



Cont.A.Nos.1 and 2 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

Cont.A.Nos.1 & 2 of 2023

and

C.M.P.Nos.2144 & 2146 of 2023

M.Sumathi

... Appellant
in both appeals

Vs.

1.Kothandan

2.K.Balasundar

3.IDFC First Bank Ltd.,

KRM Tower, 7th Floor,

No.1, Harrington Road,

Chennai – 600 031.

... Respondents
in Cont.A.No.1 of 2023

*[R3 suo motu impleaded as 2nd respondent in
Contempt Petition as per order of the Court
dated 01.11.2021 made in Cont.P.No.1104 of 2021]*

1.Kothandan

2.K.Balasundar

... Respondents
in Cont.A.No.2 of 2023



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Prayer : Contempt Appeals in Cont.A.Nos.1 and 2 of 2023 filed under Section 19 of the Contempt of Courts Act, 1971, to allow these appeals and purge the appellant from the contempt proceedings by setting aside the order dated 21.12.2022 made in Cont.P.Nos.1104 and 1165 of 2021 respectively on the file of this Court.

For Appellant	:	Mr.K.N.Nataraj in both appeals
For R1 and R2	:	Mr.K.Ashok Kumar in both appeals
For R3	:	No appearance
in Cont.A.No.1 of 2023		

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The above Contempt Appeals have been filed by the 1st respondent in the Contempt Petitions in Cont.P.Nos.1104 and 1165 of 2021 to purge the appellant from the contempt proceedings by setting aside the order, dated 21.12.2022, made in Cont.P.Nos.1104 and 1165 of 2021.



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WEB COPY 2.Respondents 1 and 2 in these Contempt Appeals as writ petitioners

filed the writ petition in W.P.No.25162 of 2019 for issuance of Writ of Certiorarified Mandamus to quash the impugned order, dated 01.07.2019, passed by the District Revenue Officer, the 1st respondent in the writ petition, and the report of Special Tahsildar, dated 28.06.2019, and for a direction to the 1st respondent in the writ petition to conduct a fresh enquiry after giving sufficient opportunities to all the parties concerned and issue Patta in the name of writ petitioners. The writ petitioners also filed a Writ Miscellaneous Petition in W.M.P.No.24736 of 2019 along with the writ petition, for interim stay of the impugned order.

3.The case of the writ petitioners in the affidavit filed in support of the writ petition can be summarized as follows :

3.1.The property measuring an extent of 25 Cents (10,904 sq.ft) comprised in Old S.Nos.608 and 609 and presently in T.S.No.64 in Ward-B and Block No.17 at No.63, Oragadam Main Road, Venkatapuram, Ambattur, Chennai, belongs to the 1st petitioner, who is the father of the 2nd



petitioner in the writ petition. It is the specific case of writ petitioners that the said property is in the enjoyment of the 1st petitioner, who has put up a small house and enjoying the same for a period of 40 years. It is contended by the petitioners that they have been paying Property Tax and other Taxes for the property from 2002 onwards in the name of the 1st petitioner. The 1st petitioner has settled an extent of 18 Cents in favour of 2nd petitioner by way of registered settlement deed dated 10.01.2012. The 1st petitioner retained an extent of 7 Cents. The writ petitioners contended that they alone are in exclusive possession of the property and they have been paying all the statutory dues like Property Tax, water and sewerage charges and electricity charges, etc.

3.2.In the affidavit, they have also referred to the suit filed by the appellant in O.S.No.14 of 2012 on the file of the District Munsif Court, Ambattur, against the writ petitioners. It is not disputed that the said suit came to be dismissed by a judgment and decree dated 05.03.2018, holding that the appellant was not in possession of the suit property. It is contended by the writ petitioners that the judgment of Civil Court attained finality.



