Reserved on : 16.09.2022

Pronounced on : 30.09.2022

A.No.2683 of 2020
in
C.S.No.544 of 2017

G. CHANDRASEKHARAN, J.

This application is filed under Order XXXIX Rule 2(A) of CPC r/w Order 14 Rule 5 of Madras High Court Original Side Rules r/w Section 151 of Code of Civil Procedure, to punish the respondents for breach of injunction by detaining them in civil prison.

2. Learned counsel for the applicants/plaintiffs submitted that the second applicant is the wife of the first applicant. They filed the suit in C.S.No.544 of 2017 for cancellation of the two sale deeds. They have given Power of Attorney to the second respondent for the suit properties to sell the properties to potential buyer and to account the sale proceeds to them. The second respondent had acted contrary to the terms of the Power of Attorney deed and had malafidely sold the properties in favour of his own son, the first respondent. The sale deeds are bereft of consideration, sham and

nominal. At the time of filing the suit, applicants filed O.A.No.692 of 2017 for injunction, restraining the respondents 1 and 2 from alienating / encumbering the suit properties. An ex parte interim injunction was granted on 18.07.2017 and it was extended from time to time. The respondents have not filed counter in the application and therefore, the interim injunction was made absolute on 12.12.2017. The respondents 1 and 2 have not filed the written statement in the suit and therefore, they were set ex parte on 20.07.2018. Ex parte evidence was recorded and when the matter was pending for arguments on 28.06.2018, the respondents' counsel appeared before the Court and requested the matter to be referred to Mediation. Accordingly, the matter was sent to Mediation Centre and returned with a failure report. Thereafter, an ex parte decree was passed on 20.07.2018.

2(i). On 03.08.2018, the learned counsel for the applicants requested the Court to send the copy of the judgment and decree to the concerned Sub Registrar for further course of action. This Court directed the registry to communicate the copy of the judgment and decree to the concerned Sub Registrar Office. Applicants' counsel also sent a notice dated 20.08.2018 with a copy of the judgment and decree dated 20.07.2018 in C.S.No.544 of

2017 along with the order dated 03.08.2018 to the fourth respondent and the Inspector General of Registration. In September 2018, respondents 1 and 2 filed application to set aside ex-parte decree in Application No.373 of 2019. That application was allowed by this Court on 11.04.2019 with a condition to pay a sum of Rs.5 lakhs to the applicants. The matter was ordered to be posted on 04.06.2019 for compliance. Respondents 1 and 2 did not comply the conditional order but filed an application for extension of time. The order was complied, only after extension of time granted by the Court. When the matter was pending for framing issues, applicants were informed about construction activity in item no.2 of the suit properties. On verification, they found that the respondents 1 and 2, after knowing the ex-parte decree passed against them, had deliberately sold the property to the 3rd respondent for a sum of Rs.1,62,72,000/- on 21.03.2019. It shows that all the respondents had committed the act of contempt by deliberately disobeying the judgment of this Court dated 20.07.2018. Therefore, this application is filed.

3. Learned counsel for the respondents 1 and 2 submitted that the first respondent filed a counter stating that the first respondent tendered unconditional apology to the Court for alienating the property on 21.03.2019 vide a registered sale deed No.2422 of 2019. The application filed to set aside the ex parte decree in A.No.373 of 2019 was allowed on 11.04.2019 with a condition to pay Rs.5 lakhs to the applicants. Respondents 1 and 2 were not able to pay this amount. They sought extension of time and paid the amount. They did not have the knowledge of the ex-parte order passed by this Court. They got the knowledge about the ex-parte decree only on 03.09.2018. They instructed their former Advocate to file written statement, counter and other necessary applications. However, the former Advocate has not done that. Applicants used the first respondent as a scapegoat to execute their agenda and demanded him to marry a girl of their choice. As he did not accept the proposal, they have initiated this proceedings. No person will transact huge money with a stranger without a reason. 1st respondent is facing action from the Income Tax Department. The sale of the suit property is not deliberate and willful

and it was done without the knowledge of the ex-parte decree. Therefore, he prayed that the unconditional apology may be accepted.

