



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

MISCELLANEOUS FIRST APPEAL NO.8803/2013 (CPC)

BETWEEN:

1. SRI ANANDA REDDY,
S/O LATE MUNI REDDY,
AGED ABOUT 52 YEARS,
RESIDING AT CHOWDESHWARI
TEMPLE STREET,
OPPOSITE VENKTESHWARA
INSTITUTE OF COMMERCE,
NEAR MARATHALLI BUS STOP,
MARATHALLI, BANGALORE-37. ... APPELLANT

(BY SRI KRISHNA MURTHY, SENIOR COUNSEL FOR
SRI CHANDRAKANTH PATIL K., ADVOCATE)

AND:

1. SMT. RADHAMMA,
W/O LATE GOPAL REDDY,
AGED ABOUT 53 YEARS,
RESIDING AT NO.86,
CHURCH STREET, MARATHALLI,
BANGALORE - 560037.
2. SMT. NALINI,
D/O LATE GOPAL REDDY,
AGED ABOUT 35 YEARS,
RESIDING AT KOTHNUR VILLAGE,
UTTARAHALLI HOBLI,
BANGALORE SOUTH TALUK-78. ... RESPONDENTS

(BY SRI T.SESHAGIRI RAO, ADVOCATE C/R1 AND R2)

THIS M.F.A. IS FILED UNDER ORDER 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 25.07.2013 PASSED ON I.A.NO.5 IN O.S.NO.7674/2001 ON THE FILE OF THE I ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, ALLOWING I.A.NO.5 FILED UNDER ORDER 39 RULE 2A OF CPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 23.11.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the caveator/respondent Nos.1 and 2.

2. This miscellaneous first appeal is filed against the order dated 25.07.2013 passed on I.A.No.5 filed under Order 39 Rule 2A of CPC in O.S.No.7674/2001 ordering detention of defendant No.2/appellant herein for a period of one month for violation of the interim order.

3. The factual matrix of the case of the plaintiffs before the Trial Court is that the plaintiffs had filed a suit for partition and separate possession of their 2/9th share in the suit schedule properties along with an application filed under Order 39 Rules 1 and 2 of CPC praying for interim order of injunction restraining the defendants from alienating the suit schedule properties,

pending disposal of the suit and the Trial Court by its order dated 09.01.2002 passed an order that defendant Nos.1 to 3 shall not alienate the suit schedule properties till their filing of objections to I.A.No.1. The plaintiff No.2 filed an affidavit before the Trial Court that this order was violated by defendant No.2 by executing the sale deed on 10.10.2002 in favour of one B.K.Srinath and also contended that two more sale deeds are executed on 03.06.2004 and defendant No.2 has deliberately disobeyed the order dated 09.01.2002 and hence he may be ordered to be detained in civil prison. The defendant No.2/appellant herein filed the objection statement on 02.08.2003 contending that he has sold site No.12, in view of the partition dated 30.06.2000 and he has not violated the order. The Trial Court posted the matter for enquiry on I.A.No.5 and plaintiff No.2 tendered her affidavit evidence in support of I.A.No.5 and got marked the documents Exs.P.1 to 3 sale deeds and the appellant herein did not lead any evidence on I.A.No.5. The Trial Court taking note of the material on record comes to the conclusion that the appellant herein violated the order and ordered to detain him for a period of one month.

4. Being aggrieved by the said order, the present appeal is filed contending that the appellant was not having the knowledge or information regarding passing of orders on I.A.No.1 and contend that P.W.2 herself admitted during the cross-examination that defendant No.2 and his previous counsel were not appearing before the Court regularly. It is contended that the application was taken along with main suit and there was a delay in passing the order and imposing the punishment is very harsh and he has not disobeyed any order and there was no any willful disobedience.

5. The learned counsel for the appellant in support of his arguments relied upon the judgment of the Apex Court in the case of **U.C. SURENDRANATH v. MAMBALLY'S BAKERY** reported in **(2019) 20 SCC 666** and brought to the notice of this Court paragraph No.7 of the judgment, wherein discussion was made that for a person to be found guilty under Order 39 Rule 2A of CPC, a mere disobedience of interim order would not suffice, but there must be 'willful disobedience' of the orders passed by the Court. When there is no such willful disobedience, the Courts cannot hold a person guilty under Order 39 Rule 2A of CPC.

6. The learned counsel also relied upon the judgment of the Gujarat High Court in the case of **NATHABHAI DHARAMSHI JADAV v. YASHOMATI RAVISHANKAR BAVISHI** reported in **2013 SCC Online Guj 3907** and brought to the notice of this Court paragraph No.12, wherein the Gujarat High Court held that contempt proceedings are between the contemnor and the Court and the Court can pass such orders to impose a deterrent effect on the wrong doers. The learned counsel also brought to the notice of this Court paragraph No.13 of the said judgment, wherein an observation is made that when the wrong cannot be undone, sentence or prison may not completely serve the ends of justice but instead payment of compensation would serve the ends of justice and deter such practice and imposed cost of Rs.1 lakh instead of punishment.

