

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.798 and 804 of 2014

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COMMON ORDER:

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These two Revisions are filed under Section 115 C.P.C. challenging the orders dt.22-11-2013 in I.A.No.145 of 2009 and I.A.No.144 of 2009 respectively in O.S.No.39 of 2003 of the
IX Additional Chief Judge, City Civil Court, Hyderabad.

2. The petitioners herein are plaintiff Nos.4 to 6 in the said suit.

3. The suit was filed by petitioners and respondent Nos.2 to 4 (plaintiff Nos.1 to 3) against 1st respondent herein for specific performance of an oral agreement dt.05-10-1999 in respect of 1173 sq. yds., of land in plot No.171, Road No.13, Jubilee Hills, Hyderabad.

4. The petitioners and respondent Nos.2 to 4 filed I.A.No.368 of 2003 in the said suit restraining the 1st respondent from alienating the suit schedule property. They also filed I.A.No.369 of 2003 for a temporary injunction restraining the 1st respondent from interfering with their possession and enjoyment of the suit schedule property.

5. On 28-08-2003, both the I.As. were allowed. This

was confirmed by common order dt.09-02-2004 in C.M.A.Nos.3772 and 3773 of 2003 by this Court.

6. In these proceedings, the petitioners as well as respondent Nos.2 to 4 were represented by Sri Shamsunder Murthy, Advocate.

7. The said Advocate filed I.A.No.167 of 2007 seeking permission of the Court to withdraw his vakalat insofar as petitioners are concerned. That application was allowed on 11-10-2007 and the said Advocate's vakalat, as far as petitioners are concerned, stood revoked. Respondent Nos.2 to 4, however, engaged another Advocate by name Sri Mohan Rao, who continued to represent respondent Nos. 2 to 4.

8. On 17-08-2009, the 1st respondent executed two registered sale deeds being Doc.Nos.2437 of 2009 and 2438 and 2009 in favour of respondent Nos.2 to 4 apart from an agreement of sale-cum-General Power of Attorney in favour of respondent Nos.2 and 3. These documents were executed in respect of portions of the suit schedule property and were clearly in violation of the order dt.28-08-2003 in I.A.No.368 of 2003, which was confirmed by this Court in the order dt.09-02-2004 in C.M.A.No.3773 of 2003.

9. On the next day, the said suit was dismissed for

default since the petitioners were not represented by any counsel and respondent Nos.2 to 4 were represented by Sri Mohan Rao, Advocate.

10. Thereafter petitioners filed I.A.No.143 of 2009 for setting aside the order dt.18-08-2009 dismissing the suit for default, I.A.No.144 of 2009 for punishing respondent Nos.2 to 4 and their father for breach of the injunction order, and I.A.No.145 of 2009 for canceling the sale deeds and G.P.A. dt.17-08-2009, which were executed in violation of the orders granted in I.A.No.368 of 2003.

11. I.A.No.143 of 2009 was dismissed on 18-11-2013 by the Court below. This was questioned in C.M.A.No.358 of 2015.

12. The Court below also dismissed I.A.No.144 of 2009 and I.A.No.145 of 2009 on 22-11-2003 on the ground that it had already dismissed I.A.No.143 of 2009.

13. Challenging the same, these Revisions have been filed.

14. It is also pertinent to note that the sole defendant/1st respondent herein died on 31-07-2012 and the Court below, in exercise of the power of the Court under Order XXII Rule 4-A C.P.C., appointed an Advocate by name Sri Maniklal Yadav to represent her interest in the suit since the deceased had no legal heirs.

15. I am informed that the arguments in C.M.A.No.358 of 2015 have already been heard and orders therein are reserved.

16. Be that as it may, the question for consideration is whether respondent Nos.2 to 4 and their father can be punished for obtaining the above documents from 1st respondent/sole defendant on 17-08-2009, at which point of time the suit was pending, and there was a subsisting order restraining 1st respondent from alienating the suit schedule property in I.A.No.368 of 2003? Also it is to be seen whether the sale deeds and G.P.A. dt.17-08-2009 executed by 1st respondent in favour of respondent Nos.2 to 4 can be allowed to stand.

