

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.18 of 2013

In

Miscellaneous Jurisdiction Case No.2093 of 2007

=====

Kamal Sharma, son of Anant Sharma, at present resident of village Karas
Ghat, P.S. Mohamadpur, P.O. Jhajhawa, District Gopalganj

... .. Appellant

Versus

1. Kailashi Devi, wife of Chandrama Thakur, resident of village Supauli, P.S.
Sidhwalia, District Gopalganj

2. Sidhanath Jha, A.S.I., Mohamadpur, P.S. and P.O. Mohamadpur, District
Gopalganj

... .. Respondents

=====

Appearance :

For the Appellant/s : Mr. Vishwa Mohan Kumar Sinha, Adv.
Mr. Sudhir Kumar Singh, Adv.

For the Respondent/s : Mr. Rana Pratap Singh, Adv.
Mr. Dharamveer, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 26-04-2019

This miscellaneous appeal filed under Section 19(4) of the Contempt of Courts Act, 1971 arises from the judgment and order passed by a learned Single Judge of this Court in M.J.C. No. 2093/2007, whereby the appellant herein alongwith one other was held guilty of contempt and ordered to be detained in civil prison for a term of three months. While the appellant herein is the beneficiary of the alleged violation of the order passed by this Court, the other person Sidha Nath Jha was at the relevant time posted as Assistant Sub Inspector, Mohammadpur Police Station in the district of Gopalganj and is stated to have aided the appellant in alleged



violation of the order dated 11.5.2007 passed by the learned Single Judge in S.A.No. 62/2007.

The facts of the case briefly stated is that a title suit was filed by the respondent no.1 herein for declaration of her title and recovery of possession over the encroached portion of the suit land admeasuring 5 katha and 15 dhurs in R.S.Plot No. 753 of Khata No. 270 situated in village Karasghat in the district of Gopalganj. The suit was decreed in favour of the respondent no.1 on 31.5.2005. Feeling aggrieved the appellant herein filed T.A.No. 58/2005 which was allowed vide judgment and decree dated 24.3.2007 reversing the judgment and decree of the trial court. It is feeling aggrieved by the judgment and decree of the appellate court that the respondent no.1 herein filed S.A.No. 62/2007 which was taken up for consideration on the prayer for injunction made by the respondent no.1 arising from I.A.No. 2814/2007, on 11.5.2007 and when the second appellate court passed the following order:

“ During the pendency of this interlocutory application the sole respondent is restrained from making any construction over the suit land and also from changing the nature and character thereof.”

It is alleged violation of this interim order of injunction that the contempt application bearing M.J.C.No. 2093/2007 was filed by the respondent no.1 herein as against the appellant as well as the respondent no.2 and which was allowed and the order for detention



of the appellant and the respondent no.2 in civil prison for a term of three months for violation of the injunction order was passed and hence, this appeal.

Two Letters Patent Appeal were filed against the judgment and order of the learned Single Judge on the contempt application dated 28.2.2012 i.e. by the appellant herein and by the respondent no.2.

The records of this proceeding confirm that while the Letters Patent Appeal filed by the present appellant was permitted to be converted into a Miscellaneous Appeal under section 19 of the Contempt of Courts Act, 1971 by a Division Bench of this Court vide order passed on 18.4.2012, the other appeal filed by the respondent no.2 arising from L.P.A.No. 605/2012 was dismissed on 19.6.2018 for want of prosecution.

The appeal was taken up for consideration on the interlocutory application filed for condonation of delay of 16 days on 12.4.2019 and this Court after taking notice of the inter-party contest as arising in this appeal as well as of the fact that the respondent no.2 having questioned the judgment and order of the learned Single Judge on the contempt application which held him guilty, had chosen to abandon the appeal which was dismissed for non-prosecution as noted above, waived of the requirement of service of notice on the respondent no.2 in the present case moreso because, it is the



punishment order in so far as it effected the appellant herein which was subject matter of the present appeal. The delay was condoned on hearing the contemner appellant and the respondent no.1 and the appeal was posted for hearing on merits.

We have heard Mr. V.M.K.Sinha, learned counsel appearing for the appellant and Mr. Rana Pratap Singh, learned counsel appearing for the respondent no.1.

While Mr. Rana Pratap Singh has simply relied on the conclusion drawn by the learned Single Judge in support of his charge of contempt committed by the appellant herein, exhaustive arguments have been advanced by Mr. Sinha to question the judgment and order of the learned Single Judge put to challenge in appeal. It is to be noted that the Second Appeal filed by the respondent no.1 is yet pending for disposal in this Court.

