

(1996) 07 AP CK 0047

In the Andhra Pradesh High Court

Case No : Contempt Case No. 1007 of 1995

Kamalabai S. Naik and Another

APPELLANT

Vs

Dhananjay S. Naik

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Contempt of Courts Act, 1971 — Section 12(1), 2
Hindu Succession Act, 1956 — Section 22

Citation : (1996) 3 ALD 553 : (1996) 2 ALD(Cri) 292 : (1996) 3 ALT 404 :
(1996) 2 APLJ 152 : (1996) 1 APLJ 152 : (1996) CriLJ 4499

Hon'ble Judges : S.R. Nayak, J;M.N. Rao, J

Bench : Division Bench

Advocate : S. Satyanarayana Prasad, for the Appellant; C. Jayashree Sarathy, for the Respondent

Judgement

S.R. Nayak, J.—The respondents 2 and 3 in City Civil Court (C.C.C.A.) No. 40 of 1995 pending on the file of this Court are the petitioners 1 and 2 respectively in this contempt case. The petitioners complain that the sole respondent herein, namely, Dhananjay S. Naik, who is the appellant in C.C.C.A. No. 40 of 1995, is wilfully and wantonly disobeying the order of this Court dated 20th April, 1995 passed in C.M.P. No. 3536 of 1995 in C.C.C.A. No. 40 of 1995 and has been indulging in abuse of the process of law by filing frivolous legal proceedings in Courts with sole and deliberate intention to thwart implementation of the order of this Court. Therefore, the petitioners have prayed for punishing the respondent for his alleged wilful disobedience of the order of this Court dated 20th April, 1995 referred to above. This Court admitted the contempt Case on 15-2-1996 and ordered notice in Form No. X. On service of notice, the respondent has put in appearance through his counsel Smt. C. Jayashree Sarathy and filed his counter. We heard the learned counsel for the parties.

2. The background facts leading to the filing of this Contempt Case be stated briefly as under : Anand Vijaya S. Naik, elder brother of the respondent, filed suit

O.S. No. 1609 of 1983 in the Court of the III Additional Judge, City Civil Court, Secunderabad for partition and separate possession of plaint Schedule I and II properties by metes and bounds, rendition of accounts and mesne profits. The respondent, the first petitioner, the second petitioner in the Contempt Case are the defendant No. 1, defendant No. 2 and defendant No. 3 respectively in the suit. Item I in Schedule I is the house property called "Mukthashram" bearing Municipal Registration No. 6-3-1215 situate at Begumpet, Hyderabad, with which we are concerned in this case. In O.S. No. 1609 of 1983, the respondent, in his written statement, inter alia, prayed the Court to the following effect :

"It is prayed that the properties shown in Schedules I, II and III be divided amongst the plaintiff and defendants 1 to 3 and in case the family residential house bearing No. 6-3-1215 called as Mukthashram at Begumpet along with its appurtenant land, garden, out houses, garage etc., is found to be incapable of division, this defendant be given an opportunity to purchase the share of the plaintiff and other defendants as per valuation to be made by the Court."

3. The learned III Additional Judge passed the preliminary decree on 7-10-1994 on the following terms :

"1. that the plaintiff and defendants 1 to 3 are entitled to 1/4th share each in items 1 and 2 of Schedule I properties and for 1/5th share each in item No. 3 of plaint schedule I properties.

3. that the plaintiff and defendants 1 to 4 are entitled for 1/5th share in item No. 3, and the 1/5th share of defendant No. 4 (deceased) shall be divided equally between the plaintiff and defendant No. 1 i.e., half share each.

2. and that the plaintiff and defendants 1 to 3 are entitled to 1/4th share each in movable items of plaint Schedule-II.

4. that the plaintiff is also entitled for rendition of accounts from defendant No. 1 in respect of items 1 and 2 of Schedule of I and Schedule of II properties from the date of death of Sri S. V. Naik i.e., from 29-5-1981 till filing of the suit.

5. that the defendants 1 to 3 do pay to the plaintiff a sum of Rs. - towards costs of the suit."

The respondent, being aggrieved by the judgment and decree dated 7-10-1994 made in O.S. No. 1609 of 1983 preferred C.C.C.A. No. 40 of 1995 to this Court, which appeal is pending on the file of this Court for adjudication. This Court, in C.M.P. No. 3536 of 1995 filed in the said C.C.C.A. No. 40 of 1995 by the respondent, passed the following order on 20th April, 1995 :

"It is further ordered that only the passing of final decree in O.S. No. 1609/83 on the file of Court of III Additional Judge, Secunderabad be and hereby stayed only. It is further ordered that all the other proceedings shall go on pending further orders on this petition."

