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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 04th November, 2024

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C.R.P. 105/2023, CM APPL. 21395/2023**SMITA CHAUDHARY**

.....Petitioner

Through: Mr. Harish Malik and M.r Kushal
Bhattacharjee, Advocate with
Petitioner in person.

versus

MS. TARUNA YADAV

.....Respondent

Through: Lt. Col. Atul Chaudhary.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****C.R.P. 105/2023**

1. A Revision Petition under Section 115 read with Section 151 *the Code of Civil Procedure, 1908* ('CPC, 1908' *hereinafter*) has been filed on behalf of the Petitioner Smita Chaudhary to challenge the Order dated 10.04.2023 *vide* which the learned ADJ disposed of the Petitioner's Application under Order XXXIX Rule 2A CPC without directing the Respondent for purging the Contempt or declaring the Sale Deed executed in violation of Injunction Order dated 30.07.2005 as Null and Void.

2. The Plaintiff/Respondent Taruna Yadav filed a Suit for Partition bearing No. C.S. (OS) 562/1975 of the Suit properties, which are Sahib Sahai Building on Church Mission Road, Delhi and other properties including the agricultural land as per the Schedule of Properties annexed along with the Plaint as Annexure-2. The learned Trial Court granted an injunction restraining all the parties to the Suit including defendant No.10 Smt. Kamla Devi and defendant No. 11 Ms. Taruna Yadav from



“alienating, transfer or creating third party right or encumbrances over any or all portions of the Suit properties”. This Order was modified by the Trial Court on 01.06.2017 by stating that *“parties are restrained from alienating, transferring or creating third party interest in the Suit property to any third person”*.

3. The Revisionist has asserted that the defendants, however, violated the stay Order as the following Suit properties were sold *vide* Sale Deed dated 06.03.2018 and 08.03.2018 which were registered on 09.03.2018. The details of the properties are as under :

(i) *Sale deeds for the following property: Khewat No. 537, Khata No. 550, Mustatil No. 4, Killa No. 25/2(4-12) Kitta-1 Area 4 Kenal 12 merla its 43/92 share area 2 Kenal 3 Merla.*

(ii) *Khewat No. 544/481 min Khata No. 558 Mustatil No. 4 Killa No. 25/1(3-8), 1 Kitta area 3 Kenal 8 Merla its 1/9 share area 0 Kenal 7.5 merla ever two Khewat total area 2 Kenal 10.5 merla*

4. The defendant/Petitioner then filed an Application under Order XXXIX Rule 2A CPC and Section 10 and 12 of *Contempt of Courts Act, 1971* for the violation of the Order dated 30.07.2005 and 01.06.2017 by the plaintiff.

5. On 18.05.2018, Taruna Yadav gave an Undertaking that since the Suit properties have been mistakenly sold by her but she continues to be in possession of the portion of the Suit property, she would take steps to get the Sale Deeds *qua* the aforesaid portions cancelled. However, she failed to take any such steps or file any Compliance Report. On 06.08.2022, Taruna Yadav assured the Trial Court that she would abide by her undertaking and restore the *status quo* in respect of the Suit properties by reversing the Sale



Deed and cancelling the same.

6. It is claimed that Respondent deliberately misled the learned Trial Court leading to passing of the Order on 01.10.2022, wherein she was held guilty of Contempt of Court as she failed to restore the *status quo ante* after having admittedly violated the injunction Orders passed by the Court. She was directed to be arrested and ***detained in civil prison in terms of Order XXXIX Rule 2A CPC till the time she restores the status quo ante or deposit the entire consideration realized by her upon sale of the land in question, in violation of the Court Order after filing of affidavit disclosing the details of the exact amount realized by her from the aforesaid sale.*** She was accordingly taken into custody for an initial period of one month and was sent to civil prison.

7. On 07.10.2022, Mr. Varun Deswal son of the Respondent filed an Affidavit along with a FDR of Rs.10,45,000/- being the total sale consideration of sold property, in the name of learned Trial Court along with. Consequently, release warrants were issued in respect of the Respondent on 07.10.2022 itself and she was consequently released.

