

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL CONTEMPT PETITION NO.2 OF 2012

Shri Brijesh Champalal Mundada. .. Petitioner

Vs

Smt. Jhunkabai Trambak Surve and Ors. .. Respondents

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Shri R.D. Soni along with Shri V.R. Kasle i/b M/s. Ram & Co for the
Petitioner.

Shri Tushar Sonawane for the Respondent Nos.1 and 2.

Shri R.M. Haridas for the Respondent No.5.

Dr.F.R. Shaikh, APP for the State.

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CORAM : A.S. OKA & PD. NAIK, JJ

DATED : 28th APRIL 2016

P.C.

1. Heard learned counsel appearing for the Petitioner, the
learned counsel appearing for the Contemnors (the first and second
Respondents), the learned counsel appearing for the fifth Respondent
and the learned APP for the State.

2. The first Petitioner along with another filed Special Civil
Suit No.208 of 2006 against the first and second Respondents in the
Court of Civil Judge, Senior Division at Nashik. On 15th June 2006, the
ad-interim injunction was granted against the first and second
Respondents herein restraining them from alienating the suit land or

creating any third party interests therein. After hearing the learned counsel appearing for the first and second Respondents, the Civil Judge, Senior Division, Nashik by an order dated 12th April 2007 confirmed the order of ad-interim injunction and restrained the first and second Respondents from alienating the suit land or creating any charge or interest of third person over the suit land till final disposal of the suit. It appears that on the basis of the Application made by the first and second Respondents, on 6th July 2007, the office of the District Collector granted permission to sell the suit land. It appears that in October 2006, an affidavit was affirmed by the first and second Respondents before a Notary Public for the purposes of obtaining sale permission. In the said affidavit, the first and second Respondents stated that in respect of the land in question, there was no civil suit pending or any other proceedings were pending.

3. On 1st November 2010, it appears that the first and second Respondents filed an affidavit-in-support of the Application made before the Collector, Nashik.

4. Subsequently, the first and second Respondents executed a registered Sale Deed dated 31st December 2010 in favour of the fifth Respondent.

5. Thus, after interim injunction was granted by the Civil Court, the first and second Respondents filed an Application before the Collector, Nashik claiming that there is no suit pending in respect of the land in question. Moreover, the first and second Respondents were represented in the suit and after hearing the said Respondents, the ad-interim injunction was confirmed on 12th April 2007. Admittedly, when the Sale Deed was executed by the first and second Respondents on 31st December 2010, the order of injunction was very much operative.

6. We have perused the earlier orders passed by this Court. Initially, a notice dated 2nd February 2012 was issued to the concerned Respondents. Thereafter, the first and second Respondents appeared before the Court and made a statement that they will apply to the District Collector for revoking the sale permission granted by him in respect of the land in question. The order dated 1st November 2012 passed by this Court records that the sale permission granted by the Collector under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 has been revoked. The said order records that the Sale Deed executed by the first and second Respondents (Contemnors) in breach of the temporary injunction is illegal and the same will not transfer any right, title or interest in respect of the land in question in favour of the fifth Respondent. The order dated 1st November 2012 was

passed after hearing the learned counsel appearing for the Contemnors as well as the fifth Respondent and the fifth Respondent has not challenged the said order.

7. The learned counsel appearing for the Contemnors urged that as there is no consent of the Advocate General obtained under Section 15 of the Contempt of Courts Act, 1971, the action for criminal contempt cannot be initiated. However, the said contention has no merit as this Court can always initiate suo motu contempt proceedings under the Contempt of Courts Act, 1971 for criminal contempt. His second contention is based on what is stated in Paragraph 5 of the affidavit-in-reply filed by the first and second Respondents on 30th April 2012. It is contended that they entered into an agreement for sale of the said land with one Shri Madhukar Khandbale and Shri Ramdas Kheru Chauhan for consideration of Rs.20 lakhs in October 2006. Another contention is that they were not aware about the pendency of the suit. It is alleged that the Petitioner obtained ex parte order in suit which was never intimated by the Petitioner to them or to any authority including the Collector or the Circle Officer. They have claimed that an Advocate was appointed by the said purchasers to represent them in the suit and they were completely ignorant about the Court proceedings.

8. We cannot accept the statements made in the affidavit only for its face value. It is not contended by the Contemnors that the suit summons and the notice for injunction Application were not served upon them. On the contrary, they have stated that the proposed purchasers appointed an Advocate on their behalf. It is not their case that they did not sign Vakalatnama of the Advocate who appeared before the Civil Court. Therefore, the contentions raised in Paragraph 5 cannot be accepted at all.

9. During the pendency of the Contempt Petition, the permission granted by the Collector to the first and second Respondents (Contemnors) to sell the said land in accordance with Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 has been admittedly revoked. It is the contention of the fifth Respondent that before executing a Sale Deed, he published a public notice and, therefore, he is a bonafide purchaser.

10. The law is well settled. A Sale Deed executed by a person who is bound by an order of injunction restraining him from selling the property subject matter of sale does not create any right, title and interest in favour of the purchaser.

11. Moreover, this Court has already recorded a finding in the

order dated 1st November 2012 after hearing the learned counsel appearing for the fifth Respondent that the Sale Deed executed by the Contemnors is in breach of the order of the temporary injunction and that the same will not transfer any right, title or interest in the suit land in favour of the fifth Respondent as the Sale Deed is illegal being executed in breach of the order of injunction.

12. As a result, the contemptuous action on the part of the first and second Respondents has been nullified as the purchaser under the Sale Deed cannot claim any right, title or interest on the basis of the Sale Deed.

13. The present age of the first Contemnor is more than 70 years and the age of the second Contemnor is about 69 years. Though we are satisfied that it is a case of gross contempt both civil and criminal, considering the respective ages of the first and the second Respondents (Contemnors) and considering the fact that now the Sale Deed has been nullified and the purchaser thereunder will not get any benefit thereof, we deem it proper not to take any action against the Contemnors. We accept the unconditional apology offered by the Contemnors in Paragraph 1 of their affidavit dated 30th April 2012.

14. Accordingly, we dispose of the Contempt Petition. The notices issued to the first and second Respondents (Contemnors) are discharged.

(P.D. NAIK, J)

(A.S. OKA, J)