

(2015) 08 KAR CK 0174

In the Karnataka High Court

Case No : Criminal Contempt of Court Case No. 100001/2014

M. Prakash and Others

APPELLANT

Vs

Allam Gurubasavaraj and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 91, 35A
Contempt of Courts Act, 1971 — Section 12, 15

Citation : (2015) 08 KAR CK 0174

Hon'ble Judges : Anand Byrareddy and S. Sujatha, JJ.

Bench : Division Bench

Advocate : Dinesh M. Kulkarni, Advocate, for the Appellant; S.S. Yadrami, Advocate, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the complainants.

2. One Dr. Mallikarjunaiah, was said to be a member of the complainants family had filed a suit for partition and separate possession against the complainants and his father and other members of the joint family. During the pendency of the said suit O.S. No. 105/1977, on the file of Civil Judge (Sr. Dn.), Bellary, it transpires that insolvency petitions in I.C. Nos. 4 and 5 of 1997 were filed against two of the members of the joint family, respectively. The Official Receiver is said to have been in possession of the joint family properties and was therefore impleaded as one of the defendants in O.S. No. 105/1977. During the pendency of the partition suit the Official Receiver is said to have brought the properties to sale and it was sold in favour of one M/s. Veerashaiva Vidyavardhak Sangha, Ballari. Two more properties were sold in favour of one Bangari Iramma and Goudar Sharanamma, respectively. Aggrieved by the judgment and decree in O.S. No. 105/1977, which having been decreed, the Official Receiver is said to have challenged the same by way of an appeal before this Court in RFA No. 292/1982 which ultimately was dismissed and the order had attained finality. The decree holder thereafter had instituted final decree proceedings in FDP No.

59/1989 for determination of his share and other reliefs, which was said to have been allowed. Aggrieved by the decree passed in FDP No. 59/1989, Regular Appeal in R.A. No. 134/2006, which was filed by the Official Receiver before the Court of the II Addl. District Judge, Ballari, is said to have been dismissed. The complainant claims that after passing of the final decree proceedings, Execution Proceedings in E.P. No. 250/2006 was filed by the complainant seeking execution of the decree in FDP No. 59/1989. The purchaser of the property from the official receiver, namely, M/s. Veerashaiva Vidyavardhaka Sangha had entered appearance and is said to have filed an application under Order XXI Rule 91 of the Code of Civil Procedure, 1908, as an obstructor. The complainant had filed objections and had contended that the Sangha could not file any such application as an obstructor. The learned Civil Judge is said to have overruled the objection and posted the matter for enquiry. The complainant had then challenged the said order by way of a writ petition before this Court in W.P. No. 5070/2007 which was allowed and this Court had held that the Sangha had no right to file application as obstructor as they had stepped into the shoes of the Official Receiver, in having purchased the property through him. The respondents who were said to be the office bearers of the Sangha had then filed a suit in O.S. No. 58/2013 challenging the preliminary decree as well as the final decree proceedings and also the execution proceedings and had preferred an appeal in R.A. No. 104/2013 before the Prl. Civil Judge (Sr. Dn.), Ballari, on 11.10.2013.

3. The complainant claims that the Official Receiver since had already challenged the preliminary decree as well as the final decree, the Sangha had no authority to challenge the filing of the original suit and regular appeal filed by the Sangha which is an abuse of process of law and was in violation of orders passed by this Court in W.P. No. 5070/2007 and therefore the present contempt petition is preferred under Section 15 of the Contempt of Courts Act, 1971. The complainant has in the first instance approached the Advocate General of the State and the Advocate General in turn has granted permission to prefer this complaint and hence the present complaint.

4. The respondents have entered appearance through counsel and filed detailed statement of objections. The statement of objections, inter-alia, indicate that the challenge by the Official Receiver to the judgment and decree in O.S. No. 105/1977 had preferred an appeal before this Court in RFA No. 292/1982 and though this Court had dismissed the appeal, it had observed as follows:

"However make it clear that if the property partitioned or any part thereof had already, by the time the decree was made, vested in the official receiver as contended on his behalf, it is left to him to take such steps as are available in law to preserve the interest he may have had thereby in the properties involved in this proceedings."

