
(2012) 06 MAD CK 0161

In the Madras High Court

Case No : Contempt Petition No. 811 of 2011 in O.A. No. 439 of 2010 in C.S. No. 398 of 2010

K. Sashikaanth

APPELLANT

Vs

K. Vijayalaakshmi, K. Kalaiselvi, K. Ramu and K. Girija

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Contempt of Courts Act, 1971 — Section 11

Citation : (2012) 06 MAD CK 0161

Hon'ble Judges : V. Periya Karuppiah, J

Bench : Single Bench

Advocate : G.K.R. Pandiyan, for the Appellant; T.V. Ramanujun senior counsel for M/s. P.V.S. Giridhar and Sai, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice V. Periya Karuppiah

1. This petition is filed by the petitioner / plaintiff to take appropriate action against the respondents / defendants u/s 11 of the Contempt of Courts Act, 1971, for their wilful violation of the order passed in O.A. No. 439 of 2010 in C.S. No. 398 of 2010 dated 19.08.2010 and to pass such further and necessary orders. Heard Mr.G.K.R.Pandiyan, learned counsel for the petitioner / plaintiff and Mr.T.V.Ramanujam, learned senior counsel appearing for respondents / defendants.

2. The learned counsel for the petitioner / plaintiff would submit in his argument that the petitioner as plaintiff filed a suit for partition and separate possession of his 1/5th share in the suit property and while filing the said suit, he had filed two applications in O.A. No. 439 of 2010 for the grant of ad-interim injunction restraining the respondents / defendants from putting up any unauthorised construction in the suit schedule mentioned property pending disposal of the suit and in O.A. No. 470 of 2010 for the grant of ad-interim injunction restraining the

respondents / defendants from in any way alienating or encumbering the suit property pending disposal of the suit. He would also submit that this court had issued emergent notice to the respondents / defendants and after entering appearance by the respondents / defendants, this Court had directed the respondents/defendants not to put up any construction in the suit property by ordering a status-quo order on 15.06.2010. However, the respondents / defendants knowing fully well that the order of status quo would amount to an injunction not to put up any structures or towards the alteration of existing structures, they have put up construction that too without the permission or approval from the authorities concerned and had raised the first floor portion in the suit property and completed the same. He would also submit that this court had subsequently extended the order of status-quo and passed a preliminary decree and in view of the passing of preliminary decree, it had closed the said application. He would further submit that the order of status quo was extended on 19.08.2010 lastly, which would go to show that it was continued from 15.06.2010 onwards. He would further submit that the photographs taken on 16.06.2010 and 18.06.2010 would go to show that the respondents / defendants have put up additional construction in the suit property in violation of the status quo order passed by this court on 15.06.2010 and the said status quo order has been flouted by the respondents / defendants by completing the entire first floor construction. He would further submit that the respondents / defendants did not obtain any special permission for the first floor construction and the said construction was purely an illegal construction and the same may be ordered to be demolished. He would further submit that the respondents / defendants knowing full well that there was an order passed by this court on 15.06.2010 and had indulged in violation of the said order and therefore, they may be suitably punished for the contempt of the court according to the provisions of the said Act.

3. The learned senior counsel Mr.T.V.Ramanujam, appearing for the respondents / defendants would submit in his argument that the respondents / defendants have put up first floor construction portion even prior to the status quo order passed by this court and the same was reported to the court, but the petitioner had come forward with the false plea that they have put up construction only after the order of status quo was ordered by this court. He would further submit that the respondents / defendants are law abiding citizens and they have no inclination to violate the orders passed by this court. He would further submit that the plaintiff, who is inimical towards the first defendant / mother, had indulged in such activities so as to bring the respondents / defendants to his terms. He would also submit that if for any reasons the respondents / defendants have in any manner either knowingly or unknowingly violated the orders, the respondents / defendants tender their unconditional apology for the same and therefore, the petition for punishing the respondents / defendants may be dismissed.

