

**(1996) 07 AP CK 0044**

**Andhra Pradesh High Court**

**Case No:** Contempt Case No. 119 of 1996

Dulcie M. Robb

APPELLANT

Vs

Murid Hyder and Others

RESPONDENT

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**Date of Decision:** July 10, 1996

**Acts Referred:**

- Contempt of Courts Act, 1971 - Section 12(1), 2

**Citation:** (1996) 4 ALD 28 : (1996) 2 ALD(Cri) 760 : (1996) 3 ALT 161 : (1996) 2 APLJ 139 : (1996) 1 APLJ 139 : (1997) CriLJ 1051

**Hon'ble Judges:** S.R. Nayak, J; M.N. Rao, J

**Bench:** Division Bench

**Advocate:** G. Anjappa, for the Appellant; Tarakami, for the Respondent

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**Judgement**

M.N. Rao, J.

This contempt case concerns the alleged non-compliance of the decree granted by a Division Bench of this Court (to which one of us, M. N. Rao, J., was a party) on a compromise memo in L.P.A. No. 265 of 1990 dated 30th April, 1992. The petitioner herein is the sister of one Stanley Anthony Corbett, who was the exclusive owner of House No. 246 (old) corresponding to 10-2-375 (new) at Road No. 8, West Marredpally, Secunderabad. The house is situate in the cantonment area where land was leased out for 99 years by the Cantonment Board. Stanley Anthony Corbett died a bachelor. By a Will dated 9-1-1956, he bequeathed the house in question to the petitioner herein. Her suit - O.S. No. 241 of 1980 - for grant of Letters of Administration was decreed by the Chief Judge, City Civil Court, Hyderabad. The first defendant in the suit is another sister of the deceased Stanley Anthony Corbett. Against the suit, C.C.C.A. No. 15 of 1984 was preferred by the first defendant to this Court and the same was dismissed by a learned single Judge on 19-10-1990. Thereafter, L.P.A. No. 265 of 1990 was preferred and during its pendency, the first defendant (appellant in the LPA) died and her son, the second respondent herein, was brought on record as her legal representative. A memo of compromise was

filed in the L.P.A., before this Court and in terms of the said compromise, a decree was passed by this Court on 30th April, 1992. The other respondents in the L.P.A., were given up. The compromise decree, inter alia, says that the petitioners herein should pay a sum of Rs. 4,00,000/- to the second respondent as and when the property is sold by her. She should, one month before the payment of the money, inform the same to the second respondent herein, who shall vacate the portion of the house in his occupation and deliver peaceful possession to the petitioner and the amount of Rupees 4,00,000/- should be paid to him by the petitioner on the date of the delivery of possession. The second respondent also was entitled to remove the abestos sheets etc., which he had erected for the purpose of running a school in the portion of the house in his possession. Under the compromise, he delivered the original of the lease deed executed by the Cantonment Board to the petitioner herein. Clause (5) of the compromise decree says that the second respondent herein, in consideration of the above compromise, "withdraws his claims" in respect of the House Bearing No. 246, Road No. 8, West Marredpally, Secunderabad and by Clause (6), admitted the Will dated 9-1-1956 relied upon by the petitioner herein by which late Stanley Anthony Corbett bequeathed the property to the petitioner. The second respondent undertook that he "shall not question the title of the property or the Will in favour of respondent No. 1 (the petitioner herein) in any other proceedings." Because of this compromise memo, the petitioner herein agreed to withdraw the petition filed by her seeking eviction of the second respondent from the portion of the house in his occupation. Accordingly, the eviction petition was withdrawn by the petitioner herein.

2. It is the case of the petitioner that in consideration of the terms of the compromise and the solemn undertaking given by the second respondent she withdrew the eviction petition and all her attempts to secure possession of the house were scuttled by the second respondent. When she entered into an agreement to sell the house, she got that fact intimated through a lawyer's notice to the second respondent herein enclosing the photo-state copy of the banker's cheque for Rs. 4,00,000/- drawn in his favour but he not only did not send any reply to the notice but filed a suit - O.S. No. 408 of 1993 - seeking permanent injunction restraining the petitioner herein from interfering with his peaceful possession and enjoyment of the eastern portion of the suit premises. A second suit O.S. No. 359 of 1995 - was got filed by the second respondent in collusion with one C. S. Sastry alleging that the petitioner herein had entered into an agreement with Sri C. S. Sastry, a builder, for construction of a multistoreyed building but subsequently resiled from the agreement. A third suit - O.S. No. 1203 of 1995 - was filed by the second respondent in the Court of the Ist Assistant Judge, City Civil Court, Secunderabad seeking a perpetual injunction. The applications for ad interim injunction in both the suits were dismissed by reasoned orders by the respective Civil Courts. The petitioner alleged that the second respondent had sent unsocial elements to terrorise her and he also actually assaulted her and in that connection,

a police complaint was lodged on 2-7-1995. She also alleged that when she was away, the second respondent broke open the lock and entered into the house and occupied two rooms and in that connection, a police complaint was lodged and prosecution also was launched in C.C. No. 711 of 1995 which is pending on the file of the X Metropolitan Magistrate, Secunderabad. When she filed E.P. No. 20 of 1995 for execution of the compromise decree, an application - E.A. No. 5 of 1995 - was filed by the second respondent, for the first time taking the plea that the compromise decree was the result of fraud and undue influence. That application was dismissed by the Chief Judge, City Civil Court on 18-3-1996 and the petitioner herein was directed to deposit a sum of Rupees 4,00,000/-, which she did on 21-3-1996. An order was passed on 29-3-1996 by the Chief Judge directing the second respondent herein to deliver possession within one month. Challenging the same, C.R.P. No. 1006 of 1996 was filed in this Court by the second respondent and the same was dismissed by a learned single Judge by a reasoned order on 26-4-1996.

