SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mohd. Jamal and ors. Vs. Mohd. SharfuddIn (Died) by Lrs. and ors.

Mohd. Jamal and ors. Vs. Mohd. SharfuddIn (Died) by Lrs. and ors.

SooperKanoon Citation : sooperkanoon.com/436894

Court : Andhra Pradesh

Decided On : Apr-03-1998

Reported in : 1998(3)ALD427; 1998(3)ALT397

Judge : V. Rajagopal Reddy, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 11, 46 and 146 - Order 1, Rule 8 - Order 39, Rule 2-A; Transfer of Property Act, 1882 - Sections 52

Appeal No. : CC No. 1412 of 1997

Appellant : Mohd. Jamal and ors.

Respondent : Mohd. SharfuddIn (Died) by Lrs. and ors.

Advocate for Def. : Mr. Vedula Venkata Ramana, Adv.

Advocate for Pet/Ap. : Mr. Mohd. Azizullaha Khan, Adv.

Judgement :
ORDER

1. The petitioners are the appellants in AS 2301 of 1997 pending in this Court. OS No.11 of 1991 was filed on the file of the Additional District Munsif, Sangareddy, by the petitioners for partition of suit A, B and C schedule properties. The 1st defendant, the father of the respondents herein, contested the suit claiming that he was exclusive and absolute owner of plaint B-schedule property and as such B-

schedule properties were not available for partition. The trial Court upheld the claim of the defendants-respondents and dismissed the suit with regard to B-schedule properties and decreed the suit with regard to plaint A and C schedule properties. Questioning the dismissal of the suit with regard to B-schedule property, the petitioners-appellants filed the appeal AS 2301/ 97 and the appeal is pending before this Court. Pending the appeal the petitioners-appellants filed CMP 13575/87 seeking temporary injunction restraining the 1st respondent from alienating B-schedule property. By an order dated 3-9-1987 this Court directed that status quo should be maintained and the same was made absolute by an order dated 13-10-1987.

2. While the appeal was pending, the 1st respondent died and by an order in CMP No.2101/92 respondents 2 to 7 were added as Legal Representatives, of the deceased 1st respondent. Alleging that the respondents alienated B-schedule properties executingregistered sale deeds, being fully aware about the orders of this Court granting status quo and thus the respondents had acted in gross violation of the orders of this Court deliberately, the petitioners filed Contempt Case No. 1412/97. The respondents filed counter-affidavit in the contempt case and the matter was heard by a learned Judge. The Court held that the order in CMP No.13575/87 being in the nature of injunction restraining the father of the respondents 3 to 7, from alienating B-schcdule property, the petitioners had an alternative remedy of approaching under Order 39, Rule 2-A of the Code of Civil Procedure. The Court therefore directed to convert the contempt case into an application under Order 39 Rule 2-A CPC. Accordingly, the petitioners filed the present application seeking a relief of penal action against the respondents 3 to 7 by attachment of their property and detaining them in civil prison for their disobedience of the orders of this Court in CMP No.13575/87, in the above appeal.

3. The respondents filed counter-affidavit stating mat they were not parties to the suit OS No. 11/81 on the file of the Additional District Munsif, Sangareddy, filed against their father for partition. It was also stated that in CMP No.13575/87, this Court-passed interim orders restraining their father from alienating B-schedule property and has also ordered status quo by order dated 3-9-1987, in CMP No.15518/87, the petition filed by the respondents to vacate the interim order, the

order of status quo was made absolute on 13-10-1987. It was clearly stated that by virtue of the said order their father could not alienate or otherwise dispose of B-schedule property. It is further averred that B-schedule properties were donated in favour of the respondents by their father by executing gift deed dated 20-1-1987 and on the death of their father they became the absolute owners of the said properties and as such they were competent to alienate the properties. It is also stated that the sale deeds referred to by the petitioners, dated 11-4-1997 and 13-5-1997, in their affidavit filed in support of the petition, were true. As there was no order of injunctionagainst them restraining alienation, the respondents sold part of the lands under six sale deeds.