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3.3.It is also contended by the writ petitioners that the appellant and one Mr.Chandrachala Sarathbabu were trying to interfere with the peaceful possession of the writ petitioners and caused life threat to the petitioners and that therefore, they had lodged a police complaint before the Inspector of Police, T-1 Ambattur Police Station, Chennai, and the said complaint was registered in Crime No.2405 of 2018. Though the Inspector of Police referred the case to Revenue Divisional Officer to initiate action under Section 145 Cr.P.C., it is contended by the writ petitioners that no action was taken by Revenue Divisional Officer.

3.4.In this regard, an earlier writ petition was filed by the writ petitioners in W.P.No.21608 of 2019 and the same was disposed of by order dated 23.07.2019 with a direction to the Revenue Divisional Officer to conduct an enquiry under Section 145 Cr.P.C. and complete the same within eight weeks from the date of receipt of the copy of the order.

3.5.Thereafter, the writ petitioners filed independent applications before the Special Tahsildar, Town Land Tax Scheme, for issuing Patta in their own name under the Town Land Tax Scheme, which is also known as



“Natham Settlement Scheme”, based on their long possession and enjoyment

in respect of the extent of 25 Cents. It is admitted that the appellant also made an application seeking Patta in her name in December, 2018. It is contended by the writ petitioners that the 2nd respondent, though conducted an enquiry, did not consider the overwhelming documents filed by the writ petitioners in relation to the property. It is also contended that the appellant, based on certain documents which are not pertaining to the property under the enjoyment of the writ petitioners, claimed Patta to the very same property.

3.6.It is seen from records that the appellant claimed title to the same property on the basis of a registered sale deed, dated 30.11.2011, which is registered as Doc.No.13299 of 2011. The said sale deed was executed by one Kalimuthu and Ramasamy as Power of Attorney Agents of one N.Gopalan. The said N.Gopalan is said to have become the owner of the property by way a registered Will, dated 04.10.2004, executed by one Saint Nithyanathaswamy in favour of N.Gopalan. It is the specific contention of the writ petitioners that the alleged Will dated 04.10.2004, as well the General Power of Attorney Deed executed by N.Gopalan, are not in respect



of the property which is the subject matter of the writ petition.

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3.7. Referring to the glaring discrepancies in the documents, it is contended by the writ petitioners that the property purchased by the appellant is not the property which was described in the Will and therefore, it is contended that the appellant is not the owner of the disputed property and has created bogus documents to make a false claim over the property which are in the enjoyment of the writ petitioners over a period of more than 40 years.

3.8. It is also to be noted that the writ petitioners have pleaded that N.Gopalan, who executed the Power of Attorney in favour of Kalimuthu and Ramasamy, expired on 07.10.2008, and the appellant obtained the sale deed from the Power of Attorney Agents on 30.11.2011 much after the death of Principal. Therefore, it was contended that the sale deed is invalid in the eye of law, as it was obtained from a dead person.

3.9. The writ petitioners raised several grounds pointing out *inter alia* how the District Revenue Officer passed the impugned order without looking into the admitted facts and the records filed before him before passing the impugned order.



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4.Learned Single Judge of this Court, upon perusing the affidavit filed in support of the writ petition and the submissions of the learned counsel appearing for the writ petitioners, recorded the submissions of official respondents who were present in Court on 27.08.2019. This Court, taking note of the fact that the impugned order itself is a fabricated one, granted the following order on 27.08.2019 in W.M.P.No.24736 of 2019.

“4.As required by this Court during morning session today, the First and Second Respondents have appeared in person before this Court. It is informed by Mr. Kalidoss, District Revenue Officer, Collectorate, Chennai, that he took over that post on 02.07.2019 and that the impugned order has been passed on 01.07.2019 by the previous incumbent, viz., Mr. Karunagaran. It is also brought to the notice of this Court from the Distribution Register maintained in office of the District Revenue Office, which has been produced, that the file number stated in the impugned order does not relate to the matter which is the subject of this Writ Petition.

