
(2009) 01 MAD CK 0323

In the Madras High Court

Case No : Contempt Petition No's. 757 and 474 of 2007 and Sub. A. No's. 96 of 2008 and 140 of 2007

W.S. Seetharam

APPELLANT

Vs

V.K. John, Mansoor Ali Khan and R. Premanayagam

V.K. John Vs Appu John and Mansoor Ali Khan

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2009) 01 MAD CK 0323

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : W.S. Seetharam, Party in Person in Cont. Petn. No. 757 of 2007 and King and Patridge, in Cont. Petn. No. 474 of 2007, for the Appellant; King and Patridge, (R1), A.R. Nixon, (R2) in Cont. Petn. Nos. 474 and 757 of 2007 and T.S. Sivagnanam, (R3) in Cont. Petn. No. 757 of 2007, for the Respondent

Judgement

P.R. Shivakumar, J.—These two contempt petitions have been filed alleging willful disobedience and violation of the order of this Court dated 22.07.1996 made in A. No. 293 of 1995 in C.S. No. 4231/1995 by Appu John, the first defendant in the above suit, shown to be the first contemnor in both the contempt petitions. Mansoor Ali Khan is alleged to have abetted the act of contempt of the above said first contemnor and hence he has been arrayed as the second contemnor. Yet another person by name R. Premanayagam is also alleged to have abetted the act of contempt committed by the first contemnor Appu John. He is sworn as the third contemnor in contempt petition No. 757 of 2007 alone.

2. Contempt Petition No. 474 of 2007 has been filed by V.K. John, the plaintiff in the above said suit. As the first defendant Appu John and Mansoor Ali Khan alone were made parties respondents/contemnors 1 and 2 in contempt petition Nos. 474 of 2007 and yet another alleged contemnor by name Premanayagam was left out, the petitioner in the said contempt petition (plaintiff in the suit) has come forward with sub application No. 96 of 2008 to implead the said

Premanayagam as the third respondent/third contemnor in the said contempt petition. He has also filed another application, namely sub application No. 140 of 2007 to order the removal of encroachment allegedly made by Mansoor Ali Khan (second contemnor).

3. Contempt Petition No. 757 of 2007 has been filed by W.S. Seetharam, the third defendant in the suit. The plaintiff in the suit has been arrayed as the first respondent in the said contempt petition. The first defendant Appu John and the alleged abettors Mansoor Ali Khan and Premanayagam have been arrayed as contemnors 1 to 3 respectively (respondents 2 to 4 in contempt petition No. 757 of 2007).

4. All the parties in contempt petition No. 474 of 2007 are also parties to contempt petition No. 757 of 2007. In addition, two more persons, namely W.S. Seetharam (third defendant) and Premanayagam (third contemnor) also appear as parties in contempt petition No. 757 of 2007. The said petition is more comprehensive than the other contempt petition and hence it shall be convenient to refer the parties, especially the contemnors, in the order found in contempt petition No. 757 of 2007.

5. V.K. John, the petitioner in contempt petition No. 474 of 2007 (first respondent in contempt petition No. 757 of 2007), had filed the above said suit C.S. No. 423 of 1995 for partition against 1) Appu John (first defendant/first contemnor) and 2) Mrs. Leelie Seetharam (second defendant in the suit). The plaintiff had also filed O.A. No. 293 of 1995 in the said suit seeking an order of interim injunction restraining the defendants therein from in any way alienating, altering or demolishing the suit properties. This Court, initially granted an ad-interim injunction for 12 weeks by an order dated 25.04.1996. The said order was later on made absolute till the disposal of the suit by order dated 22.07.1996.

6. While so, the first contemnor Appu John, in violation of the above said order of injunction, entered into an agreement with one S.P. Goenka to sell as well as mortgage the suit properties to the said Goenka. Hence, at the instance of the plaintiff he was proceeded against for contempt in a former contempt petition, namely contempt petition No. 632 of 2003. The said S.P. Goenka was also arrayed as a co-contemnor. At the conclusion of enquiry, both of them were found guilty by an order of a learned single judge of this Court dated 25.02.2005. However, accepting the apology tendered and the undertaking given by the first contemnor herein/first defendant that the order of the court would not be violated in future, the court refrained from imposing any substantive punishment and imposed a cost of Rs. 5,000/- to be paid by each one of them. The above said order was unsuccessfully challenged before a Division Bench of this Court in contempt appeal No. 15/2005. The Division Bench passed an order in the said contempt appeal on 30.08.2005 upholding the order of the learned single judge dated 25.08.2005 and dismissing the contempt appeal. The above said Goenka had also given an undertaking not to stake any claim based on the

agreement till the disposal of the suit.

