



Cont P.No.247 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Cont P.No.247 of 2021

Mr.G.Mahesh,
S/o.Ganapathy Mudaliar,
Proprietor,
Anand Transports,
G6, Ground Floor,
Singapore Plaza,
Door No.337,
Linghi Chetti Street,
Chennai 600 001

... Petitioner/Petitioner/Plaintiff

.Vs.

1. M/s.Reliance Leather Exports,
Represented by its Partners,
Mr.Fazal Mohammed Razack &
Mr.Diwakar Rajamanickam
Having their office at:
No.23, New Avadi Road,
1st Floor, Kilpauk Garden, Chennai-600010.

2. Mr.Fazal Mohammed Razack,
Partner of Reliance Leather Exports,
Residing at: No.24, Sivalingam Street,
Old No.41, Thiruvika Nagar, Vetri Nagar,
Chennai 600082.

3. Mr.Diwaker Rajamanickam,
Partner of Reliance Leather Exports,



WEB COPY

Residing at: E-6, Coromandel Towers,
816/817, Poonamallee High Road,
Kilpauk, Chennai 600 010.
816/817, Poonamallee High Road,
Kilpauk, Chennai 600 010.

4. Mrs.S.Aasiya Farhath,
W/o. Mohd. Nayeemudhin Malick
22/38, Mosue Street,
Triplicane, Chennai 600 005

5. Mrs.S.Asma Nikhath,
W/o.Akmal Basha Timir
A17, Lotus Manon South Avenue,
Kamaraj Nagar, Tiruvanmiyur,
Chennai 600 041

... Respondents/Respondents/Defendants

[4th and 5th respondents are impleaded as
per the order of the Court dated
22.10.2021 made in Sub.Appln.No.244
of 2021 in Cont P.No.247 of 2021]

Contempt Petition filed under Section 11 of the Contempt of Courts
Act 1971, praying to punish the 2nd respondent for filing false affidavit and
the 3rd respondent for his willful disobedience of the order dated 15.12.2017
passed by this Hon'ble High Court in Application No.6375 of 2017 in
C.S.No.790 of 2017 under Contempt of Courts of Act 1971.

For Petitioner : Mr.G.K.R.Pandian
For Respondents : Mr.T.A.Srinivasan

ORDER

The present contempt petition was filed on the ground that the
undertaking given before this Court by the second respondent, based on



which an order was passed in A.No.6375 of 2017, dated 15.12.2017, has been violated.

2. The petitioner filed a summary suit for recovery of money against the respondent 1 to 3. During the pendency of the suit, an application was filed in A.No.6375 of 2017 for attachment before judgement. A counter affidavit came to be filed by the second respondent wherein the second respondent undertook before this Court that he will not alienate the subject property. This undertaking was recorded by this Court and an order was passed on 15.12.2017 to the effect that there shall be no alienation of the property until further orders of the Court.

3. The suit was ultimately decreed in favour of the petitioner after all the defendants were set ex-parte, by judgment and decree dated 21.03.2018. It is the case of the petitioner that the suit claim as per the decree and the interest that was granted, worked out to nearly Rs.2.39 Crores as of October 2019.

4. The petitioner took steps to file execution petition to recover the amount. At that point of time, the petitioner applied for Encumbrance certificate and found that second respondent had executed a settlement deed dated 21.12.2017 in favour of his daughter. This fact came to be known to



WEB COPY

9. Heard Mr.G.K.R.Pandian, learned counsel for the petitioner and Mr.T.A.Srinivasan, learned counsel for the respondents.

10. There is no dispute with regard to the fact that the second respondent filed an affidavit before this Court in A.No.6375 of 2017 undertaking not to alienate the subject property. The relevant portion in the affidavit filed before this Court are extracted hereunder:-

'8.Moreover the 2nd respondent got the property mentioned in the schedule I as per partition and he is not having any intention to sell their immovable properties to defeat the alleged claim. Further the applicant/plaintiff has sent a notice dated 07.08.2015 demanding a sum of Rs.64,00,000/- (Rupees Sixty Four Lakhs Only) and the same was denied by way reply notice dated 14.08.2015. Further, the reply dated 17.07.2017 was sent to the applicant/plaintiff and a rejoinder also was issued by him. None of the averments are stated in the petition. The applicant/plaintiff has not made this case, without reasonable excuse. Therefore in the above said circumstance if this Hon'ble Court is directed the respondents to furnish the security for value of sum of Rs.1,13,00,000/- (Rupees One Crore and Thirteen Lakhs Only) before judgement failing which an order of attachment of the immovable properties belonging to the respondents which is more fully described in the schedule of



the Judge's summons, pending disposal of the above suit, the defendants will be seriously prejudice and the same cannot be compensated in terms money.

9. I submit that the prayer of the applicant/plaintiff to attach our property on the base of false claim supported by illegally fabricated promissory note and cheque is purely against the cannons of justice. Moreover this 2nd respondent's brother is in possession of the 1st Schedule mentioned property and we have no idea of disposing our property even otherwise the applicant/plaintiff having played fraud with the promissory note and cheque as if issued by us have no balance of convenience in his favour.'

11. Based on the above undertaking, this court passed an order on 15.12.2017 making it very clear that there will be no alienation of the property until further orders. The suit itself came to be decreed subsequently by judgment and decree dated 21.03.2018. However, during the interregnum, second respondent had proceeded to execute the settlement deed in favour of his daughter on 29.09.2017, but however, it was presented for registration only on 21.12.2017. It is therefore clear that the settlement deed came to be presented and registered subsequent to the interim orders passed by this Court. The respondents have given reasons and are projecting a case as if the alienation had taken place within the family, and that no



13. The next issue that requires the consideration of this court is with regard to the effect of the alienation of the property in violation of the undertaking given before this court and the orders passed directing not to alienate the property. The Hon'ble Supreme Court has categorically held that where there is alienation of property in violation of the Court order, the Court has to necessarily put back the property to the same position as it was existing on the date when the order was passed by the court. Useful



WEB COPY

reference can be made to the judgment of the Hon'ble Supreme Court in ***Ghanshyam Sarda Vs. Sashikant Jha, Director J.K.Jute Mills Co. Ltd., case law*** reported in ***2017 (1) SCC 599***.

14. Considering the nature of alienation that has taken place in this case, this Court does not want to proceed against the respondent and impose a punishment in the contempt. However, Since the alienation had taken place in violation of the orders passed by this Court on 15.12.2017, this Court has to necessarily hold that the settlement deed that was registered on 21.12.2017, has to be declared as null and void and non-est. By virtue of the same, the property will go back to its original position as it existed on the date of which the orders were passed in A.No.6375 of 2017, dated 15.12.2017.

15. The learned counsel appearing on behalf of the respondents raised certain contentions with regard to the ownership of the property and as to how the petitioner is not entitled to claim any right from the property. This Court while exercising its contempt jurisdiction, need not go into these issues and it will be left open to be agitated before the appropriate forum.



Cont P.No.247 of 2021

WEB COPY

The contempt petition is disposed of accordingly. Consequently, connected applications are closed, if any.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

nsa

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

GS/21/12/2021