

(2014) 04 MAD CK 0117

In the Madras High Court

Case No : Cont. P. Nos. 333 of 2013 and Sub. A.No. 79 of 2013

S. Hemalatha

APPELLANT

Vs

P. Murali Vittal, Mr. P. Mahaveer Chand, Contractor/Sponsor,
Commotard Private Limited and Mr. P. Mahaveer Chand,
Director, M/s. Sponcer Commotrade Private Limited

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Registration Act, 1908 — Section 17

Citation : (2014) CriLJ 3263 : (2014) 3 CTC 542 : (2014) 2 LW 964 : (2014) 5 MLJ 81

Hon'ble Judges : S. Rajendran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Rajeswaran, J.—This petition has been filed to punish the respondents for not obeying the direction given by this Court in A.No. 875/2006 in C.S. No. 318/2002, in the order dated 15.11.2006. An affidavit has been filed in support of the contempt petition by the petitioner who is the 7th defendant in C.S. No. 318/2002, which was transferred to the 15th Assistant City Civil Court and re-numbered as O.S. No. 12098/2010. In the affidavit, it is stated that the suit was filed by Tmt. Yamuna Mohan for partition of 1/5th share in the suit schedule property. The petitioner's husband is having 1/5th share in the suit property.

2. On 15.11.2006, this Court passed an order directing the party to maintain status quo from 15.11.2006 till 28.11.2006 in A.No. 875/2006 filed by the above said Tmt. Yamuna Mohan praying for an order of interim injunction restraining the defendants 1 to 3 in the suit from in any manner dealing with, parting with, alienating or encumbering the property described in the schedule.

3. According to the petitioner, the first respondent who is the second defendant in the suit should not sell the property to third parties as it is a common property and without dividing the same by metes and bounds, the property cannot be sold

to anyone. The interim order which has been granted initially till 28.11.2006 has been extended from time to time and the same is still in force. However, in spite of the same, the first respondent/2nd defendant sold his 1/5th undivided share on 25.06.2012 in violation of the orders of this Court and the sale has been registered as Doc. No. 744/2012 on the file of the SRO, Sowcarpet. The specific case of the petitioner is that on the date of the disposal of the property on 25.06.2012, there is an order of status quo against the parties to the suit proceedings and in violation of the order, the first respondent/the second defendant sold the property to and in favour of the second respondent. Hence, the sale deed becomes null and void and the respondents are also to be punished for contempt of court.

4. The first respondent/second defendant entered appearance through counsel and filed a counter affidavit. In the counter affidavit which has been filed by the said respondent/defendant, it has been stated that to the best of his knowledge, no notice was received by him in A.No. 875/2006 and he entered appearance in the suit on 21.04.2008 only. It is further stated that all the parties to the suit, who have a right and share in the suit property including the petitioner, have dealt with their individual right in the property and therefore, the contention of the petitioner that he alone had violated the interim order of status quo is not legally sustainable.

5. The case of the first respondent/second defendant is that, he is entitled to 1/5th undivided share in the property and the suit was originally filed by the wife of his deceased brother Thiru C. Mohan Vittal for partition and other reliefs. Pending suit, the petitioner who is the 7th defendant filed an application in the year 2006, praying to transpose herself as the second defendant in the suit; to amend the plaint; for an order of injunction restraining the respondents in the application from in any manner dealing with, parting with, alienating and encumbering the suit schedule property. This Court by order dated 15.11.2006 directed the parties to maintain status quo and the interim order was thereafter extended from time to time. It is reiterated by the first respondent/second defendant that to the best of his knowledge that no notice was received by him in A.No. 875/2006. It is further stated that the suit has been transferred to the file of the City Civil Court and pending suit, all the parties have negotiated for sale of their respective share in the property including the petitioner herein. After such negotiations on 03.06.2011, all the shareholders excluding the first defendant and the 6th defendant entered into an agreement to sell their respective shares in the property to M/s. Rainbow Foundations Ltd., and received substantial sale advance. The petitioner is the 11th vendor in the said agreement of sale and she received a sale advance of Rs. 31,25,000/- as evidenced in Clause 5(b) of the said agreement of sale. It is contended that if the first respondent/second defendant is liable for violating the orders of this Court, then, the petitioner is also equally liable for the same.

