

(2009) 01 P&H CK 0212

High Court Of Punjab And Haryana At Chandigarh

Case No: C.O.C.P. No. 1008 of 2008

Gurdip Singh

APPELLANT

Vs

Mangal Singh and other

RESPONDENT

Date of Decision: Jan. 8, 2009

Citation: (2009) 5 RCR(Civil) 648

Hon'ble Judges: T.P.S.Mann, J

Advocate: Mr. B.R. Mahajan, Advocate, Mr. N.S. Sodhi, Advocate, Mr. M.C. Berry, Addl. AG Punjab., Mr. B.D. Sharma, Advocate, Advocates for appearing Parties

Judgement

T.P.S. Mann, J. (Oral)

1. Short reply has been filed by respondent No. 1 today in the court, which is taken on record. Copy thereof has been supplied to learned counsel for the petitioner.
2. The petitioner is seeking prosecution of the respondents for committing contempt of this Court by disobeying the order dated 9.1.2001. Vide said order, RSA No. 3870 of 2000 filed by the petitioner and his brother Gurmail Singh was admitted and it was further ordered that statusquo regarding possession and alienation be maintained.
3. The perusal of the order dated 9.1.2001 (Annexure P3) would reveal that at the time of the passing of said order, Mangal Singh, sole respondent in the second appeal, was duly represented by his counsel, who had earlier filed a caveat on his behalf. In spite of the aforementioned order of status quo regarding alienation which according to the petitioner, was duly recorded in revenue record vide Rapat No. 294 dated 2.3.2006, Mangal Singh, present respondent No. 1 is said to have alienated the suit property by executing a sale deed with respect to the suit land on 20.11.2007 in favour of respondent No. 3 which sale deed was attested by respondents No. 4 and 5. The sale deed was registered by respondent No. 2.
4. Learned counsel for respondent No. 2 has drawn the attention of the Court towards his affidavit wherein it has been submitted that on 20.11.2007 at about 3.15

p.m., Mangal Singh, vendor, produced a saledeed for registration before him in the presence of Apinderjit Singh, vendee and Amarjit Singh son of Nishan Singh and the parties were identified by Joginder Singh, Lambardar of village Raja Sansi. Alongwith the said saledeed, Mangal Singh also produced a copy of jamabandi for the year 200203 prepared by Tajinder Singh, Patwari of village Raja Sansi, relating to the land being sold as proof of his ownership and an affidavit of the vendor duly attested by the Oath Commissioner, Ajnala, wherein he had declared that there was no stay order qua the property being transferred. As the copy of the jamabandi prepared by the Patwari did not contain any averment regarding any stay and keeping in view the affidavit submitted by Mangal Singh that there was no stay qua the property being sold, the saledeed in question was registered by him, i.e., respondent No. 2. However, after receiving notice of the present petition from this Court, respondent No. 2 got verified from the concerned official record and obtained the attested copies thereof before moving Sub Divisional Magistrate, Ajnala to initiate appropriate legal action against Tajinder Singh, Patwari, for supplying incorrect and forged jamabandi in respect of the land owned and possessed by Mangal Singh. As a result of the above said letter, Sub Divisional Magistrate, Ajnala, got the matter enquired into by the present Tehsildar, Ajnala, who after perusing the entire relevant record, found that while issuing a copy of the jamabandi for the year 200203 regarding the land in question, Tajinder Singh, Patwari intentionally did not mention the factm of recording of Rapat No. 294 in the same and only mentioned about Rapat Nos. 89 dated 27.10.2007 and 386 dated 2.5.2006 thereon, whereas the order of statusquo regarding alienation passed by this Court on 9.1.2001 was recorded in the original jamabandi vide Rapat No. 294. The said report has since been forwarded by Sub Divisional Magistrate, Ajnala to Deputy Commissioner, Amritsar, for initiating departmental proceedings against Tajinder Singh, Patwari, who was actually responsible for issuing a forged jamabandi in which note regarding interim order passed by this Court was intentionally omitted. Learned State counsel further submits that respondent No. 2 tenders unqualified apology for his aforementioned lapse and he would be careful in future.

5. In view of the above, the apology tendered by respondent No. 2 is accepted.

6. Learned counsel for respondent No. 1 has submitted that after the filing of caveat on his behalf, he was simply informed by his counsel that appeal had been admitted and would take a long time for its final decision but no copy of the order had ever been collected by him nor sent to him by his counsel. As such, he was not at all aware about the order of statusquo passed by this Court on 9.1.2001. It is also submitted that respondent No. 1 is a retired Army personnel, who has led a life of obedience and discipline and he could not even think to violate the order of this Court. Respondent No. 1 also tenders his unconditional apology and prays for taking lenient and sympathetic view.

7. Before the petitioner and his brother, namely, Gurmail Singh field RSA No. 3870 of 2000, Mangal Singh respondent No. 1 rushed to this Court and engaged a counsel for filing a caveat on his behalf. In view of the filing of the caveat, his counsel was present at the time of preliminary hearing of the aforementioned second appeal when the same was taken up on 9.1.2001. The Bench hearing the appeal admitted the same and directed that during the pendency of the appeal statusquo regarding possession and alienation be maintained. Once respondent No. 1 had filed a caveat and was duly represented by his counsel, he cannot be heard saying that he was not aware of the order passed by this Court on 9.1.2001 requiring him to maintain statusquo regarding alienation in respect of the suit property. Even a mention already stood made in the revenue record in respect of stay of alienation vide Rapat No. 294 dated 2.3.2006, as is clear from copy of jamabandi (Annexure P4). In his reply, respondent No. 1 has admitted about the communication received by him from his counsel after the admission of the appeal. He cannot now turn around and saying that he was told about the admission of the appeal only and not regarding the passing of the interim order. The act of Mangal Singh respondent No. 1 in submitting his affidavit Annexure R1 dated 19.11.2007 stating therein that there was no order of stay in respect of the property which he was alienating goes to show that he was wilful in disobeying the order passed by this Court on 9.1.2001. Though Mangal Singh has tendered unqualified apology, yet the same cannot be accepted. However, it can be taken into consideration in the matter of imposition of punishment.

8. Respondents No. 3 to 5 were not party to the aforementioned second appeal filed by Gurdip Singh and his brother Gurmail Singh. They could not be in the know of the statusquo order dated 9.1.2001. Therefore, they cannot be said to have wilfully and intentionally disobeyed the order dated 9.1.2001. Accordingly, they cannot be held liable for committing the contempt of Court.

9. In view of the above, Mangal Singh respondent No. 1 is held guilty of committing contempt of the order passed by this Court on 9.1.2001, requiring him to maintain statusquo regarding alienating the suit property by alienating the same in favour of respondent No. 3. He is sentenced to pay a fine of Rs. 5,000/-. In default of payment of fine, he would undergo simple imprisonment for two months. However, he is granted one month's time for depositing the amount of fine. The petition against respondents No. 2 to 5 is dismissed. Rule against them is discharged.