

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.398 OF 2011

High Court on its Own Motion	... Petitioner
vs.	
Ranuji Govind Pagar	... Respondent

WITH

CONTEMPT PETITION NO.74 OF 2014

Bhimabai Karbhari Nagare	... Petitioner
vs.	
Yashwant Sahadu Bherad (Deceased)	
Through legal heirs and Others	... Respondents

Mr. Ramesh Dube-Patil i/b. M/s. Jay & Co., for Respondent No. 1 in C.P. No. 398 of 2011.

Mr. Sachin Gite, for Petitioner in C.P. No. 74 of 2014.

Mr. Amey Deshpande, for Respondent Nos. 4 and 5 in C.P. No. 74 of 2014.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **21st JANUARY, 2016**

PC.:

. Not on board. Upon mentioning taken on board.

2. There is suo-motu Contempt Petition No. 398 of 2011 and another Contempt Petition No. 74 of 2014 filed by the original

Plaintiff Bhimabai Nagare. Both these two Petitions are in respect of the breach of the order passed by this Court on 1st October, 2009 in First Appeal No. 1365 of 2009. Hence, both the Petitions are heard together and disposed of by a common order.

3. The suo-mutu Contempt Petition No. 398 of 2011 taken by the High Court by an order dated 13th October, 2011. The suit is filed by Bhimabai Nagare for specific performance in respect of the suit land and also sought declaration in respect of sale deeds executed by the present Contemnor in favour of the second and third Defendants in the suit as illegal and not binding on her. The Court at the time of hearing the matter granted interim relief and decreed the suit. Thereafter First Appeal No. 1365 of 2009 is filed against the said judgment and decree.

4. At the time of hearing the application in the said First Appeal, this Court by its order dated 1st October, 2009 directed the Contemnor that he shall not create any third party interest in the suit property. However, it is pointed out that subsequently on 17th September, 2010 though the order of this Court was in force and

binding on the Contemnor in Contempt Petition No. 74 of 2014, he sold the property to Respondent Nos. 4 and 5 by a registered sale deed.

5. After service of notice, Respondent Nos. 2, 4 and 5 who are concerned with the sale and purchase of the suit land have appeared before this Court. Respondent No. 2 who is the Contemnor in Petition No. 74 of 2014 and in the suo-motu Contempt Petition No. 398 of 2011 filed affidavit in reply on 30th November, 2012 in Contempt Petition No. 398 of 2011. The learned counsel for the Respondent/Contemnor Ranuji Govind Pagar in Contempt Petition No. 398 of 2011 submits that the said affidavit is adopted and it is to be read in other Contempt Petition No. 74 of 2014 also. The Respondent Nos. 4 and 5 also filed affidavit in reply in Contempt Petition No. 74 of 2014. It is submitted that in the affidavit in reply that suo-motu Contempt Petition is taken out only against Ranuji Govind Pagar and not against Respondent Nos. 4 and 5 and therefore Contempt Petition filed by the original Plaintiff is mischievous against them and it is not maintainable. They have denied that they have committed any contempt. It is further submitted that Respondent Nos.

4 and 5 are totally unaware of any order of injunction passed by this Court in respect of the suit land. They are *bonafide* purchaser and therefore the Petition is to be dismissed.

6. The learned counsel for the Respondents-Contemnor in Suo Motu Petition has submitted that there is *ex-facie* breach of the order passed by this Court as a sale has been taken place after 1st October, 2009. He submitted that the sale is not denied by either of the party. He prayed that the Petitions be dismissed against Respondents. The learned counsel for the Contemnor Ranuji Govind Pagar has submitted that the Contemnor tendered unconditional apology and admits that there is a contempt. However, the circumstances under which the order was breached is to be taken into account while deciding the Contempt Petitions. He submitted that suit land was mortgaged by the Contemnor with the bank. There was encumbrance of the bank loan. The wife of the Contemnor was very sick and he needed money for her medical treatment. There was no option left with the Contemnor except to sale the land to the persons who are ready to satisfy the bank loan and make the land free from encumbrances and ready to give him money out of the transaction. It

is submitted that the land was sold for Rs. 22,51,000/- and out of which except Rs. 80,130/- remaining money was paid by Respondent Nos. 4 and 5 to the bank to satisfy the loan on the suit land. He submitted that the Contemnor is a 70 years old person. He was not aware about the order passed by this Court. There was a communication gap between the counsel of the High Court and the Advocate who appeared for the Contemnor. He submitted that his apology is to be accepted and the Petitions may be dismissed.

7. The learned counsel for Respondent Nos. 4 and 5 submitted that the Respondents were not aware of such order passed by this Court. They gave public notice in respect of the suit land on 22nd August, 2010 before entering into the transaction and they are the *bonafide* purchaser. They paid all the loan and gave money to Respondent No. 2 and got sale deed in their favour on 17th September, 2010. Therefore, it is submitted that the Petitions be dismissed against Respondent Nos. 4 and 5. He further submitted that Respondent Nos. 4 and 5 are already made party in the Appeal and the said transaction had taken place pending Appeal by order dated 13th October, 2011.

8. Perused the affidavits filed by the Respondents. It is true that Respondent Nos. 4 and 5 were not party to the proceeding when the order was passed. They have no knowledge about the order, unless it was disclosed to them. Therefore, Contempt Petitions cannot lie against them. However, they are rightly made party to the proceeding as the transaction is *Lis pendens* and covered under Section 52 of the Transfer of Property Act. The Contemnor and Respondent Nos. 4 and 5 are present before the Court.

9. The Contemnor is a old person and appears to be a villager. Undoubtedly, he has breached the order of this Court. However, the record discloses that the land is still stands in the name of Contemnor No. 1 and is intact. Considering the circumstances under which he has sold the land and committed breach and considering the old age of the Contemnor, apology tendered by him is accepted and no penal action is taken against Contemnor No. 1.

10. In view of the above, both the Contempt Petitions are disposed of with the following order:

- 1) The revenue entries are not to be changed till the final disposal

of the Appeal and till then the name of Respondent No. 2 shall not be removed.

2) All the Contemnors shall not part with the possession of the suit property and shall not any create third party interest or encumbrances in respect of suit property and shall keep the property as it is till the disposal of the First Appeal.

11. Accordingly, both Contempt Petitions stand disposed of.

(MRS.MRIDULA BHATKAR, J.)