Perusal of the judgment of the learned Single Judge would reflect that the plot in question in total admeasured 7 katha 5 dhurs of which the land owner, Vidya Kuer, wife of Gauri Shankar Sah, sold 5 katha 15 dhurs to the respondent no.1 by a registered sale deed and the remaining 1 katha 10 dhurs were sold to the appellant. It was the case of the respondent no.1 that taking advantage of her absence that the appellant started gathering building materials on her plot and when her oral requests did not bear result that she filed the suit in question which was decreed in her favour. It is further the case of the



opposite party that since the judgment and decree of the trial court was reversed by the appellate court that emboldened the appellant herein started construction over the disputed land and it is when that she filed I.A.No. 2814/2007 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure in S.A.No. 62/2007 praying for restraining the respondents from alienating and encumbering over the suit land and from making any construction thereon. It is on hearing of the interlocutory application that by the interim order dated 11.5.2007, as reproduced above, the appellant herein was restrained by the second appellate court from making construction over the suit land. Now while it was the charge of the plaintiff- petitioner before the Contempt Court that the double storeyed building with other constructions were made during the operation of the injunction order, the allegation was being denied by the appellant on grounds that the construction of the double storeyed building was made much prior of the passing of the injunction order by the second appellate court. It is this dispute which ended in judgment and order of the learned Single Judge upholding the charge of the plaintiff-petitioner, i.e. the respondent no.1 herein, which is the subject matter of the present appeal.

The judgment and order of the learned Single Judge would manifest that it is considering the dispute i.e. whether or not the building was constructed in violation of the injunction order, that the District Judge, Gopalganj was directed to hold enquiry after holding



spot inspection and to submit his report. The District Judge, Gopalganj after making spot enquiry has submitted his report, a copy of which is available on the records of the contempt proceedings and the relevant extract of which is also reproduced in the order of the learned Single Judge at paragraph-9 and reads under:

“ On the basis of the above evidence, attaching report, I am of the considered opinion that the order has been violated knowingly and building was completed after passing of order in I.A.No. 2814/07 of S.A.No. 62/07 dated 11.5.2007 and there was collusion between Sidha Nath Jha, A.S.I. and the respondent in continuing and getting completed the building after Hon’ble Court’s order.”

It is this report of the learned District Judge, Gopalganj which was conclusive on facts as well as on the alleged violation of the order of injunction passed by the second appellate court by the appellant as well as the respondent no.2 herein that we gave opportunity to Mr. Sinha to demonstrate by leading evidence that the building in question had been constructed prior to passing of the order by the second appellate court on 11.5.2007. Despite opportunity given we have not been posted with the single piece of evidence which could either prove the report of the District Judge, Gopalganj fallacious or vindicate the stand of the appellant that the construction was completed prior to passing of the order of injunction by the second appellate court on 11.5.2007. We are in fact



persuaded to reproduce the extract of the report of the District Judge, Gopalganj which completely concludes the issue of contempt as against the contemnors:

“ It is clear that double storeyed building is a new construction and from the report of Survey Knowing Commissioner in T.S. by both the sides, there is no mention of existence of double storeyed building. There is nothing to show that building is old construction. The case of respondent is that it was completed before 24.4.07 and it is clear that T.A. No. 58/05 was decided on 24.3.07 and there is no mentioning of double storeyed building and completion of building within one month is not possible. This shows that construction was going on after passing of injunction order in I.A. Petition in S.A.No. 62/07. The period is quite important. There is no evidence of respondent except himself that building was completed before 24.4.07, but there is specific case of applicant that construction was going then she filed I.A. Petition for injunction in S.A.No. 62/07 and after passing of order, she intimated the O.P. Kamal Sharma and approached O.C., Mohammadpur, respondent no.2 and seeing no activity, rather got seated at Thana, she approached the C.O., Sidhwalia, who has written two letters No. 251 and 256 mentioned above to O.C. And then, she has written to D.M. All these facts corroborate the statement and case of applicant that construction was going and she was taking efforts to get it stopped. Hence, it is clear that construction was going on even prior to 14.5.07 to 18.5.07 and even thereafter. Hence, it can only be held with certainty that construction of



building over disputed land was going on and completed some times after passing of order in I.A. in S.A.No. 62/07 but it is very difficult to fix a date to fix completion.”

The report of the District Judge is exhaustive not only on continued construction but also on due service of information regarding passing of the order of injunction by the second appellate court on the appellant as well as on the assistance given by the respondent no.2 in allowing the appellant to complete the construction. The District Judge after recording evidence has concluded that the order of the second appellate court was violated knowingly and the building was completed after passing of the order dated 11.5.2007 by the second appellate court with due collusion between the appellant and the respondent no.2.

We have heard learned counsel for the parties and have perused the records and the twin plea raised by the appellant to question the order of the learned Single Judge is regarding absence of knowledge of the order dated 11.5.2007 passed in S.A.No. 62/2007 and on the denial of construction after passing of the said order. In fact it is these two very defences which were raised by the appellant before the learned Single Judge to defend the charge and which are also the foundation for maintaining the present appeal. However, having heard learned counsel for the parties we find nothing present either in the Memo of Appeal or in the arguments advanced by Mr.



Sinha, learned counsel appearing for the appellant, which would persuade us to grant indulgence to the prayer made in this appeal or interfere with the judgment and order of the learned Single Judge put to question before us.

In result, we find no merit in this appeal which is dismissed accordingly but with no order as to costs.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.06.2019
Transmission Date	NA