5. Therefore it is contended that this Court had left it open for the Official Receiver to pursue any remedy available which the respondents could very well do, as they claim under the Official Receiver and that a suit now filed cannot be

characterized as an abuse of process of law. If it is a suit, according to the complainant, which is not maintainable and which is characterized as an abuse of process of law, it is for him to state and also claim that the suit is barred by res judicata, before the trial Court. Which would deal with it as a preliminary issue and the suit may even be dismissed. But it cannot be said that the respondents are precluded from initiating proceedings, which right they do possess. It is also stated that there were two more purchasers who had purchased the properties through the Receiver and those purchasers had filed a suit on similar lines and the same was decreed. The complainant had sought to challenge the same and the Regular Appeals filed have been dismissed and the second appeals are pending before this Court. Therefore it is also sought to be justified that since there are proceedings which have been allowed to take their course, the present proceedings initiated by the respondents which are of a similar nature cannot be characterized as contempt of Court and had the right exercised by the respondents in accordance with law which cannot be stifled by characterizing the same as criminal contempt.

6. The learned counsel for the complainant however would lay emphasis on the conduct of the respondents and would point out that matters having attained finality cannot be re-agitated to the prejudice of the complainant and the fruits of the decree being denied to the complainant is a serious prejudice that is caused to the complainant and certainly would amount to criminal contempt as laid down in several decisions by this Court.

7. The learned counsel relies on the case of (i) Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. Muneerappa, , as well as the case of (ii) Sri R. Sadagopan Vs. Sri K. Rajaiah Naidu, , to contend that in identical circumstances this Court has taken a strict view of such practices of bringing suit after suit and application after application to prevent a decree holder from enjoying the fruits of the decree and submits that further proceedings be taken in accordance with law.

8. Having heard the learned counsel at length and having noted the above facts and circumstances no doubt the Advocate General granting sanction to the complainant has made observations that in cases where the respondents resort to continuous filing of suits notwithstanding that issues have attained finality, it would amount to criminal contempt. Having placed reliance on the above referred decisions viz., Sri R. Sadagopan Vs. Sri K. Rajaiah Naidu, , as well as Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, . It is to be noticed, however, that the complainants have not filed "suit after suit". However, they are pursuing a remedy reserved to the Official Receiver by this Court in appeal, as already stated by the learned counsel for the respondent. No doubt the complainant is right in claiming that there is a decree in his favour which has attained finality. The respondents seeking to question that very decree in a suit cannot be characterized as contempt of Court or of having adopted a procedure to subvert the administration of justice, or being in

the nature of a suit filed only to frustrate the decree holder. It is a right exercised which may or may not be sustained. It is for the complainant to meet the contentions in the suit that are raised to sustain the same, which is always available to him. It is contended that the suit is barred by *res judicata* and if such a contention could be sustained, the Court below would frame a preliminary issue and the suit could very well be dismissed on that count and even compensatory costs, under Section 35A of the Code of Civil Procedure could be awarded to the complainant.

9. The decisions cited by the learned counsel for the complainants in support of the appeal would not squarely apply. As seen from the decision in *Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. Muneerappa*, the accused therein had challenged acquisition proceedings for the benefit of the complainant society by way of a writ petition before this Court. The writ petition having been dismissed an appeal was filed in W.A. No. 1411/1987 which was also dismissed. The matter had then been taken to the Supreme Court in a Civil appeal, unsuccessfully, and the matter had attained finality. Thereafter the accused is said to have filed a civil suit in O.S. No. 5579/1988 on the file of the City Civil Judge, Bengaluru, seeking permanent injunction against the defendant society from interfering with their possession. An *ex parte* order was said to have been passed directing the parties to maintain status quo. Thereafter applications were filed for vacating the interim order. The matter was adjourned from time to time and the order of status quo was extended repeatedly, this resulted in an appeal being filed before this Court in MFA No. 755/1989 and the appeal was ultimately allowed. Immediately thereafter yet another suit in O.S. No. 1773/1990 was fled before the very City Civil Court, Bengaluru for an injunction and the complainant society was cleverly not made a party to that suit. Though the office bearers and the contractors of the complainant society were made parties. An *ex parte* order of injunction had been granted. The defendants had entered appearance and filed an application for vacating the stay and thereafter had approached this Court under Section 12 of the Contempt of Courts Act, 1971. It is in that background that a Division Bench of this Court took exception to the conduct on the part of the accused therein. It cannot be said that the present case on hand is in similar circumstances.