4. It is, however, submitted by the learned Counsel for the respondents that as the appeal itself was posted for hearing in this Court, the same could be taken up for hearing without proceeding with this petition. I am, however, of the view that when contempt was alleged against a party, unless he has been purged himself of his contempt, he should not be heard. I, therefore, proceed to consider the arguments advanced in the petition.

5. Learned Counsel for the petitioners vehemently argued that the respondents deliberately disobeyed the orders of this Court. As the respondents 3 to 7 claim their property as LRs. of the 1st respondent-defendant, the injunction order continues to bind them even after the death of the 1st respondent. The respondents 3 to 7 have obtained the property as LRs. of their father and not as donees under gift deeds. It was further contended that respondents 3 to 7 had alienated B-schedule property fully aware and conscious that this Court passed an order restraining their father from alienating the same, pending the appeal.

6. Learned Counsel for the respondent, however, refuting the contentions, submitted that the injunction/status quo order passed against the respondents' father ceased to operate on his death. Since the Court has not passed any order of injunction against the respondents 3 to 7, they were not prevented from alienating the B-schedule lands. It is lastly contended that by virtue of the gift deeds dated 22-10-1981, the respondents became absolute owners and they were competent to alienate the property and that they did not claim the property as LRs.

of the deceased, but as donees under the above gift deed.

7. The main question that may arise in this case is whether the respondents 3 to 7 could deliberately violate the order of injunction/status quo, issued against their fether-1st respondent, on the ground that it ceased to operate on the death of their father ?

8. The injunction order dated 15-10-1987 reads as follows :

'Till the pendency of the appeal if the party was to sell in pursuance of the agreement executed by him, at the execution of the decree, it will be very difficult for the appellants to execute the decree in the event of his success. At the time of hearing the stay petition, only status quo has been ordered. No prejudice is caused to either party. The stains quo will continue during the pendency of the appeal."

This order was passed against the 1st respondent in CMP 13575/87 and the 1st respondent in the appeal. Respondents 3 to 7, no doubt, are not parties to this order. This Court issued status quo order on the ground that if the property was to be sold it would be difficult for the appellants to execute the decree in the event of their success. B-schedule property is the subject-matter of the appeal which is pending in this Court. The 1st respondent died in 1991 and respondents 3 to 7 were brought on record as Legal Representatives, being his sons. It is the case of the petitioners that the respondents, fully aware of the orders and conscious that they are bound by the status quo orders, deliberately alienated the properties by executing sale deeds. Respondents admitted in their counter-affidavit that they had sold the properties as alleged by the petitioners. The case of the respondents was that the injunction order passed against their father is not binding upon them and since this Court did not pass any order against them, they were free to alienate the property. It was their further case that they did not claim the property as LRs. of the deceased, but they became absolute owners by virtue of the gift deeds executed in 1981 by their father.

9. It becomes necessary, first, to clear the ground whether they are claiming the B-schedule property as donees or as Legal Representatives of the 1st respondent-

defendant.

10. In the affidavit filed by the 2nd respondent in CMP 15510/97 and 155110/97,seeking injunction against the SI of Police, Sangareddy, from interfering with the possession of certain lands in B-schedule property, it was clearly stated that on the death of their father, the respondents succeeded to the B-scheduIe,property and after the death of their father they were entitled to enjoy the lands in B-schedule property. In the order passed by this Court in the above petition, also it is made clear that the respondents were seeking the property as LRs. of the deceased 1st respondent. In view of the status quo order passed by this Court in CMP 13575/87 against the 1st respondent, the Court granted injunction order in favour of the respondents as prayed for in the above petition. It is also not the case of the 1st respondent in the suit that he has donated the properties in favour of his sons. The alleged gift deeds were not filed and no issue was raised nor any evidence was adduced in this regard, in the suit. There was also no reference at all in the earlier affidavits filed by the respondents, about the gift deeds in their favour with regard to B-schedule properties. It is only for the first time the respondents had come forward in the counter-affidavit filed in the contempt case about the gift deeds in their favour with regard to B-schedule properties. In view of these facts, I am not prepared to accept the contention that respondents 3 to 7 had alienated properties as absolute owners and that they did not succeed to the properties as LRs. of the 1st respondent.