6. The first respondent/second defendant stated that under the agreement of

sale consideration was to be paid on or before 31.12.2011 and in consequences thereto, they were to execute the requisite documents as desired by the proposed purchaser. However, the purchaser was not able to complete the transactions within the time stipulated. In such circumstances, due to his advanced age and various serious ailments, from which, his wife and the first defendant are suffering, he decided to settle the affairs with regard to his undivided 1/5th share in the property during his lifetime and therefore, he requested the proposed purchaser to cancel the agreement entered into with him in so far as his share is concerned and consequently, the agreement was cancelled in so far as his share was concerned on 12.05.2012. Thereafter, he sold his undivided 1/5th share in the property to the second respondent herein on 25.06.2012. It is further stated by the first respondent/second defendant that the other parties to the suit including the petitioner herein have also thereafter cancelled the agreement dated 03.06.2011 and entered into a fresh agreement with M/s. Ratnapuri Constructions Pvt. Ltd. on 26.04.2012. The petitioner received a substantial payment from M/s. Ratnapuri Constructions Pvt. Ltd. also.

7. When all the parties to the suit have dealt with their share in the property, it is not open to the petitioner to contend that the first respondent/second defendant alone had dealt with his share in the property and consequently committed contempt.

8. It is further stated in the counter that the order passed by this Court is an order of status quo and not an order of injunction. Moreover, the prayer to declare the sale deed executed by him as null and void is beyond the scope of the petition and it cannot be maintained. Before completing the affidavit, the first respondent/second defendant stated that he has got the greatest regard and respect for this Court and there is no intentional violation or disobedience to the orders of this Court and he also tenders unconditional apology to this Court. He further added that he was under the bonafide impression that the sale made by him cannot be termed as a violation of the interim orders granted by this Court, as all the parties including himself have dealt with the property. Hence, he prayed for closing the contempt petition.

9. The second respondent entered appearance through his counsel and filed a counter affidavit stated that it is not correct to state that he purchased the property from the first respondent. His case is that the property has been purchased by M/s. Sponsor Commotrade Pvt. Ltd., which is a separate legal entity. According to him, M/s. Sponsor Commotrade purchased 1/5th undivided share in the suit schedule property from the first respondent for a valuable consideration without any notice about the pendency of the suit as well as the interim order passed by this Court. It is further stated by him that the application is to be dismissed for misjoinder of party for the reason that the sale deed is executed in favour of M/s. Sponsor Commotrade who is not arrayed as a party in the application. Hence, he prayed for the dismissal of the application.

10. The petitioner filed a sub application in Sub. Appln. No. 597/2013 to permit

him to implead the proposed party viz., M/s. Sponsor Commotrade Pvt. Ltd., as the third respondent in Cont. P. Nos. 333 of 2013. This Court on 07.10.2013 allowed the application by ordering the impleading petition. Thereafter, the third respondent entered appearance through counsel and filed a counter, in which, it is stated that the third respondent Company was not aware of any orders passed by this Court and therefore, the third respondent is not guilty of violation of any orders passed by this Court. The Company has purchased the share of the first respondent in the property for a good and valuable consideration without notice or knowledge of the orders passed by this Court. Therefore, seeking declaration of the sale deed as null and void is to be dismissed and the respondents 2 and 3 are to be purged from the contempt.

