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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.173/2014
IN
SECOND APPEAL NO. 322 OF 2013

Shaikh Abdul Razzak s/o Shaikh Ahmed

PETITIONER

VERSUS

Shaikh Yunus s/o Shaikh Ahmed and Others

RESPONDENTS

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Mr. R. L. Kute h/f Mr. V. R. Dhorde, Advocate for the petitioner
Mr. Hemant Surve, Advocate for respondents No.4 and 5

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 28th SEPTEMBER, 2016

ORDER :

1. This contempt petition has been moved in respect of an order dated 13th December, 2013, whereunder parties to the proceedings in second appeal No.322 of 2013 and civil application No.8359 of 2013, in which order of injunction in terms of prayer clause "C" had been passed, did not include present respondents No. 4 and 5.

2. It is contended by Mr. Kute, learned advocate appearing for the contempt petitioners that a suit instituted by predecessors in title of respondents No.4 and 5, for possession had been decreed and an appeal carried therefrom by present contempt petitioners

to district court had been dismissed under order dated 28th January, 2013. The position emerges that it was the defendants, against whom the decree was sought, had been in possession. He further contends that pursuant to said decree, the revenue authorities have very carefully taken entries taking entry of name of decree holder only to the extent of showing his name in the ownership column and not anything beyond, particularly about possession. In such a case, although it is being shown that respondents No.4 and 5 have purchased property from decree holders on 1st February, 2013, it is difficult to conceive a position that the decree holders had really been in a position to deliver possession to the purchasers. Coupled with this, order of injunction having been passed against the decree holders and yet purchasers filing an application to Sub Divisional Officer seeking police protection and that being granted would not only show that respondents No.4 and 5 are rude and to a certain degree contumacious, showing callous disregard to the courts, its proceedings and orders.

3. He, therefore, urges to proceed against respondents No.4 and 5 in accordance with the Contempt of Courts Act and punish the contemnors.

4. On the other hand, Mr. Surve, learned advocate appearing for respondents No.4 and 5 submits that while the purchase had been made, the land was open agricultural land and had been delivered by their vendor to them. No proceedings on the date of sale had been pending and since the date of sale respondents No.4 and 5 are in possession. In spite of aforesaid, respondents No.4 and 5 were not made parties to the second appeal or in the civil application. They were never served with any order of injunction of this court. The paper publication, which is being cited in support of submissions by learned advocate for the contempt petitioners would hardly tantamount to service of a injunction order, which generally operates in *personum*. Nor respondents No.4 and 5 had come across said paper publication. The respondents had been unaware of the same till notice of the contempt petition had been served on them. Order of injunction had not been served and allegation of willfulness in alleged disobedience of order would not sustain. The primary requirement to initiate contempt proceedings is conspicuously absent in the present matter. Neither the injunction order had ever been served on respondents No.4 and 5 nor paper publication had come to their notice nor by other means respondents No.4 and 5 were made aware of the orders till

notice of contempt petition had been served. Contempt petitioners had not bothered to make respondents No. 4 and 5 parties to second appeal or civil application. At no point of time, respondents No. 4 and 5 had any intention to jump over orders of the court. However, since open land had been given in their possession, they are accordingly enjoying the same being oblivious of the court proceedings and the orders thereupon. There is no willful intention in the same, much less to disregard orders of the court.

5. In view of aforesaid, the explanation being given on behalf of respondents No. 4 and 5 having regard to the events as those appear to have occurred is plausible. It is being claimed that respondents No.4 and 5 have come in possession when no proceedings in any court were pending. The injunction appears to have been issued against respondents in the proceedings. As such, there does not appear to be case made out for initiation of contempt proceedings against respondents No.4 and 5 and the contempt petition, as such, fails and stands dismissed.

[SUNIL P. DESHMUKH, J.]