



Cont.P.No.1066 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Contempt Petition No.1066 of 2013

in

TOS.No.70 of 2013 in C.S.No.894 of 2006

M.Rajkumar,
2A, Ramaniyam shreyas Apartments,
36, 4th Seaward Road,
Valmiki Nagar, Thiruvanmiyur,
Chennai 600 041

...Petitioner

Vs.

1.Rajashree,
Attyampatti,
Salem District

2.Padmini Priyadarshini,
Attyampatti,
Salem District

3.Abuja R.Bajaj,
4A, Stringers Road,
Periamet,
Chennai 600 003

4.Utsa R.Bajaj,
4A, Stringers Road,
Periamet,
Chennai 600 003



5.Bajaj Properties Developers (P) Ltd.,
Rep. By its Director, Mr.Rajesh S.Bajaj,
S/o.S.K.Bajaj,
71/72, Harden Chambers,
Pantheon Road, Egmore,
Chennai – 600 008.

6.Kareena R.Bajaj,
4A, Stringers Road,
Periamet,
Chennai 600 003

7.Rajesh S.Bajaj,
4A, Stringers Road,
Periamet,
Chennai 600 003

...Respondents

Prayer: Contempt Petition filed under Section 12 of the Contempt of the Courts Act, 1971, to punish the respondents for violation of undertaking given in O.A.No.945/2006 in C.S.No.894/2006 dated 22.04.2008 and for violating the orders passed therein.

For Petitioner : Mr.S.Vaitheeswari

For Respondents : Mr.K.Ashok Kumar for R1 & R2

ORDER

Complaining that the respondents have acted in violation of the undertaking given by them to this Court in A.Nos.944 & 945 of 2006, the petitioner seeks to punish the respondents.



2.The suit in C.S.No.894 of 2006 has been filed by the petitioner seeking partition and separate possession of his 3/4th share in the suit property and for other reliefs. The 1st defendant in the suit namely, sister of the plaintiff resisted the suit contending that the property has been bequeathed to her and her daughter by her father under the Will dated 24.09.2003. An application for grant of probate of the said Will has also been filed before this Court and the same has been converted into a Testamentary Original Suit in TOS.No.70 of 2013 and the same is pending.

3.In A.No.945 of 2006, the plaintiff in the partition suit / the petitioner herein sought for an order of injunction restraining the respondents from alienating the property subject matter of the suit. In the counter affidavit filed in the said application, the respondents 1 and 2 in the contempt petition undertook not to alienate the property, which is the subject matter of the partition suit and the Testamentary Original Suit. This Court by order dated 22.04.2008 recorded the said undertaking.

4.However, during April 2009, precisely on 15.04.2009, the respondents 1 and 2 in the contempt petition executed a general power of



attorney in favour of the 3rd respondent Abuja R Bajaj, empowering her to deal with the property, which was the subject matter of the partition suit in C.S.No.894 of 2006. On the same day, an agreement was also entered into between the respondents 1 and 2 in the contempt petition and M/s.Bajaj Properties Developers Private Limited, in and by the said agreement, the respondents 1 and 2 herein, agreed to sell the property for a consideration of Rs.1,10,00,000/-(Rupees One Crore Ten Lakhs only).

5.Subsequently, the Agent namely, Mrs.Abuja R Bajaj executed sale deeds in her capacity as power agent of the respondents 1 and 2, conveyed the said property to M/s.Bajaj Properties Developers Private Limited. This contempt petition has been filed in the year 2013, stating that the action of the respondents 1 and 2 in executing the power of attorney, the agreement of sale on 15.04.2009, then by enabling the Agent, Mrs.Abuja R. Bajaj to execute four sale deeds on 13.07.2011, conveying different extents of undivided share in the property subject matter of the suit in favour of M/s.Bajaj Properties Developers Private Limited, Rajesh S.Bajaj, Utsa R.Bajaj and Kareena S.Bajaj is in clear violation of the undertaking given to



this Court. Claiming that the execution of the power of attorney, agreement of sale and the sale deeds are in violation of the undertaking given to this Court and therefore, the respondents 1 and 2 are guilty of contempt, this contempt petition has been filed seeking to punish them.