11. A reply affidavit has been filed by the petitioner to the counter affidavit filed by the first and second respondents. It is stated in the reply that the suit was filed in the year 2002 and the first respondent/second defendant was very much aware of the suit proceedings and he was defending the suit along with the first defendant. Therefore, it is not open to the first respondent to plead ignorance and try to escape from the act of disobedience committed by him. The status quo order has been passed in the injunction application. u/s 17 of the Registration Act, the transfer of the property takes place only when the registration is completed. Therefore, unless a document is registered in accordance with the provisions of the Registration Act, there is no transfer of property. Merely entering into an agreement would not in any manner tantamount to transfer of property. On the contrary, the first respondent who transferred the property and completed the sale transaction in violation of the orders of this Court, has the audacity to point that others have also entered into an agreement. In such similar circumstances, the Hon"ble Courts have treated the matter very seriously and declared such transfers as null and void. Hence, she prayed for passing appropriate orders against the contemnor and to declare the sale deed dated 25.06.2012 as null and void.

12. Heard Mr. T.V. Ramanujam, the learned senior counsel for the petitioner, Mr. A.R.L. Sundaresan, the learned senior counsel for the first respondent and Mr. S. Parthasarathy, the learned senior counsel for the third respondent. I have also gone through the relevant records made available before this Court.

13. The learned senior counsel for the petitioner submits that an order has been passed on 15.11.2006 in O.A. No. 875/2006 directing the parties to maintain status quo of the property as against the defendants in the suit. However, the first respondent/second defendant sold the 1/5th undivided share of his property on 25.06.2012 in violation of the above said status quo order. The learned senior counsel points out that an evasive counter has been filed by the first respondent wherein the first respondent carefully states that he has not received notice in the application. But, he has not stated that he is not aware of the orders passed in the application. Thus, passing of the order and his knowledge is not disputed and is only admitted. The order is still in force and the same has also not been

disputed and it is also admitted that sale deed has been executed when the order was still in force. Therefore, according to the learned senior counsel, the first respondent has committed contempt willfully and that too, with the knowledge of this status quo order. In so far as the agreement entered into by the other parties including the petitioner is concerned, the learned senior counsel submits that entering into a mere agreement will not tantamount to conveyance until the same is culminated into a sale deed. The learned senior counsel relies on the decision of this Court reported in *S. Prabhavathi Vs. The Revenue Divisional Officer*, to submit that when something has been done in disobedience of the orders passed by this Court, it will be the duty of the Court to set the wrong right and put back the aggrieved person in the original position. The learned senior counsel cites the decision reported in *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd.* and another, to argue that Court has got powers besides imposing punishment for contempt to give appropriate directions to permit and rectify the acts and things done in violation of the orders of the Court. The learned senior counsel further refers to the decision reported in *Keshrimal Jivji Shah and Another Vs. Bank of Maharashtra and Others*, to submit that transfer of immovable property in violation of an order of injunction issued by Court of law confers no right, title or interest in the transferee as it is no transfer at all. The learned senior counsel has also relied on the decision reported in *Surjit and others Vs. Harbans Singh and others etc. etc.*, to submit that in defiance of a restraint order passed by the Court, if any transfer of property is made, a duty has been cast upon the Court to treat the alienation as having not taken place at all. The learned senior counsel has placed his reliance on the decision reported in *C. Elumalai and Others Vs. A.G.L. Irudayaraj and Another*, to submit when the order of the Court is violated willfully and deliberately, the apology tendered cannot be accepted and exemplary cost is to be imposed. The learned senior counsel has also referred to an unreported judgment dated 18.01.2011 in Cont. P. Nos. 114/2008 (*N. Srinivas vs. Naresh Kumar*) to submit that if for proper administration of justice and ensure due compliance with the orders passed by the Courts, it is required to take strict view under the Act, then, it should not hesitate in wielding the potent weapon of contempt. The order passed by the learned Single Judge in the above case has been upheld by the Division Bench on 09.07.2013 in Cont. A.No. 4/2011. Citing the above said judgments, the learned senior counsel for the petitioner submits that a clear case of willful disobedience of the order of status quo has been made and therefore, the first respondent is to be punished and the sale made by him in utter violation of the order is to be declared as null and void.