4. Learned counsel for the third respondent submitted that third respondent is an innocent and bonafide purchaser of item no.2 of the suit properties for a valuable consideration. He is not aware of the pendency in C.S.No.544 of 2017 and the interim order passed in the suit and finally, the ex-parte decree passed in the suit against the respondents 1 and 2. In August 2018, he saw an advertisement in The Hindu newspaper for a sale of a property in Akkarai, in ECR comprising of 7200 square feet land and built up area of 5000 sq.ft, for Rs.3 crores. He contacted the first respondent, whose contact number was given in the advertisement. After seeing the property and negotiating the price, the sale consideration was fixed at Rs.1,75,00,000/-. The building in the property was partly completed. After purchase of the property on 21.03.2019 through a registered sale deed, he made changes in the revenue records, got the patta transferred to his name. Then, he put up a pucca house by spending over Rs.75 lakhs. Only in September 2020, he came to know about civil suit in

C.S.No.544 of 2017 pending before this Court. Then, he confronted 1st respondent about the suit and suppression of the pendency of the suit, he refused to give any reply. Then he gave a complaint to the Director General of Police, Chennai. He is a bonafide purchaser for value without the notice of the pending civil suit. Before purchase, he verified encumbrance certificate and it did not reflect any encumbrance. Had he known about the pendency of the suit, he would not have spent huge amount in buying the property and construct a building. From the email communication between applicants and first respondent, it is seen that they were involved in illegal activity of money laundering. First respondent had sold the property only after getting consent from the applicants. Thus, he prayed for dismissal of the application against the third respondent. In addition to that he filed an undertaking affidavit as to not to alienate the item no.2 of the suit property to any one.

5. Learned Government Pleader filed counter for the fourth respondent stating that one Arumuga Navaraj S/o Arumugam was working as Sub Registrar, Neelankarai, during the relevant point of time. He

received a letter of K.R.S.Associates dated 20.08.2018 along with the copy of the decree and judgment dated 20.07.2018 in C.S.No.544 of 2017 on 23.08.2018. As per Rule 89 of the Civil Rules of Practice, the registering officer has to receive order or decree only from the Court. Till he was transferred from the office of the Sub Registrar, Nellankarai on 09.10.2019, no order has been received from this Court. In fact, he informed this fact to the person representing K.R.S.Associates and also directed him to present the copy of the decree and order declaring a document as null and void for registration as prescribed under Section 23 of the Registration Act, 1908. Meanwhile, the sale deed dated 21.03.2019, executed by first respondent in favour of the third respondent in respect of item no.2 of the suit properties was registered as Document No.2422 of 2019. He has not dreamt of violating the order of this Court and tenders his unconditional apology, if this Court considers his act amounts to contempt of Court.

6. Considered the rival submission and perused the records.

7. From the narration of facts as projected from the submission of the learned counsel appearing for the parties and counter of fourth respondent, it is made clear that the applicants have filed C.S.No.544 of 2017 for the following reliefs:-

"*(a). to cancel the Sale Deed dated 29.01.2015, registered as document No.503 of 2015 in the office of the Sub-Registrar, Virugambakkam, executed in favour of the first defendant which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in immovable property as sham and nominal, ultra virous, collusive unsustainable and invalid; and consequently mandator direction, directing the first defendant to handover vacant possession of Item No.1 of the suit schedule property to the plaintiffs.*

(b). to cancel the Sale Deed dated 09.01.2015, registered as document No.166 of 2015 in the office of the Sub-Registrar, Neelangarai, executed in favour of the first defendant which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in immovable property as sham and nominal, ultra virous, collusive unsustainable and

invalid; and consequently mandatory direction, directing the first defendant to handover vacant possession of Item No.2 of the suit schedule property to the plaintiffs.

