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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17-07-2018

Pronounced on : 03.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Contempt Petition No. 1611 of 2016

T. Ramachandran

.. Petitioner

Versus

1. Mr. L. Sukumar

2. Mr. Anand Babu

Inspector of Police (L&O)

F-2 Police Station

Egmore, Chennai - 600 008

3. Mr. Senthilkumar

Inspector of Police (L&O)

F-2 Police Station

Egmore, Chennai - 600 008

.. Respondents

Petition filed under Section 10 and 12 of Contempt of Courts Act praying to punish the respondents for Contempt of Court by deliberate, wilful disobedience and violation of the Subordinate Court's order dated 31.08.2015 made in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. K.V. Ananthakrushnan

For Respondents : Mr. Satish Parasaran,
Senior Advocate
for Mr. Srish Choudhary for R1

<https://hcservices.ecourts.gov.in/hcservices/>

: Ms. Saratha Devi
Government Advocate(Crl.side) for
RR2 & 3



appointed as per the power of attorney deed dated 23.10.2009 registered as document No. 516 of 2009 on the file of Sub-Registrar, Sowcarpet. According to the petitioner, he never executed any such power of attorney deed dated 23.10.2009 in favour of any one, much less Mr. Adhimoolam. The petitioner also came to know that based on such forged and fabricated power of attorney deed dated 23.10.2009, the said Adhimoolam, as power of attorney agent, had sold the property owned by him to the first respondent by means of the registered sale deed dated 27.12.2013. On coming to know about the fraudulent transaction, petitioner has given a complaint dated 18.04.2014 to the Inspector of Police, Central Crime Branch, Chennai and during the course of enquiry, the signature and/or thumb impression contained in the power of attorney deed dated 23.10.2009 were sent for Forensic Science Department and as per the report submitted by the Forensic Science Department, the thumb impression contained in Power of attorney deed dated 23.10.2009 is not that of the petitioner. The first respondent, with full knowledge that the power of attorney has been forged, has purchased the property for a sale consideration of Rs.2.20 crores and thereby the petitioner has been deprived of his valuable property.

4. At this juncture, the first respondent has filed O.S.

No. 3757 of 2015 on the file of VI Assistant Judge, City Civil

<https://hcservices.ecourts.gov.in/hcservices/>

Court, Chennai praying for a Declaration to declare that there



is no privity of contract between the plaintiff and defendants in respect of the execution of the sale deed dated 27.12.2013 in respect of the property bearing New Nos. 11 & 13, Old Nos. 7 & 8, Samy Reddy Street, Egmore, Chennai - 600 008 and for a consequential permanent injunction restraining the defendants from in any manner obstructing the demolition of the superstructure in the property in accordance with the planning permission granted by the competent authority. Pending suit, the first respondent has also filed I.A. Nos. 9371 of 2015 for interim injunction restraining the defendants not to interfere with his possession. The first respondent also filed I.A. No. 9372 of 2015 for interim injunction restraining the defendants in the suit from interfering with the demolition of the building in any manner. By order dated 31.08.2015, the learned VI Assistant Judge, City Civil Court, Chennai allowed I.A. No. 9371 of 2015 restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property but I.A. No. 9372 of 2015 was dismissed, at the same time, the Court directed the first respondent/plaintiff not to demolish the old building in the suit property by changing the physical features in the suit property till the disposal of the suit.

5. According to the petitioner, as against the order dated 31.08.2015 passed in I.A. No. 9372 of 2015, the first respondent has filed C.M.A. No. 100 of 2015. The petitioner



has filed C.M.A. No. 105 of 2015 against the order passed in I.A. No. 9371 of 2015. However, during the pendency of the appeals, on 26th and 30th May 2016, the first respondent demolished the building in question inspite of the specific order passed by the trial Court. Such an act on the part of the first respondent in demolishing the building in question is in violation of the order dated 31.08.2015 passed in I.A. No. 9372 of 2015. Therefore, the petitioner has given written complaint on 26.05.2016, 28.05.2016, 30.05.2016 and 01.06.2016 bringing to the notice of the second and third respondents the unauthorised manner in which the first respondent resorted to demolish the building by violating the order dated 31.08.2015 passed in I.A. No. 9372 of 2015. According to the petitioner, inspite of written complaints, the second and third respondent remained as mute spectators and they did not take any action on the basis of the complaints given by him. It is the specific complaint of the petitioner that the first respondent, with the active aid and support of the respondents 2 and 3 has indulged in demolishing the building in question and therefore, the respondents 2 and 3 are also liable for prosecution. Further, the first respondent demolished yet another portion in the property in question on 11.05.2016. Therefore, the petitioner sent a notice dated 10.06.2016 to the respondents informing them of the violation they have committed against the order dated 31.08.2015 passed by the Court below by demolishing the property in question. Thus,



complaining that the respondents herein have wilfully violated the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai, the present contempt petition is filed. The second and third respondents have further obtained an Opinion dated 06.06.2016 from Mr. Jaganathan, Government Pleader, who has opined as follows:-

"On 28.05.2016, 30.05.2016 and 01.06.2016, T. Ramachandran has given a complaint against the present owner of the subject matter of the property and one Mr. Nageswararao, who is the cousin brother of the present owner of the property is Mr. L. Sukumar against Ramachandran's wife Mrs. Durga and other persons.

