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Balwinder Kumar Vs. Rajinder Kumar and ors.

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Court : Punjab and Haryana

Decided On : Jan-25-2005

Reported in : AIR2005P& H246; (2005)140PLR475

Judge : Ajay Kumar Mittal, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 151 - Order 39, Rules 1, 2 and 2A

Appeal No. : First Appeal Order No. 504 of 2005

Appellant : Balwinder Kumar

Respondent : Rajinder Kumar and ors.

Advocate for Pet/Ap. : A.K. Jindal, Adv.

Disposition : Petition dismissed

Judgement :

Ajay Kumar Mittal, J.

1. This appeal is directed against the order dated 15.1.2005 passed by the learned Additional District Judge, Fatehgarh Sahib whereby the appellant has been held guilty in proceedings under Order 39 Rule 2-A of the Code of Civil Procedure (for snort 'the Code') for violating the order passed by him on 5.2.1993, and has been

ordered to be detained in civil prison for a period of three months.

2. One Kewal Krishan, predecessor-in-interest of respondents Nos. 1 to 3 filed an appeal before the District Judge against the judgment and decree dated 7.12.1992 passed by the trial court. In the appeal, he also moved an application under Order 39 Rules 1 and 2 read with Section 151 of the Code. While admitting the appeal on 5.2.1993, the appellate court passed an interim order restraining the respondents in the appeal, from alienating the suit land till further orders. In the meantime, Kewal Krishan aforesaid died and his legal representatives i.e. respondents Nos. 1 to 3 herein moved an application before the Additional District Judge in the pending appeal, under Order 39 Rule 2-A of the Code complaining that despite the injunction order passed by the Court, the petitioner executed sale deed dated 30.5.1997 with regard to 10 Bighas and 10 Biswas bf land in favour of respondents Nos. 10 to 13. It was averred that the interim order dated 5.2.1993 which was ordered to continue till further orders, was neither modified nor varied nor vacated at any time and that the respondents therein had full knowledge of the injunction order. It was further averred that even the vendees i.e. respondents Nos. 10 to 13 were also aware of the injunction order dated 5.2.1993 and in spite of that they became party to the sale deed. The allegations made in the application were controverted by the petitioner and respondents Nos. 10 to 13, by filing separate replies. The Additional District Judge, after framing issues and appraising evidence led on record, absolved the other respondents but held the petitioner guilty of flagrant disobedience of the order of the Court and accordingly, ordered the- petitioner to be detained in civil prison for three months.

3. Learned counsel for the appellant submitted that there had been no willful disobedience on the part of the appellant and further the appellant had no knowledge of the stay order dated 5.2.1993 as the advocate was also engaged by the father of the appellant.

4. Learned counsel for the appellant placed reliance on a Division Bench judgment of Orissa High Court in Sukuma Panigrahi v. Satyabhama Panigrahi, 1997(1) Civil Court Cases 374 and submitted that knowledge of the counsel of the appellant of the order of injunction simplicitor could not be imputed to the appellant who is

alleged to have disobeyed the same and this is not sufficient to fasten him with the liability. This contention of the counsel cannot be accepted. In the reported case, the injunction restraining the order party from alienating any suit property was passed on 1.9.1992 but the party against whom such injunction had been issued got a sale deed registered in respect of the suit property on 15.9.1992 when the injunction was in force. In the said case, the stand of the party against whom the violating was alleged, was that she came to know of the injunction only on 18.9.1992. It was thus rightly held in those facts that mere knowledge of a counsel of a party of an injunction is not sufficient and as a matter of fact, the party against whom injunction has been issued must be aware of it.

5. In the present case, however, the position is quite different. At this stage, it is necessary to notice as to how the appellant has been held guilty and, therefore, the observations of the learned Additional District Judge, Fatehgarh Sahib made in paras 8, 9 and 10 in that regard read as under:-

'8. Having heard the respective submissions of learned counsel for the parties at considerable length and examining the material evidence on the record, this court proceeds to dispose of this controversy. Firstly, this court deals with the contention of Sh. J.S. Cheema, counsel for the respondent Balwinder Kumar that no valid execution of sale deed has been proved on the record dated 30.5.1997 vide which any injunction order was violated. This contention is without any force in the opinion of this court and it is noted to be rejected. The submission of RW-1 Balwinder Kumar the alleged contemner, respondent No. 4 may be examined in this respect. He has admitted in his examination that he executed sale deed Ex.A-1 in favour of Harinder Singh alias Harminder Singh, Bhinder Singh, Jaspal Singh and Hakam Singh in equal shares. He further admitted that this sale deed was executed by him for a consideration of Rs. 3,50,000/- vide Ex.A-1. Once there is an admission by RW-1 Balwinder Kumar the alleged contemner and the executant of sale deed Ex.A-1, therefore, no further proof is required to prove the execution of the sale deed. The fact admitted need not to be proved under law. Consequently, it is a proved fact on the basis of admission of RW-1 Balwinder Kumar respondent No. 4 that he executed the sale deed, copy of which is Ex.A-1 on 30.5.97 in favour of respondent No. 8 to 11. In addition to it : RW-2 Harminder

Singh has also stated that they purchased the land from Balwinder Kumar measuring 10-B-10B on 30.5.97. AW-1 Sarwan Kumar has proved the certified copy of sale deed Ex.A-1 which was registered in the office of Registry Clerk, Fatehgarh Sahib. This finding is thus returned by this court that it is proved on the record that Balwinder Kumar executed the sale deed, copy of which is Ex.A-1 in favour of respondent No. 8 to 11 on 30.5.97.