(c). permanent injunction restraining the first defendant, his men, agents, nominees, servants, etc., from alienating or encumbering the schedule properties in Item No.1 and Item No.2 any manner whatsoever;

(d). to direct the second defendant to furnish true and proper accounts to the plaintiffs;

(e). for costs of the suit; and

(f). to pass such further or other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

7(i). Along with the suit, they filed O.A.No.692 of 2017 seeking injunction restraining the respondents 1 and 2 from alienating or encumbering the suit properties. An ex parte injunction was granted on 18.07.2017 and that was made absolute on 12.12.2017. The respondents 1 and 2 entered appearance in the suit and despite that they did not file counter in O.A.No.692 of 2017 or the written statement in main suit. Therefore, the respondents 1 and 2 were set ex parte on 20.07.2018. It is submitted by the applicants that when the matter was pending for arguments after recording ex-parte evidence, at the instance of respondents 1 and 2, the matter was referred to Mediation. However, Mediation resulted in failure. The matter was sent back to Court resulting in passing of the ex-parte decree on 20.07.2018.

8. Learned counsel for the applicants made a submission before this Court with a request to communicate the judgment in C.S.No.544 of 2017 to the concerned Registrar. After recording the submission, this Court on 03.08.2018 directed the registry to communicate the copy of the judgment in C.S.No.544 of 2017 to the concerned Registrar Office forthwith. Applicants have not produced any material to show that whether the judgment in C.S.No.544 of 2017 has been communicated to the concerned Registrar namely the fourth respondent, as ordered by this Court on 03.08.2018. Only if the applicants pay the necessary charges for communicating judgment of this Court to the fourth respondent, the registry would communicate the judgment. As of now, there is no materials produced by the applicants to show that whether they paid the charges for communicating the judgment in C.S.No.544 of 2017 and whether the registry had communicated it.

9. Be that as it may, the learned counsel for the applicants produced copies of the notice sent to fourth respondent and Inspector General of Registration through register post with acknowledgment on 20.08.2018 with a copy of the judgment in C.S.No.544 of 2017. From the counter affidavit of the fourth respondent, it is also established that the legal notice dated 20.08.2018 along with the copy of the decree and judgment dated 20.07.2018 in C.S.No.544 of 2017 were received by the fourth respondent on 23.08.2018. However, fourth respondent had not chosen to act on this, stating that he will act only if, an order or decree is directly received from the Court. Whether this stand taken by the fourth respondent is correct or not will be considered in the later part of this order. But, suffice it is to say that had he acted on the copy of the judgment produced by the counsel for the applicants and made necessary entries in the concerned register, third respondent would have been saved from the embarrassment of purchasing a property, embroiled in a litigation and facing this contempt proceedings.

10. Coming to the claim of the respondents 1 and 2 that they knew about the ex-parte decree only on 03.09.2018, this Court is of the considered view that this claim is a false claim made only for the purpose of avoiding the contempt proceedings. As indicated earlier, an ex parte injunction order was passed against the respondents 1 and 2 restraining them from alienating or encumbering the suit properties on 18.07.2017. Despite, giving opportunity to file counter, it appears that counter was not filed and therefore, ex-parte interim injunction was made absolute on 12.12.2017. Subsequently, respondents 1 and 2 have not filed a written statement resulting in setting them ex-parte on 20.07.2018. When it was pending for arguments, on ex-parte hearing, on the representation of the respondents 1 and 2, the matter was sent to mediation. When the mediation failed, ex-parte decree came to be passed on 20.07.2018. During all these transactions, the respondents were represented by an Advocate. Now, it is stated by the respondents 1 and 2 that the Advocate has not properly conducted the case. If that be the case, the respondents 1 and 2 are expected to initiate appropriate legal action against their Advocate. However, no material is produced before this Court to show that they proceeded against

their Advocate for not appropriately defending their case. Therefore, the charges levelled against their Advocate that Advocate had not conducted the case properly cannot be accepted.