Opinion:- On perusal of the entire records, I am of the opinion that the police to take necessary action in favour of the present owner Mr. L. Sukumar as per Court orders above."

6. The learned counsel appearing for the petitioner would contend that by the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 the learned VI Assistant Judge, City Civil Court has specifically directed that the first respondent shall not demolish the old building in the suit schedule property by changing the physical features of the suit property. Thus, there was a specific prohibitory order, prohibiting the first respondent from demolishing the property in question till the disposal of the suit. However, notwithstanding the order passed by the trial Court, the first respondent, without adhering to such order, demolished a portion of the property in question. When the



petitioner has given complaint to the respondents 2 and 3 regarding the unlawful manner in which the property was being demolished by the first respondent in violation of the order passed by the Civil Court, they failed and neglected to take any action thereof and remained a mute spectator. The learned counsel for the petitioner also placed reliance on the photographs filed in the typed set of papers to show that the first petitioner had in fact demolished a portion of the building in question when the order of injunction granted by the court below was in force. Thus, according to the learned counsel for the petitioner, the respondents have scant regard for the order passed by the Court below and for non-adherence to the order passed on 31.08.2015 passed in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 the respondents are liable to be prosecuted by initiating appropriate contempt proceedings against them. Accordingly, the learned counsel for the petitioner prayed for allowing the contempt petition as prayed for.

7. Per contra, the learned Senior Counsel appearing for the first respondent would vehemently contend that originally, the first respondent has filed the suit in O.S. No. 3757 of 2015. In the suit, the first respondent sought for a declaratory relief and consequential permanent injunction restraining the defendants in the suit from interfering with his peaceful possession of the property. Pending suit, the



first respondent filed I.A. No. 9371 of 2015 seeking for an interim injunction restraining the defendants in the suit from interfering with his peaceful possession and enjoyment of the suit property. Yet another application in I.A. No. 9372 of 2015 was also filed by the first respondent praying to restrain the defendants from obstructing or interfering with the demolition of the suit premises in accordance with the demolition order dated 04.02.2015 issued by the Corporation of Chennai. The applications in I.A. Nos. 9371 and 9372 of 2015 were taken up for hearing and after hearing the counsel for both sides, the learned VI Assistant Judge, City Civil Court, Chennai has passed an order allowing the application in I.A. No. 9371 of 2015 thereby restrained the defendants in the suit from interfering with the possession of the first respondent herein. However, I.A. No. 9372 of 2015 was dismissed while directing the first respondent not to demolish the building in question till the disposal of the suit. Aggrieved by the order dated 31.08.2015 passed in I.A. No. 9372 of 2015, the first respondent has filed C.M.A. No. 100 of 2015 and pending appeal, the first respondent has also filed CMP No. 1117 of 2015 seeking interim stay of operation of the order dated 31.08.2015 passed in I.A. No. 9372 of 2015. In the appeal, notice was served on the petitioner herein and inspite of notice, he did not appear. Therefore, on 10.02.2016, the petitioner was set exparte in C.M.P. No. 1117 of 2015 in CMA No. 100 of 2015. Subsequently, by an order dated 24.02.2016,



the petitioner herein was set exparte in the C.M.A. No. 100 of 2015 itself. At this stage, the petitioner filed CMP No. 276 of 2016 in CMP No. 1117 of 2015 in CMA No. 100 of 2015 seeking to set aside the exparte order dated 24.02.2016 in which he alleged that he neither received notice in the above appeal nor had authorised his previous counsel to appear on his behalf. It has been further averred that the said counsel has given change of Vakalath in O.S. No. 3757 of 2015. When the said application in CMP No. 276 of 2016 is pending, on 10.06.2016, the petitioner has filed CMP No. 614 of 2016 in CMA No. 100 of 2015 seeking to restrain the first respondent herein from demolishing the suit premises or changing the physical features of the suit property. Notwithstanding the filing of applications mentioned above, the petitioner has independently filed a suit in C.S. No. 322 of 2016 before this Court, in which the first respondent herein was arrayed as first defendant. In the suit in C.S. No. 322 of 2016 and the application No. 456 of 2016 in C.S. No. 322 of 2016 filed thereof, the petitioner herein has prayed similar relief namely to grant an order of injunction restraining the first respondent herein from demolishing or changing the physical features of the property. The petitioner herein has also filed an application in Application No. 293 of 2016 in C.S. No. 322 of 2016 seeking to permit him to fence the suit property, which is contrary to the order passed in I.A. No.



