
(2004) 09 PAT CK 0160
In the Patna High Court
Case No : M.J.C. No. 871 of 2001

Basant Kumar

APPELLANT

Vs

Warsha Khatoon and Others

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 11, 151, 39

Citation : (2004) 4 PLJR 539

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—The petitioner has filed this application for taking appropriate action against opposite parties for violating and disobeying the order dated 13.5.1999 of this Court passed in M.A. No. 401 of 1998 by which opposite parties were directed to maintain status quo. Brief facts of the case are that petitioner filed a suit against opposite parties for specific performance of contract in respect of sale of a land fully described in Schedule-IV of the plaint of the suit. In that suit, the petitioner filed a petition dated 12.9.1997 under Order 39, Rules 1 and 2 and Section 151 of CPC (in short "CPC") with a prayer to restrain opposite parties from alienating or transferring the suit properties. This petition was rejected and against which petitioner filed MA No. 401 of 1998 in this Court. The petitioner filed I.A. No. 10319 of 1998 for grant of injunction against opposite parties directing them not to sell or alienate the physical feature of suit properties. The aforesaid miscellaneous appeal was listed for hearing under Order 41, Rule 11 of CPC alongwith I.A. No. 10319 of 1998 and on 13.5.1999 after hearing the counsel of petitioner, the miscellaneous appeal was admitted for hearing and order issuing notice to opposite parties was passed on the interlocutory application filed by petitioner and this Court further observed that in the meanwhile, opposite parties shall try to maintain status quo.

2. The case of petitioner is that after passing the aforesaid order, the opposite parties on 3.7.2000, executed a sale deed in favour of Rajeshwar Kumar and Gyan Shankar in respect of suit properties. According to petitioner, because the opposite parties have executed the sale deed after passing the order dated 13.5.1999 of this Court for maintaining status quo, they have disobeyed the order and, therefore, proceeding u/s 39, Rule 2A of CPC be initiated and appropriate action be taken against them.

3. Show cause notices to opposite parties were issued and opposite parties have appeared and have filed reply to show cause notices.

4. The case of opposite parties is that the order dated 13.5.1999 was passed by this Court in their absence and opposite parties had no knowledge about this ex parte order and it is for the first time on 19.7.2000, the opposite parties came to know regarding the aforesaid ex parte order from their lawyer who came to know about this fact on 18.7.2000 when a copy of application regarding disobedience of order dated 13.5.1999 was served upon him. Their further case is that they received notices signed by Assistant Registrar of this Court on 13.7.1999 in which date of appearance of opposite parties was mentioned as 4.9.1999 but then with these notices, copy of only miscellaneous application has been served and no copy of the order of this Court was annexed with the notices (Annexure-1 series). Their further case is that in the notices served on them, there was no mention of ex parte order granting status quo. About the execution of sale deed by them, the case of opposite parties is that they were in urgent need of money, the period of the contractual agreement with petitioner had already expired and they were not aware of the ex parte order dated 13.5.1999, they were compelled to sell the land without any intention to disobey the order of this Court. Lastly, the opposite parties have tendered unqualified apology for their any act which might have caused any inconvenience to this Court.

5. The case of petitioner is that opposite parties have disobeyed the order dated 13.5.1999 by which they were directed to maintain status quo. Admittedly, on 13.5.1999, I.A. No. 10319 of 1998 filed by petitioner was listed and this Court ordered for issuing a show cause notice to opposite parties. Admittedly, no injunction was granted because opposite parties were not present on that date and for considering the prayer of petitioner for injunction, as stated above, notices were sent to opposite parties. It is true that in the last line of that order, this Court observed that "In the meanwhile, respondents shall try to maintain status quo." In my opinion, on 13.5.1999, no specific direction was given to respondents which could not have been given because of their absence and the Court simply expressed its desire that till the hearing on the injunction petition filed by petitioner, the opposite parties shall try to maintain status quo. The case of opposite parties is that before executing sale deed in favour of other parties, they had no knowledge about the order dated 13.5.1999. The notices which were ordered to be issued on opposite parties (Annexure-1 series) show that they were informed that M. A. No. 401 of 1998 was fixed for hearing on 4.9.1999.

These notices do not show that opposite parties were informed that any order maintaining status quo on 13.5.1999 was passed.

6. Considering the aforesaid facts as well as the fact that no specific order restraining the opposite parties from doing any act in respect of suit properties was passed, I find no material to hold that opposite parties deliberately violated or disobeyed the order dated 13.5.1999 passed by this Court in M.A. No. 401 of 1998. I, therefore, find no merit in this application which is, accordingly, dismissed.