

C.R. Jagannathan and anr. Vs. Subhash Chandra Kapoor and ors.

C.R. Jagannathan and anr. Vs. Subhash Chandra Kapoor and ors.

SooperKanoon Citation : sooperkanoon.com/686319

Court : Delhi

Decided On : Sep-24-1986

Reported in : ILR1986Delhi545

Judge : Mahesh Chandra, J.

Acts : Contempt of Court Act, 1971 - Sections 11

Appeal No. : Contempt Civil Petition No. 43 of 1986

Appellant : C.R. Jagannathan and anr.

Respondent : Subhash Chandra Kapoor and ors.

Advocate for Pet/Ap. : P.P. Malhotra,; R.N. Chawla,; D.S. Narula and;

Judgement :

Mahesh chandra, J.

(1) By this order I propose to dispose of this civil contempt petition filed under Sections 11& 12 of the Contempt of Courts Act by the plaintiffs. I have heard the learned counsel for the plaintiffs-petitioners and the defendants-respondents and have gone through the file and after giving my considered thought to the matter before me, I have come to the following findings.

(2) Facts relevant for disposal of this civil contempt petition are that suit No. 911/86 was filed by the plaintiffs against defendants 1 to 4 for specific performance of the contract for sale of property bearing No. 13-1051, New Friends Colony, New Delhi and in the said suit I.A. 2858/86 was filed in which following injunction orders were issued by Sultan Singh, J. on 30th day of April 1986:

'DEFENDANTS Nos. 1 and 2 are hereby restrained from entering into any agreement with defendants Nos. 3 and 4 and from creating any lien, charge, mortgage, encumbrance or creating any tenancy and from parting with the possession of the premises No. D-1051, New Friends Colony, New Delhi, to defendants Nos. 3 and 4 or to anybody else till further order. Defendants Nos. 3 and 4 are hereby restrained from occupying the premises at D-1051, New Friends Colony, New Delhi, till further orders.'

These injunction orders were served upon defendants 1, 2 & 4 on 2nd May 1986 as the perusal of the file shows. This petition was filed on 15th May 1986 and show cause notice was ordered to be issued for 29th May 1986. On 29th May 1986 the date fixed in the suit and the I.A. 2858/86, Shri Sanjay Dawar, defendant No. 4 had appeared along with his counsel while counsel for defendants 1 and 2 appeared for them. Statement of said Sanjay Dawar was recorded on 29th May 1986 which reads as under :-

'DAWAR Associates defendant No. 3 was a partnership firm. I was one of its partners. My mother was the other partner. Defendant No. 3 never functioned as a partnership concern. I and my other relations entered into an agreement to purchase the property D-1051, New Friends Colony, New Delhi, from defendants Nos. 1 and 2 by means of an agreement dated 27th February 1986. We took possession of the said property on the evening of 27th February 1986. No sale deed has been executed in our favor as yet. My wife, my mother, my father and my sister and my two kids have been in occupation of this property since 27th February 1986. We are in possession of the entire house. There is no body else in possession of any portion of this property. I do not want to contest the suit as partner of defendant No. 3. The name of my mother is Mrs. Sudershan Dawar. She was a partner of Dawar Associates. At present she is residing at D-10511

New Friends Colony, New Delhi.'

(3) As regards respondent No. 3, it was ordered by Sultan Singh, J. that 'Respondent No. 3 is a partnership concern of which Sanjay Dawar was a partner. The other partner was his mother. It is not necessary to proceed against respondent No. 3. The name of Dawar Associates is deleted from this contempt petition.'. Replies have been filed by respondents 1, 2 & 4 to this petition and these replies are supported by duty sworn affidavits of the respective respondents. The petitioner has filed his affidavit in support of the petition apart from certain other documents. Similarly respondent No. 4 also has filed number of documents in support of his reply. It is in the light of these facts that this petition has to be disposed of.

