

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 206 of 2021

(Office Reference)

(In the matter of Suo Motu contempt arising from First Appeal No.156 of 2018)

1. Manglu Ram (Dead) Through LRs

1(A). Achchhe Bai W/o Late Manglu Ram, Aged About 55 Years R/o Village Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazaar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

1(B). Smt. Sushil Sahu W/o Harprasad, D/o Late Manglu Ram, Aged About 32 Years R/o Village Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazaar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

1(C). Siya Bai Sahu D/o Late Manglu Ram Sahu, Aged About 28 Years R/o Village Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazaar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

1(D). Brihaspati Sahu, D/o Late Manglu Ram Sahu, Aged About 25 Years R/o Village Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazaar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

1(E). Kishan Kumar Sahu S/o Late Manglu Ram Sahu, Aged About 23 Years R/o Village Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazaar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

1(F). Geeta Kumari D/o Late Manglu Ram Sahu, Aged About 21 Years R/o Village Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazaar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicants/Defendants

Versus

1. Laxmikant Mishra S/o Shri Rajdhar, Aged About 40 Years R/o Paras Nagar, Kasdol, P.H.No. 09, Tahsil Kasdol, District Balodabazar Bhatapara (Chhattisgarh), District : Balodabazar-Bhathapara, Chhattisgarh (*Plaintiff*)

2. Ms. Indira Mishra, Tahsildar, Kasdol, Tahsil Kasdol, District Balodabazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents/Contemnors

For Applicants/Defendant	:	Shri K.K. Dewangan, Advocate
For Respondent No.1/Contemnor	:	Shri H.V. Sharma, Advocate
For Respondent No.2/Contemnor	:	Shri Rahul Jha, Advocate

Both the Respondents - Contemnors are present in the Court through VC

D.B. :Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

26/07/2021

Heard.

1. First Appeal No.156 of 2018 was filed by Manglu Ram, the original defendant in the year 2013 along with an application for grant of leave to file appeal as an indigent person. That application remained pending until it was allowed vide order dated 28.2.2018 allowing MCC and permitting legal representatives of Manglu to file appeal taking into consideration insufficiency of means to pay the Court fee.
2. The First Appeal was admitted on 28.2.2018 and the parties including the plaintiff-respondents were noticed and represented through their counsel. Subsequently, on 6.12.2018, this Court passed order staying execution of decree of specific performance during the pendency of the appeal and the appeal was directed to be listed for final hearing in due course.
3. It appears that thereafter, the appellants in the First Appeal (legal representatives of original defendant- Manglu) started raising certain construction, repairs etc on the land which was subject matter of decree of specific performance. The plaintiff -Laxmikant Mishra (one of the contemnor herein) moved an application before the jurisdictional Tahsildar (the other contemnor) for restraining the occupants of the disputed land from raising any construction. On such application, the second contemnor Ms. Indira Mishra, then posted as Tahsildar, passed interim order on 11.12.2020. It was also brought to the notice of Tahsildar that matter is

pending in the High Court and the execution of decree has been stayed. This is reflected from order dated 11.1.2021. The second contemnor, having noted that an order has been passed by the High Court, rejected application dated 11.1.2021 on the consideration that as the case is pending in the High Court, it will be proper to maintain status quo to avoid any dispute if the parties are allowed to carry on any construction or repair work on the property in dispute.

4. When the aforesaid order and proceedings were brought to the notice of this Court in the pending First Appeal No.156 of 2018, this Court prima facie found that the conduct of respondent-plaintiff Laxmikant Mishra and the Tahsildar are contemptuous. Accordingly, while issuing notice on application under Order 39 Rule 2 (A) CPC filed by the appellant in the First Appeal, this Court also directed suo motu contempt proceedings to be initiated.
5. In the contempt matter, learned counsel for the applicant (Appellant/ Defendant in FA No.156 of 2018) would submit that the matter was subjudice before this Court and the decree for specific performance of contract granted in favour of plaintiff had remained stayed and if at all the plaintiff had any grievance with regard to appellant carrying on any construction or repair activity on the land, their remedy was to move application before this Court rather than approaching the revenue authority. The plaintiff applied before the Tahsildar only to get a favorable order and overreach the proceedings of this Court. He would further submit that the Tahsildar also had no jurisdiction to entertain any application filed by the respondent -plaintiff of the appeal (contemnor No.1 herein) and the Tahsildar ought to have left the parties to work out their remedy by filing suitable application before this Court for passing appropriate orders in the form of injunction/prohibition. The Tahsildar knowing fully well that such an order could not be passed, proceeded to pass an order staying the construction/repair work on the property, modifying the order of status quo passed by this Court which is an act of overreaching the orders and proceedings of this Court and for such willful

act, both the contemnors are liable to be punished.