11. Assuming that they knew about the ex-parte decree only in 2019 without admitting their claim, it is seen that the respondents 1 and 2 filed applications to set aside the ex-parte decree in A.No.373 of 2019. This application was filed on 04.09.2018 and the same was allowed on 11.04.2019 on condition to pay Rs.5 lakhs to the applicants on or before 03.06.2019. When the matter was posted for compliance on 04.06.2019, respondents 1 and 2 sought extension of time and only after extension of time granted, they paid this amount. Thus, it is clear that on the date of filing Application No.373 of 2019 on 04.09.2018, the respondents 1 and 2 knew well that an ex parte decree was passed against them on 20.07.2018. The ex-parte decree effectively granted the prayer for cancellation of sale deeds dated 29.01.2015 and 09.01.2015 executed in favour of the first respondent. Still the first respondent had executed a sale deed in favour of the third respondent in clear violation of the interim order passed in

O.A.No.692 of 2017 which was merged with final judgment passed in C.S.No.544 of 2017 on 20.07.2018. Therefore, there is no doubt that the first respondent, when decree for cancellation of the sale deeds was in force, sold the item No.2 of the suit properties to the third respondent. Therefore, this Court holds the first respondent as violator of the orders passed by this Court in C.S.No.544 of 2017 and he is liable to be punished for contempt for violating the order / judgment of this Court.

12. With regard to violation of orders of the Court and committing contempt, learned counsel for the applicants pressed into service the following judgments:-

12(i). In the judgment reported in ***(1994) 2 SCC 266*** in ***Satyabrata Biswas and Others Vs. Kalyan Kumar Kiskku and Others***, it is observed as follows:-

> *"23. Apart from the fact whether A.K.Ghosh had a legal authority to sublease or not it was not open to him to grant a sublease in violation of the order. It is no use contending as Mr.Chidambaram, learned counsel for the respondents does, that there was a bar to such a sublease*

under the terms of the status quo order. It has the effect of violating the preservation of status of the property. This will all the more be so when this is done without the leave of the court to disturb the state of things as they then stood. It would amount to violation of the order. The principle contained in the maxim 'actus curiae neminem gravabit' has no application at all to the facts of this case when in violation of status quo order a sub-tenancy has been created. Equally, the contention that even a trespasser cannot be evicted without recourse to law is without merit, because the state of affairs in relation to property as on September 15, 1988 is what the court is concerned with. Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of sub-tenancy is recognised, how is status quo as of September 15, 1988 maintained? Hence, the grant of sublease is contrary to the order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sublease are clearly illegal."

12(ii). In the judgment reported in ***(1994) 6 SCC 50*** in ***Surjit Singh and Others Vs. Harbans Singh and Others***, it is observed as follows:-

"4. As said before, the assignment is by means of a registered deed. The assignment had taken place after the passing of the preliminary decree in which Pritam Singh has been allotted 1/3rd share. His right to property to that extent stood established. A decree relating to immovable property worth more than hundred rupees, if being assigned, was required to be registered. That has instantly been done. It is per se property, for it relates to the immovable property involved in the suit. It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is

so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 CPC."

12(iii). In the judgment reported in ***2016 SCC OnLine Bom 8884*** in ***Prakash Gobindram Ahuja Vs. Ganesh Pandharinath Dhonde***, it is observed as follows:-

"88. The effect and impact in legal terms on the alienation or transfer of an immovable property in the teeth of an order of injunction is distinct and that a prohibitory or

preventive order passed by a competent court restrains the party to it from indulging in the above acts. If that is breached, the consequences are that the transaction may not be void but it is illegal.

93. As against it, the object of Order XXXIX Rule 1 and 2 CPC is to totally restrain a party, pending the litigation, from creating any third party interests in the suit property and ensuring that the suit property remains in the same condition as it was on the date of filing of the suit. Thus, the object of Order XXXIX Rule 1 and 2 CPC, under which the order of injunction is passed, is totally different from that of Section 52 of the TP Act. This provision restrains the party from entering into any sort of transaction or alienation, whatever may be the circumstances or whatever may be the exigencies.

