

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2020

Date of Verdict : 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cont.P.No.349 of 2012

P.Rukmini

... Petitioner

Vs..

1.A.M.Abdul Azeez
2.R.Subramaniam
3.M.K.Sahabudin
4.A.S.Sakkarai Bava
5.B.Syed Abu Dahir
6.A.Asif Iqbal
7.S.Maher Banu
8.A.A.Rameena
9.A.Mahboob Khan
10.N.Mohammed Rafiq

...Respondents

Prayer :- This Contempt Petition is filed under Section 11 of the Contempt of Courts Act to punish them for deliberate violation of the Orders of Interim Injunction of this Court dated 14.12.2006 in CMP.No.10726 of 2006 in SA.No.1983 of 2006.

For Petitioner : Mr.T.M.Hariharan
For Respondents : Mr.V.Manohar

ORDER

This petition has been filed to punish the respondents for deliberate violation of the order of interim injunction passed by this Court dated 04.12.2006 in CMP.No.10726 of 2006 in SA.No.1983 of 2006.

2. The learned counsel for the petitioner submits that the second appeal in SA.No.1983 of 2002 has been filed as against the defendant. Thereafter the sole defendant died and his legal heirs were brought on record as respondents 2 to 4 in the main second appeal. The petitioner also filed application for injunction in CMP.No.10726 of 2006 to restrain the respondents 2 to 4 therein, their agents, servants and men from alienating or encumbering the suit property in O.S.No.2337 of 1996 pending disposal of the second appeal. While pending the said injunction application, other respondents were also impleaded as parties. On 14.12.2016 after hearing the parties, this Court passed an order of interim injunction in CMP.No.10726 of 2006. While being so, respondents 1 and 2 have appointed the third respondent as power agent by document dated 15.12.2010 and registered as document No.1372 of 2010, in respect of the suit properties.

2.1 He further submitted that the respondents 1 and 2 through their power agent, namely the third respondent have alienated the portion of the suit property to respondents 4 to 10 under various sale deeds. In fact, the respondents 1 to 3 are fully aware of the interim order passed by this Court restraining them from alienating the suit property. However, they have also sold some portion of the suit properties. It is a fragment violation of order passed by this Court and all the alienations are held pending the proceedings and as such all the sale deeds are hit by Section 52 of Transfer of Property Act. Therefore, they are also liable to be punished for their wilful and deliberate disobedience to the order passed by this Court.

2.2 The learned counsel for the petitioner, in support of his contention, relied upon the following judgments:

(i) ***Centry Flour Mills Vs. S.Suppiah (FB)*** reported in ***AIR 1975 Madras 270***

(ii) ***Surjit Singh and Others Vs. Harbans Singh and Others*** reported in ***(1995) 6 SCC 50***

(iii) ***Delhi Development Authority Vs. Skipper Construction CO.(P) Ltd and another*** reported in ***(1996) 4 SCC 622***

(iv) *All Bengal Excise Licensees' Association Vs.*

Raghabendra Singh and Others reported in (2007) 11 SCC 374

(v) *P.Chengaiah and 4 others Vs. D.Chandra* reported in 2008 (6) CTC 555.

3. The learned counsel for the petitioner and the respondents are present, and the submissions of the learned counsel for the petitioner were considered.

4. The second appeal was admitted by this Court on 13.12.2002. While pending the second appeal, the plaintiff filed petition in CMP.No.10726 of 2006 under Order 39 Rules 1 and 2 of CPC and sought for injunction restraining the respondents, their agents, servants and men from alienating or encumbering the suit property in O.S.No.2337 of 1996 pending disposal of the main second appeal in SA.No.1983 of 2002. This Court by order dated 14.12.2006 was pleased to grant an order of interim injunction as prayed for. In fact, while pending the second appeal the sole respondent died and his legal heirs, respondents 2 to 4 in the second appeal were brought on record in the second appeal by an order dated 14.12.2006