8. The Petitioner has claimed that despite having given an undertaking to cancel the Sale Deeds, she has failed to purge her Contempt. She had not abided by her undertaking of reversing and cancelling the Sale Deeds of the Suit properties which are admittedly in her possession till date. It is further asserted that the alleged amount of Rs.10,45,000/- which is claimed to be the sale consideration is not correct and is prima facie falsely disclosed on the affidavit without any opportunity being given to verify its correctness.

9. The Petitioner moved an Application before the learned Trial court to direct the Respondent to purge the Contempt and to cancel the Sale Deeds of



the Suit properties. The sale consideration as mentioned in the affidavit and consequently deposited in the Court appears to be prima facie incorrect. The learned Trial Court has failed to appreciate the material facts on record and the aforesaid Order dated 10.04.2023 which is asserted to be based on conjectures and surmises that the Respondent is not required to reverse the Sale Deed as she has deposited the sale consideration amount.

10. It is, therefore, submitted that the Impugned Order dated 10.04.2023 be set aside and the Sale Deeds be directed to be cancelled in Order to purge the Contempt.

11. *No formal reply* has been filed on behalf of the Respondent/Plaintiff. However, learned Counsel on behalf of the Respondent has submitted that the sale consideration as received by the Respondent has not only been disclosed on the affidavit, but has been deposited in the Court pursuant to the directions of the learned Trial Court passed while deciding the Contempt Application under Order XXXIX Rule 2 A CPC. There is no infirmity in the Impugned Order and the present Revision Petition is liable to be dismissed.

12. **Submissions heard.**

13. A Suit bearing No. C.S. (OS) 562/1975 (later marked as C.S. DJ 612529/2016) for Partition, Injunction and other reliefs was filed by Lt. Col. Gaj Singh Yadav (deceased through Legal Heirs) in the year 1975 seeking partition of the Suit properties. In the said Suit, this Court *vide* Order dated 30.07.2005 and again on 01.06.2017 restrained all the parties to the Suit from alienating, transferring or creating third party rights or encumbrances in the Suit property in favour of any third person. The Respondent Taruna Yadav who is D-11, apparently executed the Sale Deeds



dated 06.03.2018 and 08.03.2018 in violation of the stay Orders that had been granted by the Court.

14. The Petitioner Smita Chaudhary filed an Application under Order XXXIX Rule 2A read with Section 10 and 12 of *Contempt of Courts Act, 1971* dated 13.04.2018 asserting that Respondent/defendant No.2(ii) has committed contempt of the Orders of the Court by executing the Sale Deeds in favour of third parties.

15. Defendant No.11, Taruna Yadav made a Statement before the learned Trial Court on 18.05.2018, wherein she admitted execution of Sale Deed dated 05.03.2018 in favour of Shri Ved Pal which included a portion of the property which is the subject matter of partition in the Suit for Partition i.e. 7.6 marla out of Square no.25/1 (3-8) Khata No.558, Village Kosli, Haryana. She further stated that the joint property was sold by her by mistake. The possession, however, of the said portion was with her. She undertook to take steps to get the Sale Deed cancelled *qua* the aforesaid portion. She further stated that she had applied for partition of the agricultural land reflected in Schedule B of the Plaint before the Tehsildar, Village Kosli, Haryana.

16. This Statement was followed by Order dated 18.05.2018 of the learned ADJ, wherein after making a reference to the Statement of Taruna Yadav as recorded in the Court, she was directed to inform the Court about the steps taken by her pursuant to her statement in the Court.

17. On 06.08.2022, *learned counsel on behalf of Taruna Yadav* informed that though she is willing to abide by her Undertaking dated 18.05.2018, but because of certain legal issues which may arise between her and the Subsequent Purchaser, she may be given another four weeks' time to restore



the *status quo* ante qua the land sold by her during the present Suit, if possible, or she would abide by the Orders that may be made by the Court.

