

Mohan Singh Vs. Kartar Singh

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Court : Rajasthan

Decided On : Jul-15-1987

Reported in : 1987(2)WLN432

Judge : Farooq Hasan, J.

Appeal No. : S.B. Civil Contempt Petition No. 130 of 1987

Appellant : Mohan Singh

Respondent : Kartar Singh

Judgement :

Farooq Hasan, J.

1. In S.B. Cr. Misc. Petition No. 134 of 1982 it was directed that, the disputed room shall be used by Kartar Singh and Shri Mohan Singh will not obstruct Kartar Singh from going into the room through the disputed verandah; that, likewise the disputed verandah shall be used by Mohan Singh, and in doing so, Kartar Singh will not in any way obstruct; that, this arrangement shall be subject to the preliminary decree passed on 7-2-1982 in a suit decided between the parties; and that the final decree is to be finally passed in that suit.

2. After passing of the aforesaid order, Cr. Misc. Contempt Petition No. 2964/86 was filed against the present non petitioner Kartar Singh making allegations that

he did not care to comply with the aforequoted directions and the order passed by this court; and in that contempt petition, it was directed under order dated 2-2-1987 that the non-petitioner shall vacate the verandah within fifteen days otherwise necessary action shall be taken against him.

3. Hence this second contempt petition with the averment that the non-petitioner has failed to obey the orders of this court. In para 6 of the present petition, specific allegation has been made against the non-petitioner to the effect that the non-petitioner is not in a mood to obey the orders of this Court and he has started demolishing a part of verandah on 16-2-1987 which he is still occupying in spite of the orders of this Court.

4. A notice of this contempt petition was issued to the non-petitioner who has filed his reply denying the averments made in the present petition. During the pendency of this petition, the petitioner filed an affidavit stating on oath that the contemner has fixed a gate over the almirah situated in the Verandah and a lock on the same for putting his goods in it, and the same is under his lock and key on the western side of the disputed Verandah, and that, the non-petitioner is using the said Almirah and in view of the order dated 24-7-1986. the non-petitioner has no right to use the said almirah as well. In this view of the matter, the non-petitioner is alleged to have disobeyed the orders of this Court.

5. The non-petitioner also filed counter affidavit wherein the existence of the Almirah is admitted but it has further been mentioned that the non-petitioner neither in possession of the Almirah nor has made any obstruction with regard to the verandah in dispute nor the said Almirah/Kottari belongs to him and there is no obstruction so far as the excess of the petitioner is concerned, nor he has fixed any iron gate after passing of the order dated 2-2-1987. It has further been stated in affidavit by Kartar Singh that Almirah/Kottari in question did belong to one Inder Singh real brother of the petitioner Mohan Singh. This Almirah is said to have been owned by Inder Singh on account of partition effected between the brothers of the parties. The existence of this almirah/kottari is also admitted in the report made by Shri Inder Singh Commissioner appointed by this Court. The Commissioner has mentioned in the report that the gate opens in the verandah and new iron gate

in the green colour has been fixed on the opening of the aforesaid Almirah/kottari Shri Prahlad Singh, Commissioner, in his report stated that at the time of the inspection, Kartar Singh did not claim the disputed Almirah/Kottari.

6. In view of the aforesaid statement in the shape of affidavit, filed by both the parties, it is clear that now the dispute is with regard to the use of Almirah/kottari which opens in the disputed verandah. On the last date of hearing, it was admitted by the petitioner that the non-petitioner is not making any obstruction or hindrances in the use of the disputed verandah and the petitioner is using the same without any interruption by the non-petitioner.

7. In the order dated 24-7-1986, a direction was with regard to the disputed verandah and at that time, as well as in the subsequent contempt petition it has not been mentioned by the petitioner that the disputed Almirah/ Kottari is a part and parcel of the disputed property which has also been made the subject matter of dispute in the proceedings wherein the order dated 24-7-1986 was passed.

8. Learned Counsel for the petitioner failed to show by producing certified copy of the proceedings wherein order dated 24-7-1986 had been passed so as to show that the Almirah is subject matter of the case in those proceedings. In these circumstances I am afraid to understand as to how the disputed Kottari can be made subject of the present contempt petition. Learned Counsel for the petitioner submits that the approach to the disputed Almirah/Kottari is from the disputed verandah and the non-petitioner frequently passes through verandah in order to use it. But, on the other hand, that has not been admitted by the non-petitioner in his affidavit. In these circumstances, the petitioner failed to make out a case against the non-petitioner so as to take action under the Contempt of Court Act. I do not find any substance in this contempt petition and it is dismissed. However, the non-petitioner is directed that he shall not use the disputed verandah except to have an access in the room for which a direction was given by this Court on 24-7-1986. No direction can be given against Sardar Inder Singh who is said to have occupied the disputed Almirah/Kottari. The notice issued is discharged.