14. Per contra, the learned senior counsel for the first respondent submits that the first respondent entered appearance in the suit through his counsel on 21.04.2008 only and the order dated 15.11.2006 was not served on the first respondent. In the absence of any knowledge of the order, the first respondent cannot be held to be a person violated the order of this Court. It is further stated by the learned senior counsel that all the shareholders including the petitioner

herein and excluding the defendants 1 and 6 negotiated for sale of their respective shares and entered into an agreement on 03.06.2011. Therefore, the first respondent was made to believe that there was no bar in entering into such an agreement. Therefore, according to the learned senior counsel, no deliberate and willful contempt has been committed by the first respondent. The learned senior counsel further accuses the petitioner coming to the Court with unclean hands as she suppressed the fact that she also entered into an agreement to sell her share in the property after receiving substantial consideration. He contends that she is also guilty of violating the status quo order. The learned counsel submits that the first respondent's 1/5th share in the property cannot be denied and therefore, the sale of his 1/5th share need not be interfered with. The learned senior counsel relies on the decision of the Hon'ble Supreme Court reported in Hoshiar Singh Vs. Gurbachan Singh, to submit that a person cannot be held guilty of contempt when he has not been served with the orders of the Court and conviction for contempt of Court must depend on unimpeachable evidence of the knowledge of the alleged contemnor about the order of the Court. A reference was also made to the decision of the Hon'ble Supreme Court reported in Suresh v. Imran Khan, 1995 Supp (3) SCC 306 to submit that unless the litigant is aware of the prohibitory order made against him by the Court, there can be no desire or intention on his part to flout the Court's order. The learned senior counsel finally relied on the decision of the Hon'ble Supreme Court reported in Patel Rajnikant Dhulabhai and Another Vs. Patel Chandrakant Dhulabhai and Others, , to submit that even entering into an agreement and acceptance of part sale consideration would be hit by the status quo order passed by this Court and the petitioner having herself committed contempt of the court order cannot maintain this application. The learned senior counsel finally wound up his argument by stating that the first respondent has not violated the orders deliberately and in fact as a senior citizen of more than 75 years old, he has acted genuinely and hence, the contempt petition deserves to be dismissed.

15. The learned senior counsel for the third respondent submits that the first respondent's 1/5th undivided share has been confirmed in a preliminary decree dated 31.07.2012 and subsequently a final decree is also passed on 22.12.2013. Therefore, the declaration sought for by the petitioner to declare the sale as null and void is not maintainable and as such, the prayer cannot be granted. The learned senior counsel submits that no contempt has been committed by either the second or the third respondent and therefore, the contempt petition is not maintainable against them. He relies on the following decisions to submit that at any event, the sale deed executed in favour of the third respondent cannot be declared as null and void.

- 1 Thomson Press (India) Ltd. Vs. Nanak Builders and Investors P. Ltd. and Others,
2. Muthu Karuppan Vs. Parithi Ilamvazhuthi and Another,
3. A. Ramalingam Vs. V.V. Mahalinga Nadar,

16. I have considered the rival submissions carefully with regard to facts and citations.

17. The following facts are not in dispute:

1. An order has been passed by this Court on 15.11.2006 in A.No. 875/2006, directing the parties in the application to maintain status quo from 15.11.2006 till 28.11.2006;

2. The above said order has been extended from time to time;

3. The first respondent entered appearance in the suit on 21.04.2008 through counsel;

4. The first respondent sold his undivided 1/5th share in the suit property on 25.06.2012 registered as Doc. No. 744/2012 on the file of SRO, Sowcarpet;

5. Interim Status quo order granted by this Court was very much in force on 25.06.2012.

In such circumstances, it is to be seen whether the first respondent is aware of the order and whether the sale made by him is deliberate and willful.

