

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCp-281-2022 (O&M)
Date of decision: 24.07.2023

Balwant Singh

...Petitioner

Versus

Tilla Singh and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Shvetanshu Goel, Advocate
for the petitioner.

Mr. Rakshit Gupta, Advocate for
Mr. Rakesh Gupta, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J.

Present contempt petition is filed for violation of the order dated
26.01.1994 passed in RSA-934-1994 filed by the petitioner, vide which,
while issuing notice of motion, following order was passed: -

“Notice of motion for 6-7-1994.

*Mr. Rakesh Gupta who is present in Court accepts notice
on behalf of the contesting respondents. Meanwhile,*

respondents are restrained from alienating the property.”

In order to ascertain certain facts, record of RSA-934-1994 is requisitioned. On 06.07.1994, this appeal was admitted by passing the following order: -

“Learned counsel representing the appellants contends that against the very judgment, impugned in this appeal, R.S.A. bearing No.984 of 1994 has since already been admitted. This appeal is also admitted to the regular hearing and ordered to be heard along with R.S.A. No.934 of 1994.”

As per information submitted by the office, record of RSA-984-1994 got destroyed in a fire incident, however, the order dated 31.05.1996 is available, photocopy of which is taken on record as **Mark ‘A’**. This appeal was also filed against the same judgment and decree dated 24.03.1989 passed by the Sub Judge 1st Class, Kaithal, as upheld by the Additional District Judge, Kaithal vide order dated 23.02.1994. Vide aforesaid judgments and decrees, the suit as well as appeal filed by predecessors-in-interest of the petitioner were dismissed.

It is relevant to mention that as per available record, on 31.05.1995, by filing an application, RSA-984-1994 was dismissed as withdrawn. The operative part of the order reads as under: -

“Mr. Beri, counsel for respondents 31 to 45 states that the

averments in para 2 of the application are totally wrong and that in the prayer clause, it has also been stated that the appeal may be allowed. Mr. Bansal, counsel for the appellants states that the prayer is for allowing the applications and not the appeal. He further states that since the appellants are withdrawing the appeal and the court is not pronouncing on the merits of the case, the averments in paragraph 2 are of no consequence so far as the respondents are concerned in this appeal.

In view of the above position, the appeal is dismissed as withdrawn.”

As RSA-934-1994, qua which the present contempt petition has been filed, was admitted only because of admission of RSA-984-1994, which stands dismissed as withdrawn on 31.05.1996, by moving an application, that is to say that, plaintiffs/appellants in RSA-984-1994 have virtually admitted that the impugned judgment and decree passed by both the Courts below, dismissing their suit (as they were co-plaintiffs with predecessors-in-interest of the present petitioner), who have filed RSA-934-1994, are no more contesting the validity of the judgments and decrees passed by both the Courts below.

Certain facts are also relevant to know the controversy.

Predecessors-in-interest of the petitioner filed a suit for possession against the defendants/contemnors on the ground that one Rulia died in the year 1942 and vide mutation dated 23.02.1943, his share of land was transferred in favour of his widow Sonti Devi as a limited owner and later on, Sonti Devi gifted the property in favour of defendant No.1 Bogar Singh by way of oral gift alleging him her to be adopted son and the mutation dated 08.06.1946 was entered in his favour. The suit was filed after death of Sonti Devi (who died on 20.04.1971), praying that the plaintiffs being governed by Mitakshara Law are entitled to succeed the estate of Rulia and the alienation made by Sonti Devi in favour of defendants by declared null and void.

The trial Court, apart from others, framed issue No.1 whether the suit is filed within limitation as well as issue No.6, as to whether the defendants have become owners by way of adverse possession. A categorical finding is recorded by the trial Court that the suit was filed after 12 years of the limitation period from the date of death of Sonti Devi i.e. 26.04.1971 and simultaneously, held that the defendants have otherwise become owners by way of adverse possession in terms of Article 65 of Limitation Act. The appeal filed by the predecessors-in-interest of the petitioner was dismissed by the lower appellate Court and the aforesaid RSA-984-1994 was filed, in which, on first date, it was directed that the respondents are restrained from alienating the suit property.

A perusal of record of RSA-934-1994 further shows that subsequent thereto, when the appeal was admitted on 06.07.1994 and was ordered to be heard along with RSA-984-1994 (which stands withdraw on 31.05.1996), there is no order of extension of stay order and therefore, it will be a matter of final disposal before the trial Court, whether admission of RSA-934-1994, which is based only on RSA-984-1994, without framing of question of law, whether there was any extension of stay order. A perusal of subsequent orders shows that on almost all the dates, appeal was adjourned either for filing application for LRs or issuance of notice to the LRs of number of respondents, who could not be served. Further perusal of latest order dated 14.02.2023 also shows that service on unserved respondents is yet to be effected.

In view of aforesaid scenario, following questions arise before this Court;

- (i) Whether in the absence of any extension of stay order, post admission of appeal, this contempt petition is maintainable or not?
- (ii) As per allegations, the respondents have mortgaged some land without possession in favour of State Bank of India on 20.09.2009 and 15.05.2010, therefore, in terms of Section 20 of Contempt of Courts Act, whether this contempt petition is filed

within limitation or not?

- (iii) Whether mortgaging the land without possession with the Bank would amount to alienation in order to raise small time loan against agricultural land?