18. On 01.10.2022 it was further recorded that Taruna Yadav was unable to abide by her Undertaking dated 18.05.2018 for restoration of *status quo* ante and an Affidavit of her assets was filed in the Court. However, she was directed to file a better Affidavit disclosing all her assets in Delhi. In the mean time, she was also directed to deposit the entire consideration received by her from the sale of the land within a period of three weeks from the date of Order, failing which *“the Court shall be constraint to pass appropriate Order for attachment of all her properties and in case the same is not sufficient to secure the amount realized from the sale of the land during the pendency of the Suit, the Court shall even proceed to arrest and detain the non-Applicant in civil prison as per the provisions of Order XXXIX Rule 2A (i) CPC without any further opportunity to her in this regard”*.

19. Taruna Yadav on specific query put by the Court, remained adamant in stating that she is liable to deposit a sum of Rs.1.5 lakhs only which she had realized from sale of part of the aforesaid land to the extent of 200 sq. yards. The learned Trial Court thus, noted that despite several opportunities being given to Taruna Yadav, she has failed to restore the *status quo* ante and was not willing to undo the act of violation of injunction Order or to abide by her Undertaking dated 18.05.2018, she was directed to be arrested and detained in civil prison till such time she deposited the entire sale consideration realized by her from the aforesaid sale.

20. Subsequent thereto, son of Taruna Yadav filed an affidavit disclosing that a total sum of Rs.10,45,000/- had been received and the said amount was deposited in the Court after which she was directed to be released from



civil prison.

21. The *sole grievance* of the Petitioner Smita Chaudhary is that once the Court had held Taruna Yadav to be guilty under Order XXXIX Rule 2(A) for violating the stay Orders granted by the Trial Court, she was liable to purge the Contempt by undoing the Sale Deeds executed by her. It was only in execution of the Contempt Order, that she had been directed to be *detained in civil prison* and the direction to deposit the sale consideration amount was merely a pre-condition for her release from the civil prison and was not a direction towards purging of the Contempt committed by her.

22. The Petitioner had thus, moved an Application under Section 151 CPC seeking directions to Defendant No.11 to purge the Contempt, which has been dismissed *vide* Impugned Order dated 10.04.2023 by observing that an FDR in the sum of Rs.10,45,000/- i.e. the entire sale consideration stood deposited in the Court and nothing further was required to be done. The Application was dismissed with cost of Rs.10,000/- to be deposited in Prime Minister National Relief Fund within one week.

23. Order XXXIX Rule 1 and 2 CPC provides for grant of injunction in respect of the Suit property in Order to preserve the Suit property and prevent it from being wasted, damaged, alienated, sold or disposed of during the pendency of the Suit.

24. Order XXXIX Rule 2A provides for the consequences of disobedience of breach of injunction. It provides that in case of disobedience/breach of injunction, the Court may Order the property of the person guilty of disobedience to be attached and may also Order such person to be detained in civil prison for a term not exceeding three months unless in the meantime the Court directs his release. From the scheme of the



provisions as contained in Order XXXIX CPC it is evident that while the Court may pass any Orders by way of temporary injunction or issue any directions to ensure preservation of the Suit property till the dispute is settled, it also empowers the Court to suitably punish the person who commits breach of the injunction or disobeys the Order of the Court.

25. *In the present case*, admittedly the Court had granted injunction vide Order dated 30.07.2005 and 01.06.2017 directing all the parties to the Partition Suit to not to alienate or create third party rights in favour of third parties. Admittedly, Respondent (Defendant No.11) Taruna Yadav executed the Sale Deeds in respect of agricultural lands which included 200 yards of the Suit property. The learned Trial Court while holding her guilty of committing breach of the injunction Order dated 30.07.2005, directed her to undo the Sale Deeds as was undertaken by her in the Statement recorded in the Court on 18.05.2018. However, on the subsequent date it was submitted by her behalf that she was having a legal difficulty in reversing the Sale Deeds *vis-a-vis* the Subsequent Purchaser. Consequently, she was directed to deposit the entire sale consideration in the Court. Admittedly, Rs.10,45,000/- have been deposited in the Court as the entire sale consideration on which she was directed to be released from the civil prison.