6.Heard Ms.Vaitheeswari, learned counsel appearing for the petitioner and Mr.K.Ashok Kumar, learned counsel appearing for the respondents 1 and 2.

7.Though this contempt petition filed in the year 2013, notice in the contempt petition could not be served on the respondents for over 8 years. When a new counsel appeared for them in the Civil Suit and the Testamentary Original Suit, he was asked to get instructions and appear in the contempt petition also. Accordingly, Mr.K.Ashok Kumar, learned counsel has entered appearance for the respondents 1 and 2 in the contempt petition.

8.Mr.K.Ashok Kumar, learned counsel appearing for the respondents 1 and 2 would submit that there was no intention on the part of the respondents 1 and 2 to disobey the orders of this Court. According to



him, the 1st respondent was in urgent need of money for her daughter's medical education and therefore, she had borrowed monies from Mr.Rajesh S.Bajaj, who happened to be the Director of Bajaj Properties Developers Private Limited.

9.As a security of the said borrowing, the lender insisted on execution of the power of attorney as well as agreement of sale. According to her, the lender has misused the power of attorney as well as the agreement of sale and had created the sale deeds on 13.07.2011. She would also contend that she had given a police complaint regarding the execution of the sale deeds and the police have said that this being a civil dispute, she will have to approach the Civil Court, seeking cancellation of the sale deed. It is also seen that the respondents 1 and 2 have now launched the proceedings before the Registration Department, seeking to annul the sale deeds dated 13.07.2011.

10.Be that as it may, it has to be seen as to whether the actions of the respondents 1 and 2 in executing the power of attorney and the sale agreement would amount to violation of the undertaking constituting



contempt of Court. Mrs.Vaitheeswari, learned counsel appearing for the petitioner would vehemently contend that all these transactions are within the knowledge of the respondents 1 and 2 and they have done this only to circumvent the orders of this Court. Mr.K.Ashok Kumar, learned counsel appearing for the respondents 1 and 2 would submit that it was not their intention to disobey the orders of this Court. He would add that in fact, the respondents 1 and 2 got cheated by the purchaser namely, Mr.Rajesh S.Bajaj.

11.I do not propose to go into the validity or otherwise of the sale deeds that had been executed by the power agent in favour of the various purchasers on 13.07.2011, based on the power of attorney dated 15.04.2009. The validity or otherwise of those documents would have to be decided only in appropriate proceedings, which are either pending or may be launched by the parties. All that has to be addressed in the contempt petition is, was there any wilful violation of the undertaking given to this Court. From the evidence that has been produced in the form of Bank Statements and other records, I find some justification in the claim of the respondents 1 and 2 to



the effect that the transaction was only a loan transaction and the documents executed as security were misused to create the sale deed. This finding of mine is on a *prima facie* examination of the documents and I make it clear that this finding will not be binding on any of the parties and it is restricted only to the disposal of this contempt petition.

12.It is seen from the bank transactions that several amounts were deposited by the purchaser to the accounts of the 1st respondent and almost immediately monies have been withdrawn in the names of various persons. In the counter affidavit of the 1st respondent filed in the contempt petition, it is stated that the many of the persons, who have been shown as persons to whom the payment has been made had no connection with her and it is the alienee, who had misused the cheques issued by her. From the pattern of the transactions in the accounts, I find that the claim of the respondents may also be true. I do not think that I can go into the questions in the absence of those parties before me.

13.Since I find that the sale was not made with an intention to circumvent the orders of this Court made in A.No.945 of 2006. I do not



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think the case of contempt has been made out. However, I conclude that the action of the respondents 1 and 2 in executing the general power of attorney and the agreement of sale dated 15.04.2009 is not free from doubt also.

14.However, I do not see any reason to punish the respondents for contempt of Court. The respondents 1 and 2 should not indulge in such transactions in future. The contempt petition is therefore, closed.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

kkn

//Certified to be true copy//

Dated at Madras this the day of 2022.

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GS/10/08/2021