3. The case of the second respondent is that the compromise decree itself was obtained by fraud and that he was entitled to challenge the validity of the compromise decree by resorting to appropriate legal remedies. The land on which the house in question stands being a leasehold land, the petitioner is not entitled to sell the same and, therefore, it must be deemed that the compromise was vitiated. In any event, there can be no charge of contempt against a person for flouting a compromise decree. He has not denied the filing of the suits and the orders passed therein.

4. Although the breach complained of concerns a compromise decree, the attitude adopted by the second respondent, in effect, amounted to committing breach of an undertaking given by him to this Court in the compromise memo, which was incorporated in the decree. As already adverted to supra, the undertaking given by him was that he shall not question the title of the property or the Will in favour of the respondent No. 1 (the petitioner herein) in any other proceedings. Even though the decree is based upon a compromise memo, the undertaking given by the second respondent to this Court is clearly discernible. A recital in a compromise memo if in the nature of an undertaking, the breach of that cannot be ignored by the Court on the ground that it is only a breach of the compromise but not an act of contempt. It is not the form that matters, but the substance. The petitioner is now aged 76 years and what she got under the Will 40 years ago, she is unable to obtain till now. Case after case is being filed by the second respondent in breach of the solemn undertaking given to this Court giving up all his claims in respect of the house in question. The breach committed by the second respondent was not only an act designed to obtain a benefit for himself by non-compliance of the decree but also a breach of a solemn undertaking given by him to the Court. His act of filing subsequent suits is clearly in violation of the undertaking given by him obstructing the course of justice.

5. The two precedents cited by Sri Tarakam, learned senior counsel for the second respondent - [Babu Ram Gupta Vs. Sudhir Bhasin and Another](#), and [Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others](#), are not in any way helpful to his client. In [Babu Ram Gupta Vs. Sudhir Bhasin and Another](#), the action for contempt was founded upon an allegation that a consent order passed by the Delhi High Court was flouted by the opposite party in that possession of the house was not handed-over to the receiver. It was found by the Supreme Court that even the consent order does not incorporate expressly or clearly any undertaking given by the alleged contemner. In [Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others](#), the question was whether a decree passed on a compromise was a decision by the Court operating as res judicata. Holding that such a decree might create an estoppel by conduct, it was ruled by the Supreme Court that a compromise decree was not a decision by the Court; it merely sets the seal of the Court on the agreement of the parties and that it has not decided anything.

6. The proposition that flouting of an undertaking given to a Court amounts to contempt of Court is well settled : See [Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others](#), [Smt. Ram Pyari and others Vs. Jagdish Lal](#), ; [Jahurul Islam Vs. Abul Kalam and others](#), .

7. The contentions now raised by Sri Tarakam, learned senior counsel for the second respondent, that the compromise is denuded of its basis because the land on which the house in question was constructed is not a free hold land and that through misrepresentation and in ignorance of certain essential facts, the compromise memo was filed have been considered and rejected by our learned brother P. Venkatarama Reddi, J., in a well reasoned order in C.R.P. "I am firmly of the view that a solemn agreement between the parties, which has received the seal of approval of this Court shall not be allowed to be desecrated by the ingenious devices such as those adopted by the petitioner. I am also of the view that the injunction in O.S. No. 408/1993 is not a bar to execute the decree through the process of Court".

That the second respondent had given another undertaking before the Chief Judge, City Civil Court in the E.P. No. 20 of 1995 seeking extension of time for the purpose of handing-over possession and that he has flouted the same is evident from the order of our learned brother :

"Further, as already noticed, the petitioner himself sought for extension of time of four months for the purpose of holding examinations to the students and issuing of reports and transfer certificates and having obtained time till 21-4-1996, he has chosen to file this petition in an obvious attempt to delay the process of execution further."

8. The conduct of the second respondent in filing successive suits clearly negates his claim that he is seeking remedies available to him under law. In our view, behind the

facade of resorting to legal remedies available under law, what the second respondent is doing is actually indulging in sharp practices, a subterfuge to wriggle out of the commitment given by him to this Court in the form of an undertaking incorporated in the compromise memo.

9. For the foregoing reasons, we hold that the second respondent is guilty of civil contempt as defined in S. 2(b) of the Contempt of Courts Act, 1971. We, therefore, convict him under S. 12(1) of the Act and sentence him to a fine of Rupees 500/- in default simple imprisonment for a period of two weeks. We grant four weeks" time for payment of the fine amount. The Chief Judge, City Civil Court, Hyderabad shall immediately, deliver possession of the house in question, the subject matter of E.P. No. 20 of 1995, to the petitioner herein by evicting the second respondent. The suits - O.S. No. 408 of 1993 on the file of the XI Assistant Judge, City Civil Court and O.S. No. 1203 of 1995 on the file of the I Assistant Judge, City Civil Court, Secunderabad - shall stand dismissed. The suit O.S. No. 359 of 1995 on the file of the III Additional Judge, City Civil Court, Secunderabad shall be taken up for trial and disposed of as expeditiously as possible in any event not later than six months from the date of receipt of a copy of this order. However, no injunction shall be granted in that suit to the detriment of the petitioner herein.

10. The contempt case is accordingly allowed with costs.

11. Petition allowed.