4. I have given anxious thoughts to the arguments advanced on either side.

5. It is an admitted fact that the suit was filed by the petitioner as plaintiff for partition and separate possession of his 1/5th share in the suit property. The plaintiff has also filed application in O.A. No. 439 of 2010 for interim injunction against the respondents / defendants from in any way put up additional construction in the suit property till the disposal of the suit and yet another application in O.A. No. 470 of 2010 for interim injunction against the respondents / defendants restraining them not to alienate the suit property during the pendency of the suit. In both the applications, this court had ordered emergent notice to the respondents / defendants. The defendants / respondents appeared before the court and they are also represented through counsel. On 15.06.2010, this court had passed an order of status quo in the presence of both parties, which would run as follows:-

"The learned counsel for the applicant / plaintiff seeks an order of injunction restraining the respondents/defendants from putting up construction in the suit schedule property.

The learned counsel for the respondents / defendants submits that construction has already been completed in respect of the portion in which the respondents are residing.

Whatever be the merits of the matter, there will be an order of status quo in respect of putting up further construction in the suit schedule property until further orders.

Call this matter on 02.07.2010."

6. The said order was passed in open court and it was made known to both parties. However, the matter was taken on 02.07.2010 and on that day, it was complained by the learned counsel for the petitioner / plaintiff that additional constructions are going on in the suit premises and the photographs were also shown to the Court. This Court, after going through the photographs produced on that day, had come to the conclusion that those constructions in the suit property cannot be termed as repair works and it was a substantial additional construction and the respondents / defendants should file affidavit that they would not claim exclusive right in the additional construction put up by them and on such filing by the respondents / defendants, it has also been ordered to maintain status quo and no construction activity shall be carried out by the respondents / respondents / defendants until further orders. The said order passed by this Court on 02.07.2010 is very clear that the status quo order passed on 15.06.2010 was continued till the date of disposal of the application. By closure on that day, when the preliminary decree was passed, it was brought to the notice of this court regarding the photographs taken on 16.06.2010 and 18.06.2010 in the suit property in respect of the additional construction of the first floor. I could see from the other photographs produced on that day, the first floor construction was over, on the ground floor which was only in existence on the date of filing of the suit. The photographs in the typed set, showing the

construction work on 16.06.2010 and 18.06.2010 and thereafter, would amply prove that the respondents / defendants have deliberately violated the orders passed by this Court on 15.06.2010. The authenticity of the said photographs could be ascertained from the orders passed by this Court on 02.07.2010, since the said photographs were shown to the Court on that day and this Court was very much convinced that the said construction cannot be termed as repair works, but they were additional construction. In pursuance of the orders passed by this Court on 02.07.2010, the respondents / defendants have filed affidavits to the effect that they would not claim exclusive right over the additional construction put up by them. Therefore, it is quite clear that the respondents / defendants have violated the orders passed by this Court on 15.06.2010, which continued till the date of passing of final decree. The mere filing of the affidavit not claiming exclusive right over the additional construction will not in any way absolve the respondents / defendants from the commission of contempt.

7. Therefore, I am of the considered view that the respondents / defendants have committed the act of contempt and they are liable to be dealt with under the provision of Contempt of Courts Act. However the first respondent / first defendant submitted her apology in her counter affidavit.

8. Moreover, the finding of this Court has been put forth to the respondents 1 to 4 / defendants 1 to 4, and they replied that they may be pardoned, on their tendering of unconditional apology in their affidavits filed by them. Accordingly, the respondents 2 to 4 / defendants 2 to 4 have today tendered unconditional apology by way of filing a joint affidavit. The first respondent / first defendant has tendered unconditional apology in the counter affidavit filed by her. Considering the dispute was, in between the son on one hand and mother, another brother and sisters on other hand, fight for their rights, the act of contempt committed by the defendants are pardoned and accordingly, the Contempt Petition is closed.