7. Meanwhile, Mansoor Ali Khan (second contemnor herein) filed a suit O.S. No. 1242 of 2007 in the City Civil Court, Chennai for permanent injunction against V.K. John, W.S. Seetharam and Premanayagam (third contemnor) for a permanent injunction not to disturb his possession and enjoyment of the properties described in "A" schedule to the plaint in C.S. No. 423 of 1995. He also filed I.A. No. 3198 of 2007 for a temporary injunction pending disposal of the suit. The said suit (O.S. No. 1242 of 2007) and interlocutory application (I.A. No. 3198 of 2007) were filed based on the alleged leasehold right obtained by the second contemnor from the first contemnor under a registered lease agreement dated 01.12.2006. He had claimed that the entire first floor portion of the building and the vacant land in the "A" schedule property were leased out to him by the first contemnor. He had also claimed that a sum of Rs. 2,00,000/- was paid as advance with an understanding the same shall carry no interest and at the same time no rent shall be payable by him to the first contemnor. It is his further contention that a further sum of that the interest for the said amount shall be treated as rent and that a further sum of Rs. 8,00,000/- was spent by him for carrying out repairs to the building. The above said act of leasing out the property to the second contemnor is cited as the act of contempt on the part of the first contemnor. The act of getting the property on lease from the first contemnor is cited as the act of abetment of contempt on the part of the second contemnor herein.

8. The third contemnor is said to have obtained a power of attorney (a registered one) from the first contemnor. Based on the power of attorney, the third contemnor is in possession of the ground floor portion of the suit "A" schedule property.

9. During the pendency of these contempt petitions, the first contemnor, namely Appu John passed away. Therefore the charge of contempt against the first contemnor shall be taken to have abated. However, the contempt petitions are proceeded further against the remaining contemnors. The contemnors 2 and 3 have taken a plea that they got the lease deed and the power of attorney respectively without having any knowledge of the order passed by this Court granting an injunction restraining the defendants in the suit from alienating, altering or demolishing the suit properties.

10. The respective pleadings of the parties and the submissions made by the respective counsel for the parties have been taken into consideration.

11. Contempt petition No. 474 of 2007 has been filed by the plaintiff in the suit against the first and second contemnors alone. Hence sub application No. 96 of 2008 has been filed for impleading the third contemnor Premanayagam. However, the very same act on the part of the third contemnor in getting a registered deed of power of attorney from the first contemnor amounted contempt of court, according to the petitioner in both contempt petitions. W.S.

Seetharam who was impleaded after the death of the second defendant Leelie Sitharam as third defendant in the suit, has filed contempt petition No. 757 of 2007. As it is not denied that the petitioner in the said contempt petition, namely contempt petition No. 757 of 2007, is diligently prosecuting the said contempt petition, this Court feels it shall not be necessary to implead the third contemnor in the contempt petition filed by the plaintiff, (contempt petition No. 474 of 2007), as the same can be canvassed in the other contempt petition. In fact the plaintiff who has been arrayed as the first respondent in the contempt petition filed by the third defendant, (contempt petition No. 757 of 2007), has filed a counter affidavit supporting the plea of the petitioner therein/third defendant and seeking punishment of the contemnors 2 and 3 as well. Therefore, this Court is of the considered view that sub application No. 96 of 2008 has to be closed as no orders are necessary.

12. It is not in dispute that this Court granted an ad interim injunction for 12 weeks by an order dated 25.04.1996 made in A. No. 293 of 1995 in C.S. No. 423 of 1995 restraining the first contemnor and Leelie Seetharam from alienating, altering or demolishing the suit properties and that the said order was made absolute till the disposal of the suit by an order dated 22.07.1996. It is also the admitted case of the parties that subsequently, the second defendant Mrs. Leelie Seetharam passed away and the third defendant W.S. Seetharam was impleaded as her legal representative. It is also not in dispute that though there was some controversy regarding the alleged contempt which was the subject matter of the earlier contempt petition, namely contempt petition No. 632 of 2003 regarding imputation of knowledge to the respondents therein, ultimately this Court, in the said contempt petition and in the consequent contempt appeal, held that the contemnors therein, namely first contemnor herein and one S.P. Goenka were guilty of contempt as they had violated the order of injunction. That itself is enough to hold that the first contemnor (first defendant) did have sufficient notice of the order of injunction.

