

Maninder Sood Vs. Deep Pal Singh and ors

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Court : Delhi

Decided On : Sep-10-2013

Judge : Jayant Nath

Appellant : Maninder Sood

Respondent : Deep Pal Singh and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: Pronounced on:
+ 05.09.2013 10.09.2013 CCP(O) 64/2012 in CS(OS) 1389/2012 MANINDER SOOD Through versus DEEP PAL SINGH & ORS Through Plaintiff Mr.S.K.Puri, Senior Advocate with Mr.Gaurav Puri, Ms. Nupur Pandey and Ms.Sahiba, Advocates Defendant Mr.Hrishikesh Barua and Mr.Manav Gupta, Advocates for D-1 Mr.M.G.Vachar, Advocate for D-2 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

CCP(O) 64/2012 in CS(OS) 1389/2012 1. The petitioner has filed the present contempt petition aggrieved by the stated wilful and deliberate omission on the part of the contemners No.1 and 2 to comply with orders of this court dated 15.05.2012 whereby the respondents were directed to maintain status quo with regard to the possession of the petitioner in a portion of property No. E-342, Greater Kailash-I, New Delhi, till the next date.

2. The petitioner has filed the present suit seeking a decree of partition in respect of various properties and business detailed in paragraphs 2(f) of the plaint and other reliefs. It is the case of the petitioner that the petitioner is the daughter of respondent No.4 and the sister of respondent No.1. It is the contention of the petitioner that the properties mentioned in the plaint are ancestral properties and she has an equal share in the said properties and hence she claims decree of partition. In the plaint, it was also stated that she is in joint possession of property i.e. E-342, G.K.-I, New Delhi as highlighted in the plan being filed with the suit. It is further stated that the plaintiff was married in the year 1994 with Sh. Rejeev Sood and from the wedlock she was blessed with one son Tarush Sood. The plaintiff separated from her husband on 04.08.2001, and since then has been living jointly with defendants No. 1, 3 and 4 (defendants in the suit) in the said property.

3. On 15.05.2012, this Court directed the parties to maintain status quo with regard to the possession of the plaintiff in the portion of the suit property. It is stated that the plaintiff was in occupation of two bedrooms and a lounge which are marked in yellow in Annexure to the plaint which is at page 81 of the suit file. It is stated that the petitioner was in possession, apart from other area, of bed room marked A, and has been dispossessed by the respondent in June, 2012 after the interim orders passed by this Court. Hence the present contempt petition has been filed.

4. It is the submission of learned senior counsel appearing for the petitioner that in the plaint, clear averment is made in para 3 that the petitioner is in possession of the part of the premises as per the plan filed with the suit. The plan clearly indicates the demarcated area. Learned senior counsel also pointed out that before filing of the present suit, the petitioner had also filed a complaint under The Protection of Woman from Domestic Violence Act. Pursuant to the order of MM, a protection officer had visited the premises of the petitioner and had filed a DIR report before the Court confirming said possession of the petitioner. The status report which is filed in the court of Ms. Pooja Talwar, MM, Saket, states that the complainant has shown her rooms on the first floor one occupied by the complainant and the other one by complainants son in which their stuff was also lying and one lobby area.

5. The status report was filed on 04.06.2012. Learned senior counsel also relies upon the status report which is stated to be based on a complaint of the petitioner made on 09.06.2012. The said status report reiterates that on the last visit, the protection officer had visited the premises and found that the complainant has two rooms and lobby area on the first floor. The report also notes that the complainant had mentioned that she has been ousted from her possession of one room on the first floor which was occupied by her son. Learned senior counsel also relies upon a list of items that was prepared and returned to the petitioner in the presence of counsel for both the sides. It is stated that on the room which has been illegally occupied by the respondent, various goods belonging to the petitioner and clothes of the son were found, as noted in the list. It is stated that the list is accepted by counsels for both sides and this list was prepared pursuant to orders dated 07.11.2012. Learned senior counsel has also pointed out that the respondent had filed a suit for possession against the petitioner in the court of District Judge, Saket where they have, in para 12 of the plaint, confirmed that the son of the petitioner used to sleep in the adjoining bedroom.