18. A careful perusal of the counter affidavit filed by the first respondent/second defendant makes it very clear that they entered appearance in the suit on 21.04.2008 only and according to him, to the best of his knowledge, no notice was served on him in A.No. 875/2006. Nowhere in the counter affidavit, it has been stated by him that he had no knowledge of the status quo order passed by this Court and his stand is that he has not received the notice in the application even though he entered appearance in the suit on 21.04.2008. It is not in dispute that the first respondent sold his 1/5th undivided share in the property on 25.06.2012. In the light of the above facts, I am not inclined to accept the contentions of the learned senior counsel for the first respondent that the first respondent has no knowledge of the status quo order passed by this Court. The first respondent entered appearance in the suit, even according to him on 21.04.2008. Therefore, after 21.04.2008, definitely his counsel would have come to know about the interim order passed by this Court and informed the same to the first respondent. As admitted by the first respondent, he sold his 1/5th undivided share on 25.06.2012 only, which means, four years and two months have gone after he entered appearance in the suit. During the period of four years and two months, the first respondent would have definitely had the knowledge of the interim order passed by this Court and therefore, this Court is not inclined to accept the statements made on behalf of the first respondent that he has not had the knowledge of the order passed by this Court, directing the parties to maintain status quo. Apart from this, I find ample evidence in the records to say that the first respondent/second defendant knows the status quo order passed by this Court.

19. In the counter affidavit filed by the first respondent it has been clearly stated

that what has been granted by this Court is an order of status quo and not an order of injunction. This statement is audacious in nature as it is not for the first respondent to vitiate the order of status quo and an order of injunction. By making such a statement, he has impliedly made it clear that as it is an order of status quo, he can sell the property, as it is not an order of injunction. Even assuming for argument sake, that the first respondent is entitled to have such an opinion, still he should have the wisdom and courtesy to approach this Court to interpret the order of status quo as to whether it will amount to prohibiting him from selling his 1/5th undivided share in the property. Therefore, I am of the considered view that the first respondent/second defendant has willfully violated the order passed by this Court, the facts of which, came to his knowledge after he entered appearance in the suit on 21.04.2008.

20. Having held that the first respondent/second defendant is aware of the order and in spite of the same, he has violated the same, what is the remedy that could be granted to the petitioner is another question posed before this Court.

21. Once it is held that the first respondent has violated the order willfully, then, he is to be punished for this willful disobedience of the order. However, the first respondent has clearly stated that all the shareholders including the petitioner and excluding two other persons entered into a sale agreement to sell their respective 1/5th share and therefore, he was made to believe that there is no prohibition for selling his 1/5th undivided share. He has also stated that he is a person of 75 years of age and having some health complications and ailments. In such circumstances, this Court is of the considered view that no harsh punishment should be given to him and instead it would be sufficient if he is directed to pay a cost of Rs. 10,000/- to the petitioner for committing willful contempt of the status quo order passed by this Court. This cost of Rs. 10,000/- is to be paid by the first respondent to the petitioner within two weeks from the date of receipt of a copy of this order, failing which, he is to undergo a simple imprisonment for one day.

22. Now, having punished the contemnor in the above said terms, what is to be further decided in this contempt petition is a question to be considered by this Court. It is absolutely established that when the Court order was in force, the sale took place, which means, the first respondent has brought disrepute to the majesty of law. If a sale order has come into existence disregarding the orders passed by this Court, same should not be allowed to stand as it will affect the majesty of this Court. Further, a sale which has been made disregarding the order passed by this Court, is not a sale at all and therefore, it should not be allowed to stand.

23. Hence, I have no hesitation in holding that the sale deed dated 25.06.2012 executed by the first respondent in favour of the third respondent and registered as Doc. No. 744/2012 on the file of SRO, Sowcarpet as null and void.

24. As this Court has declared this sale deed as null and void, if this order is

produced before the SRO, Sowcarpet, the Sub-Registrar is directed to receive the same and make appropriate entries in his records to the effect that the above said sale deed is null and void and therefore, it is not binding on the parties to the sale deed. The contempt petition is allowed in the above said terms. The cost of Rs. 10,000/- is to be paid by the first respondent to the petitioner as directed above. No costs. Consequently connected sub application is closed.