13. It transpires that the first contemnor, not content with the earlier act of contempt, made a subsequent attempt to alienate the property in favour of the second contemnor and other persons through the third contemnor by executing a registered lease agreement in favour of the second contemnor and a registered Power of attorney in favour of the third contemnor. Admittedly, the second contemnor got a registered lease agreement from the first contemnor on 01.12.2006. A perusal of the copy of the same produced in the typed set of papers will make it abundantly clear that it is a scheme devised by the first contemnor in collusion with the second contemnor to virtually alienate the property in the form of creation of a lease. In fact even in the previous contempt petition, the Division Bench has held that an encumbrance in the property, namely mortgage will amount to alienate. The deed executed in favour of the second contemnor is still worse than the earlier attempt made by the first contemnor. The entire first floor portion of the suit "A" schedule property has been leased out under the above said registered lease agreement to the second

contemnor. In addition to that the vacant land in suit "A" schedule property which is not occupied by the building has also been leased out to the second contemnor. A reading of the lease agreement will show that allegedly receiving a sum of Rs. 2,00,000/- as advance, the said property was leased out free of rent to the second contemnor. The said amount of Rs. 2,00,000/- was also agreed to be repaid without interest when the second contemnor would hand over vacant possession. There is no specific clause in the agreement that the interest accrued on the deposited amount shall be treated as rent. However, the second contemnor would contend that the same was the agreement between the first contemnor and the second contemnor. Even assuming that such an arrangement would have been made, the same shall be far below the reasonable rent for the first floor portion and the vacant land of the suit "A" schedule property, as rightly contended by the learned Counsel for the petitioners in the contempt petitions. The further contention of the second contemnor that he spent eight lakhs rupees, even without authorisation in writing for repair works, is nothing but an attempt to meet the contention of the petitioners in the contempt petitions that the very lease deed is unnatural. It is an attempt to show that the amount to be spent for repair works/renovation was also taken into account at the time of entering into the lease agreement. But the 2nd contemnor has miserably failed in such attempt.

14. Clause 7 of the Lease Agreement reads as follows:

7. Lessee agrees to carry out minor repairs of the let out portion and agree to keep it neat and good condition.

For carrying out minor repairs such a huge sum shall not be necessary. Therefore this Court accepts the contention of the petitioners in the contempt petitions that the above said contention of the second contemnor is nothing but an attempt to show that the lease agreement is natural and reasonable. The very arrangement made therein will show that the second contemnor also did have the knowledge of the order passed by this Court. Therefore this Court, without any hesitation whatsoever, comes to the conclusion that the second contemnor has chosen to enter into a lease agreement with the first contemnor with the knowledge of the order of this Court and thus has abetted the act of contempt committed by the first contemnor. Accordingly he is to be held liable as if he himself has committed the act amounting to contempt.

15. It is true that the second contemnor in his counter affidavit has incorporated a paragraph tendering unconditional apology for what he has done. However, in view of the above said finding that the second contemnor entered into the lease agreement with knowledge of the order of this Court, this Court deems it fit to convict him for the act of contempt. But this Court proposes to punish him not with a substantive punishment of imprisonment. This Court is of the considered view that awarding a fine of Rs. 1,000/- shall be sufficient. The fine must be paid within two weeks failing which the 2nd contemnor shall undergo civil imprisonment for one month.

16. Sub application No. 140 of 2007 has been filed for removal of the alleged encroachment made by the second contemnor. Strictly speaking it cannot be termed as an encroachment. It is a kind of alienation made by the first contemnor in favour of the second contemnor. The second contemnor is in possession of the first floor portion of the building and the vacant land in suit "A" schedule property by virtue of the lease agreement dated 01.12.2006. The said deed has been brought to effect by the act of contempt. Any transaction between the parties in violation of the order of the court, which will amount to contempt, can be declared null and void by the court using its powers u/s 151 C.P.C. In *All Bengal Excise Licensees Association v. Raghavendra Singh and Ors.* reported in 2007 (2) SCC 374, the Hon''ble Supreme Court has held that "the court not only has the power but also has the duty to set-right the wrong done in disobedience of a restraint order or an injunction and not to allow the perpetuation of the wrong doing".