9. The next point for determination before this court is whether the court passed any order of stay in this case or not. Vide certified copy of order dated 5.2.1993 Ex.A-3 on the record, the court restrained the respondents from disposing of the suit property till further orders on an application for stay of alienation. Respondent No. 4 Balwinder Kumar was a party to the proceedings. This order was passed by the court on 5.2.1993 imposing restraint of alienation till further order. Sh. J.S. Cheema, Advocate appeared on behalf of respondent No. 1, 3, 4, 5 and 6 and 7 on 27.5.1993 in the court and this fact is established on the record by certified copy of order dated 5.2.1993. The restraint order was passed till further orders vide Ex.A-3 on 5.2.1993. The certified copy of the waqalatnama Ex.A-8 is on the record. Sh. J.S. Cheema, appeared on 27.5.1993 on behalf of respondent No. 4 Balwinder Kumar and others in the court and weqalatnama Ex.A-8 which is the certified copy of signed by Balwinder Kumar respondent No. 4. Ex.A-5 is the certified copy of the judgment and Ex.A-6 is the certified copy of the decree thereof. Now this court is to determine the controversy as to whether knowledge can be imputed to Balwinder Kumar respondent No. 4 when he appeared through his counsel in this court on 27.5.1993 vide Ex.A-4, the order of the court and Ex.A-8 the certified copy of the waqalatnama. On examining the authorities relied upon by the learned counsel for the respondents, this court has reached the conclusion that all the authorities proceed on different facts and would not be applicable in this case. Balwinder Kumar put in appearance through his counsel on 27.5.93 vide Ex.A-4 and Ex.A-8 on the record. There was stay order till further orders and it has not been proved on the record that it was either varied or modified at any time. It is thus presumed to be in force till the court vacates it or modifies it. Respondent No. 4 on 30.5.97 after four years from the date of this order Ex.A-4 vide which restraint order was passed, executed sale deed Ex.A-1. This court is not impressed with the submissions of the counsel for the respondents that respondent No. 4

Balwinder Kumar was not aware of the order of the court despite the passage of 4 years from the time of passing of order. Sukuma Panigrahi case (supra) when closely examined would not be applicable in this case. Knowledge alone can be presumed in this case to Balwinder Kumar as sale deed was executed after four years from the date of passing the stay order. This court is not impressed with this submission of counsel for the respondents that respondent No. 4 Balwinder Kumar was not aware of the order. AW-2 Rajinder Kumar has also categorically deposed regarding the knowledge of stay by respondent No. 4 Balwinder Kumar. Consequently, all the authorities have been examined by this court as relied upon by the respondents, but they would not be helpful to respondent No. 4 Balwinder Kumar. Consequently, this court returns the findings that respondent No. 4 Balwinder Kumar willfully disobeyed the order of the court dated 5.02.93 by executing a sale deed Ex.A-1 on 30.5.97 by respondent No. 8 to 11.

10. Now this Court proceeds to examine as to whether any disobedience of order of the court has been proved against respondent No. 8 to 11. Admittedly, respondents No. 8 to 11 were not the parties to the appeal wherefrom this stay order had arisen. There is no documentary evidence on the record that this stay order was brought to their knowledge. There is also no worthwhile evidence on the record that they were aware of this stay order. The mere statement of AW-2 Rajinder Kumar that he made raula in the village would not fasten them with any liability. RW-2 Harinder Singh has categorically deposed that they were neither party to the proceedings nor they have any knowledge regarding any stay order. In the circumstances, in view of the law laid down in Mohiddin Basha Abdul Razak case (supra) by the Bombay High Court that breach of injunction by a person not party in the suit, he can not be held guilty of breach of any order. Consequently, the applicants have failed to prove that respondents No. 8 to 11 wilfully disobeyed the order of the court dated 27.5.93.'

6. In the present case, the injunction order was passed on 5.2.1993 and thereafter the proceedings continued before the appellate court and the sale deed was executed on 30.5.1997 after four years of the passing of the injunction by the Court. Learned counsel for the appellant could not point with reference to any material on record that the injunction order was not in the knowledge of the

appeilant. This contention is, thus, rejected.

7. Learned counsel for the petitioner then relied upon a judgment of the Supreme Court in Samee Khan v. Bindu Khan, A.I.R. 1998 S.C. 2765 to contend that if the appellant tenders unconditional apology, he should not be sent to civil imprisonment. The observations made in the aforesaid case are peculiar to the facts of that case and the same are not applicable to the case in hand. In the reported case, the disobedient party was alleged to have disobeyed the order of the court by raising construction who, however, subsequently removed the construction and tendered unconditional apology. It was in these circumstances, the Apex Court observed that in view of the subsequent actions done by the disobedient party, it was not necessary to put him in prison. In the present case, the act which had been committed by the appellant by executing a sale deed on 30.5.1997 in violation of interim order dated 5.2.1993 is such which cannot be reversed or rectified or modified voluntarily by the appellant as he had got a sale deed executed and thereby created third party rights. The learned counsel for the appellant submitted that the period of detention is excessive. Keeping in view the facts and the circumstances, the learned Additional District Judge has rightly held the appellant guilty for violating the ad interim stay order dated 5.2.1993 and has ordered the appellant to be detained in civil prison for three months. No illegality or infirmity could be pointed out in the impugned order. Finding no merit in the revision petition, the same is therefore, dismissed.

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