

HON'BLE SMT JUSTICE ANIS

-
Contempt Case No. 2413 of 2015

ORDER:

This contempt case is filed by the petitioner, who is the respondent in S.A.M.P.No.787 of 2015 in S.A.No.292 of 2015, to summon the respondents, who are the petitioners/appellants in S.A.M.P.No.787 of 2015 in S.A.No.292 of 2015 and punish them for willfully and deliberately flouting the *status quo* orders dated 01.05.2015 granted in the above S.A.M.P.

02. The brief averments in the petition are that the petitioner is a landless poor person and belongs to Vaddera community, and when the respondents are trying to interfere with his possession and enjoyment over the house site bearing Plot Nos.38-A and 37-A in Survey No.3 of Annavarappadu, Ongole Mandal, Prakasam District, he filed suit in O.S.No.889 of 2005 on the file of the Principal Junior Civil Judge's Court, Ongole for permanent injunction. The respondents 2 and 3 also filed a suit in O.S.No.849 of 2005 on the file of the Junior Civil Judge's Court, Ongole. Thereafter, after trial, the suit filed by the petitioner was dismissed and the suit filed by the respondents was decreed. Against the judgments and decrees passed in both the suits, the petitioner preferred two appeals in A.S.Nos.124 and 129 of 2013 on the file of the VII Additional District Judge's Court, Ongole. Both the appeals were allowed on 07.04.2015, setting aside the judgments and decrees passed by the respective trial Courts. It is further stated that the respondents having failed to succeed in their attempts to grab the suit schedule property, foisted false criminal cases against the petitioner and taking advantage of the criminal cases, the respondents illegally trespassed into the suit

schedule property and removed the structures raised by the petitioner. Thereafter, the respondents filed S.A.Nos.292 and 293 of 2015 before this Court and obtained *status quo* orders in S.A.No.292 of 2015. It is further stated that during the subsistence of the *status quo* orders, the respondents made constructions in the suit property by violating the orders passed by this Court and the petitioner filed photographs showing day-to-day construction activities. The photographs clearly establish that the respondents willfully and deliberately flouted the *status quo* orders. Therefore, prayed the Court to punish the respondents.

03. The respondents filed counter and denied the allegations made by the petitioner. It is specifically stated that the suit filed by the respondents was decreed for the suit schedule property bearing Plot No.38-A and 37-A situated in Survey No.3 of Annavarapadu, Ongole Mandal, Prakasam District. Aggrieved by the same, the petitioner filed A.S.No.129 of 2013 and the said appeal was allowed on 07.04.2015. The respondents filed S.A.No.292 of 2015 and this Court passed the following interim order:

“Learned Senior counsel for the appellant states that pending the first appeal, his injunction decree continued to be in force and was not suspended.

Learned counsel for the respondents, however, opposed the grant of interim order.

Since the injunction decree of the appellant is, for the first time, reversed by the lower appellate Court under impugned Judgment dated: 07-04-2015, the impugned judgment shall remain suspended and the status quo, as existed, pending appeals before the lower appellate Court, to be continued pending further orders.”

The respondents also stated that the present petition is not maintainable since the provisions of the Contempt of Courts Act,

1971 (for short “the Act”) have no application for the alleged violation of interim injunction. In fact, the Code of Civil Procedure contains comprehensive and exhaustive procedure to deal with such situation. It is further stated that the petitioner strangely filed the contempt petition without there being any order in his favour. On the other hand, the Tahsildar, Ongole vide Proceedings, dated 26.11.2013, evicted the petitioner from the schedule property. It is further stated that the photographs filed by the petitioner is not genuine and created for the purpose of contempt case by embossing the date on the same and the photographs are not pertaining to the plaint schedule property, and even the dates mentioned on the photographs are edited and created through the process of Photo shopping and the dates are not genuine. It is further stated that there are no interim orders against the respondents from making construction nor the injunction order granted in their favour is suspended. Therefore, the respondents have every right to enjoy the property, and finally prayed the Court to dismiss the petition.

04. Now, the point for consideration is -

Whether the petitioner is entitled to punish the respondent for flouting the *status quo* orders passed in S.A.M.P.No.787 of 2015 in S.A.No.292 of 2015 as prayed for?

05. Point:

A perusal of the record shows that there is no dispute that both the parties are claiming Plot Nos.37-A and 38-A in Survey No.3 of Annavarappadu, Ongole Mandal, Prakasam District. It is an admitted fact that the petitioner filed O.S.No.889 of 2005 on the file of the Principal Junior Civil Judge’s Court, Kandukur, likewise the respondents 2 and 3 also filed O.S.No.849 of 2005 on the file

of the Junior Civil Judge's Court, Ongole. The suit filed by the respondents was decreed, whereas the suit filed by the petitioner got dismissed. Aggrieved by the judgments of the trial Courts, the petitioner filed A.S.Nos.124 and 129 of 2013 on the file of the VII Additional District Judge's Court, Ongole and both the appeals were allowed on 07.04.2015. Aggrieved by the judgment of the appellate Court, the respondents filed S.A.No.292 and 293 of 2015 and obtained interim orders on 01.05.2015 in S.A.M.P.No.787 of 2015 in S.A.No.292 of 2015, which are as follows:

“Learned Senior counsel for the appellant states that pending the first appeal, his injunction decree continued to be in force and was not suspended.

Learned counsel for the respondents, however, opposed the grant of interim order.

Since the injunction decree of the appellant is, for the first time, reversed by the lower appellate Court under impugned Judgment dated: 07-04-2015, the impugned judgment shall remain suspended and the status quo, as existed, pending appeals before the lower appellate Court, to be continued pending further orders.”

06. Admittedly, there is no order in favour of the petitioner. Further, this Court has not directed both the parties to maintain *status quo*. As stated by the respondents, the contempt petition is not maintainable since the provisions of the Act have no application for the alleged violation of interim injunction. There is no dispute that the Code of Civil Procedure contains comprehensive and exhaustive procedure to deal with violation of injunction orders. The main contention of the respondents is that the Tahsildar, Ongole vide Proceedings, dated 26.11.2013, evicted the petitioner from the plaint schedule property with the aid of police protection and the respondents got every right to make constructions in the suit schedule property. It is also contended

that the photographs filed by the petitioner is not genuine and created for the purpose of filing of the present petition. But, the said allegations are not denied by the petitioner by way of reply affidavit. Since the allegations are serious in nature, the petitioner ought to have denied them specifically by filing a reply affidavit.

07. Further, a perusal of the order passed by this Court in S.A.M.P.No.787 of 2015, it is clear that the impugned judgment was suspended and the *status quo* as existed pending appeals before the lower appellate Court to be continued pending further orders. In view of the same, the petitioner do not have any order in his favour against the respondents and further the petitioner has not made out any case against the respondents. Hence, I am not inclined to initiate contempt proceedings against the respondents.

08. Accordingly, this Contempt Case is closed. No order as to costs.

ANIS, J

Date: 27.06.2016
Anr

THE HON'BLE SMT. JUSTICE ANIS

Contempt Case No. 2413 of 2015

–

27.06.2016

Anr