Learned counsel for the petitioner submits that even on earlier occasion, when similar loan was raised by the respondents by mortgaging their land without possession, COCP-304-1996 was filed, which was disposed of on 13.09.1996 and respondent No.2 was held guilty, by making the following observations: -

“For the reasons aforesaid, in spite of the fact that I hold the contemner-respondent guilty for violating the orders of the Court, I accept the unconditional and unqualified apology tendered by the respondent who is present in Court and do not punish him for such violation. Consequently the rule is discharged. The petition is disposed of subject to payment of Rs.1000/- as costs.”

Thereafter, another COCP-335-1996 was filed against respondent No.1, in which he was held guilty for mortgaging the property without possession on 11.09.2001, by passing the following order: -

“Since the respondent is a rustic person, he might have interpreted the order in his own manner. But nevertheless he

has violated the directions of this Court. Moreover, the respondent has stated in the presence of his counsel that he tenders unqualified apology, therefore, I take lenient view in the matter and impose a penalty of Rs.1000/- upon the respondent which shall be paid by him in the Court of Chief Judicial Magistrate, Kaithal within 15 days from today. In case he does not pay the amount of penalty, he shall undergo simple imprisonment for a period of 10 days.

Petition stands disposed of.”

Learned counsel thus submits that again the respondents, by raising loan from the Bank by way of mortgaging their land, have committed the contempt of Court.

Separate replies are filed by the respondents. As per reply filed by respondent No.1, he is a marginal farmer having less than 05 acres of land and in order to do cultivation, he had to purchase seed, fertilizer etc., for which Reserve Bank of India has framed policy instructions for granting loan at concessional rate of interest to the farmers, who are having less than 05 acres of land, therefore, he took periodic loan, which was repaid. It is stated that if same loan is taken from some money lender, he had to pay 3-4 times of interest and there is every possibility of manipulation of account and an agriculturalist may loose his land in litigation. A specific objection is

taken under Section 20 of Limitation Act that the land was mortgaged in 2009 and the contempt application has been filed after more than 12 years, whereas the limitation is 01 year.

In reply filed by respondent No.2, a similar stand is taken that he is also a marginal farmer having less than 05 acres of land and in order to do cultivation, he has to take loan from the bank, which provides loan on much lower rate of interest than the private persons.

After hearing learned counsel for the parties, I find no merit in the present petition, for the following reasons: -

- (a) A perusal of the order dated 26.04.1994 passed in RSA-934-1994 shows that while issuing notice of motion, it was directed the meanwhile, respondents are restrained from alienating the property. On the subsequent date, the appeal was admitted and was ordered to be listed with RSA-984-1994, which arose out of the same judgments and decrees passed by the Courts below. While admitting this appeal, neither there was any extension of stay order nor any substantial questions of law were framed i.e. to say that only reason for admission of appeal was that it should be tagged with RSA-984-1994. Admittedly, as per information supplied by the Registry **Mark 'A'**, original case file of RSA-984-1994 stands burnt, however, prior to that, on

31.05.1996, by moving an application, co-plaintiffs of the predecessors-in-interest of the petitioner have withdrawn said RSA and there was no adjudication on merits. Thus, co-plaintiffs of the appellant have admitted dismissal of the suit by both the Courts below to be correct. In view of the same, it will be a matter of consideration at the time of disposal of appeal whether RSA-934-1994, which was admitted just to be tagged with RSA-984-1994 would survive or not.

- (b) So far as questions regarding limitation is concerned, admittedly, it is own case of the petitioner that when the land was mortgaged without possession with the bank, an entry was made in the jamabandi i.e. to say, it was a notice to the general public, as a revenue entry was incorporated in the revenue record and despite that notice, contempt petition has been filed after 12 years, therefore, it is not held to be within limitation.
- (c) With regard to third question, the respondents have taken a specific stand that the possession has not been delivered to the bank, as it is a simple mortgage for the collateral purpose to raise some loan and even on previous occasion, as per own case of the petitioner, when loan was raised, mortgaged property was redeemed from the bank.

- (d) In view of the above, once there was no extension of stay order regarding alienation, after first date of notice of motion i.e. when the appeal was admitted on 06.07.1994, it cannot be held that a simple mortgage for collateral purpose of obtaining loan will amount to alienation by the contemnors, as it is not case of the petitioner that the respondents have not repaid the loan.
- (e) Another aspect of the case, which need to be referred to, is two earlier orders passed in COCP-304-1996 and COCP-335-1996. A perusal of both these orders dated 11.09.1996 and 13.09.1996 would show that neither the factum of withdrawal of RSA-984-1994, with which RSA-934-1994 was tagged, was brought to notice of the said Bench nor it was brought to notice of the Bench that there is no order of extension of stay, after the appeal was admitted.
- (f) As noticed above, original record of RSA-984-1994 has been perused, which reveals that notice of motion, for the first time, was issued on 26.04.1994, when the respondents were restrained from alienating the property and on the very next date i.e. 06.07.1994, RSA-934-1994 was admitted be listed with RSA-984-1994, without there being any such order of extension of stay. Subsequent thereto, the appeal was adjourned only for

bringing the LRs of the respondents on record and perusal of all the interim orders nowhere suggests that there was any extension of stay order.

- (g) Miscellaneous applications were filed by the petitioner, which are only with regard to bring LRs of the respondents on record, who died and there is no application on record to suggest that the petitioner has ever applied for extension of stay.

In view of the above, this Court is not in agreement with the orders dated 11.09.1996 and 13.09.1996 holding the respondents guilty of contempt for violation of the order dated 26.04.1994, as neither record of original RSA was perused nor aforesaid facts were appreciated by the said Bench, while passing two orders.

Accordingly, finding no merit in the present contempt petition, same is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

24.07.2023
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No