17. Learned counsel for petitioners contended that the order granting temporary injunction passed in I.A.No.368 of 2003 on 28-08-2003 restrained no doubt the 1st respondent from alienating the suit schedule property and since respondent Nos.2 to 4, in collusion with 1st respondent, obtained three documents dt.17-08-2009 bearing Doc.Nos.2437, 2438 and 2439 of 2009, the 1st respondent was clearly in contempt; and since she has received the benefit under the documents, her estate cannot keep the fruits of her contempt even if she is not

alive. In fact, he would contend that respondent Nos.2 to 4 and their father should be held liable under Order XXXIX Rule 2-A C.P.C. and punished for contempt. He placed reliance on the judgment of the Supreme Court in **Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and another**^[1] wherein the Supreme Court had held that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt.

18. The learned counsel for respondent Nos.2 to 4, on the other hand, contended that respondent Nos.2 to 4 cannot be punished for violation of the temporary injunction granted in I.A.No.368 of 2003 since respondent Nos.2 to 4 at that point of time were minors; the orders passed in I.A.No.368 of 2003 operated only as a restraint on

1st respondent from alienating the property and cannot operate preventing respondent Nos.2 to 4 from obtaining a sale deed. In any event, he contended that the documents bearing Nos.2437, 2438 and 2439 of 2009 executed on 17-08-2009 in favour of respondent Nos.2 to 4 by 1st respondent cannot be set aside by applying the principle laid down in **Delhi Development Authority** (1 supra) particularly because 1st respondent is no more; she had received consideration under the above documents; and it may be difficult to recover since she

has no legal heirs.

19. I have noted the submissions on both sides.

20. There is no dispute that on 28-08-2003 in I.A.No.368 of 2003, there was an order passed by the IX Additional Chief Judge, City Civil Court, Hyderabad in O.S.No.39 of 2003 restraining the

1st respondent from alienating the suit schedule property.

On

17-08-2009, 1st respondent executed two sale deeds and one G.P.A.-cum-agreement of sale bearing Doc.Nos.2437, 2438 and 2439 of 2009 in favour of respondent Nos.2 to 4 covering the entire suit schedule property of 1173 sq. yds. It cannot be disputed that on this date, the order of injunction granted on 28-08-2003 by trial Court, which had been confirmed by this Court in C.M.A.No.3773 of 2003 vide order dt.09-02-2004 was subsisting. In defiance of the said order, which is binding on the deceased 1st respondent, she executed these three documents in favour of respondent Nos.2 to 4, who were equally aware of the said order. Merely because petitioners had not been represented at that point of time by any counsel, it was not proper for 1st respondent to clandestinely execute these documents in favour of respondent Nos.2 to 4 and it was also not proper for the guardian of respondent Nos.2 to 4 to obtain these

documents behind the back of petitioners.

21. For this conduct, 1st respondent would have been undoubtedly punished for contempt, but for the fact that she died on 31-07-2012.

22. However, this does not mean that the documents executed by her can be allowed to stand. The principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of contempt, is well settled. The Supreme Court in **Delhi Development Authority** (1 supra) held that where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the Court is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. It declared that this salutary rule has to be applied and given effect to by it, if necessary, by overruling any procedural or other technical objections, and that the Court must ensure full justice between the parties before it. Although the Supreme Court traced this power to Article 129 of the Constitution of India, since similar power is vested in this Court under Article 215 of the Constitution of India, I am of the opinion that the sale deeds and G.P.A. executed by 1st respondent in violation of the order of temporary

injunction granted on 28-08-2003 in I.A.No.368 of 2003 cannot be allowed to stand, and that it is the duty of this Court to set them aside.

23. Therefore, C.R.P.No.798 of 2014 is accordingly allowed, and the order dt.22-11-2013 in I.A.No.145 of 2009 in O.S.No.39 of 2003 is set aside and said I.A. is also allowed. No costs.

24. Coming to C.R.P.No.804 of 2014, since primarily the order dt.28-08-2003 passed in I.A.No.368 of 2003 prohibited the

1st respondent from alienating the property, and there was no specific prohibition restraining respondent Nos.2 to 4 from purchasing the property, although such conduct on the part of respondent Nos.2 to 4 cannot be said to be *bonafide*, I am of the view that they cannot be punished under the Contempt of Courts Act, 1971 for violation of the said order.

25. Therefore, C.R.P.No.804 of 2014 is dismissed. No costs.

26. As a sequel, miscellaneous petitions pending if any, in these Revisions, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-09-2015

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[\[1\]](#) (1996) 4 SCC 622