5.In the aforesaid circumstances, there shall be an order of interim stay of the impugned order, and any form of alienation or creation of encumbrance or third party interest



or alteration of the physical features or parting with possession of the property, shall not be made either by the Petitioner or the Third Respondent, without the prior permission of this Court, until further orders.

6.Learned Counsel appearing for the Petitioner seeks time to implead the said Mr. Karunagaran, who was the District Revenue Officer, Chennai at the time of passing the impugned order, in his personal capacity.”

5.After the learned Single Judge granted interim order prohibiting any form of alienation or creation of encumbrance or third party interest or alteration of physical features by any of the parties, the appellant, who is the 3rd respondent in W.M.P.No.24736 of 2019, filed an application to vacate the interim order dated 27.08.2019 in W.M.P.No.24736 of 2019 in W.P.No.25162 of 2019. The affidavit filed in support of the vacate stay petition was signed by the appellant on 23.10.2019.

6.However, when the interim order of the learned Single Judge was in force and the petition filed by the appellant to vacate the interim order is also



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pending, the appellant and her husband, by name A.D.Murugan, have created a mortgage over the property with IDFC First Bank Ltd. by depositing the title deeds in respect of the property, which is the subject matter of the writ petition and availed a loan of Rs.2.5 Crores. A Memorandum of Deposit of Title Deeds dated 04.01.2021 was also executed and registered as Doc.No.25 of 2021 in the office of Sub-Registrar, Ambattur. Stating that the creation of mortgage is an encumbrance and the appellant was specifically directed not to make any alienation or create any encumbrance or third party interest and that the mortgage of the property by way of deposit of title deeds is in utter disregard to the order of the learned Single Judge, the writ petitioners/respondents 1 and 2 herein filed the Contempt Petition in Cont.P.No.1104 of 2021. Subsequently, the writ petitioners came forward with another Contempt Petition in Cont.P.No.1165 of 2021, alleging that the appellant and her husband are using the disputed property for advertising their family business by putting up flex banner of the company which is in the name of her husband. Making several other allegations to the effect that the appellant has altered the physical features and tried to assert physical possession by illegal and indirect means, the



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second Contempt Petition in Cont.P.No.1165 of 2021 is filed.

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7.The appellant herein filed separate counter affidavits in both Contempt Petitions, specifically denying the serious allegations made against her. In the counter affidavit filed by the appellant in Cont.P.No.1104 of 2021, the appellant came forward with a peculiar story that she was under the *bona fide* impression that she would succeed in the vacate stay petition.

8.After the Contempt Petitions were filed, the learned Single Judge, who heard the Contempt Petitions, passed orders on 26.10.2021 and on 01.11.2021 directing the appellant to redeem the mortgage to purge the appellant from contempt proceedings.

9.The appellant, thereafter, filed an affidavit on 02.11.2021, containing the following statements :

“6.I submit that in order to comply with the order of this Hon'ble Court in letter and spirit, I have explored all the possibilities in redeeming the mortgage in any one of the following manners:

a) Substituting the security provided in the above said



mortgage with another property, viz., land measuring about 1 acre and 34 cents, i.e., 58,370 square feet out of 6 acres 28 cents in Survey No.80, Paimash Nos. 192, 218, 219, 220 and 221 in Vadakalani, Gomathipuram, Thirunidravur Village, Poonamallee Taluk, Thiruvallur District, within SRO, Avadi and in the same Survey No., and Village, another piece of land measuring 113/4 cents or 5,123 square feet or thereabouts, which is worth about Rs.4 crores.

b) In case of any difficulties, alternatively, the residential property of my mother, viz., late Mrs. A.Pushpam at Door No.1,

Bharathiyar Street, Vathalagundu Villagea, Nilakottai Taluk Dindugal District measuring an extent of 87.63 square metres together with a building constructed thereon consisting ground and first floors along with the property owned by my husband, viz., a piece of vacant land measuring about 0 acre 85 1/4 cents in Survey No.99/10 in Nedumaram Group Manamellpatti Village, Thirupattur SRO, Karaikkudi Registration District. The worth of both the properties is around Rs.3 crores.

c) I have made arrangements to raise temporary loans to the tune of Rs.3 crores from the near and dear of my husband, who have promised me to do the same by 20th of



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this month, which I hope to receive and clear the mortgage by the end of this month and clear the encumbrance.