11. Now coming to the question of binding nature of the order of injunction on respondents 3 to 7, it is true, as submitted by the learned Counsel for the respondents, that an injunction is, in its nature, a remedy against an individual and it will be issued only in respect of acts done by him against whom it is sought to be enforced and that it operates in personam. Learned Counsel relies upon a passage in the Text Book by Sir John George Woodroffe, Law Relating to Injunctions in India, which is as follows :

'17.03. Injunction in respect of acts of an individual :--Insofar as an injunction is in its nature a remedy against anindividual, it will be issued only in respect of facts done by him against whom it is sought to be enforced. Thus, an injunction cannot

be obtained against executors on account of acts done by their testator. They may be sued for an injunction in respect of a wrong done by themselves, but they cannot be so sued in a representative character. And for the same reason, namely, that an injunction is an order directed to a person, it does not run with the land. By reason of this same operation in personam, the Court may exercise jurisdiction quite independently of the act to be done, provided the defendant be within the reach and amenable to the process of the Court.'

Learned Counsel also cited the decision in Sudhir Namasudra v. Purnendu Kumar Das, AIR 1980 Gauhati 1, for the proposition that persons not injuncted by order of the Court cannot be punished for violation of an injunctioa It was observed-

'In my opinion there cannot be a violation of an order of injunction by a person unless he is pointedly injuncted not to do or to do certain things by a Court of law. In the instant case I have perused the order of injunction issued by the learned Additional, Subordinate Judge and find that the order did not contain any direction to the petitioners not to enter into the suit land. As such, assuming, they had been in the land they are not liable for violation of the injunction.'

The injunction order issued by the Court in that case did not contain a direction to the petitioners not to enter the suit land. Hence, though they were found on the land, it was held that they did not violate the injunction. But, it should be noticed in the present case that the injunction order, though issued against the father of the respondents, was still in force as this Court has not vacated the orders. The contention, however, is that the orders ceased to operate on the death of the 1st respondent against whom the orders were issued. But no authority was cited in support of this contention. In my view the order would notlapse. The respondents succeeded B-schedule property, which is the subject-matter in appeal, on the death of 1st respondent. A perusal of the injunction order before it was made absolute, makes it clear that the status quo order was passed to safeguard the property to enable the petitioners to execute the decree in case they succeed. Respondents are aware of this order and the reasons for passing the order. They are also aware of the feet that B-schedule property is the subject-matter in appeal and the appeal is still pending. When that is the situation, would respondents be

permitted to disobey the injunction issued by this Court If they are permitted to disobey the order of the Court, taking the stand that the order was not binding upon them, it would be contrary to the public policy and subversive to the Rule of Law. The only appropriate course for them would be to approach the Court seeking clarification of the injunction and necessary directions. This principle has been recognised by the Supreme Court in Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd., : [1997]2SCR152 . In the said case an order of injunction was disobeyed by a party on the ground that the order was passed by the Court without jurisdiction, hence it was a void order. Considering the question, after an exhaustive discussion of case law, His Lordship Jeevan Reddy, J. as he then was, observed :

'Would it be right to say that violation of and disobedience to the said orders of injunction is not punishable because it has been found later that the Civil Court had no jurisdiction to entertain the suit. Mr. Sorabjee suggests that saying so would be subversive of the Rule of Law and would seriously erode the majesty and dignity of the Courts. It would mean, suggests learned Counsel, that it would be open to the defendants respondents to decide for themselves whether the order was with or without jurisdiction and act upon that belief. This can never be, says the learned Counsel. He further suggests that if any party thinks that an order made by the Civil Court is without jurisdiction or is contrary to law, the appropriate course open to him is toapproach that Court with that plea and ask for vacating the order. But it is not open to him to flout the said order, assuming that the order is without jurisdiction.''

It was further observed :

'The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of Rule of

Law and would seriously erode the dignity and the authority of the Courts. We must repeat that this is not even a case where a suit was filed in wrong Court knowingly or only with a view to snatch an interim order. As pointed out hereinabovc, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.'

The ratio laid down in Hadkinson v. Hadkinson, (1952) 2 All. ER 567, has been followed by the Supreme Court in the above decision (supra), which is as follows :

'In Hadkinson v, Hadkinson, (1952) 2 All. ER 507, the Court of Appeal held :

It is the plaint and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, LC said in Chuck v.Cremer, (1846) i Coop Temp Colt 205 (342).

