

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

Contempt (C) no. 5/2004

Date of Decision: 16.11.2009

Kaki Devi

Vs.

Karan Singh & Ors

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.

Appearing Counsel:

For the Petitioner(s): Mr. B. L. Kalgotra, Advocate.

For the Respondent(s) : Mr. O. P. Sharma, Advocate.

i) Whether to be reported in Press, Journal/Media : Yes

ii/ Whether to be reported in Digest/Journal : Yes

Dispute with respect to the inheritance regarding land measuring 8 acres comprised in Khasra nos. 103, 107, 109, 109 min, 110 and 111 situated at village Ghore Bains tehsil R. S. Pura, has been engaging the parties in various courts. It is contended that Ananti Devi allegedly made a Will of her occupancy rights in favour of Karan Singh and Kanta Devi. In this respect a civil suit came to be filed before the trial Court in which decree was passed in favour of the petitioner. On an appeal being filed before the learned District Judge, the decree passed by the trial Court was set aside. Against this Civil Second Appeal was filed in this Court. This Court vide order passed on 22.05.2003 directed that operation of the impugned

judgment and decree shall stay. The second appeal was, however, dismissed for default on 30.09.2003. While passing the order of dismissal, this Court had vacated the stay order granted on 22.05.2003. The appeal was restored on 15.04.2004 to its original number subject to payment of Rs. 500/- as costs.

It is contended by the petitioner that after restoration of the appeal, respondents dispossessed him, from the land in question and it is under these circumstances the present contempt petition has been filed.

Respondents in their objections have stated that one Raj Singh had filed a suit before learned Munsiff R.S.Pura wherein order of status quo was passed on 12.06.2003. On an application filed by Raj Singh, plaintiff, direction was issued to S.H.O. Police Station R. S. Pura to implement the order of 12.06.2003 and ensure that no obstruction is caused in cultivating the suit land by the applicant. Against this order an appeal is stated to have been preferred by the present respondents before learned 1st Additional District Judge Jammu, who, vide order dated 16.04.2004, set aside the orders passed by learned Munsiff R. S. Pura. It is contended that Raj Singh was acting as an intermediater for and on behalf of the

petitioner in claiming to be in possession of the land for and on their behalf.

The positive case of the respondents is that petitioner was never in possession of the property nor was there any order of stay passed by this Court.

I have the learned counsel for the parties.

It is contended by the petitioner that after the restoration of the appeal the stay order was to automatically revive. Learned counsel for the petitioner has contended that after revival of the appeal, stay order becomes operational and respondents could not have dispossessed her from the said piece of land. He contends that respondents trespassed in the land on 26.06.2004 but failed to dispossess the petitioner on that date and subsequently they trespassed into land on 07.07.2004 by ploughing it with five tractors. He has placed reliance on a judgment of Hon'ble Supreme Court, in Vareed Jacob v. Sosamma Geevarghese & Ors, reported as AIR 2004 SC, 3992.

The stand of the respondents is enumerated herein above. The power to proceed for non-compliance of an order of injunction passed under Order 39 Rule 1 and 2 of the Code of Civil procedure is under Rule 2 (a). The determination is required to be obtained from the Court that the contemnor has

violated the order of the Court and then appropriate orders are required to be passed by the Court after such determination. The present petitioner has not taken any steps to adduce evidence to prove the alleged violation of the Court order by the respondents. It is yet to be seen as to whether the present petitioner was in actual possession of the property at the time the order of stay was granted by the Court and consequently when the appeal was restored to its original number. It is all matter of proof. Petitioner was required to prove these facts before seeking the punishment of the respondents for having violated the Court order. Petitioner has failed to prove all these allegations in this contempt petition.

Petitioner's other contention that on revival of the appeal the order of stay would get automatically revived, cannot be accepted in the present case. The judgment relied upon by the petitioner clearly makes a distinction that once the suit or appeal is dismissed, there is automatic revival of the stay, unless Court expressly or impliedly excludes its operation. It is admitted in the present case that when the appeal was dismissed for default, the interim order of stay passed by this Court was also vacated. Once the order of stay was vacated, the revival of appeal would not automatically mean that the stay order has also been revived. I say so because stay order has

been expressly vacated by the Court while dismissing the appeal, which, on revival of appeal, would not automatically get revived.

Viewed thus, I find no force in this petition, which is, accordingly, dismissed.

(SUNIL HALI)
Judge

JAMMU:
16.11.2009
Anil Raina, Secy.