(4) The contention of the petitioner is that even though the order of injunction had been served upon the respondents by telegram as well as by process server of the court, the respondents have deliberately, intentionally and willfully disregarded and flouted the said injunction orders and defendants 1 & 2 parted with the possession of the premises to defendants 3 & 4. Defendants 1 & 2 have submitted that the possession of the premises in dispute was handed over to defendant No. 4 and his family on or about 27th February 1986 whereas the suit had been filed by the plaintiff on 29th April 1986 and consequently there was no disobedience of any orders of this Court by defendants 1 & 2. Defendant No. 4 has submitted that he had entered into an agreement to sell dated 27th February 1986 with the other defendants and had taken over possessions of the premises in dispute on the same date and Greh Pravesh' ceremony was fixed for and held on March 5, 1986 and as such the injunction order of the court had not been violated by him either.

(5) The learned counsel for the petitioner has, in the first instance, drawn my attention to the report of the Local Commissioner who was appointed on the oral request of counsel for the petitioners vide orders dated 30th April 1986 to report whether any body is in occupation or possession of the property No. D-1051 New Friends Colony, New Delhi or not. In pursuance of the said request, Miss Nita Agarwal, Advocate was appointed Local Commissioner and her report is on the file. It would be appropriate to reproduce the said report verbatim which is as under:-

'(1)That in pursuance to the order dated 30-4-1986 by the Hon'ble Mr. Justice Sultan Singh in the above case. the undersigned Along with Shri Satva Sheel, a friend of the Plaintiff. went to the premises situated at D-1051, New Friends Colony, New Delhi, on 30-4-1986 at 5.55 P.M.

(2)That one Shri Jagdish who claimed himself to be the Chowkidar of the premises at the site, had informed me that he is doing Chowkidari for Daburwale and Kapool Sahib. He further informed me that he is staying all alone in the House, and no other person is staying in the house apart from him. The statement of Shri Jagdish was recorded, but he refused to countersign the same.

(3)That the premises in question is a three storeyed building with a Basement. On the ground floor, there are two rooms, one kitchen, one bath room and one dressing room. On the first floor, there are three bed rooms with attached bath and a lounge. On the second floor, there was a roof but the same was locked and keys of the same. according to the Chowkidar. were not with him. The basement of the premises was also locked, and the keys of the same were also according to the Chowkidar, not with him

(4)That the room on the second and the basement which were locked, were visible through the windows. No one was apparently living in the premises in dispute at the time when the undersigned visited the same. Only the Chowkidar, as stated above, was living in the premises.

(5).The Commission proceedings were recorded at the site and were duly countersigned by Shri Satya Sheel, a friend of the Plaintiff, who had accompanied the undersigned to the premises. The proceedings were concluded at 6.55 P.M. on 30-4-1986.

The Commission proceedings, submitted herewith in original, may kindly be read as part of this Report. The Report is submitted accordingly.'

'Time : 5.55 P.M. Dated : 30-4-1986 Memo Of Proceedings

PRESENT:

MR.Satya Sheel for the Plaintiff, and Mr. Jagdish, Chowkidar for the defendants.

I reached the premises situated at D-1051, New Friends Colony, New Delhi. I inspected the house mentioned above in pursuance to the Court's order dated 30-4-1986 passed by Hon'ble Mr. Justice Sultan Singh.

I reached the house at the time and date mentioned above and was met by the Chowkidar of the house mentioned above.

I inspected the house and found that it consists of three storeys and a basement. I found the house empty and without any signs of occupation except for the fact that on the roof some used up wooden pieces were lying and in the basement some mattresses and bundles of cloth covered by an old cloth.

I am giving the details of the rooms I found in each storey and the basement as follows:

(1)Ground floor.-2 Rooms. 1 kitchen and 1 bathroom and 1 dressing room, all vacant including the closets and 1 lounge.

(2)First Floor.-3 Bedrooms with attached baths and a lounge, all vacant including the closets.

(3)Second floor.-1 room which was locked from outside but vacant as seen through windows and also saw 2 doors which were locked. The keys were not with the Chowkidar, according to him.

(4)Terrace.-Above second floor, in a corner, some used up wooden pieces of shavings were lying.

(5)Basement.-It was locked but 2 rooms could be seen through glass panes, in one room. Some mattresses and bundle of cloth covered by old cloth was lying and the room was looking not being lived in. In the other room an empty carton was lying and there was no sign of anyone living in there.