26. The *only grievance* of the Petitioner Smita Chaudhary is that the Order of sending her to civil imprisonment was only by way of execution but the Contempt would not be purged till the reversal of the Sale Deeds. Reliance has been placed on RMG Builders and Developers Pvt. Ltd. V. USG Construction Pvt. Ltd. And Ors. Cont.Cas 86 of 2012; and Gulshan Kumar Arora v. Ashwani Shukla & Ors. 2013 (131) DRJ 107.

27. It may be observed that the purging of the Contempt could have been



done by Taruna Yadav either by reversing the Sale Deeds and thereby restoring the *status quo ante* or by depositing the sale consideration. On 1.10.2022, it had been noted before the Trial court that reversal of the Sale Deed was difficult because of legal hassles and consequently the sale consideration was directed to be deposited.

28. The argument made on behalf of Smita Chaudhary that, in addition to having deposited the sale consideration, the Sale Deeds should also be cancelled, is nothing but a double punishment for the Contempt. The Sale Deeds have been executed in favour of third party who may be a *bona fide* purchaser and unaware of the injunction Orders granted against the Suit property. Furthermore, even if part of the Suit property has been sold, the subsequent purchaser is bound by the Orders that may follow, on the doctrine of *lis pendens*. Therefore, even if the sale has been made, the subsequent purchaser shall be bound by the final outcome of the Suit. Furthermore, the Respondent Taruna Yadav has already deposited the benefit derived by her from the sale, by depositing the sale consideration. Apparently, the only grievance being now agitated by the Applicant is that this cannot be the actual sale consideration for the Suit properties and there is no complete disclosure of the actual consideration amount which has to be necessarily much more than the amount deposited in the Court having regard to the location and the value of the property.

29. In the case of Noorali Babul Thanewala vs. K.M.M. Shetty & Ors 1990 AIR 464 it was observed by the Apex Court that :

“In case of breach of an undertaking given to a Court by a person in a civil proceedings on the faith of which the Court sanctions a particular course of action, is misconduct amounting to contempt. The remedy in such



circumstances by giving a direction to the contemnor to purge the contempt or sentence of imprisonment or fine or all of them. On the facts and circumstances mere imposition of imprisonment or fine may not meet the ends of justice. To purge the contempt, the contemnor may be directed to deliver vacant possession immediately.”

30. In the case of State Bank of India vs. Dr. Vijay Mallya Contempt Petition (C) Nos.421-424 of 2016 decided on 11.07.2022 the Apex Court observed that

“apart from punishing the contemnor for his contemptuous conduct the majesty of law may demand the appropriate directions be issued by the Court so that any advantage secured as a result of such contemptuous conduct, is completely nullified. This approach may require directions either for reversal of the transaction in question, by declaring such transaction to be void or passing appropriate directions to the concerned Authorities to cease that such contemptuous conduct does not continue to the advantage of the contemnor or anyone claiming under him.”

31. Similar observations have been made in Punjab National Bank vs. Delite Properties Pvt. Ltd. AIR 2004 Calcutta 114 wherein it was observed that :

“if any person comes in possession of a Suit property in breach of the Order of the Court, they do not acquire any right or authority and they are to be dealt with amongst others by passing an Order of eviction and further with an appropriate Order of punishment.”

32. In RMG Builders and Developers Pvt. Ltd. vs. USG Construction Pvt. Ltd. and Ors. CONT. CAS (C) 86/2012, while considering the disobedience of the Order of the Court directing the Respondents to maintain *status quo* in regard to title, possession and construction of the Suit property it was directed that since the Sale Deeds had been executed in violation of the stay



Order, the Sale Deeds were annulled and *status quo* ante as prevalent on the date of the interim Order was restored.