6. Learned counsel appearing for respondent No.1/contemnor Laxmikat Mishra (Plaintiff in FA No.156 of 2018) would submit that a decree of specific performance was passed in favour of plaintiff and though the execution of that decree was stayed by the Appellate Court, decree stood remained in his favour, but the appellant (defendant in FA No.156 of 2018), taking undue advantage of stay of execution of decree of specific performance in their favour, started altering the nature of property by carrying out various activities and they also came to know that the defendant may also create third party interest by disposing off the same though the appeal had remained pending. He submits that stay of execution of decree of specific performance cannot be equated with an order of temporary injunction against the plaintiff-respondent. In such a situation, application for prohibiting the defendant of the suit (appellant in First Appeal No.156 of 2018) was filed upon legal advice.
7. Learned counsel appearing for respondent No.2/contemnor, the then Tahsildar would submit that respondent No.2 passed the order without having any intention to flout the order and proceedings of this Court. He would submit that initially, the application was moved before her Court by Laxmikant Mishra stating that a decree was passed in his favour, though, subsequently, there is stay order passed by the High Court and if during this period, the other party is allowed to raise construction and take benefit of other scheme, it will create complications and other injury. Thus, considering this eminent situation and to avoid any complication, an order was initially passed on 23.11.2020 restraining the other party from raising construction or sale of the property and, thereafter, when the other party moved an application dated 11.01.2021, taking into consideration that the matter is pending in the High Court, it was considered appropriate to direct status quo to be maintained to avoid any complication. Therefore, the application was rejected.
8. Learned counsel for respondent No.2/contemnor would submit that the order may be right or wrong but there was no intention to overreach the

judicial proceedings or to flout the order of the Court. Learned counsel for respondent No.2 further submits that respondent -Tahsildar has submitted unconditional apology, if at all, this Court comes to the conclusion that act of the respondent No.2 has amounted to willful disobedience of the order or an act of overreaching the proceedings of this Court.

9. We have heard learned counsel for the parties, perused the records, various orders sheets which have been passed in the case.

10. Undisputedly, the dispute between the parties was subjudice and pending before this Court. A decree of specific performance was passed in favour of Laxmikant Mishra (plaintiff) against Manglu Ram (deceased-defendant). In the appeal, this Court had stayed the execution of impugned decree of specific performance of contract. If at all the decree holder- Laxmikant had any grievance that having obtained stay of execution of decree, the defendant /legal representatives of deceased- Manglu (Appellants in FA No.156 of 2018) are proceeding to raise construction or carrying out repair work or intending to create third party interest over the property, their remedy was to approach this Court in pending appeal by moving suitable application. We find that contemnor Laxmikant Mishra, instead of making any application before this Court, moved application before Tahsildar on certain legal advice.

The concerned Tahsildar/contemnor No.2 passed the order of injunction in revenue proceedings though it was within her notice and knowledge that matter is pending before this Court. Once matter was brought to this Court and was subjudice, the plaintiff-Laxmikant Mishra (respondent/contemnor No.1 herein) could not have moved application before the revenue authority unless there was an order to that effect passed by this Court in pending appeal nor Tahsildar was competent to initiate any proceeding and the parties ought to be left to work out their remedy in the pending appeal.

11. We are, therefore, of the view that the conduct of Laxmikant Mishra (Plaintiff) in moving application before Tahsildar and Tahsildar in drawing proceeding and passing various orders in the matter, was an act of

overreaching the order and proceedings of this Court. However, considering that plaintiff - Laxmikant Mishra (respondent/contemnor No.1) has stated that an application was moved before Tahsildar on legal advice from local counsel and also taking into consideration the unconditional apology tendered by the concerned Tahsildar/contemnor No.2 before this Court that there had been no intention to flout the order of the Court, but she only intended to preserve status quo as the matter was pending before the Court, we accept the apology and not inclined to pass further orders in the matter. The contemnors in the case are warned to remain cautious and careful in future and it is expected that such conduct shall not be repeated by them in future.

12.The contempt petition is accordingly disposed off.

13.A copy of this order shall be produced before the concerned Tahsildar and it shall be obligatory for him to pass appropriate orders withdrawing all earlier orders passed in the case. If that is not done by the Tahsildar who is occupying the office of Tahsildar at present, it will be open for the aggrieved party to initiate fresh contempt proceedings against present incumbent in the office of Tasildar, Kasdol, District- Balodabazar-Bhatapara.

14.A copy of this order shall also be placed in the record of First Appeal No.156 of 2018.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge