

(2012) 06 PAT CK 0047

In the Patna High Court

Case No : Misc. Jurisdiction Case No. 3122 of 2009

Chakrapani Dutta Dubey @ Chandramani Dubey @ Bacha
Dubey and Others

APPELLANT

Vs

Babu Nand Dubey and Others

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 3
Penal Code, 1860 (IPC) — Section 193, 205, 419
Transfer of Property Act, 1882 — Section 52

Citation : (2013) 1 PLJR 676

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : S.S. Dwivedi, Ranjan Kumar Dubey, Rakesh Chandra and Sangeeta Sharma, for the Appellant; Vishwajeet Kumar Mishra, for the Respondent

Judgement

S.N. Hussain, J.—This petition has been filed by the petitioner for initiating a proceeding of contempt and punishing opposite parties nos. 1 and 10 for their alleged intentional and willful disobedience of the order of this Court dated 27.1.2009 passed in S.A. No. 418 of 1994. The aforesaid S.A. No. 418 of 1994 was filed by the petitioners against judgments and decree of the lower courts by which the claim of partition of plaintiffs-respondent-1st Set was allowed. The second appeal was admitted on 29.11.1994 by a Bench of this Court finding several substantial questions of law involved in the second appeal, which is still pending for final hearing in this High Court.

2. It transpires that during the pendency of the second appeal, the original respondent nos. 1 and 2, namely Ram Ekbal Dubey and Smt. Ratanjhari Devi died and on the application of the appellants, the son and daughter of Ram Ekbal Dubey, namely Babu Nand Dubey and Radha Rani Dubey were substituted as respondent nos. 1 and 2 respectively vide order dated 7.8.2002 and appeal notices were sent to them.

3. In the said second appeal, the appellants (petitioners) filed I.A. No. 6701 of 2007 under Order XXXIX Rules 1 and 2 of the CPC (hereinafter referred to as "the Code" for the sake of brevity) for an interim injunction restraining the respondents from executing any sale deed with respect to the land in suit and to deal with it or encumber it in any manner and to maintain status quo as on that date till the final disposal of the second appeal.

4. This Court vide order dated 7.3.2008 directed issuance of notice to the respondents through ordinary process in connection with hearing of I.A. No. 6701 of 2007, whereafter on 22.1.2009 office presented a note stating that as per the service report notices have been validly served on all the respondents, hence interlocutory application was fit to be heard.

5. When I.A. No. 6701 of 2007 was placed before this Court on 27.1.2009 it was found that in spite of notices having been validly served, the respondents had not appeared to oppose the said interlocutory application in which it had been stated that the respondents were on selling spree during the pendency of the second appeal, although it had already been admitted having found specific substantial questions of law. In the said circumstances, respondents were restrained from further alienating or encumbering any suit land or any part thereof in any manner whatsoever till further orders.

6. The grievance of the petitioners is that the opposite parties are muscle men and litigant persons having no respect to law and even after knowledge of the admission of the aforesaid second appeal, they sold prime and valuable suit property, especially the properties which the appellants got from the original owner through gift. It was also stated that when the petitioners-appellants came to know about the sale deed, they filed I.A. No. 6701 of 2007, but even after the aforesaid order of interim injunction passed by this Court on 27.1.2009, they did not stop from selling spree and opposite party no. 1 (respondent no. 1) executed a sale deed dated 26.3.2009 with respect to portion of suit land in favour of opposite party no. 10 (respondent no. 10) in spite of having full knowledge and information about the second appeal and the order passed therein.

7. Learned counsel for the petitioners asserted that soon after the passing of order dated 27.1.2009 the petitioners obtained certified copy thereof and circulated it to the intending purchasers of the disputed land, whose names were already disclosed in I.A. No. 6701 of 2007, whereafter the intending purchasers withdrew their proposal to purchase the land and they also got back their earnest money from respondent no. 1, who thus got knowledge of the order of injunction and even took a copy of the order from one such intending purchaser.

8. It was further claimed by learned counsel for the petitioners that petitioner no. 1 personally requested respondent no. 1 not to sell the suit land in view of order of injunction passed by this Court till the disposal of the second appeal, but respondent no. 1 reacted and threatened the appellants that by the time appeal would be decided, he would dispose of all the properties and in spite of having

full knowledge of order dated 27.1.2009, respondent no. 1 deliberately with mala fide intention to show his supremacy executed sale deed in favour of respondent no. 10 dated 26.3.2009 with respect to 1 katha 16 dhurs of the suit land for Rs. 1,18,000/- and got it registered in the registration office, Siwan Sadar in complete violation of the aforesaid order of this Court.

9. Learned counsel for the opposite parties claimed that they had no knowledge or information about the said order of injunction passed by" this Court dated 27.1.2009, hence there was no willful disobedience of the said order, nor there was any violation of the said order of this Court or the provision of Order XXXIX of the Code.

10. Learned counsel for the opposite parties stated that petitioner no. 1 Chakrapani Dubey is a fraud and he had earlier filed a vakalatnama and petition by setting a fake person in place of O.P. No. 1 against which opposite party no. 1 raised objection and a complaint was lodged before the Chief Judicial Magistrate under Sections 193, 205 & 419 of Indian Penal Code and the Chief Judicial Magistrate took cognizance in the matter on 22.6.1991.

11. Learned counsel for opposite parties argued that since the order of injunction was ex parte, the compliance of Order XXXIX Rule 3 of the Code was necessary, but the petitioner neither sent a copy of the order of injunction, nor it was ever sent to the opposite parties, nor petitioners ever filed any affidavit and hence petitioner is not entitled to any such relief, especially when the opposite parties had not disobeyed the order of this Court as he was unaware of the said order.

12. Considering the arguments of learned counsel for the parties and the materials on record, it is quite apparent that specific statements have been made by the petitioners in their MJC petition, but no specific parawise reply to all those statements except paragraphs 15 and 16 of the MJC petition, have been given by the opposite parties although opposite parties nos. 1 and 10 had filed their show cause on 27.6.2011, whereas a supplementary show cause had been filed by them on 17.8.2011 and a second supplementary show cause had been filed by opposite party no. 1 on 7.9.2011.

13. In their show cause opposite parties nos. 1 and 10 had merely stated that they had no knowledge or information about the order of this Court dated 27.1.2009 and that they had sold only those suit lands which had fallen in the share of O.Ps. as per the report of the Pleader Commissioner submitted in the partition suit and if the petitioners ultimately succeed in the second appeal it may be allotted in the O.Ps. share. In the supplementary show cause opposite parties nos. 1 and 2 had merely stated that petitioner no. 1 is a shrewd and cunning man and had managed the process server in order to obtain a favourable service report and he had earlier also played fraud in the year 1990 which had been detected. However, in the second supplementary show cause opposite party no. 1 had falsified the statements made by the petitioners in paragraphs 15 and 16 of the MJC and had stated that petitioners neither

informed the opposite parties nor their intending purchasers about the said order of this Court. Hence, according to him, no case of contempt is made out against the said opposite parties.

14. Thus, allegation of disobedience is only against opposite party no. 1 and opposite party no. 10 as admittedly the sale deed in question dated 26.3.2009 was executed by opposite party no. 1 in favour of opposite party no. 10 after payment of consideration amount of Rs. 1,18,000.00 by opposite party no. 10 to opposite party no. 1. Hence, no allegation of disobedience or contempt is made against the remaining opposite parties nos. 2, 3, 4, 5, 6, 7, 8, 9 and 11.

15. It is quite apparent from the materials on record that before granting injunction this Court vide order dated 7.3.2008 directed issuance of notice to respondents and only thereafter the order of injunction was passed on 27.1.2009. Hence, no defect can be legally pointed out in the aforesaid order of injunction dated 27.1.2009 passed by this Court as per the provision of Order XXXIX Rule 3 of the Code.

16. So far the proviso to the aforesaid Rule 3 as relied by learned counsel for the opposite parties is concerned, it will be only attracted where the Court proposes to grant an injunction without giving notice of the application to the opposite party and hence the Court has to record reasons for its opinion that the object of grant of injunction would be defeated by delay, and require the applicant to deliver to the opposite party, or to send to him by registered post immediately after the order granting injunction has been made, a copy of the application for injunction together with a copy of the affidavit filed in support of the application, a copy of the plaint and copies of the documents on which the applicant relies and to file an affidavit in Court stating that the copies aforesaid have been so delivered or sent. However, in the instant case, the order of injunction was not passed without giving notice of the application to the opposite parties, rather notices had already been sent to them vide order dated 7.3.2008 and the office had noted its valid service upon the opposite parties. Hence this plea of the opposite parties is not sustainable in law.

17. However, after perusing the materials on record, it is quite apparent that although the office had noted on 22.1.2009 that notices had been validly served as per the service report, but no material has been produced to show that it was actually served upon the opposite parties. Furthermore, the claim of the petitioners that immediately after the order of injunction dated 27.1.2009 they informed the opposite parties and their intending purchasers about the said order, but no material has been produced to support the said assertions which are mere statements on affidavit which have been denied by the opposite parties on affidavit. Hence, there is only oath against oath supported by nothing.

18. In these circumstances, in the words of Justice A.M. Bhattacharjee of Calcutta High Court, may I say that law in its majestic magnanimity excuses a little wrong for doing greater right and that if law is good, justice is still better

and would mould the law where it can be.

19. However, it is not in dispute that the order of injunction dated 27.1.2009 was operative on 26.3.2009 when the sale deed was executed by opposite party no. 1 in favour of opposite party no. 10, the effect thereof would be that the said deed of sale is not binding on the parties and is also hit by the doctrine of lis pendens as provided in Section 52 of the Transfer of Property Act, 1882, hence its validity or otherwise is not necessary to be considered as legally it would not come in the court's way in passing a decree in favour of the appellants-petitioners. In the said circumstances, this Court finds no reason to take any action against opposite parties nos. 1 and 10 under Order XXXIX Rule 2A of the Code and accordingly this MJC petition is disposed of with the aforesaid observations.