

104

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2835-2018 (O&M)

Date of Decision:09.08.2022

Ramesh Kumar and others

.. Petitioners

Vs.

Barkha Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Aayush Gupta, Advocate for the petitioners.

...

Manoj Bajaj, J. (Oral)

Petitioners have preferred this revision petition to challenge the judgment dated 06.01.2018, passed in Civil Appeal No.923 dated 2013 by Addl. District Judge, Kurukshetra, whereby the decision dated 31.01.2013 passed by Addl. Civil Judge (Sr. Divn.), Kurukshetra, dismissing plaintiff's contempt petition No.4 of 2012 under Order XXXIX Rule 2-A CPC read with Section 151 CPC, was reversed.

The brief facts of this case are that Barkha Ram along with others filed a suit titled as *Barkha Ram and others Vs. Ram Nath*, for declaration to challenge the revenue entries in Column No.4 of the jamabandi in favour of defendants No.1 to 10 relating to the suit property measuring 32 kanals 8 marlas comprised in khewat No.409, khatoni No.600, Rect. No.65, khasra No.9/2(4-8), 10(8-0), 11(7-16), 12/1(4-12), Rect No.66, khasra No.6/1(4-0), 15/2(3-12), total kitta 6 situated in Village Yara, Tehsil Shahabad, District Kurukshetra, as illegal, null and void and also prayed for a decree of possession. Along with the said suit, an application under Order

was also filed by plaintiff for restraining the defendants from alienating the suit property, in any manner by creating any charge or delivering the possession to anybody till the decision of the suit.

Upon notice, defendants No.2 to 10 appeared before the court to contest the suit, and after hearing the parties, Addl. Civil Judge (Sr. Divn.), Kurukshetra, passed the interim injunction order in favour of the plaintiff and restrained the defendants from alienating the suit property, in any manner till the decision of the injunction application dated 19.08.2005.

The interim injunction order dated 03.09.2005 was passed in the presence of the defendants as well as their counsel and it was not challenged, which attained finality. The plaintiff had personally given the certified copy of the said order along with copy of plaint in the office of Tehsildar/Sub-Registrar, Shahabad Markanda and requested them not to register any sale deed qua the suit land, but in blatant defiance of the said order dated 03.09.2005, the defendants transferred the suit property by executing two sale deeds dated 01.05.2006 and 27.06.2006. The entire land measuring 32 kanals and 8 marlas was sold by defendants No.1 to 10 and the sale deeds were registered by the respondents, namely, Godhu Ram, Tehsildar/ Sub-Registrar, Shahabad Markanda and Bir Singh, Naib-Tehsildar, Joint Sub-Registrar, Shahabad Markanda, District Kurukshetra (respondents No.11 and 12) respectively.

Thereafter, the plaintiff-Barkha Ram filed the application under Order XXXIX Rule 2-A CPC for disobedience of injunction order dated 03.09.2005 against the defendants as well as Godhu Ram and Bir Singh, on the ground that the injunction order was well within the knowledge of defendants, therefore, by executing the sale deeds, they all have willfully

and deliberately violated the restraint order and committed contempt of Court and further prayed that they be punished.

The respondents while contesting the said application filed their reply dated 29.05.2007 to plead that the plaintiff/applicant has concealed material facts from the Court, and the applicant is well aware of the decision dated 11.03.2006 passed in Civil Suit No.428 of 1999 tiled as *Babu Ram etc. Vs. Puran Chand and others*, by Addl. Civil Judge (Sr. Divn.), Kurukshetra and pursuant to it, the sale deed was executed. As per reply, since the execution of sale deed was in compliance of the Court order dated 11.03.2006, therefore, this transfer of property does not amount to contempt, and it was also claimed that the order dated 03.09.2005 was not brought to the notice of the respondents. Besides, the counsel, who appeared on behalf of the defendants on 03.09.2005 was not engaged by the defendants. Denying the other averments in the application, in the end, it was prayed that the application under Order XXXIX Rule 2-A CPC be dismissed with compensatory costs of Rs.50,000/- and the plaintiff be prosecuted for commission of offences punishable under Sections 415 to 420, 465 to 471, 193 to 209, 499, 500 and 427 of IPC.

Respondents No.11 and 12 filed their separate reply, who while raising the preliminary objections regarding maintainability etc. pleaded that the order dated 03.09.2005 was neither conveyed to them nor the plaintiff visited their office to deliver the copy of the said decision. According to them the sale deeds were registered by them after verifying the record and even in the sale deeds, it is mentioned by the executants that in respect of the property in question, no stay is operating. It was prayed that as no contempt has been committed by them, therefore, the application be

dismissed.

After completion of the pleadings of the parties, the trial Court framed in all four issues and thereafter, parties adduced their evidence. The trial Court upon considering the pleadings, evidence and material on record dismissed the application of the plaintiff vide order dated 31.01.2013.