'A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors. or their solicitors, could themselves, judge whether an order was null or valid - whether it was regular or irregular, that they should come to the Court and not take upon themselves to determine such a question. That the course of party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed.'

Such being the nature of obligation, the respondents' disobedience of the order of injunction which was not vacated by this Court. should be punishable otherwise it would be subversive of the Rule of Law and would seriously erode the majesty and dignity of the Courts.

12. An injunction may be a personal matter. The ordinary rule is that it cannot be disobeyed by a person named in the order. But other persons cannot be proceeded against any contempt for disobeying the injunction. But a Division Bench of Uiis Court in R. Narapa Reddy v. Jagarlamudi Chandramouli, : AIR 1967 AP219 , the decision cited by the learned Counsel for the petitioners, relying upon the Privy Council in decision in S.N. Bannerjee v. Kuchwar Lime and Stone Co., Ltd., 1938 PC 195, held that

'The Court has no doubt jurisdiction to commit for contempt a person not included in an injunction and/or not a party to the action, who knowing of the injunction, aids and abets the defendant in committing a breach of it.'

In view of the binding nature of this decision, it has to be held that the respondents could be proceeded against for contempt, since they disobeyed the injunction, knowing about the injunction.

13. The decision of Gauhati High Court (supra), cited by the learned Counsel for the respondent, is a decision pertaining to the point whether the person injuncted has really violated the order of injunction. It is not helpful to the case on hand.

14. Mool Chandra Jain v. Jagdish Chandra Joshi, : AIR1955 All385 , does not also assist us in determining the actual question in this case. The question in the said case was whether in a representative suit under Order 1 Rule 8 of Code of Civil Procedure, can an order of injunction be binding on the parties, not actually impleaded but represented by those actually on record. It was held that the sole object of such a suit was to bind those persons with the decree passed in the suit. This question does not arise in the present case.

15. It was argued by the learned Counsel for the respondents that the petitioners ought to have filed another application for injunction against the respondents, after the death of the 1st respondent and obtained an order of injunction against them. The said argument is untenable. Can LRs. of the 1st respondent put forward a claim which has already been determined by this Court in passing an injunction order Can they be permitted to say that injunction order passed against the 1st respondent was incorrect A similar question arose in Rajappan v. Sankaran

Sudhakaran, : AIR1997 Ker315 , where it was held that the order of injunction already passed would operate as res judicata to any application that may be filed against LRs. of the deceased party, 'since res judicata bars not only the parties to the suit, but also persons who claim under the parties to the suit and arc litigating under the same title.'

16. It was also held in the above decision that an order of injunction would be binding not only on judgment-debtor personally but on all those who claim through or under him. Learned Judges, considering the scope of Section 146 CPC, which provides that anyproceedings that may be taken by or against a person could be taken by or against any person claiming under him, held-

'In the race of Section 146 of the Code the judgment-debtors cannot contend that they are not bound to obey the decree for injunction granted against their predecessor-in-interest restraining him from tampering with the boundary of the property or from entering the property of the decree-holder or from committing any acts of waste therein. To permit such a plea would be to ignore the principle of public policy embodied in Sections 11 and 46 of the Code of Civil Procedure on the one hand and Section 52 of the Transfer of Property Act on the other.'

I am in respectful agreement of the views expressed in the above decision.

17. In view of the above pronouncements, it has to be held that the respondents 3 to 7, having succeeded to the property of the 1st respondent as LRs. and knowing that the 1st respondent was injuncted not to alienate B-schedule property pending the appeal, have deliberately disobeyed the orders of injunction and thus rendered themselves liable for action under Order 39 Rule 2-A CPC.

18. Then the question that remains is whether there should be a direction for the arrest of the respondents or for the attachment of their property.

19. In the circumstances, I direct that a warrant be issued for the attachment of the properties of respondents 3 to 7 for a period of six months or until such time when the respondents deposit an amount of Rs.20,000/-(Rupees twenty thousand only) into the Court. On its deposit, the petitioners are permitted to withdraw the same.

The petition is accordingly allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com