

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CONTEMPT PETITION NO.687 OF 2016
IN
SECOND APPEAL NO.189 OF 1999**

1. Rameshwar s/o Vasant Rao Mali,
Age 36 years, Occupation Service,
R/o Shivaji Chowk, Latur
Tq. and Dist. Latur.
2. Smt. Premkalabai w/o Vasant Rao Mali,
(Since Died)

...Petitioners.

VERSUS

1. Prakash @ Sham s/o Sadashiv Mali,
Age 59 years, Occupation Agriculture,
R/o Osmanabad Tq. Dist.Osmanabad.
2. Smt. Parvatabai w/o Sadashiv Mali,
Age 72 years, Occupation Household,
R/o As above.
3. Sow. Suman w/o Nivarti Dhage,
Age 60 years, Occupation Household,
R/o Kati Tq. Tuljapur Dist.Osmanabad.
4. Sow. Meerabai w/o Vishnu Dhage,
Age 55 years, Occupation Household,
R/o Tmbri Vibhag Tq.Dist.Osmanabad.
5. Kaka s/o Waman Gaikwad,
Age Major, Occupation Business,
R/o Tmbri Vibhag Tq.Dist.Osmanabad.
6. Harischandra s/o Raosaheb Khatake,
Age Major, Occupation Business,
R/o Tmbri Vibhag Tq.Dist.Osmanabad.

7. Nandkishor s/o Chhaganro Thakre,
Age Major, Occupation Business,
R/o Tmbri Vibhag Tq.Dist.Osmanabad.
8. Sanjay s/o Chhaganro Thakre,
Age Major, Occupation Business,
R/o Tmbri Vibhag Tq.Dist.Osmanabad.
9. The State of Maharashtra,
Through The District Collector,
Tq. Dist. Osmanabad.

...Respondents.

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Mr. A. N. Nagargoje, Advocate holding for Mr. V. D.
Gunale, Advocate for Petitioners.

Mr. A. S. Kakade, Advocate holding for Mr. V. D. Salunke,
Advocate for Respondent No.1.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 02-05-2019.

JUDGMENT :

1. The petitioners filed this contempt petition alleging violation of order dated 19-12-2006 and 28-02-2007 against respondent No.1.
2. The petitioners are the original plaintiffs in Regular Civil Suit No.65 of 1986 which was filed for partition and possession against the respondents. The said suit was decreed by learned Jt. Civil Judge, Senior Division, Osmanabad on 23-04-1990. Present respondent No.1 approached District Court, Osmanabad by filing Regular Civil Appeal No.134 of 1990 to challenge the said Judgment

and decree passed by the trial Court. The said appeal was heard by learned Joint District Judge, Osmanabad and the appeal was dismissed, thereby the decree passed by the Trial Court was confirmed. Hence, respondent No.1 filed Second Appeal No.189 of 1999 before this Court and it is pending for final adjudication after admission. It is stated that, during the pendency of the second appeal, the petitioner had filed Civil Applications No.11253 of 2006 and 11259 of 2006. While passing the order in these civil applications on 19-12-2006, this Court protected the possession by way of granting status-quo and restrained the parties from creating third party interest over the disputed land till the final decision in the second appeal. Thereafter petitioner gave notice under Section 52 of the Transfer of Property Act to the Sub-Registrar so that the third party interest shall not be created. In fact when the said order was passed on 19-12-2006, the petitioner had placed on record the sale deeds executed by respondent No.1 in favour of third persons, and therefore, the status quo was granted. In utter disregard to the said order, the respondent No.1 has sold plot from the suit land to one Vishal Prakash Chavan on 06-09-2016, Ram Ambadas Gundale on 28-06-2016, Jayashree Arjun Pudale on 02-11-2015 and to one shivajirao Keshavrao Jadhav on 02-01-2015. The petitioner

apprehends that, respondent no.1 might have executed more sale deeds to other persons in violation of order passed by this Court. It shows that he had uttered disregard to the order passed by this Court though he had knowledge about the order that was passed against him. Therefore, the conduct of the respondent No.1 is willful, deliberate and intentional and on this ground the petitioner has prayed that the action under Contempt of Courts Act read with Article 215 of Constitution of India should be taken against the respondent No.1 for floating the order dated 19-02-2006 in Civil Application No.11253 of 2006 and dated 28-02-2007 in Civil Application No.11259 of 2006.