7.I submit that all these activities will be subject to the leave that may be granted by this Hon'ble Court on compassionate grounds. I seek indulgence of this Hon'ble Court to permit me to redeem of the mortgage of the subject property so as to keep the said property in adherence to the order of this Hon'ble Court...”

After recording the affidavit filed by the appellant, the learned Single Judge directed the appellant to file an affidavit on the action taken in furtherance to the same by 25.11.2021.

10.Again, the learned Single Judge, after taking note of the fact that the 3rd respondent Bank did not appear despite notice, passed an order on 13.12.2021 in the following lines :

“4.The First Respondent had filed an affidavit dated 25.11.2021 before this Court informing that she was taking action for redeeming the mortgage which has been created over the property in contravention of the order dated



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27.08.2019 in W.M.P. No. 24736 of 2019 in W.P. No. 24162 of 2019 passed by the Court. However, it was informed when the matter was taken up for hearing on 10.12.2021 that the First Respondent has not yet redeemed the mortgage and would require further time in that regard.

5.The Hon'ble Supreme Court of India in Delhi Development Authority -vs- Skipper Construction Co. (P) Ltd. [(1996) 4 SCC 622] has cited the decision of the Full Bench of this Court in Century Flour Mills. Ltd. -vs- S.Suppiah (AIR 1975 Mad 270) and held that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt, in the following words:-

"19. where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order."

In view of the aforesaid legal position, it has become



imperative for this Court to immediately undo the wrong doing committed by the Respondents in utter disregard of the court order, meaning thereby that the creation of the mortgage by the First Respondent in favour of the Second Respondent by Memorandum of Deposit of Title Deeds dated 04.01.2021, which is not valid, and its registration, shall stand effaced by making necessary entries for its cancellation in the relevant books maintained in the office of the Sub-Registrar, Ambattur, in terms of Rule 116-A of the Registration Rules. The report in compliance of such action taken shall be sent by the Sub-Registrar, Ambattur, with supporting documents to this Court by 31.12.2021.”

11. Thereafter, Contempt Petitions were listed before Hon'ble Mr. Justice M.Dhandapani on 13.06.2022 and on that day, the learned Judge adjourned the Contempt Petition after recording the undertaking of the appellant that a sum of Rs.45,00,000/- will be paid before 30.06.2022 and further, a sum of Rs.50,00,000/- will be paid by the appellant on or before 13.07.2022. Thereafter, the appellant did not pay any money. The learned Single Judge found that the appellant did not honour her commitments or undertaking before the Court. Thereafter, on 30.11.2022, learned Single



Judge heard the matter and found that the appellant/contemnor has not shown any inclination to comply with the earlier direction of this Court to redeem the mortgage on her own. After holding that the appellant has committed willful disobedience of the order passed by the learned Single Judge and her conduct cannot be viewed lightly, the learned Single Judge imposed punishment by directing detention of the appellant/contemnor for a period of three months in civil prison and by imposing fine of Rs.25,000/- to be paid by the appellant/contemnor.

12.Challenging the same, the above Contempt Appeals have been preferred by the appellant, mainly on the ground that the petition filed by her to vacate the interim order is not yet disposed of and that there is no willful disobedience, in the sense, there is no *mens rea* in disobeying the orders of the learned Single Judge.

