

Shri Rajendra Basaveshwar Malge ... Petitioner
vs.
 Shri Basaveshwar S. Malge & Ors. ... Respondents

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Ms Pallavi N. Dabholkar for the Petitioner.
Mr.R.S.Alange for Respondent Nos.1 to 5.

CORAM : K.K. TATED, J.
DATE : 01ST FEBRUARY, 2016

P.C.:

Heard the learned Counsel for the parties.

2. By this Contempt Petition, Petitioner alleged that the Respondent violated the order dated 15th July, 2011 passed by this Court in Civil Application No.411 of 2011 in First Appeal No.320 of 2003 by creating third party right, title and interest in respect of the suit property i.e. House No.440, TP Scheme-2, Admeasuring 0.01R equivalent to 196.1 sq.mtrs., situated at Morarji Peth, Kolhapur.

3. It is the case of the Petitioner that being aggrieved by the Judgment and Decree dated 3rd May, 2002 passed by the trial Court in Special Civil Suit No.65 of 1997, they preferred the First Appeal No.320 of 2003 in this Court. In that First Appeal the

Petitioner preferred the Civil Application No.411 of 2011 for following reliefs:-

“Pending the hearing and final disposal of the present First Appeal, the Respondents herein, either by themselves, or through their agents, assignees or representatives be restrained by an order of injunction of this Hon'ble Court from alienating, transferring or in any way creating third party interests in the entire suit property, including suit house and agricultural land.”

4. The learned Counsel for the Petitioner further submits that the said injunction was passed by this Court after hearing both the sides. She submits that inspite of injunction order granted by this Court, the Respondents created third party right, title and interest in respect of the House property in favour of one Mr. Laxman Atmappa Talbhandare. She submits that as soon as the Petitioner learned about the creation of third party right, the Petitioner immediately filed a complaint with the Police Station at Solapur on 4th July, 2012. She submits that even Mr.Laxman Atmappa Talbhandare in his statement dated 19th July, 2013 admitted that he agreed to purchase two Galas from Sudhir Malge for Rs.10,000/-. The learned Counsel for the Petitioner submits that on the basis of the statements made by the said purchaser i.e.Mr.Laxman Atmappa Talbhandare dated 19th

July, 2013, it is crystal clear that the Respondent violated the order dated 15th July, 2011 passed by this Court and, therefore, the action to be taken against them under the Contempt of Courts Act.

5. On the other hand the learned Counsel Mr. Alange appearing on behalf of the Respondents vehemently opposed the present Contempt Petition. They filed affidavit in reply dated 15th January, 2016. The learned Counsel for the Respondent submits that the First Appeal No.320 of 2003 filed by the Petitioner in this Court was transferred to the District Court. That was registered as Appeal No.390 of 2012 in District Court. He submits that the said Appeal was decided by the District Court on 5th September, 2014 and the same was dismissed. He submits that at that time the lower Appellate Court has not extended any ad-interim relief, granted by this Court. He submits that the Respondents sold the two properties on 11th September, 2014. On that date neither the interim relief, granted by this Court extended by the lower Appellate Court nor the lower Appellate Court granted any relief in favour of the Petitioner. Hence there is no question of violation of any order passed by this Court. Hence there is no question of violation of any order by the Respondents.

6. I heard both the sides at length. The case of the Petitioner that though this Hon'ble Court passed order on 15th July, 2011 in Civil Application No.411 of 2011 the Respondent created third party right, title and interest in respect of the suit property i.e. House property No.440. She submits that though Appeal filed by the Petitioner was dismissed lateron, but during the pendency of the Appeal the Respondents created third party right. Hence they may be dealt with the provisions of the Contempt of Courts Act. In support of this contention, the advocate for the Petitioner relies on the Judgment of Patna High Court in the matter of State Vs. Tribhuvan Nath Verma reported in AIR 1959, Patna 262. Paragraph 22 reads thus;

“22. Keeping in view the principles mentioned above, I propose now to consider the merits of both the cases. I first take up Original Criminal Miscellaneous Case No. 9 of 1957. Sub-section (1) of Section 2 of the Contempt of Courts Act, 1926, makes it perfectly clear that this Court has precisely the same jurisdiction and power to punish person for contempt of subordinate Courts as to punish them for contempt of itself. It is well established that contempt may be committed in respect of a case which is pending or one which has just concluded provided that the criticism advanced against the Judge concerned is calculated to interfere with the course of justice. I need refer only to the observations of Mookerjee, J. In the matter of the Amrita Bazar Patrika, ILR 45 Cal 169: (AIR 1918Cal 988) as follows:

"It is immaterial whether the attack on the Judge is
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with reference to a case about to be tried, or actually under trial, or recently adjudged; in each instance the tendency is to poison the fountain of justice, to create distrust, and to destroy the confidence of the people in the Courts. which are of prime importance to them in the protection of their rights and liberties."

Annexure A is a complaint sent to Mr. Basil's administrative superiors the Chief Justice of this Court and the district Judge of Muzaffarpur, very shortly after the conclusion of Title Suit No. 48 of 1954 in which Mr. Basu passed an ex parte decree."

7. It is to be noted that in the present proceeding the Respondents has filed affidavit in reply. It is specifically stated in paragraph 7 of reply that they sold the suit property i.e. House Property No.440 by sale-deed dated 11th September, 2014. That means on the date of sale deed neither this Court nor the lower Appellate Court restrained the Respondents from creating any third party right, title and interest. The citation filed by the Petitioner is not applicable to the facts and circumstances of the present case. Hence I do not find any substance in this Contempt Petition.

8. The Contempt Petition stands dismissed.

(K.K. TATED, J.)