In pursuance of the interim order of this Court dated 20th April, 1995 and at the

instance of the petitioners herein, the III Additional Judge by an order dated 9-11-1995 passed in I.A. No. 2406 of 1995 appointed Sri Devendra Kumar Jain, as an Advocate-Commissioner to conduct the final decree proceedings. The enquiry proceedings were posted before the Advocate-Commissioner on 9-11-1995. On that day, the respondent filed a letter dated 9-11-1995 before the Advocate-Commissioner requesting the latter to postpone the enquiry to 25-11-1995 on the ground that the respondent was advised by his doctor to undergo a medical check-up on 10-11-1995. The Advocate-Commissioner adjourned the proceedings to 18-11-1995. In the meanwhile the respondent filed a suit O.S. No. 454 of 1995 in the Court of the III Additional Judge, City Civil Court, Secunderabad on 7-11-1995 against the petitioners 1 and 2 and 6 others, seeking a declaration that the agreement of sale dated 14-12-1991 executed by the first petitioner and also the agreement of sale deed 14-12-1991 executed by the second petitioner in favour of the defendant Nos. 3 to 7 as null and void and for a consequential direction to the petitioners 1 and 2 to sell, transfer and convey their respective shares in the suit schedule property in favour of the respondent, upon the respondent depositing the sum of Rs. 1,90,000/-. The respondent, in the said suit, also sought injunctive relief against the defendants 3 to 7 restraining them from entering into the suit schedule property. The suit schedule property in O.S. No. 454 of 1995 is the same residential property bearing Municipal Registration No. 6-3-1215, Mukthashram situate at Begumpet, Hyderabad referred to earlier. In the said suit, the respondent filed I.A. No. 2406 of 1995 under Order 39 Rules 1 and 2 of the CPC for grant of temporary injunction restraining the defendants 3 to 8 from interfering with his peaceful possession of the suit schedule property. The learned III Additional Judge, on the said application, passed an order on 9-11-1995 directing the defendants 3 to 8 to maintain status quo in respect of the suit schedule property. When the proceedings were posted before the Advocate-Commissioner on 18-11-1995, on behalf of the respondent, a letter was filed before the Commissioner informing about the ex parte interim order passed by the learned III Additional Judge in I.A. No. 2406 of 1995 in O.S. No. 454 of 1995. Therefore, the Commissioner adjourned the proceedings to 2-12-1995. Again, on behalf of the respondent a letter dated 1-12-1995 was filed informing the Commissioner about the status quo order passed in I.A. No. 2406 of 1995 and also further informing that the respondent has filed I.A. No. 2495 of 1995 in O.S. No. 1609 of 1983, in which he has sought a direction to the Advocate-Commissioner not to execute the warrant in respect of the dwelling house bearing Municipal Registration No. 6-3-1215. In the letter the respondent also requested the Commissioner not to execute the warrant in respect of the dwelling house. The Commissioner adjourned the proceedings to 16-12-1995. Again, on 16-12-1995 another letter was filed on behalf of the respondent requesting the Commissioner not to execute the warrant to the extent of dwelling house is concerned and seeking adjournment.

4. Sri. S. Satyanarayana Prasad, the learned counsel for the petitioners would contend that all the proceedings, applications, requests made by the respondent

in several letters are in direct violation of the order made by this Court on 20th April, 1995 in C.M. P. No. 3536 of 1995 and these actions of the respondent are deliberate and intentional and they were taken with a sole intention to disobey the orders of this Court. The learned counsel also submitted that the respondent has been physically preventing the Advocate-Commissioner from executing the warrant of commission issued by the learned III Additional Judge for implementing the orders of this Court. He also pointed out, on the basis of the averments in the affidavit, that the respondent kept some anti-social elements outside the residential property in question to see that the warrant of Commission is not executed. On the other hand, Smt. C. Jayashree Sarathy, the learned counsel for the respondent would maintain that the respondent has not committed any contempt. Elaborating the argument, the learned counsel would contend that the order of this Court dated 20th April, 1995 made in C.M.P. No. 3536 of 1995 would not come in the way of the respondent filing either O.S. No. 454 of 1995 u/s 22 of the Hindu Succession Act or filing I.A. No. 2406 of 1995 in O.S. No. 454 of 1995 or I.A. No. 2495 of 1995 or O.S. No. 1609 of 1983 or presenting certain letters referred to above before the Advocate-Commissioner requesting the latter to adjourn the case and not to execute the warrant in so far as the dwelling house is concerned and he has been only pursuing legal remedies available to him in law. The learned counsel, alternatively, would contend that the acts attributed to the respondent do not constitute either "civil contempt" or "criminal contempt" within the meaning of those terms as defined in Clauses (b) and (c) of Section 2 of the Contempt of Courts Act, 1971, for short "the Act". The learned counsel would also maintain that there is no wilful disobedience of the order of this Court dated 20th April, 1995 and no case is made out for punishing the respondent for the alleged Contempt of the Court.