However, on the backward, I saw some labourers and mason working on the floor. But there was no one living nor any signs of occupation were noticeable except

that one room on 2nd floor and the basement were locked and were empty.
'.....STATEMENT Of H. JAGDISH: Chowkidar, of the house mentioned above.

(I)He said that he is doing Chowkidari for Dabur wale at D-1051, New Friends Colony.

(II)He said that his employers are Kapur Sahib and Daburwale.

(III)He stated that he stays all alone in the house around the clock, and there is no one staying in the house apart from him.

I asked him to make a statement and after making the statement in Hindi, I explained to him in Hindi what all I had written in English. On asking him to sign his statement, he out rightly refused to do so saving that be did not now how to sign. neither he put his thumb impression.

I hereby concluded my proceedings at 6.55 P.M. on 30-4-1986.'

(6) He has further drawn my attention to copy of report dated 30th April 1986 purported to have been lodged by the petitioner with the Station House Officer, Police Station New Friends Colony, New Delhi, with the request that 'police should ensure that the orders passed by the Hon'ble High Court should be complied with and the premises is not allowed to be occupied at night'. He had also drawn my attention to another letter addressed by the petitioner to the said S.H.O. on 8th May 1986 in which it was reported that 'today at about 9 P.M. in violation of the injunction order some unknown persons have tried to occupy the premises. My representative who was passing by informed them about the order of the Hon'ble Court They threatened him with dire consequences and intimidated him. It is requested that necessary action may be taken.'. It has been submitted by the learned counsel for the petitioner that in so far as the receipt of court orders on 2nd May 1986 has not been disputed on behalf of the respondents and in so far as the Local Commissioner's report shows that the premises had not been occupied by respondent No. 4 till then a clear case under Sections 11 & 12 of the Contempt of Courts Act has been made out by the petitioner against the respondents. As against this the learned counsel for respondents 1& 2 have submitted that they

had delivered the possession of the premises to respondents 3 & 4 on 27th February 1986 and as such there was no question of their having committed any contempt of the orders of this Court and in this behalf they have relied upon recitals in the agreement of sale dated 27th February 1986 (Annexure 'G') and another document which is deed of cancellation of sale and purports to have been executed and registered by respondent No. 2. The agreement of sale dated 27th February 1986 shows that respondents 1 & 2 had agreed to sell the premises in dispute to respondent No. 4 and in pursuance of the said agreement had 'also handed over the vacant physical possession of the above said property to the purchasers'. The said agreement purports to have been attested by the notary public on 27th February 1986. This prima facie shows that the possession of the suit property had been delivered by respondents 1 & 2 to respondent No. 4 on 27th February 1986. The learned counsel for respondent No. 4 has drawn my attention to various documents filed by him in support of his contention. The first of them is the agreement to sell executed by respondents 1 & 2 in his favor on 27th February 1986 in which it has been mentioned in clause 8 that respondents 1 & 2 had 'also handed over the vacant physical possession of the above said property to the purchasers'. He has also drawn my attention to the deed purporting to be 'cancellation of Special Power of Attorney' executed by Kamla Devi, respondent No. 2 on 27th February 1980 which is witnessed by defendant No. 1 also. This also evidences execution of a will in favor of respondent No. 4 by said Kamla Devi, a photostat copy of the said will also has been placed on record which is a registered will and which was registered on 27th February 1986 and this corroborates the allegations in the agreement. A photostat copy of the Special Power of Attorney purported to have been executed by said Kamla Devi on 27th February 1986 in favor of Shri Tilak Raj Dawar which is a registered document, as also photostat copy of registered General Power of Attorney have also been placed on record. The said Shri Tilak Raj Dawar is the father of respondent No. 4 Shri Sanjay Dawar. My attention has similarly been drawn to application dated 4th March 1986 which was allegedly submitted before the telephone authorities for shifting of telephone of respondent No. 4 to the premises in dispute with immediate effect and in the said application the premises in dispute has been described as the new residence of said Shri Sanjay Dawar. Another photostat copy of letter