33. Similarly in the case of Gulshan Kumar Arora vs. Ashwani Shukla & Ors. CS (OS) No.508/2005 decided by the Coordinate Bench of this Court on 02.07.2012, the contemnor was directed to deposit the entire sale consideration received by him within six weeks in the Court. A cost was also imposed on the contemnor. Furthermore, the transactions made by the contemnor after passing of the interim Order were directed to be treated as of no consequence.

34. The law of Contempt can thus, be summed up to state that in case of disobedience of the Order of the Court, the contemnor may be punished by way of arrest or imposition of cost or with the directions to purge the Contempt.

35. *The learned Trial Court* in its discretion, finding that the sale reversal may not be possible has held that to purge the Contempt, the sale consideration may be deposited. Having so complied with the Orders which have been accepted by the Trial Court it cannot be said that there is any infirmity in the Order of the Trial Court accepting the purging of the Contempt.

36. Therefore, there is no infirmity in the Impugned Order dated 10.04.2023 *vide* which the subsequent Application under Section 151 CPC filed by the Applicant directing the cancellation of the Sale Deed has been rejected.

37. Furthermore, the sale consideration i.e. the benefit derived by the contemnor by selling the property despite the injunction by the Court has already been deposited in the Court. It may also be noted that this was only a



part of the larger land that was sold by her, no further directions or penalty for Contempt is warranted in the present case.

38. There is no infirmity in the Order of the Impugned Order of the Trial Court. The Revision Petition is hereby dismissed.

CM APPL. 31934/2024

39. This is an Application under Section 151 CPC filed on behalf of Lt. Col. Atul Chaudhary/non-Applicant wherein it is submitted that the Suit involved ancestral agricultural property of the heirs of common ancestor Ch. Shib Sahai. There are 16 surviving legal heirs. A partition Suit was decided in 1989 defining their respective shares by way of a preliminary decree. The Petitioner is an LR of Defendant No.2. The Respondent is Defendant No.11 and the Applicant herein is Defendant No.9.

40. It is submitted that the Suit is being litigated between two co-owners, Smt. Smita Chaudhary as LR of Defendant No.2 and the Respondent Mrs. Taruna Yadav as Defendant No.11, to the exclusion of other LRs, but the Interim Stay to maintain *status quo* is impacting all the co-owners without them being impleaded. In the Civil Suit No. C.S. (OS) 562/1975 (later marked as C.S. DJ 612529/2016) *vide* Order dated 09.05.2023 the Respondent was directed to maintain *status quo* with respect to the Suit property, however, in violation of the *status quo* Order the Petitioner Smt. Smita Chaudhary used the *status quo* Orders dated 09.05.2023 to get the proceedings on mutation pending in the Court of Collector, Rewari stayed. Any Order behind the back of the co-owners is directly impacting them. The filing of the Suit is misuse of the process of law and is misleading the Court. Therefore, Suitable Orders may be made so that *status quo* Orders dated 03.11.2023 and 09.05.2023 may not come in the way of mutation/ partition



of agricultural land by meets and bounds and that all the co-owners may be directed to be impleaded as party to the Suit.

41. *Learned counsel on behalf of the Petitioner* submits that this aspect already stands clarified *vide* Order 27.05.2024 wherein it is stated that the Orders made in this case, shall be operative with respect to the parties to the present petition and shall not have any effect on any case pending in the Revenue Court in regard to the ancestral property.

42. ***Submissions Heard.***

43. The *first prayer* in the Application as regards to the clarification for continuation of mutation proceedings of the suit property which is subject matter of partition Suit are concerned, it already stands addressed by the Order dated 27.05.2024.

44. The other prayer made by the non-Applicant is that they be impleaded as a party in the Suit that has been filed by the Petitioner, Smita Chaudhary.

45. In so far as the prayer of being made a party to the Suit is concerned, the non-Applicant is at liberty to make appropriate Application in the Suit to be impleaded as a party. These are proceedings emanating from the Orders under Order 39 Rule 2A CPC which is between the Court and the Contemnor. The non-Applicant is neither a necessary nor proper party for the adjudication the Suit.

46. The Application is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 04, 2024/va