
(2019) 01 P&H CK 0197

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 8149 Of 2015 (O&M)

Purshotam Kumar

APPELLANT

Vs

Kusum (Since Deceased) Through Lrs And Another

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 9 Rule 13, Order 39 Rule 2A

Citation : (2019) 01 P&H CK 0197

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Atul Gaur, Shrey Goel

Final Decision : Allowed

Judgement

Amol Rattan Singh, J

1. By this petition, the petitioner challenges the orders of the learned Courts below by which he has been ordered to undergo simple civil imprisonment for a period of 14 days on account of the fact that despite an order having been passed in the civil suit filed by the respondent-plaintiff, in which the petitioner is the first defendant, to the effect that status quo would be maintained by the parties qua the suit land consisting of 61 bighas 7 biswas, the petitioner was found to have sold land to the extent of 100 sq. yards therefrom.

2. Learned counsel for the petitioner submits that as a matter of fact the aforesaid order was passed when the application filed by the petitioner under Order 9 Rule 13 of the CPC was still pending, though on specific query, he could not deny that the said order was passed in the presence of his counsel which is also obvious from a perusal of the copy of the order (Annexure P-4 with the petition), wherein Shri S.L.Nirwania, Advocate, is shown to be present for the petitioner, i.e. respondent no.1 in the application under Order 39 Rule 2-A CPC.

The aforesaid 100 sq.yards of land is stated to have been sold on 11.5.2011, i.e. about 16 days after the order dated 26.4.2011 was passed.

He further submits that after the application under Order 9 Rule 13 was eventually allowed by the appellate Court (vide the order Annexure P-1), and after the petitioner-defendant no.1 was heard on merits, the suit was eventually dismissed, though an appeal has been filed by the respondent-plaintiff against that judgment and decree.

His contention therefore is that the order dated 26.4.2011 having merged with the order dismissing the suit, in fact no contempt is made out against the petitioner.

He next submits that in any case what has been sold by the petitioner is 100 sq yards which in any case is far less than the share that would come to the respondent-plaintiff, even if her suit is eventually decreed. In other words, it is his contention that 100 sq. yards would be within the petitioners' own share even if the suit was to be decreed in favour of the plaintiff.

Lastly, he submits that the petitioner in any case did not have knowledge of the order of 'status quo' because even as testified by the Clerk of the counsel representing him before the trial Court on the date that the order was passed, the order was actually never conveyed to the petitioner.

3. Learned counsel for respondent no.1 on the other hand submits that even though it is not denied that the area of land sold is only a 100 sq. yards, and admittedly the respondent plaintiff has sought a 1/6th share of 61 bighas and 7 biswas of land, which would amount to slightly over 10 bighas of land, even so, the petitioner having deliberately flouted the order of the trial Court by which status quo was to be maintained, he does not deserve any leniency.

4. Having considered the matter, though learned counsel for the respondent is absolutely right that the petitioner, in the face of the order dated 26.4.2011, could not have alienated any part of the suit land whatsoever, till such order was vacated, and it is very difficult for this Court to believe that despite the order passed in the presence of his counsel, with the petitioner also having filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree earlier passed against him, that he did not have knowledge of the said order, and therefore he in any case deemed to be having such knowledge (as his counsel was duly representing him), yet, keeping in view the fact that the area of the land sold admittedly would not be more than what would otherwise fall to the petitioners' share even if the suit of the respondent-plaintiff is decreed in her favour eventually, in the appeal stated to be pending, in the opinion of this Court, a lenient view to some extent can be taken, as regards the imprisonment ordered by the learned Courts below.

Hence, keeping in view the aforesaid facts, dehors the fact that the suit of the respondent-plaintiff has been dismissed, (with an appeal still pending), but because the suit land sold would not be beyond what eventually would fall to the share of the petitioner, even if the suit of the respondent-plaintiff is decreed in her favour, the petitioner is instead directed to pay a sum of Rs.20,000/- to the

District Legal Services Authority, Karnal.

Though it is to be noticed that Rule 2-A of Order 39 of the CPC does not specifically postulate imposition of a fine, but it postulates attachment of property or civil imprisonment, and also sale of such property to compensate the injured party. In the present case, as already noticed, the 100 sq. yards of land sold being well within the share of the petitioner, the plaintiff at least at this stage cannot be stated to have been injured by such sale; but however, without a doubt, the order of the trial court has been violated, with it still to be determined as to whether the part of the suit land sold, was prime land compared to rest of the land, or was of the same value. Consequently, at this stage, it is considered appropriate that the aforesaid fine be imposed upon the petitioner for violation of the courts' order, with the payment to be made to the District Legal Services Authority.

Ordered accordingly.

However, as it has not been determined as to what the value of the suit land is, as has been sold, therefore, if eventually the suit of respondent no.1 herein is decreed in her favour, the Court so decreeing it shall record a finding as to the location of the land sold by the petitioner, and if such part of the unpartitioned land consisting of 61 bighas and 7 biswas is of a higher value than the remaining land. If so, the petitioner shall be directed, as part of the decree to be issued in favour of respondent no.1 (if so issued), that she be compensated for the loss caused to her by the sale of more expensive land than is left to her share (upon such decree being passed).

Such compensation shall also include interest at the rate of not less than 8% per annum from the date of sale of the land by the petitioner, till the date of payment by him of such compensation.

Having said that, it is made absolutely clear that this Court has not made any observation whatsoever with regard to the merits of the case for or against either party, i.e. as regards whether respondent no.1-plaintiff is entitled to any part of the suit land or not, which naturally would be gone into by the learned appellate Court wholly on the merits of the evidence before the learned trial Court and that Court.

With the aforesaid observations, this petition is allowed to the aforesaid extent, with the imprisonment of the petitioner, as ordered vide the impugned order, set aside, and a fine of Rs.20,000/- instead imposed on him.