97. Moreover, as against the transfer made pendent lite, the transfer made in violation of injunction order is held to be no transfer in the eyes of the law. The legal position in this respect is well settled that, if any property is alienated in the face or order of interim injunction passed by the Court, such alienation become ipso facto illegal and not at all binding on the parties thereto. It confers no right, title or interest on the transferee. This legal position is very well illustrated in the Division Bench Judgment of this Court in *the case of Keshrimal Jivji Shah (supra), to which one of us [Coram: S.C. Dharmadhikar,J.] was a Member."*

13. It is submitted on behalf of the learned counsel appearing for the 3rd respondent that applicants and first respondent had involved in money laundering activities. That is the reason why applicants had sent huge money through various illegal banking transactions to the first respondent. It is evidenced from the email communications produced by the respondents 1 and 2. The applicants themselves had not approached the Court with clean hands and they cannot seek the indulgence of this Court for punishing the respondents for contempt. May be that the applicants and first respondent had illegally involved in money transaction. However, this is a matter for consideration by the Enforcement Directorate and other agencies, to look into this matter. This Court cannot stretch beyond the scope of the enquiry in the contempt application.

14. It is also to be noted that a memo is filed by the applicants stating that when the matter is pending for mediation through the Court appointed mediator, first respondent sold item no.1 of the suit properties to the third parties on 28.07.2021. When it was brought to the notice of this Court, first respondent cancelled the sale deed on 10.08.2021. Copy of the encumbrance certificate was also filed along with this memo. This conduct of the first respondent shows that he has no regard for the Court proceedings or Court order, confirming that he is a clear violator / contemnor of the Court's order. Admittedly, as found from the discussions held above, 1st respondent had clearly committed an act of contempt by violating the order of this Court. Second respondent is not a party to the sale deed executed in favour of the third respondent. Therefore, he cannot be punished for the sale made by the 1st respondent.

15. When it comes to third respondent, this Court finds substance in the submission of the learned counsel for the third respondent that the third respondent is a bonafide purchaser for value without notice of pendency of suit in C.S.No.544 of 2017. Admittedly, the judgment and

decree was passed in C.S.No.544 of 2017 was not entered in the concerned register. Third respondent applied for encumbrance certificate before purchase and after finding that there is no encumbrance, he purchased item no.2 of the suit property. In the absence of any evidence to show that he purchased item No.2 of the suit property, after knowing the pendency of the civil suit in C.S.No.544 of 2017, this Court is of the considered view that the third respondent cannot be punished for contempt. The petition against the third respondent is liable to be dismissed.

16. As for the fourth respondent, a legal plea is taken that the judgment and decree in C.S.No.544 of 2017 was not directly sent from the Court. It was already found that applicants have not produced any material to show that the judgment and decree in C.S.No.544 of 2017 was sent to fourth respondent through Court, as ordered on 03.08.2018. However, this judgment passed in C.S.No.544 of 2017 was brought to the notice of the fourth respondent by counsel for the applicants. That was also admitted by the fourth respondent. Still fourth respondent has not taken any care and shown any diligence to verify the claim of the counsel for the applicants and

proceeded to register the sale deed in favour of third respondent. It shows that he has not performed his duty diligently and committed an act of misconduct. Thus, this Court, instead of punishing fourth respondent, Arumuganavaraj S/o Arumugam, the then Sub Registrar, Neelangarai and then Superintendent of the Inspector General of Registration, directs the Inspector General of Registration, the Registration Department to take appropriate departmental action against Mr.Arumuganavaraj S/o Arumugam for the aforesaid misconduct.

17. In the result, this application is allowed in part. 1st respondent is ordered to be sent to civil prison to undergo simple imprisonment for a period of three months in a civil prison, on payment of necessary charges to the prison department, as required under law. The Inspector General of Registration Department is directed to take appropriate departmental action against fourth respondent and send a report on the action taken to the Court within a period of three months from the date of receipt of copy of this order. Application against the second and third respondents is dismissed. No costs.

18. Registry is directed to issue warrant of commitment against the 1st respondent to lodge him in civil prison at Chennai or other civil prison in the State of Tamil Nadu.

30.09.2022

AT
Index:Yes/No

Note: Registry is directed to issue order copy on or before 20.10.2022.

To
The Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Chennai – 600 028.

G. CHANDRASEKHARAN, J.

AT

Order in
A.No.2683 of 2020 in
C.S.No.544 of 2017

30.09.2022