

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3612 of 2015 (O&M)
Date of Decision: November 30, 2016

Kailash Devi

...Petitioner

Versus

Mohinder Pal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.C.B.Goel, Advocate,
for the petitioner.

AMIT RAWAL, J.

The petitioner-plaintiff is aggrieved of the impugned order whereby the appeal of defendant Nos.1 and 2 (respondent Nos.1 and 2 herein) has been allowed and the order of the trial Court dated 10.02.2012 convicted them to undergo a simple imprisonment for a term of two months in view of the alleged willful disobedience of the ad interim order dated 09.04.2003 passed by the trial Court in civil suit instituted by the petitioner-plaintiff.

Mr. C.B. Goel, learned counsel appearing for the petitioner-plaintiff submits that the suit was instituted for joint possession in which ad interim order dated 09.04.2003 was passed whereby the respondent Nos.1 and 2 were restrained from alienating the suit property till 25.04.2003 which was subsequently extended upto 05.08.2003. The nature of the property was a rice seller, however, the respondents vide sale deed dated 29.08.2003 sold the land measuring 711 sq. yards i.e. 1 kanals 3 ½ marlas being 47/262

share of land out of total land measuring 6 kanals 11 marlas comprised in Khewat No.216, Khatoni No.316, Rect. No.220, Killa No.14 to respondent No.4. It is in this background of the matter, the application under Order 39 Rule 2-A CPC was moved. The trial Court on the basis of oral and documentary evidence realized that there was a willful disobedience of the order and convicted respondent Nos.1 and 2 to undergo simple imprisonment as noticed above, however, the lower Appellate Court has allowed the appeal on the premise that the property in dispute was not identifiable. He submits that it was a share out of the property for which the joint possession has been sought for and therefore, defendants-respondents cannot wriggle out of the interim order and therefore, willful disobedience as the order of interim stay was in vogue. It is in this backdrop of the matter, the present revision petition has been filed.

Notice of this revision petition was ordered. Respondent Nos.1 and 2 have been served through attorney and respondent Nos.3 and 4 have also been served. There is no representation and this Court on 15.11.2016 recorded the satisfaction qua service.

Mr. Manoj Dhankar, AAG, Haryana submits that he has no role to play being pro forma respondent No.5.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that when there was a sale of the property, the interim order was in vogue. This fact has been noticed from the interim orders passed on to this Court during the course of the hearing.

The defendants have not chosen to contest the matter, but the fact remains that when the respondents vide sale deed dated 29.8.2003 had sold the land, the interim order was in vogue. The zimni orders commencing

from 9.4.2003 to 5.8.2003 show that upto 30.1.2004 the stay was in vogue.

The same are reproduced herein below:-

“Present: Sh.S.K.Bindlish, Adv.for plaintiff.

Defts.no.3 and 4 exparte.

Sh.A.K.Nirwani, Adv.for defts.no.1 and 2.

Sh.Ajay Gupta, Adv.for deft.no.5 and 6.

Written statement and reply to stay application not filed. Adjournment requested. Now case is adjourned to 25.4.03 for filing written statement and reply to stay application.

Ld.counsel for plaintiff stressed on injunction application. Heard. After perusing the contents mentioned in the application and documents placed on file, the defendants are restrained from alienating the suit land mentioned in para no.1 of the plaint till then.

CJ (JD) Kaithal

9.4.03.

“Present: Sh.S.K.Bindlish, Adv.for plaintiff.

Defts.no.3 and 4 exparte.

Sh.A.K.Nirwani, Adv.for defts.no.1 and 2.

Sh.Ajay Gupta, Adv.for deft.no.5 & 6.

Written statement and reply to stay application not filed. Now case is adjourned to 5.5.03 for filing written statement and reply to stay application. Stay already granted is extended till then.

CJ (JD) Kaithal

25.4.03.

“Present: Sh.S.K.Bindlish, Adv.for plaintiff.

Defendants.no.3 & 4 exparte.

Sh.A.K.Nirwani, counsel for defendants no.1 & 2.

Sh.Ajay Gupta, counsel for defendants no.5 & 6.

An application under section 151 CPC on behalf of defendant no.2 filed. Copy given. Now, the case is adjourned

to 10.6.2003 for filing of reply. Stay already granted is extended till then.

CJ (JD) Kaithal

5.5.2003.

“Present: Sh.S.K.Bindlish, Adv.for plaintiff.

Defts.no.3 & 4 exparte.

Sh.A.K.Nirwani, Adv.for defts.no.1 & 2.

Sh.Ajay Gupta, Adv.for deft.no.5 & 6.

Reply filed. Copy given. Now case is adjourned to 5.8.03 for consideration. Stay already granted is extended till then.

CJ (JD) Kaithal

10.6.03.

“Present: Sh.S.K.Bindlish, Adv.for plaintiff.

Defts.no.3 and 4 exparte.

Sh.A.K.Nirwani, Adv.for defts.no.1 & 2.

Sh.Ajay Gupta, Adv.for deft.no.5 & 6.

On the request of counsel for parties, case is adjourned to 5.9.03 for consideration. Stay already granted is extended till then.

CJ (JD) Kaithal

5.8.03.

“Present: None

File taken up today as I shall be on casual leave on 5.9.03 to 6.9.03. Now case is adjourned to 5.11.03 for the purpose already fixed. All concerned be informed accordingly.

JMIC, Kaithal

4.9.03.

“Present: None

File taken up today as I shall be on casual leave on 4.11.03 and 5.11.03. So, now the case is adjourned to 30.1.04 for the purpose already fixed. All concerned be informed accordingly.

JMIC, Kaithal

3.11.03.”

The orders of the Courts are to be respected in letter and spirit and the persons bound by the same cannot violate the same with impunity. If this act of the alleged violators goes scot-free, the people would not have any fear or regard to the orders of the Courts and there would a gross threat to the law and order situation. The Lower Appellate Court was swayed away of the fact that the main suit had been dismissed, but the fact remains that during the pendency of the suit, some overt act done by the parties, which is against the interim order, cannot be ignored.

In my view, the Lower Appellate Court ought not to have allowed the appeal and set-aside the order affecting the defendants, but should have compensated the plaintiff in terms of money. Resultantly, the order of the Additional District Judge is hereby set-aside, but instead restoring back the order of the trial Court convicting the accused, I deem it appropriate to impose a costs on defendant Nos.1 and 2 to the tune of Rs.20,000/-. The costs assessed by this Court shall be paid to the plaintiff by the defendants within a period of two months from the date of receipt of certified copy of the order, failing which the petitioner shall be at liberty to seek recovery in accordance with law.

With the aforementioned observations, the revision petition stands disposed of.

November 30, 2016
pankaj/ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No