7. The learned counsel also relied upon the judgment of the Apex Court in the case of **C. ELUMALAI AND OTHERS v. A.G.L. IRUDAYARAJ AND ANOTHER** reported in **(2009) 4 SCC 213** and brought to the notice of this Court paragraph No.7, wherein it is held that there must be willful disobedience by the violator therein. The conclusion was arrived at because the violator tendered apology but continued violating the order.

Despite coming to such conclusion, the Hon'ble Supreme Court imposed heavy cost and did not impose imprisonment.

8. The learned counsel also relied upon the judgment of this Court in the case of **L.S. SHARADAMMA v. D.S. SRIKANTAIAH AND OTHERS** reported in **MANU/KA/3716/2016** and brought to the notice of this Court paragraph No.8, wherein this Court while considering the health condition and the relationship between the parties had condoned the violation by imposing cost of Rs.1,000/-. The Court on humanitarian grounds reversed the verdict of imprisonment.

9. The learned counsel referring these judgments would contend that this Court can exercise its discretion and show lenience in the matter. The learned counsel also brought to the notice of this Court the affidavit filed by the appellant before this Court stating that he has sought an unconditional apology that he has not committed any willful disobedience and contend that he is suffering from throat cancer from more than two years and underwent radiation and chemotherapy and the doctors had also suggested to undergo surgery for third stage cancer. The learned counsel also produced the document of medical records

for having taken the treatment in the second week of May 2021 in Sakra World Hospital and chemotherapy session and surgery have been postponed due to Covid-19. The learned counsel submits that under these circumstances, the Court has to pardon him on humanitarian ground.

10. Per contra, the learned counsel for the caveator/respondent Nos.1 and 2 would contend that it is nothing but intentional disposal of the property inspite of having knowledge of interim order. The order is very clear that defendant Nos.1 to 3 shall not alienate the suit schedule properties till their filing of objections to I.A.No.1 and before filing of the objections on 02.08.2023, sale was made on 10.10.2002 and knowing fully well the interim order, the appellant had disposed the property and it is a clear willful disobedience of the Court order and enquiry was held and the Court came to the conclusion that there is a willful disobedience. The learned counsel submits that the appellant relied upon the earlier partition and the same has been questioned before the Trial Court wherein an allegation was made that impersonation made as the respondent was present at the time of registering the partition deed and two more sale deeds also executed and it

clearly discloses willful disobedience and the judgments relied upon by the learned counsel for the appellant will not come to the aid of the appellant.

11. Having heard the learned counsel for the appellant and the learned counsel for the caveator/respondent Nos.1 and 2 and having considered the principles laid down in the judgments referred supra by the learned counsel for the appellant, the points that arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in ordering for detention of the appellant for a period of one month and whether it requires interference of this Court?
- (ii) What order?

12. Having heard the learned counsel for the respective parties, it is not in dispute that the respondents filed a suit seeking the relief of partition and interalia sought for the relief of temporary injunction. It is also not in dispute that the Trial Court passed an order on 09.01.2002 restraining defendant Nos.1 to 3 from alienating the suit schedule properties till their filing of objections to I.A.No.1. It is not in dispute that objections to I.A.No.1 was filed on 02.08.2003 and before that

the property was sold on 10.10.2002 in favour of one Sri B.K. Srinath by this appellant. Though the grounds are urged in the appeal memo, the learned counsel for the appellant argued only on humanitarian ground relying upon the judgments referred supra. No doubt, the Apex Court in the judgment in the case of **Surendrananth** (supra) held that there must be willful disobedience of the orders passed by the Court. In the judgment of the Gujarat High Court in the case of **Nathabhai Dharamshi Jadav** (supra), it is held that it is interse between the contemnor and the Court and the Court can pass such orders to impose a deterrent effect on the wrong doers. In paragraph No.13 it is held that when the wrong cannot be undone, sentence of prison may not completely serve the ends of justice, but instead payment of compensation would serve the ends of justice and condoned the imprisonment of one month and instead imposed heavy fine to the tune of Rs.1,00,000/-. The Apex Court in the case of **Elumalai** (supra) held that there must be a willful disobedience. This Court in the case of **Sharadamma** (supra) imposed cost of Rs.1,000/- condoning the detention.

13. This Court would like to rely upon the judgment of this Court in the case of **T. SUDHAKAR PAI AND OTHERS v. MANIPAL ACADEMY OF HIGHER EDUCATION** reported in **2023 SCC Online Kar 41**, wherein for the offence punishable under Order 39 Rule 2A of CPC ,imposed civil imprisonment for three months and held liable to pay an amount of Rs.1,00,000/- as compensation to the plaintiff.