5. After perusing the pleadings of the parties and hearing the arguments of the learned counsel appearing for them, the only question which arises for our consideration and resolution is that whether the acts of the respondent in instituting the suit O.S. No. 454 of 1995, filing I.A. No. 2406 of 1995 in the said suit and obtaining "status quo order" in the said I.A. on 9-11-1995, filing letters on 18-11-1995, 2-12-1995, 16-12-1995 requesting the Advocate Commissioner to adjourn the case and not to execute the warrant in respect of the dwelling house and filing I.A. No. 2495 of 1995 in O.S. No. 1609 of 1983 seeking a direction to the Advocate-Commissioner not to execute the warrant in so far as the dwelling house is concerned do constitute contempt of the order made by this Court on 20th April, 1995 in C.M.P. No. 3536 of 1995 in C.C.C.A. No. 40 of 1995 or not. This question need not detain us for long inasmuch as the answer to this question is quite apparent on the face of the records placed before us. They speak for themselves.

6. The order made by this Court on 20th April, 1995 in C.M.P. No. 3536 of 1995 clearly shows that only the passing of the final decree is stayed in O.S. No. 1609 of 1983 and directs that all other proceedings shall go on. Therefore, the natural flow of this order or the proceedings initiated by the Court below in obedience of

the direction issued by this Court cannot be stalled or modified or meddled with or thwarted by any Court, tribunal or any person except by the Division Bench of this Court or the "Court above" the Division Bench of this Court thereby meaning the Supreme Court in an appropriate legal proceedings and if we find that the respondent, directly or indirectly but deliberately and wilfully acted in a manner to disobey the order of this Court, then, he should be held to have committed contempt of the Court.

7. Clause (b) of Section 2 of the Act defines "civil contempt" as under :

"Civil contempt" means wilful disobedience of any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court."

8. As pointed out in Section 2(b), civil contempt means - (i) wilful disobedience of any judgment, decree, direction, order, writ or other process of a Court; (ii) or wilful breach of an undertaking given to a Court.

9. In the present case we are not concerned with wilful breach of an undertaking given to the Court. The essential ingredient is "wilful disobedience" and not any and every disobedience due to various reasons such as delay due to unavoidable circumstances, or inadvertence. That it was "wilful" has to be proved. The word wilful connotes "purposefulness and "clear intention to flout. It has been firmly established as a rule of contempt law, that a lawful order made by a Court, which has jurisdiction over the subject matter and parties in exercise of available power to render such decision, cannot be disregarded without incurring punishment for the contempt although ambiguity assisting misconstruction may some-times be a plausible defence or may be considered in mitigation of sentence.

In the present case the order made by this Court on 20th April, 1995 in C.M.P. No. 3536/95 is quite clear in terms and does not admit any ambiguity or misconstruction. Added to this, it is not the contention of the learned counsel for the respondent that the order made by this Court is not clear and is capable of being understood in more than one sense.

10. Now let us advert to what has happened after this Court made the interim order on 20th April, 1995. Admittedly the respondent filed O.S. No. 454 of 1995 on 7-11-1995. We have carefully gone through the averments in the plaint and also the averments in the affidavit filed in support of I.A. No. 2406 of 1995 filed by the respondent in the suit. Quite curiously the respondent has not at all referred to the facts of his filing C.C.C.A. No. 40 of 1995 and the interim order made by this Court on 20th April, 1995 in C.M.A. No. 3536 of 1995. In C.C.C.A. No. 40 of 1995 the respondent is the appellant and at his behest and in his application the interim order came to be made by this Court. Therefore in the context of this case we are not persuaded to think that the failure on the part of the respondent to refer to the filing of C.C.C.A. No. 40 of 1995 in this Court and to the interim order made by this Court on 20th April, 1995 is an innocent, inadvertent, accidental slip. Omission, rather suppression, is deliberate and