13.Referring to the appellant's earnest efforts to deposit the balance amount due, to discharge the mortgage, the appellant would contend that the appellant will be in a position to redeem the mortgage by paying the entire



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mortgage amount. Referring to Section 12 of the Contempt of Courts Act, it was pointed out that fine may extend only upto Rs.2,000/-, whereas, the learned Single Judge has imposed the fine by directing the contemnor to pay Rs.25,000/- and that therefore, the order of punishment is liable to be set aside. Referring to some of the financial expenses incurred by the appellant towards her daughter's marriage and mental agony, the appellant wanted this Court to consider the overall situation. Stating that the appellant has made her earnest efforts to redeem the mortgage and it was due to her financial crisis she was unable to pay the amount, the appellant further prayed that this Court may allow the Contempt Appeals to purge the appellant from the contempt proceedings by setting aside the order, dated 21.11.2022, made in Cont.P.Nos.1104 and 1165 of 2021.

14.Per contra, learned counsel appearing for the respondents 1 and 2 herein/petitioners in both the Contempt Petitions, submitted that the appellant, having committed contempt by her willful disobedience, cannot be shown any mercy and that appellant has been rightly punished by the learned Single Judge in the interest of institution to preserve not only the



dignity and majesty of Court, but also to get the public opinion and public trust. Learned counsel, from the dates and events, pointed out further that the appellant has influenced even the Police who failed to execute the warrant.

15.The basic facts are not in dispute. The interim order was granted by the learned Single Judge on 27.08.2019. While granting interim orders, learned Single Judge noticed that the order impugned in the writ petition appears to be one concocted as the file number stated in the impugned order was not relating to the matter which is the subject matter of writ petition. After Contempt Petitions were filed, several opportunities were given to the appellant to redeem the mortgage. Based on the undertaking and promise given by the appellant, the learned Single Judge gave sufficient time to secure compliance. However, in utter disregard to the direction of this Court and despite the lenience shown by learned Single Judge, the appellant did not honour her undertakings/commitments. The appellant took sufficient time under the solemn promise that she would redeem the mortgage either



by substituting property security or by paying amount directly to discharge the mortgage. Even in the affidavit filed before this Court on 24.03.2023, the appellant prayed for further time to redeem the mortgage in order to comply with the order of this Court in letter and spirit. The appellant has borrowed a huge sum of Rs.2.5 Crores by offering the subject property as security. The equitable mortgage created by appellant in respect of the property is in utter disregard to the direction of this Court and the appellant is bound to accept her contumacious conduct as evident from the records. Even after knowing that she has done something in violation of the order passed by this Court in the interim application, she is unable to account for the money she has borrowed by creating equitable mortgage. She has stated that the property was mortgaged in connection with the loan obtained by her husband. She has not come forward to offer any property to substitute the security. The appellant has taken sufficient time under the pretext of discharging the loan. The learned Single Judge has taken note of the conduct of appellant at every stage of the proceedings and held that the appellant has created equitable mortgage knowing fully well the consequences. Having regard to the conduct exhibited by the appellant, this



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Court is unable to find any irregularity in the order of the learned Single Judge holding the appellant guilty of committing contempt of Court.

16.However, learned counsel appearing for the appellant is right in pointing out that, as per Section 12 of the Contempt of Courts Act, a person can be imposed with a punishment of imprisonment which may extend upto 6 months or with fine which may extend upto Rs.2,000/- or both. Therefore, the fine amount imposed has to be reduced from Rs.25,000/- to Rs.2,000/- in accordance with Section 12 of Contempt of Courts Act. Except the above modification, this Court is unable to find any merit in the Contempt Appeals.

17.As a result, these Contempt Appeals are dismissed, however, subject to the modification by reducing the fine amount from Rs.25,000/- to Rs.2,000/-. Consequently, connected miscellaneous petitions are closed. Registry is directed to take necessary steps to give effect to the order of learned Single Judge dated 21.12.2022, subject to the modification forthwith.

(S.S.S.R., J.) (C.K., J.)



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