14. This Court would also like to refer to the judgment of the Apex Court in the case of **SITA RAM v. BALBIR** reported in **(2017) 2 SCC 465**, wherein it is held that the Courts have the power to punish the person who willfully violates the Court order despite being aware of the Court order, though such a person is not a party to the proceeding which passed the order. It is important to note that the Court while imposing the punishment has to take note of the proportionality.

15. This Court would also like to rely upon the judgment of the Apex Court in the case of **SAMEE KHAN v. BINDU KHAN** reported in **(1999) 7 SCC 59**, wherein it is held that the Court has the power to order attachment as well as civil imprisonment simultaneously. The Apex Court in the case of **PATEL**

RAJNIKANT DHULABHAI AND ANOTHER v. PATEL CHANDRAKANT DHULABHAI AND OTHERS reported in **(2008) 14 SCC 561**, in paragraph No.77 has held that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a "tactful move" when the contemnors are in the right corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court.

16. Having considered the principles laid down in the judgments referred by the learned counsel for the appellant and also this Court, the Court has to take note of the factual aspects. It has to be noted that the respondents had filed a suit in 2001 and interim order was passed on 09.01.2002 restraining defendant Nos.1 to 3 from alienating the suit schedule properties. However, in utter disregard to this order, having knowledge and though appeared through counsel, the appellant sold the property on 10.10.2002, but not filed objections to I.A. Hence, it is clear that even inspite of having knowledge of the order, without filing the objections to I.A.No.1, when the date is fixed for filing of objections on 13.02.2002, did not choose to file

the objections and sold the property on 10.10.2002 and even written statement and objections not filed and thereafter, an application is filed seeking permission to file the objections on 02.08.2003 after selling the property and hence the Court has to take note of the conduct of the appellant. When such being the case, whether he is entitled for pardon and condoning the punishment. Having perused the material on record, it is very clear that the plaintiffs/respondents till date have not received the fruits of the decree of granting relief of partition and even the appellant was unsuccessful before the Trial Court as well as this Court and not yet derived the share and this appellant is coming in the way of giving the share to the respondents. This Court during the course of hearing the argument, suggested the appellant to give the share of the respondents, but the appellant was not inclined to the said suggestion. Even the learned counsel for the respondents suggested that if the appellant gives the share i.e., the legal share awarded by the Court, they would consider the same in lenience. But the appellant is reluctant to the submission of the respondents as well as the suggestion made by this Court and would like to drag the matter without giving the share in favour of the plaintiffs and contest the matter

which is pending for giving possession in favour of the respondents and hence the Court has to take note of the said conduct of the appellant also.

17. However, taking note of the medical records placed before this Court along with the affidavit, an unconditional apology is sought. But the fact is that the medical records produced are of the year 2021 and no recent documents are placed before the Court except the document of 2021 stating that he underwent chemotherapy. This Court can take note of the said fact into consideration and at the same time take note of the agony underwent by the respondents. The suit is filed in the year 2001 and for more than two decades the respondents are fighting for their share. The respondent No.1 lost her husband and is having a daughter, but the appellant has not given the share for more than two decades and same also to be taken note of while considering the unconditional apology in view of the health condition of the appellant. There is a willful disobedience of the order of the Court, instead of filing objections to I.A.No.1, the appellant sold the property after ten months of passing of the interim order and even after selling the

property also not filed the objections to the I.A. and the same was filed only after recording not filed objections and written statement and on 09.08.2023 filed the statement of objections and the order was remaining in force. For more than two decades, the respondents are fighting for their legal share and the Courts have found that respondent No.1 was impersonated while getting the document of partition deed registered. The appellant claims partition of the year 2010, wherein the respondents/plaintiffs was impersonated and the Trial Court as well as this Court held that there was a impersonation. When such being the material on record, it is appropriate to condone the punishment, since the appellant is suffering from cancer and taking note of mental agony on the plaintiffs, it is appropriate to award a fine of Rs.3 lakhs instead of punishment for the willful disobedience of the Court order. The appellant having knowledge of the order, sold the property and there was no any partition, but claims that it is his share and his share is also by making impersonation of plaintiff No.1 got registered the document and Court has to take note of the said fact into consideration while imposing the heavy fine and hence imposed the heavy fine. Heavy fine would atleast give some relief to the

respondents/plaintiffs, who are facing the agony from more than two decades to get the legal share on account of death of respondent No.1's husband and she is taking care of the daughter also. Hence, I answer the point for consideration in the negative, but it requires modification only on the health ground with humanitarian approach.

18. In view of the discussions made above, I pass the following:

ORDER

- (i) The miscellaneous first appeal is allowed in part.
- (ii) The order passed by the Trial Court on I.A.No.5 is modified. Instead of punishment, a fine of Rs.3 lakhs is imposed on the appellant payable within two weeks from today. If the appellant fails to pay the fine of Rs.3 lakhs, the order of the Trial Court is confirmed for detention.

Sd/-
(H.P. SANDESH)
JUDGE

MD