Dissatisfied with the order passed by the Addl. Civil Judge (Sr. Divn.), Kurukshetra, plaintiff preferred civil appeal before Addl. District Judge, Kurukshetra and the same was partly allowed through impugned order dated 06.01.2018, whereby it was held that respondent Nos.2 to 9 have committed intentional disobedience and willful breach of the injunction order dated 03.09.2005 and in respect of the others, it was observed that as they were not aware of the injunction order, they are not guilty of contempt of Court. Hence, this revision petition.

Learned counsel for the petitioners has argued that the order dated 03.09.2005 was an ad interim order and since the application under Order XXXIX Rules 1 and 2 CPC was still pending, therefore, even if it is assumed that the said order was violated, the application under Rule 2-A CPC would not be maintainable. He submits that as the suit brought by the plaintiff was decreed on 28.03.2011, therefore, the appellate Court could not have held the petitioners guilty for violating the order dated 03.09.2005, because this order stood merged in the final decree, much prior to the impugned decision dated 06.01.2018. Learned counsel vehemently argued that as the defendants were facing another litigation through civil suit No.428/1999 and it also relates to the same property, wherein the decree was passed against them on 11.03.2006, therefore, the sale deed was executed in obedience of the said decree. Learned counsel has argued that in

this background, it cannot be held that the action of executing sale deed on the part of the petitioners was willful, therefore, the appellate Court has wrongly proceeded to reverse the well reasoned order passed by the Addl. Civil (Sr. Divn.), Kurukshetra by holding the petitioners guilty of the alleged contempt. He prays that the impugned order dated 06.01.2018 be set aside.

After hearing the learned counsel, considering the pleadings and material on record, this Court finds that the entire controversy relating to the contempt by defendants (petitioners) revolves around the interim injunction order dated 03.09.2005. No doubt, the said order was passed at the initial stage, while considering the plaintiff's application under Order XXXIX Rules 1 and 2 CPC and the same was not finally decided during the pendency of the suit, but it cannot be said that the order dated 03.09.2005 alleged to be violated is not passed under Order XXXIX Rules 1 and 2 CPC.

During the course of hearing, it has not been disputed by learned counsel for the petitioners that the order dated 03.09.2005 was never challenged by them, therefore, the defence that the counsel who appeared on their behalf on 03.09.2005 was not engaged by them is not worth believing, as the defendants effectively contested the suit, which was decided against them. Similarly, the other argument raised by Mr. Gupta, learned counsel that the sale deeds were executed pursuant to the decree dated 11.03.2006 passed in Civil Suit No.428/1999 is also without any merit, as concededly pursuant to the decree dated 11.03.2006, no execution was pressed by the decree holder. Further, even if, it is believed that the decree had been passed by some other Court in relation to the suit property, the petitioners were required to seek permission of the Court or ought to

have applied for modification of the injunction order dated 03.09.2005, but in this regard, no steps were taken by them. Thus, it would not absolve them of their willful and deliberate disobedience of the order dated 03.09.2005. The argument that as the injunction order dated 03.09.2005 stood merged in the decree dated 28.03.2011, the contempt under Order XXXIX Rule 2-A CPC would not be maintainable is also misplaced, as it is not the case of the petitioners that the application under Order XXXIX Rule 2-A CPC was filed by plaintiff after the decision of the suit. Needless to observe here that the contempt proceedings under Order XXXIX Rule 2-A CPC are independent in nature and merely because the same came to be decided after the decision of the main suit, would not render the contempt proceedings as infructuous. These proceedings are *quasi* criminal in nature aimed to find out the culpability of the contemner in alleged disobedience of the injunction order.

During the course of hearing, it is also not disputed by learned counsel that the application was filed soon after the execution of the sale deeds and during the pendency of the civil suit. At this stage, Mr. Gupta, learned counsel has argued that the RSA arising from the decree dated 28.03.2011, filed by petitioners is still pending, therefore, at this stage it would not be safe to hold them guilty of violation of interim injunction order dated 03.09.2005 as there are chances that their second appeal may be accepted. However, this Court does not find any substance in this submission and pendency of RSA has no relevance to the act and conduct of the defendants relating to wilful disobedience of injunction order. A perusal of the impugned order passed by the appellate Court shows that it has carefully examined the material on record, before arriving at a conclusion

that the petitioners willfully and deliberately violated the injunction order dated 03.09.2005 by executing the sale deeds to transfer the suit property during the pendency of the suit, and rightly reversed the trial Court decision, refusing to entertain the plaintiff's application under Order XXXIX Rule 2-A CPC.

No other argument was raised.

Resultantly, this Court does not find any irregularity or impropriety in the impugned order.

Dismissed.

09.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No