in CMP.No.17174 of 2005. In fact, the plaintiff categorically stated in the affidavit filed in support of the injunction petition in CMP.No.10726 of 2006, that the respondents 2 to 4 had alienated some portion of the suit property to the respondents 1 and 2 herein and others. Therefore, the respondents 1 and 2 herein filed application in CMP.No.9358 and 9359 of 2006 to implead themselves as party in the second appeal. They have also been impleaded as respondents 5 and 6 in the second appeal. On perusal of documents, the respondents 1 and 2 have appointed the third respondent as their power agent and the same was also registered as document No.1372 of 2010, Office of the District Registrar, Coimbatore.

5. In fact on the very same day, while they were impleaded as party in the second appeal, after hearing them also this Court granted interim injunction in CMP.No.10726 of 2006. Therefore, they have full knowledge about the interim order passed by this Court by order dated 14.12.2006. Even then, the respondents 1 and 2 through their power agent, the third respondent have alienated the portion of the suit property to the respondents 4 to 10 under various sale deeds. In fact, the seventh respondent is none other than the wife of the third respondent, namely the power agent of respondents 1 and 2. Therefore, all the respondents had knowledge about the pendency of the second appeal and also the interim

order passed by this Court. Thus, the respondents deliberately and wantonly violated the order passed by this Court dated 14.12.2006. In view of the order passed by this Court in S.A.No.1983 of 2002 by allowing the same and decreed the suit filed by the plaintiff in O.S.No.2337 of 1996 on the file of the Additional District Munsif Court, Coimbatore. Accordingly, the plaintiff is entitled to have her half share in the suit property. The learned counsel for the petitioner has relied upon the following judgments:

(i) ***Centry Flour Mills Vs. S.Suppiah (FB)*** reported in ***AIR 1975 Madras 270***, wherein it is held as follows:

“10. Mr. Panchapakesa Iyer, for the respondent, however, contends that our view, as indicated above, would prevail only as between the parties in court, but when third parties have acquired rights by reason of something happening though it is in contravention or in disobedience of the order of court, the legal position would be different. He says that, since the resolutions had been passed at the meeting on 14-9-1974, which had vested rights in third parties, it would be beyond the power of this court to make an order, which will have the effect of affecting or interfering with or setting aside such rights in third parties. In our opinion, the question of third parties' rights being affected does not arise in the context. We are concerned with a meeting which had been prohibited and not with what happened at the meeting. If the meeting held was in violation of

the court's order and the parties affected approach this court and ask for relief on the ground that what happened at the meeting would be destructive of their standpoint; this court on a consideration of the entire circumstances and facts will have to put back the parties in the same position as they stood prior to the holding of the meeting. That is not to say that, in doing so, the court interferes with third parties' rights. All that this court would do in such circumstances is that, since the meeting was prohibited, but all the same it was held, in violation of the order of this court, it would refuse to recognise the holding of the meeting as a legal one. Our attention has been invited for the respondents to [Puzhakkal v. Mahadeva Pattar](#) (AIR 1919 Mad 772). That was an extreme case where a Karnavan was held to be liable to repay the debt which he had incurred for necessity of the tarwad in contravention of an order forbidding him from incurring debts. The defence in the suit to enforce the debt was that the incurring of the debt was in violation of a prohibitory order. The court declined to accept the defence. It may be seen at once that the justice of the case demanded that the Karnavan was made liable to the debt, more especially when it was incurred for necessity of the tarwad. In that case, the learned Judges confined themselves to a consideration of Order XXXIX and their attention was not drawn to their inherent power under [Section 151](#), C.P.C. Even if their powers under [Section 151](#) had been invoked, in that case too, we have no doubt that the court would have come to the same

conclusion because of the exigencies of justice in that case. In *Bal Bhaddar v. Balla*, AIR 1930 All 387 (2) the court was concerned with an alienation made contrary to the order of injunction. It was no doubt held that the alienation could not be held to be invalid. But that was solely on the basis of the provisions of Order XXXIX, *Lord Krishna Sugar Mills Ltd. v. Abanash Kaur*, (1974) 44 Com Cas 210 = (1972 Tax LR 1667) (Delhi), which was cited for the respondents, was concerned with a different situation and we do not think it is of assistance in the present case. We are of the view that none of these cases cited for the respondents, which we have referred to above, leads us to the conclusion that this court cannot legitimately invoke its inherent powers in the present circumstances.”