interim injunction was granted in favour of the first respondent restraining the respondents/defendants from interfering with his peaceful possession and enjoyment of the property in question. When an order of injunction is in force, it is not known as to how the Application No. 293 of 2016 in C.S. No. 322 of 2016 seeking to permit the first respondent to fence the suit property could be maintained, In any event, according to the learned Senior counsel for the first respondent, the order dated dated 31.08.2015 made in I.A.N o. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai was the subject matter of appeal in CMA No. 100 of 2015 in which, after notice, the petitioner was set exparte and thereby the order dated 31.08.2015 made in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai cannot be enforced in law. However, the present contempt petition has been filed by the petitioner alleging disobedience of the order dated 31.08.2015 made in I.A.N o. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai

8. Notwithstanding the above, the learned Senior counsel for the first respondent would contend that the first respondent is admittedly in possession of the suit property.

The first respondent has purchased the suit property for a valuable sale consideration. After purchase, the first



respondent obtained demolition order from the Corporation of Chennai. In fact, before issuing the order for demolition, the officials of the Corporation inspected the property in question on 04.02.2015 and satisfied themselves that the building in question warrant demolition. However, the order of demolition has not been given effect. The first respondent did not demolish the building in violation of the order dated 31.08.2015 made in I.A.N o. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai. The fact remains that during December 2015, due to heavy floods in Chennai, a portion of the building got damaged badly and fell on to the road. The learned Senior counsel for the first respondent also invited the attention of this Court to the photograph to show the nature of damage caused to the building due to heavy flood.

9. Above all, it is submitted by the learned Senior counsel appearing for the first respondent that the first respondent did not commit any disobedience of the order dated 31.08.2015 made in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai, as alleged by the petitioner. Even if this Court comes to a conclusion that the first respondent had in fact committed disobedience of the order passed by the Court, the learned Senior counsel appearing for the first respondent would submit that the first respondent had tendered



unconditional apology in the counter affidavit dated 25.06.2018 filed by him in this contempt petition and accepting the same, he prayed for dismissing the contempt petition.

10. The learned Government Advocate would contend that when there is an order passed by the Civil Court, in a civil proceedings, the respondents 2 and 3, being Police officials, cannot interfere with or go beyond the scope of the order passed thereof. In fact, the petitioner repeatedly given complaints on 28.05.2016, 30.05.2016 and 01.06.2016 complaining that the first respondent indulged in demolition of the building contrary to the order dated 31.08.2015 made in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 on the file of VI Assistant Judge, City Civil Court, Chennai. On the basis of such complaints, the respondents 2 and 3 obtained legal opinion from the City Public Prosecutor, who opined that action can be resorted to in favour of the first respondent. It is further submitted that the respondents 2 and 3 are not parties to the suit in O.S. No. 3757 of 2015. If the order passed by the Court is violated, as alleged by the petitioner, it is for the petitioner to take recourse to law. When a suit is pending and if it is complained that the order passed by the Civil Court has been contravened by a party to the suit, the respondents 2 and 3 cannot take any action during the pendency of the suit. The present contempt petition has been



filed against the respondents 2 and 3 unnecessarily to harass them. The allegation that respondents 2 and 3, in collusion with the first respondent did not take any action on the complaints given by the petitioner is *per se* untenable. The dispute between the petitioner and the first respondent is purely a civil dispute and the matter is *sub judice* before the competent Court. While so, the respondents 2 and 3 cannot be expected to take any action on the basis of the complaint given by the petitioner. In any event, the respondents 2 and 3 were not parties to the civil suit, they did not violate any order or direction issued against them, hence, the learned Government Advocate therefore prayed for dismissal of the contempt petition.

11. We have heard the counsel on either side and perused the materials placed on record. Admittedly, the first respondent has purchased the suit property by means of a registered sale deed dated 27.12.2013 registered as document No. 2940 of 2013 on the file of Sub-Registrar, Periamet from one Aadhimoolam, representing himself as power of attorney agent of the seller. According to the petitioner, he never executed any power of attorney in favour of Mr. Adhimoolam and consequently, the sale deed dated 23.10.2009 executed in favour of the first respondent is void. Further, on coming to know about the sale transaction, the petitioner has given a complaint dated 18.04.2014 to the Inspector of Police, Central Crime Branch, Chennai based on which an enquiry was conducted



