARAYAN MISHRA)
JUDGE

pp