6. On the basis of the above documents and averments, the learned senior counsel for the petitioner contends that it is proved that the petitioner was in physical possession of the room marked A in the plan attached to the plaint as on the date when the status quo order regarding the possession was passed by this Court on 15.05.2012. It is submitted that in gross violation of the status quo order, the respondent have illegally and contemptuously dispossessed the petitioner and are liable to be punished in accordance with the Contempt of Courts Act.

7. The learned counsel appearing on behalf of the respondents have on the other hand denied the contention and submissions of the petitioner and submitted that the contention of the petitioner are absolutely false and that the petitioner was never in exclusive possession of the room marked A in the stated plan. The son of the plaintiff occasionally used to sleep in the said room. He being a child, none of the respondent objected to the same but the possession of the said room was always with respondent No.1. Learned counsel submits that prior to the stay order passed by this Court on 15.05.2012, the respondents along with the father of respondent No.1 and husband of respondent No.2, Sh. Ranbir Singh had filed the

suit for possession in the District Court, Saket. In the plaint which is prior to the interim order passed by this Court in para 12, it was categorically stated that the petitioner was only a licensee in respect of one bedroom on the first floor. It is stated that the said suit has been filed seeking a decree of possession for the one room only that is in occupation of the plaintiff. It is further submitted that in the suit that was filed by the petitioner, there is no averment whatsoever about the area that is being occupied and is in possession of the petitioner. Para 3 of the plaint simply states that the plaintiff is in joint possession of the suit property as highlighted in the plan. There is no averment which states about the exact area in possession of the petitioner. It is further stated that as far as the status report filed by the protection officer is concerned, it is a manipulated report and cannot in any manner be relied upon to conclude that the petitioner was, at any stage, in exclusive possession of more than one bedroom in the suit property. Learned counsel also relies upon the judgments in Thresia and another v. Johny and Others, AIR 200.Kerala 97; Lakhbir Singh v. Harpinder Singh and others AIR 200.Punjab and Haryana 126; and Jugan K. Mehta v. S.S. Gulati and others 2004(4) CCC 29.(Del.) to submit that in the absence of any clear evidence a person cannot be punished for violation of a status quo order on mere surmises and that unless the violation of the injunction order is proved beyond reasonable doubts, no contempt can be said to have arisen.

8. The issue that now arises for determination is as to whether the petitioner was in physical possession of two rooms as stated by her on the date when status quo order was passed on 15.05.2012 by this Court.

9. Reference may first be had to the averments made by the petitioner in the plaint that was filed. Para 3 of the plaint reads as under:

3. That the Plaintiff is in joint possession of E-342, G.K. -1, New Delhi as highlighted in the plan being filed with the suit, the Plaintiff was granted a decree of divorce by the Honble Court of Sh. K.S. Mohi, ADJ, Family Courts, Saket, Delhi on 18.04.2012. There is no categorical averment in the plaint as to of what portion, the plaintiff is in possession.

10. Reference may also be had to paragraphs 12 of the plaint filed by the respondents No.1 and 2 before the Saket Court. Admittedly, this plaint is dated 03.05.2012 and is stated to have been filed on 09.05.2012 i.e. prior to the status quo order passed on 15.05.2012. This is a suit for possession of the area allegedly in occupation of the petitioner. Para 12 of the plaint reads as follows:

12. The status of the defendant was no better than that of a licensee in respect of one bed room on the first floor shown in red colour in the site plan. She occasionally makes her son sleep in the adjoining bed room shown in yellow colour, though the said bed room shown in yellow colour is in complete control and possession of Sh. Deep Pal Singh, son of the plaintiffs. The defendant occasionally makes use of the kitchen on the ground floor shown in yellow colour although complete control and possession of this kitchen is with the plaintiffs only. The articles lying in all these portions are of the plaintiffs only. The property in question is the self acquired property of the plaintiffs and the defendants cannot make any claim therein. Similarly, prayer clause A of the plaint reads as follows: a. pass a decree of possession in favour of the plaintiffs thereby directing the defendant to handover possession of one bed room as shown in red colour in the site plan situated on the first floor of property no. E-342, Greater Kailash-I, New Delhi-110048 within such time as may be fixed for this purpose.