in which the first respondent participated. Thereafter, the first respondent, who purchased the suit property on 23.10.2009, has filed the suit in O.S. No. 3757 of 2015 for the relief of declaration and consequential permanent injunction. Pending suit, the first respondent has filed I.A. No. 9371 of 2015 for an interim injunction restraining the defendants in the suit from interfering with his peaceful possession and enjoyment of the suit property purchased by him. Another application was also filed by the first respondent in I.A. No. 9372 of 2015 for interim injunction restraining the defendants from obstructing with the demolition of the suit premises. By order dated 31.08.2015, the learned VI Assistant Judge, City Civil Court, Chennai allowed I.A. No. 9371 of 2015 restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property but dismissed I.A. No. 9372 of 2015 with the observation that the first respondent shall not demolish the old building. According to the petitioner, inspite of the dismissal of I.A. No. 9372 of 2015, the first respondent had caused demolition of the building whereby he breached the order dated 31.08.2015 passed in I.A. No. 9372 of 2015. Even though the petitioner had given complaints dated 28.05.2016, 30.05.2016 and 01.06.2016 to the respondents 2 and 3, they remained as a mute spectator without taking any action thereof.



12. The averments made in the contempt petition were denied by the first respondent by contending that he did not demolish the building, as alleged. The building was in a dilapidated stage and during the flash flood witnessed during December 2015, a portion of the building collapsed and fell onto the road. Above all, it is submitted that the first respondent has filed CMA No. 100 of 2015 before the Appellate Court along with CMP No. 1117 of 2015 for interim stay of operation of the order dated 31.08.2015. In the appeal notice was issued to the petitioner, but he did not appear, therefore, the petitioner herein was set exparte. Even otherwise, the suit itself was filed by the first respondent and he suffered an order of dismissal dismissing I.A. No. No. 9372 of 2015 against which he has also filed an appeal. While so, the question of violating the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 in the suit filed by the first respondent, does not arise. As regards the respondents 2 and 3, it is contended that they were not parties to the suit and when the matter is subjudice, they cannot be expected to take any action at the instance of the petitioner herein.

13. With the above factual background, let us examine as to whether the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 on the file of learned VI Assistant Judge, City Civil Court has been violated by the respondents, wilfully warranting initiation of contempt proceedings against them.



Before dealing with the present contempt petition any further, it is relevant to extract the portion of the order dated 31.08.2015 which reads as follows:-

"..... Therefore, in the light of the above discussion, the petitioner has proved his prima facie case and the balance of convenience also lies in his favour. Prima facie case means that the petitioner should establish an arguable case, the petitioner has presented a arguable case and the contention of the respondent as to the fraud committed by the power agent and his brother T. Jagannathan could be answered only or after the conclusion of trial. Till then, the valuable right of the petitioner over the suit property by virtue of Ex.P1 should be protected and at the same time, the petitioner cannot be permitted to demolish the old building in the suit property by changing the physical feature of the suit property. Therefore, the possession established prima facie by the petitioner can be ordered to be protected till the disposal of the suit and in so far as the old building situated in the suit property should be maintained as it is till the disposal of the suit."

14. It is evident that in the order dated 31.08.2015, a reference was made as to the dilapidated building exist in the suit property. The first respondent also obtained an order of demolition from the corporation officials. While so, it is contended that the first respondent, in obedience to the order dated 31.08.2015, did not proceed to demolish the property, rather, he only filed an appeal to challenge the legality and validity of the order dated 31.08.2015 and accordingly he filed the appeal in CMA No. 100 of 2015. Even otherwise, as pointed out by the learned Senior counsel for the first respondent, by the order dated 31.08.2015, the application



filed by the first respondent seeking interim injunction to restrain the defendants in the suit from interfering with the demolition of the building was dismissed and the petitioner herein did not obtain any order in his favour which the respondents allegedly violated. We find much force in the said argument of the learned Senior counsel for the first respondent. Above all, the learned Senior counsel for the first respondent produced some photographs evidencing that the building in question collapsed during December 2015 when the City witnessed heavy rain and that the first respondent did not resort to any demolition process.

15. It has to be noted that as against the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 passed by the learned VI Assistant Judge, City Civil Court, the first respondent has filed CMA No. 100 of 2015 in which, after notice, the contesting respondent namely the petitioner was set exparte. Thus, the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 is the subject matter of the appeal in C.M.A. No. 100 of 2015 pending before the Appellate Court at the instance of the first respondent herein. In such circumstances, we are of the view that the first respondent did not disobey the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015.



are not parties to the suit. The dispute involved in the present case is a civil dispute in which the respondents 2 and 3 cannot be expected to interfere. Further, when the respondents 2 and 3 are not parties to the civil suit, it cannot be said that they have in any manner violated the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015 warranting initiation of contempt proceedings against them.

17. In the result, we are of the view that the respondents have not in any manner violated the order dated 31.08.2015 passed in I.A. No. 9372 of 2015 in O.S. No. 3757 of 2015. Consequently, we dismiss the contempt petition. No costs.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)

rsh

//Certified to be true copy//

Dated at Madras this the day of 2018.

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