(ii) *All Bengal Excise Licensees' Association Vs. Raghabendra Singh and Others* reported in (2007) 11 SCC 374, wherein it is held as follows:

27. Even assuming that there was any scope for bona fide misunderstanding on the part of the respondents, once it was found that the respondent had disobeyed the specific order passed earlier by the Court, the High Court should have directed the contemnors to undo the wrong committed by them which was done in clear breach of the order of the Court by restoring the status quo ante by canceling the lottery wrongfully held by them. The learned Judge found that the

respondent-contemnors had held the lottery in violation of the Court's order and the results of the said lottery should not be permitted to take effect and should be treated as unlawful and invalid for the purpose of grant of license. The learned Single Judge for the purpose of upholding the majesty of law and the sanctity of the solemn order of the court of law which cannot be violated by the executive authority either deliberately or unwittingly should have set aside the lottery held and should not have allowed the respondents to gain a wrongful advantage thereby.

28. In our opinion, a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof. By pleading misunderstanding and thereafter retaining the said advantage gained in breach of the order of the Court and the wrong perpetrated by the respondent-contemnors in contumacious disregard of the order of the High Court should not be permitted to hold good. In our opinion, the impugned order passed by the High court is not sustainable in law and should not be allowed to operate as a precedent and the wrong perpetrated by the respondent-contemnors in utter disregard of the order of the High Court should not be permitted to hold good.

34. In view of the clear finding of the Court that the respondent had acted in clear violation of the order made by the High Court. It is settled law that a party to the litigation

cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof by pleading misunderstanding and thereafter retain the said advantage gained in breach of the order of the Court. Such violations should be put an end with an iron hand.

35. We are unable to accept the argument advanced by learned Addl. Solicitor General that the respondents did not understand the implication and consequences of a prohibitory order passed by the High Court. We have already explained their conduct and the refusal to cancel the order when they were advised to do so by the High Court during the pendency of the contempt proceedings. The act of the respondent is not only willful but also deliberate and contumacious.

38. In the instant case, the respondents have conducted the auction quite contrary to and in violation of an injunction order passed by the High Court. Courts have held in a catena of decisions that where in violation of a restraint order or an injunction order against a party, something has been done in disobedience, it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our opinion, the inherent power will not only be available under Section 151 CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest.

(iii) ***P.Chengaiyah and 4 others Vs. D.Chandra*** reported in **2008 (6)**

CTC 555, wherein it is held as follows:

33. Here is a case where the respondent has played fraud upon the court by inviting a consent decree in C.S.No.1142 of 1992 to upset the restraint order the applicants obtained as against her in C.S.No.1843 of 1994 and also to force the applicants to grope in the dark without there being any property at the fag end of the trial of the case. It will be a travesty of justice to direct the applicants to work out their remedy in C.S.No.128 of 2006 filed by them against the respondent praying to declare the sale deed dated 10.7.2003 executed by the respondent in favour of Dhakshayini, permitting the respondent to participate in the main suit in C.S.No.1843 of 1994. The confidence reposed by the public in the majesty of law will be shaken if the alienation made by the respondent pendente lite against the spirit of the restraint order is allowed to continue even for a minute. This court will have to exercise its inherent jurisdiction under Section 151 of the Code of Civil Procedure to nullify the sale deed dated 10.7.2003 taking into account the admitted position and also the fact that transferee has no right to defend himself on the plea that he was a bona fide purchaser for consideration without notice. Only then, can the respondent be permitted to defend the suit in C.S.No.1142 of 1992.