3. Taking into consideration the allegations, this Court had issued notice to respondent No.1 before initiation of contempt proceeding seeking explanation on 19-10-2016. In consequence thereof he appeared. Affidavit-in-reply has been filed by respondent stating that, he has not disputing the orders passed by this Court on 19-02-2006 and also the subsequent order dated 28-02-2007. It is further contended that, he is challenging the Judgment and decree passed by learned Jt. District Judge, Osmanabad in Regular Civil Appeal No.134 of 1990 dated 17-10-1998. His second appeal is admitted

and substantial questions of law have been framed. In civil application for stay to the execution of the decree that has been passed by the First Appellate Court, this Court has directed to maintain status-quo. Thereafter a compromise was recorded on 13-06-2000, and thereafter the matter was restored on 12-04-2005. Therefore it is contended that, even the parties are enter into compromise, however the matter could not be disposed of. The second appeal is ready for hearing. In fact the learned advocates have argued the matter several times before earlier Benches, the question of shares of the property was raised. However for one or the other reason the second appeal could not be disposed of finally. Respondent No.1 has executed sale deed with consent of the petitioner Rameshwar Vasantrao Mali and it is stated that the consideration of the land has been received by Rameshwar. Now the petitioner want to harass him and pressurize him by filing the contempt petition. It is also contended that, by filing the contempt petition, the intention of the petitioner is to see that the second appeal does not get allow. The second appeal was for final hearing and when it was called out on 07-02-2019, the advocate for the respondent No.1, that is original appellant, could not remain present as he was out of station due to unavoidable difficulty, the

matter was mentioned by junior Advocate colleague, however this Court dismissed the matter in default on 07-02-2019. Immediately the civil application for restoration i. e. C.A. No.4787 of 2019 was filed on 11-02-2019. It is stated that if deponent i.e. the respondent No.1 succeeds in appeal, there is no question considering the contempt petition as admittedly sale deed is not executed with malafide intention but inadvertently it was executed. It is again reiterated that the consideration has been paid to the petitioner thereby he is a party to the sale proceeding. It is stated that, since there is no intentional violation of the order passed by this Court, he is not liable for contempt. He is an old age person of 69 and has executed the sale deed with the consent of the petitioner, and therefore, he prayed that the contempt petition be dismissed.

4. Heard learned advocate Mr. A. N. Nagargoje holdign for Mr. V. D. Gunale appearing for the petitioners and learned advocate Mr. A. S. Kakade holding for Mr. V. D. Salunke for respondent No.1. It will not be out of place to mention here that, after the affidavit-in-reply was taken on record on 16-04-2019, in the morning session it was mentioned that the matter would be argued by learned advocate Mr. V. D. Salunke and therefore the matter was kept in the second

session. However it appears that, in the second session he was busy in another Court but then the learned junior colleague submitted that the affidavit-in-reply of the respondent No.1 is the argument on behalf of the respondent No.1.

5. When the second appeal was filed and it was then admitted it appears that by Civil Application No.11253 of 2006 the present petitioner prayed as follows ;

“B] That, pending hearing and final disposal of Second Appeal No.189 of 1999, the non-applicants be restrained by appropriate prohibitory order or injunction from alienating AND/OR creating any third party interest in the suit property by way of sale, transfer mortgage etc. and for that purpose necessary direction be issued.”

Civil Application No.775 of 1999 which was for stay to the execution of the decree passed by the First Appellate Court was also heard along with Civil Application No.11253 of 2006 and following order is passed ;

“2. In both these applications the parties are directed to maintain status-quo.”

Thus it is to be noted that, though in Civil Application No.11253 of 2006 it was contended by the present petitioners that, present

respondent No.1 has alienated considerable portion from the suit property and trying to dispose of the suit property, after hearing both sides this Court had directed parties to both the applications to maintain status-quo. Meaning thereby even the respondent No.1 as well as the present petitioners were directed not to create any third party interest in the suit property.

6. Thereafter, the present petitioner filed another Civil Application No.11253 of 2006 on similar ground that respondent No.1 is creating further third party interest and therefore he should be restrained by prohibitory order of injunction from alienation. That matter was heard by this Court on 28-02-2007. Learned advocate for the applicants as well as respondent No.1 were heard and following order has been passed ;

“...In the meanwhile, the respondents are restrained from creating third party interest in respect of the suit property.”

By this order respondent No.1 was restrained from creating third party interest in respect of suit property.

7. Thereafter, notice was issued under Section 52 of the Transfer of Property Act by the present petitioner to respondent No.1 and

others giving all the details and it is registered with the Sub-Registrar on 22-09-2016. He had attached 7/12 extracts of the lands along with the notice. However it appears that, and the fact is admitted by the respondent in his affidavit-in-reply that, he has sold portion of the suit property to Vishal Prakash Chavan on 06-09-2016, Ram Ambadas Gundale on 28-06-2016, Jayashree Arjun Pudale on 02-11-2015 and to one Shivajirao Keshavrao Jadhav on 02-01-2015. The photocopies of the sale deeds have been produced on record. That means, in spite of having knowledge of the order of status-quo passed earlier and thereafter specific order of restraining him from creating third party interest in the suit property on 28-02-2007, the present respondent No.1 has went on creating third party interest periodically. He has now come with a case that, at one place it is stated that due to inadvertence he has executed the sale deed but it can be seen that when there are four different transactions of different dates then it cannot be taken as inadvertent mistake. Secondly, he has tried to contend that, he has executed the sale deed with the consent of the present petitioner and has even parted with the consideration amount, but there is absolutely no evidence annexed by him to the affidavit-in-reply to support his contention. The photocopies of these sale deeds on record doe not

show that petitioners had given consent for those sale deeds. Respondent No.1 in his affidavit-in-reply has not stated that as to why he did not obtain receipt or acknowledgement from the petitioner in respect of receipt of part of consideration amount. When the second appeal is pending definitely he would have been more cautious.