from Commercial Officer, Delhi, Telephones, purported to have been issued on 9th April 1986 has been filed which shows that it was communicated to M/s. Dawar Associates that the telephone had been ordered to be shifted. Lastly, my attention has been drawn to the card in respect of Greh Pravesh ceremony, which was fixed for 5th March 1986 by defendant No. 4 and his parents, to the premises in dispute. All these documents go to prima facie show that respondent No. 4 had occupied the premises in dispute before the ad interim injunction whose disobedience has been complained was ordered. In the face of the fact that possession had been delivered by respondents 1 & 2 to respondent No. 4 of the said premises on 27th February 1986 and even Greha Pravesh ceremony had been performed on the 5th March 1986 and the telephone had been ordered to be shifted to the new residence read in the light of statement, reproduced above, of defendant No. 4 in the court, it would be difficult to say that respondent No. 4 had not occupied the said premises before the issuance of restraint order. In view thereof, it would be difficult to accept that respondent No. 41 had violated the ad interim injunction issued by the court on 30th April 1986 which was served upon respondent No. 4 on 2nd May 1986.

(7) Coming to the report of the Local Commissioner, it would be difficult to conclude that the premises in dispute were not altogether in occupation of respondent No. 4. Even the Local Commissioner had admitted that Chowkidar Jagdish was found on spot and he had stated that he was doing chowkidari on behalf of Daburwale and Kapur Sahib. Admittedly, the premises in dispute is a three storey building with a basement and the keys of most of the portion were not with the Chowkidar which implies that the same were with respondent No. 4. The conclusion of the Local Commissioner that apparently no one was living in the premises has to be accepted with great caution keeping in view the facts above mentioned by roe. Even in the memo of proceedings of the report it would be found that some mattresses and bundles of cloth were, intact, found in the basement. According to the report of the Local Commissioner, some masonry work was still going on in the premises in dispute. Keeping in view all these facts, it can be safely concluded that the premises in dispute had been taken possession of by respondent No. 4 from respondents 1 & 2 on 27th February 1986 and Greh Pravesh ceremony also had been performed the telephone also had

been ordered to be installed at the premises in dispute and as such for all intents and purposes it would be deemed to have been occupied by respondent No. 4, more so when respondent No. 4 has categorically stated that his wife, his mother, his father and his sister apart from his two kids had been in occupation of the premises in dispute since 27th February 1986 and they were in possession of the entire house.

(8) Let us consider the matter from another angle. Assuming for the sake of argument that respondent No. 4 and his family were not residing in the premises in dispute even then it cannot be said that any contempt has been committed by respondent No. 4. In this context I would like to refer, the meaning the word 'occupy' given in Chamber's Twentieth Century Dictionary. According to it, 'occupy' means 'to take possession of to capture: to hold or have in possession' and 'occupation' means 'the act of occupying: possession'. According to the same dictionary, the word 'possess' means 'to inhabit, occupy ; to have or hold as owner' and 'possession' means 'acts state, or fact of possessing or being possessed'. Thus, even according to plain meaning of the dictionary 'possession' is occupation and vice versa and when a person had taken possession of a premises he would be deemed to be in occupation thereof. In this view of the matter also it would be difficult to conclude that respondent No. 4 has violated the injunction order in any manner whatsoever. 'Occupation' thus does not mean residence. In Venkataramaiya's Law Lexicon and Legal Maxims, Second Edition, it has been stated that 'it is not easy to give an accurate and exhaustive definition of the word 'occupying'. 'Occupation' includes 'possession' as it is primary element but it also includes something more. Legal possession does not of itself constitute an occupation. If the owner of a house furnished it and kept it ready for habitation whenever he pleased to go to it, he was an occupier though he may not reside in it one day in a year. Residence and occupation are not the same thing and a person can be occupier of a house although he does not live in it'. This shows that in ordinary legal terminology without reference to any particular enactment the terms 'possession' and 'occupation' are synonymous. A person who is in possession would be deemed to be in occupation. Even otherwise the word 'occupy' has to be given ordinary dictionary meaning rather than narrower meaning which this word might be capable of, more so keeping in view the fact that injunction order has to

be understood by a common-man rather than by a legal expert. I do not think it would be in the interests of justice to give narrower meaning to the word 'occupy' in the instant case particularly because it entails penal consequences.

(9) In view of all my discussion above, I hold that there is no merit in this petition and as such this petition is dismissed and notice is discharged.

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