Relying on the said observation made by the Hon''ble Supreme court, this Court hereby comes to the conclusion that the interest of justice requires declaration of the lease agreement dated 01.12.2006 between the first and second contemnors to be null and void and that the continued possession of the second contemnor of the property shall be unauthorised. This Court also comes to the conclusion that besides declaring the said lease agreement null and void, a direction shall be issued to the second contemnor to hand over possession to any one of the parties to the suit (admitted to be a co-owner) or the legal heirs of the first defendant. Admittedly, the first defendant is no more and it is not in dispute that the property was in his possession before the date of lease agreement.

17. Admittedly, the third defendant has obtained a power of attorney from the first contemnor on 21.10.2005. The contention of the third contemnor is that he did not have the knowledge of the order of injunction passed by this Court on the date of obtaining the power of attorney. It is not his contention that the said power of attorney would not amount to a violation of the order of injunction granted by this Court. This is so because the said power of attorney has been couched in such term that it is an irrevocable power of attorney. The third respondent has been given power to negotiate, get advance, enter into agreement for sale, execute sale deeds and hand over possession of the properties to the intending purchasers. As per the contents of the deed of power of attorney the sale proceeds can also be appropriated by the third contemnor for his own use. The terms found in the power of attorney will show that it is also a deliberate attempt made by the first contemnor in collusion with the third contemnor to have the properties alienated and come with a plea that the alienations were made by the power of attorney holder without the knowledge of the order of injunction. When the third contemnor has not paid any amount as per the recitals found in the power of attorney, the power given should not have been termed an irrevocable power of attorney. The further clause empowering the third contemnor to appropriate the advance amount and the sale consideration and use it according to his will and pleasure, will show that there is

a hidden agenda which has not been spelt out in the deed of power of attorney. Therefore, the mere fact that no sale has been effected in pursuance of the power of attorney will not be enough to hold that no alienation has been made. The very fact that the first contemnor has given an irrevocable power of attorney with a right to collect and appropriate the sale proceeds will show that it is nothing but an alienation in the guise of power of attorney. Therefore this Court holds that the third contemnor is also guilty of contempt in getting an irrevocable power of attorney from the first contemnor. However, considering the fact that the third contemnor has not effected any alienation in pursuance of the power of attorney and that the third contemnor has also tendered an unconditional apology, this Court comes to the conclusion that convicting the third contemnor and imposing a fine shall meet the ends of justice. Accordingly a fine of Rs. 1,000/- is imposed. The fine must be paid within two weeks failing which they will undergo simple imprisonment for one month. As a necessary corollary the deed of power of attorney dated 21.10.2005 shall be declared null and void and the third contemnor shall be directed to hand over possession of the property to either of the parties to the suit or to the legal representatives of the deceased first defendant from whom he got possession. However, it is contended on behalf of the petitioner in the contempt petition that there is no legal representative of the deceased first contemnor/first defendant other than the petitioners in the contempt petitions/plaintiff and the third defendant. Hence it shall be directed that in case any other person would claim to be the legal representative of the deceased first defendant, the contemnors 2 and 3 may hand over possession to him/her. In such an event it shall be open to the petitioners in the contempt petitions to move necessary application for appointment of a party receiver or third party receiver.

18. In the result,

I) Sub-application No. 96 of 2008 is dismissed as unnecessary.

II) Contempt Petition No. 474 of 2007 and 757 of 2007 and Sub-application No. 140 of 2007 are disposed of with the following order/directions:

a) the contemnors 2 and 3 are found guilty of contempt and are convicted by imposing a fine of Rs. 1,000/- on each one of them to be paid within two weeks from today and directing them to undergo civil imprisonment for a period of one month in case of default in payment of fine.

b) the lease agreement dated 01.12.2006 registered as document No. 1164 of 2006 in the office of the Sub Registrar, Thousand Lights is declared null and void.

c) the deed of power of attorney dated 21.10.2005 registered as document No. 469 of 2005 in the office of the Sub Registrar, Thousand Lights is declared null and void.

d) The 2nd and 3rd contemnors are directed to hand over the respective portion of the suit "A" schedule property (in their possession) to either of the parties to

the suit or to the legal representatives of the deceased first defendant/first contemnor, as their continued possession shall amount to a continuing act. It shall be done within a period of four weeks. In case any person other than the petitioners in the contempt petitions (first and third defendant in the suit) would claim to be the legal representatives of the deceased first contemnor/first defendant, the contemnors 2 and 3 may hand over possession to him/her. In such an event it shall be open to the petitioners in the contempt petitions to move necessary application for appointment of a party receiver or third party receiver.