8. Another fact is also required to be considered is that, earlier the matter was compromised and the second appeal itself was disposed of, however thereafter respondent No.3 i.e. original plaintiff had created third party interest by executing sale deeds and then the other sisters filed miscellaneous application to recall the order of acceptance of compromise and accordingly that order of acceptance of compromise was recalled and the second appeal came to be restored. If the parties are contesting the matter by tooth and nail and they were diligent about their rights in the property, it is hard to believe that the petitioners would have joined respondent No.1 in disposing of the property. Without evidence to support the contention of the respondent No.1 that petitioner had consented to the sale deeds and he has received his share from the consideration, the lane excused by the respondent No.1 cannot be accepted. The

respondent No.1 not only once but it appears that even in the past as well as the four transactions now before this Court specifically mentioned in the petition show that, the respondent No.1 has absolutely no regard to the orders passed by this Court. This willful disobedience to the orders passed by this Court on 19-12-2006 and 28-02-2007 amounts to civil contempt as defined in Section 2 (b) of the Contempt of Courts Act, 1971.

9. Notice was issued of this proceeding which itself is a contempt petition to the respondent No.1, therefore he had sufficient knowledge that what action will be taken against him and therefore any other notice was not required to be issued to respondent No.1. Now by his own conduct when respondent No.1 has floated two separate orders passed by this Court on different dates by allowing the portion of the suit land at least four times, it cannot be said that, there is no willful contempt of the order passed by this Court. Definitely he deserves to be punished under Section 12 of the Contempt of Court's Act. Another fact also required to be noted that, he has not tendered any apology to be accepted and even if it would have been tendered, it could not have been accepted for the simple reason which requires to be reiterated that tow orders of this

Court have been floated on four occasions. Hence, I hold respondent No.1 guilty of committing civil contempt.

10. Heard respondent No.1 himself on the point of sentence. So also heard Mr. A. N. Nagargoje, Advocate holding for Mr. V. D. Gunale, Advocate for petitioners and Mr. V. D. Salunke for respondent No.1. Respondent No.1 himself told that, a mistake has been committed by him. Learned advocate appearing for him submits that, he has tendered apology in the affidavit-in-reply which was the occasion for him to tender the same.

11. It is to be noted and at the cost of repetition it can be seen that earlier there was a order of stauts-quo by this Court, in Civil Application No.775 of 1999 and thereafter in Civil Application No.11253 of 2006 was also filed, restraining respondent from creating third party interest and a specific order to that effect was passed on 28-02-2007. That means, twice the parties were directed to maintain status-quo or whatever position is there in respect of the suit properties to be maintained till the second appeal. In spite of that, four sell transactions have been executed by the respondent No.1. Therefore it can be said that, it is in defiance to the order passed by this Court. Under such circumstance the apology will not

be the appropriate sentence.

12. Further as per Explanation to Section 12 of the Contempt of Courts Act, 1971, it is provided that, "*an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.*" Here after the above said history and four instances a sell subsequent to the second order will not allow it to infer that the apology is bona fide. However at the same time it is also required to be seen that the contemnor is 75 years old as on today and that age is required to be considered while imposing the punishment. It is also to be noted that, in four sell instances the appellant has received lakhs of rupees. Under such circumstance mere sentence for fine is also not proportionate as per Section 12, the fine that can be awarded is maximum to the extent of Rs.2,000/-. Therefore, taking into consideration the age as well as the instance of the sell transactions done in defiance to the order. Will have disobedience of the order, punishment is required to be imposed. Hence, following order.

ORDER

- 1) Respondent No.1 Prakash @ Sham s/o Sadashiv Mali, the contemnor, stands convicted under Section 12 (1) of Contempt of Courts Act, 1971.

- 2) The contemnor is directed to be detained in civil prison as per Section 12 (3) of Contempt of Courts Act for one (01) week week and pay fine of Rs.2,000/- (two thousand).
- 3) The contemnor shall surrender himself before Registrar (Judicial) of this Court and Registrar (Judicial) is directed to execute the punishment.
- 4) The Registrar (Judicial) is directed to provide copy of the order to respondent No.1 contemnor free of cost today itself.
- 5) Since it is a civil contempt the Registrar (Judicial) to take note of the same and execute it accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-