10. So also in the case of *Sri R. Sadagopan Vs. Sri K. Rajaiah Naidu*, it is seen that one Kuppuswamy and his brother Rajaiah were the accused. They were the directors of M/s. Chamudeswari Studio and Laboratory Private Limited. It is stated that Kuppuswamy had formed a trust under the name of K.K. Foundation and Public Charitable Trust. Kuppuswamy is said to have executed a will bequeathing, his estate to various beneficiaries, including the complainant, his wife and also the accused. Kuppuswamy is said to have died on 4.3.2007. The accused had filed a suit before the City Civil Court, Bengaluru, in O.S. No. 25543/2007 against the executors of the Will, the complainant, his wife, daughter, son-in-law and also his parents and an *ad interim* order of temporary injunction was granted and later vacated by the trial Court. Subsequently the

accused had filed Civil Suits in O.S. No. 25660/2007, O.S. No. 25716/2007, O.S. No. 25487/2007 and O.S. No. 26992/2007 before the very City Civil Court, Bengaluru, as well as a Company Petition No. 35/2007 before the Company Law Board at Chennai. He had also filed yet another suit in O.S. No. 25413/2008 before the City Civil Court, in the form of an Administrative Suit for administration of the estate of late Kuppuswamy. There was no mention about the filing or the pendency of the earlier civil suits and therefore the complainant was before the Court complaining of the string of suits that were filed not only obstructing and preventing the due course of justice and the multiple suits amounted to an abuse of process of law. It is in the above background that this Court had taken exception to the conduct of the accused therein. It cannot therefore be said that it was in similar circumstances as the present case on hand.

11. In the case of Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, , the appellant was a cooperative society before the Supreme Court which had applied for a loan for establishment of an industry for manufacturing aluminum pottery. The loan was sanctioned in the year 1991 and part of the amount was released by the respondents, yet another sum was sanctioned in 1996 and an application was filed for grant of a loan of a further sum under the Consortium Bank Credit Scheme for establishing a unit in manufacturing PVC Shoe Soles. A sum of Rs. 16.20 lakh was sanctioned and Rs. 13.20 lakh was released. The society allegedly defaulted in making payments and recovery proceedings were initiated. Several writ petitions were filed questioning the legality of the recovery proceedings. Public interest litigation petitions were also filed wherein the appellant was also a party for the following reliefs;

(i) to hold the provisions of Section 35A of the U.P. Khadi and Village Industries Board Act, 1960 to be unconstitutional;

(ii) to issue a writ in the nature of certiorari to quash the recovery certificates; and

(iii) for direction in the nature of mandamus to command the opposite parties to get recovery of amount due against the members of the petitioners society through due process of law other than the recovery the same as arrears of land revenue.

12. It further transpires that there were other writ petitions also filed by the appellant as stated in the counter affidavit filed on behalf of the respondents. However fresh recovery proceedings had been initiated which were not the subject matter of the challenge in the writ petition. A fresh writ petition having been filed, the same was filed by reason of the impugned judgment holding that the appellants have suppressed the material facts, namely, filing of four writ petition on the same cause of action and thus it was held not maintainable. It was this order, which was under challenge before the Supreme Court. The

Supreme Court had taken a view that the attempt on the part of the appellants was certainly an abuse of process of law. Therefore, it cannot be said that the above circumstances are parallel to the circumstances as found in the present case on hand.

13. Hence, in our opinion the complainant has not made a case of criminal contempt of Court as against the respondents-accused. The complaint is rejected.