36. In the result, the sale deed dated 10.7.2003 executed by the respondent in favour of Dhakshayini, a nominee of Banu Priya is declared null and void exercising the inherent

jurisdiction of this court under section 151 of the Code of Civil Procedure. Though the respondent has committed civil contempt, she is not punished as the act of contempt committed by her has been wiped out by this court. All the three Applications are ordered accordingly. There is no order as to costs.

In the above judgments, the Hon'ble Supreme Court of India and this Court held that once it was found that the respondent had disobeyed the specific order passed earlier by this Court, High Court should have directed the contemnors to undo the wrong committed by them which was done in clear breach of order of the court by restoring the status quo ante by cancelling the lottery wrongfully committed by them. Further a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof.

6. In the case on hand, the respondents 1 and 2 had full knowledge about the interim order passed by this Court thereby restraining the respondents 2 to 4 in second appeal in SA.No.1983 of 2002 from alienating or encumbering the suit property in OS.No.2337 of 1996. In fact, the respondents 1 and 2 also filed application in CMP.Nos.9358 and 9359 of 2006 to implead themselves as party in the second appeal as respondents 5 and 6. On the very same day while hearing the arguments in the

injunction petition, their objections were also heard and the implead petition was allowed and they were impleaded as respondents 5 and 6 in the main second appeal. Therefore, they were fully aware about the interim order passed by this Court and even then, they appointed their power agent, third respondent herein. Thereafter the respondents 1 and 2 through their power agent the third respondent have alienated the portion of the suit property to the respondents 4 to 10 herein under various sale deeds as follows:

Sl. No.	Date	Doc.No.	Name of Purchaser	Rank
1	30.12.2010	7056/2010 dt. Registrar, Coimbatore	A.S.Sakkarai Bava	R-4
2	30.12.2010	7057/2010 dt. Registrar, Coimbatore	B.Syed Abu Dahir	R-5
3	30.12.2010	7058/2010 dt. Registrar, Coimbatore	B.Syed Abu Dahir	R-5
4	30.12.2010	7059/2010 dt. Registrar, Coimbatore	A.Asif Iqbal	R-6
5	30.12.2010	7060/2010 dt. Registrar, Coimbatore	S.Mehar Banu	R-7
6	12.01.2011	196/2011 dt. Registrar, Coimbatore	A A Rameena	R-8
7	19.01.2011	283/2011 dt. Registrar, Coimbatore	A Mahboob Khan	R-9
8	25.01.2011	470/2011 dt. Registrar, Coimbatore	N Mohamed Rafiq	R-10

Therefore, they willfully, wantonly and deliberately violated the order passed by this Court and they are liable to be punished for their wilful disobedience of the order.

7. However, this Court is of the considered opinion that no harsh punishment should be given to them and instead it would be sufficient if the respondents 1 and 2 are directed to pay cost of Rs.10,000/- for committing wilful contempt of the injunction order passed by this Court. Therefore, The cost of Rs.10,000/- (Rupees Ten Thousand only) shall be paid by the respondents 1 and 2 to the petitioner within a period of two weeks from the date of receipt of copy of this order, failing which sentenced them to undergo a simple imprisonment for one week.

8. Now having punished the contemnors, the respondents 1 and 2, it is to be decided whether the sale deed executed by them through their power agent third respondent in favour of the respondents 4 to 10 are valid or not. It is well established that when the order of this Court is in force, the entire sale took place in respect of part of the suit property, the respondents 1 and 2 have brought disrepute to the majesty of law. Therefore, the sale deeds executed by the respondents 1 and 2 through the third respondent in favour of the respondents 4 to 10 are declared as null and void.

9. In the result, the contempt petition is allowed in the above said terms. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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