wilful. We trust, if the respondent were to disclose to the Court below about the order made by this Court on 20th April, 1995 in C.M.P. No. 3536 of 1995, the Court below would not have granted the "status quo" order on 9-11-1995 in I.A. No. 2406 of 1995 in O.S. No. 454 of 1995. The respondent is clear terms in his letters dated 1-12-1995 and 16-12-1995 requested the Advocate-Commissioner not to execute the warrant in respect of the dwelling house. It is relevant to note at this stage that warrant was issued to the Advocate-Commissioner by the Court below in pursuance of the order made by this Court in C.M.P. No. 3536 of 1995. Therefore, it should be held that the respondent is guilty of meddling with the order made by this Court as well as the order made by the Court below issuing warrant to the Advocate-Commissioner. Further the order obtained by the respondent in I.A. No. 2406 of 1995 in O.S. No. 454 of 1995 as well as the relief sought in I.A. No. 2495 of 1995 filed in O.S. No. 1609 of 1983 are clearly in violation of the order of this Court.

11. Coming to the institution of the suit O.S. No. 454 of 1995, may be noted that the defendants 3 to 8 are not parties in the earlier suit O.S. No. 1609 of 1983. In O.S. No. 1609 of 1983 the respondent claimed preferential right to purchase the shares of the plaintiff and other defendants including the petitioners herein who are the defendants 2 and 3 respectively in the said suit. That prayer of the respondent contained in para 7 of the amended written statement is not granted by the Court below. That is why the respondent has preferred C.C.C.A. No. 40 of 1995 to this Court making grievance in that regard. The question whether the respondent has preferential right to purchase the shares of the petitioners 1 and 2 in the dwelling house is now seized by this Court C.C.C.A. No. 40 of 1995, and only in the event of this Court in the said appeal holding that the respondent has such right, the respondent will have grievance, if any, against the defendants 3 to 7 in O.S. No. 454 of 1995. The defendants 3 to 7 are only the vendees under agreements of sale. The title to the property is not passed on to the defendants 3 to 7 in O.S. No. 454 of 1995. Therefore the respondent under the guise of a suit for declaration cannot be permitted to reagitate the same point covered by the earlier suit O.S. No. 1609 of 1983. The interim order obtained by the respondent in I.A. No. 2406 of 1995 in O.S. No. 454 of 1995 directly comes in the way of implementation of the order of this Court dated 20th April, 1995 made in C.M.P. No. 3536 of 1995. At this juncture it may be noted that having noticed the unrighteous litigative processes initiated by the respondent after this Court made the order on 20th April, 1995 in C.M.P. No. 3536 of 1995 with sole intention to stall the implementation of the order of this Court, this Court was constrained to pass an interim order on 29-12-1995 in C.M.P. No. 19581 and 19582 of 1995 in C.M.P. No. 3536 of 1995 in C.C.C.A. No. 40 of 1995 in the following terms :

"Unless there is an order by the Supreme Court directing the Advocate-Commissioner not to proceed with the enquiry, Shri Devendra Kumar Jain, the Advocate-Commissioner shall proceed with the execution of the warrant issued by the III Additional Judge, City Civil Court, Secunderabad in I.A. No. 2551/94 in O.S. No. 1609/93. The Advocate-Commissioner shall not stop his work on the

ground that either of parties has produced an order passed by any civil Court in the State. The parties of their authorised general power of attorney shall not be stopped from being present at the time when the Commissioner executes the warrant."

The conduct of the respondent in instituting the suit O.S. No. 454 of 1995, filing I.A. No. 2406 of 1995 in the said suit and obtaining a "status quo" order on 9-11-1995, filing I.A. No. 2495 of 1995 in O.S. No. 1609 of 1983 and filing letters on 18-11-1995, 2-12-1995 and 16-12-1995 before the Advocate-Commissioner requesting the latter not to execute the warrant in so far as the dwelling house is concerned negates his claim that in doing all these things he has been seeking only remedies available to him under law. We are constrained to observe that behind the facade of resorting to the legal remedies available under law, what the respondent is doing is actually indulging himself in acts deliberately intended to thwart the order of this Court passed in C.M.P. No. 3536 of 1995.

12. In the result and for the foregoing reasons, we hold that the respondent is guilty of "civil contempt" as defined in Section 2(b) of the Act. We, therefore convict him u/s 12(1) of the Act and sentence him to pay a fine of Rs. 2000/- (Two thousand Rupees) in default simple imprisonment for a period of two weeks. We grant four weeks time to the respondent for payment of the fine amount.

13. The suit O.S. No. 454 on the file of the III Additional Judge, City Civil Court, Secunderabad shall stand dismissed I.A. No. 2495 of 1995 filed in O.S. No. 1690 of 1983 shall also stand dismissed.

14. The contempt case is accordingly allowed with costs. Advocate fee is fixed at Rs. 500/-.

15. Petition allowed.