11. There is merit in the contention of the learned counsel for the respondent that prior to the present stay order the respondents have already filed a suit for recovery of the area in possession of the petitioner in the suit property. The respondents have categorically averred in the said suit filed prior to the stay order that the petitioner is in possession of only one bedroom. Based on said averments, a decree of possession of the said bedroom is only sought in the said suit filed by respondents No. 1 and 2.

12. In contrast, the averments in the plaint filed by the petitioner in this case are evasive and there is no categorical averment of the area in actual possession of the petitioner.

13. In view of the sketchy and evasive nature of averments regarding her possession in the plant, I am not inclined to accept the plan as being conclusive of

the extent of possession of the petitioner as on 15.05.2012 i.e. the date of the status quo order.

14. The sum and substance of the evidence which is placed on record by the petitioner for her contention of being in possession of room marked A in the plan, which is filed with the list of documents with the plaint, is the status report filed by the protection officer in the proceedings under the Protection of Woman from Domestic Violence Act.

15. So far as the status report is concerned, the relevant portion of the status report reads as follows: Complainant also showed me her rooms on the first floor i.e. one occupied by the complainant and the other one by the complainants son in which there stuff was also lying there and one lobby area also on first floor (site plan attached with this) and complaint copy of GK-I also High Court order given by the complainant.

16. In my view, the said report on the face of it is based on the contention of complainant only. In view of the manner in which the report is prepared, the said report cannot be said to be conclusive evidence on the possession of the petitioner to the said room marked A in the plan.

17. I may also refer to the judgments cited by the respondent in this context. In *Lakhbir Singh v. Harpinder Singh* (Supra), the Punjab and Haryana High Court, held as under:

11. At the out set, it may be relevant to notice that provisions of Order 39, Rule 2-A of the Code are quasi criminal in nature and since a person violating the injunction order passed by the civil Court or otherwise disregarding the same is liable to be detained in civil prison, therefore, the aforesaid violation or disregarding of injunction order has to be proved beyond all reasonable doubts by the person complaining of such violation. The standard of proof required in such a case would, no doubt, be as is required in a criminal case, since the said act of the violator itself entails his detention in civil imprisonment.

18. It must be remembered that standard of proof required to establish a charge of contempt is that it has to be proved beyond reasonable doubts. Reference may be had to the judgment of Supreme Court in the case of Anil Ratan Sarkar and Ors. v. Hirak Ghosh and Ors. (2002) 4 SCC 21. In para 13 and 14 (relevant portion) the Supreme Court has held as follows:

13. The observation as above finds support from a decision of this Court in Chhotu Ram v. Urvashi Gulati & Anr. (2001 (7) SCC 530), wherein one of us (Banerjee, J.) stated as below : "As regards the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the standard of proof, be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

14. Similar is the situation in Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors. (2001 (3) SCC

739) and as such we need not dilate thereon further as to the burden and standard of proof vis- a-vis the Contempt of Courts Act Suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

19. The settled legal position is that the provisions of Order XXXIV Rule 2A CPC or Section 10 and 12 of the Contempt of Courts Act are quasi criminal in nature. Hence, before a contemnor can be punished for violation of an injunction order of the Court, the violation must be proved beyond all reasonable doubts and the standard of proof required in such a case would be as is required in a criminal case.

20. Keeping in view the above legal position, in my view, the petitioner has failed to prove beyond reasonable doubts that respondents No.1 and 2 are guilty of violating the injunction order of the Court. The evidence relied upon by the petitioner is sketchy and does not conclusively lead to prove that the petitioner was in exclusive possession of the room marked A in the plan filed in the list of documents. It is hence not possible to hold respondents No. 1 and 2 to be guilty of breach of injunction order passed by this Court or for the matter being guilty for Contempt of Courts.

21. The present petition is accordingly dismissed. JAYANT NATH, J SEPTEMBER 10 2013 raj

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