

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CACP No. 20 of 2016 (O&M)
in COCP No. 1887 of 2015
Reserved on: 30.9.2024
Pronounced on: 14.10.2024

Rajbir and others

.....Appellant

Versus

Raj Singh (since deceased) through LRs.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Gagandeep Rana, Advocate
for the appellants.

Mr. Harshit Jain, Advocate for
Mr. Manvender Rathi, Advocate
for the respondents.

SURESHWAR THAKUR, J.

1. The instant appeal has been directed against the order dated 19.9.2016, as passed by the learned Contempt Bench of this Court in COCP No. 1887 of 2015.

Brief facts of the case.

2. The respondent herein had filed a suit for declaration and permanent injunction against the appellants herein alleging, that the suit land was ancestral, and, has never been partitioned but the appellants have obtained a collusive decree in their favour which was not binding on his rights. However, vide order dated 6.12.2001, the said suit became dismissed by the learned trial Court concerned. Being aggrieved from the said made order, the respondent preferred an appeal

before the learned Appellate Court concerned, which became allowed by the learned Appellate Court concerned, through an order made thereons, on 5.6.2002, while holding that the property in dispute was ancestral and the collusive decree was bad in law because the respondent was not a party in the earlier suit. Being aggrieved therefrom, the appellants herein preferred RSA No. 3432 of 2002 before this Court, whereins, notice of motion was issued on 19.8.2002 for 28.10.2002, and, the parties were directed to maintain status-quo regarding the land in dispute till further orders.

3. Respondent Raj Singh (since deceased) preferred COCP No. 1887 of 2015 before this Court, alleging therein that the appellants have started accumulation of bricks on the land in dispute, and, also started construction of shops over the suit property. It was also pleaded therein, that the action of the appellants in raising the construction over the suit land is wilful disobedience of the order passed by this Court. The appellants filed reply to the said Contempt Petition denying the allegations made in the said petition. The learned Contempt Court concerned, vide order dated 19.9.2016, allowed the Contempt Petition (supra). The relevant paragraph of the verdict (supra) becomes extracted hereinafter.

“I have heard learned counsel for the parties and perused the record. In order to find out as to whether the respondents have raised construction, a Local Commissioner was appointed by this Court at the expense of the petitioner. It was mentioned categorically in the order dated 25.7.2016 that for the time being, the petitioner would pay the fee and expenses of the Local Commissioner but in case it is found that the contention raised by the

petitioner is correct then the amount which is paid by the petitioner shall be paid by the respondents, who would also face other liabilities which may incur because of the disobedience of the order passed by this Court. The learned senior counsel appearing on behalf of the respondents, during the course of hearing, has admitted that the respondents have raised construction but it is contended that the said construction has been raised within their premises. I am afraid this contention cannot be accepted because the property in dispute, which fell to the share of the respondents was by virtue of the collusive decree, which has been set aside by the First Appellate Court and the property in dispute is held to be ancestral and unpartitioned. The respondents cannot claim that they have raised construction in their own premises/share. Moreover, this Court vide order dated 19.8.2002 specifically directed the parties, which includes the respondents, to maintain status -quo regarding the land in dispute meaning thereby nobody was to change the nature of the land as it was existing at the time of passing of the order on 19.8.2002 but the word used by the Court "till further orders" were to give liberty to both the parties to apply for modification of the order in future but none of the parties applied for the change in the order dated 19.8.2002 for the purpose of raising construction. The petitioner has followed the order dated 19.8.2002 in its letter and spirit as he did not commit any act to violate the said order but the respondents have admittedly raised construction without the permission of the Court which tantamounts to wilful disobedience of the order dated 19.8.2002 which attracts the penal provisions of the Act and is a substantial interference at their instance in the due course of justice. Accordingly, the present petition is hereby allowed and the respondents are held guilty of committing contempt of the order of this Court by

their wilful disobedience of the order dated 19.8.2002 and are convicted for three months simple imprisonment with Rs. 2,000/- as fine. The amount which was paid by the petitioner for appointment of the Local Commissioner is directed to be paid by the respondent- contemner to the petitioner as directed vide order dated 25.7.2016.”

4. The order (supra), passed by the learned Single Judge (Contempt Court) has caused pain to the appellants herein and has led them to file thereagainst the instant appeal before this Court.

5. For the reasons to be assigned hereinafter, the assumption of jurisdiction by the learned Contempt Court over the instant contempt petition rather was an ill assumed jurisdiction thereover(s).

6. Firstly for the reason that since the order of status quo became passed by this Court upon RSA No.3432-2002, thereby in case there was an evident breach of the said made order or in case there was willful disobedience of the order passed (supra), thus the aggrieved therefroms, became invested with a right to make an espousal, in respect thereof rather only before the learned RSA Court. Moreover, the jurisdiction for testing whether there was any purported willful disobedience vis-a-vis the order passed (supra), thus became vested only in the Court which rendered the said order.

7. Secondly, and as a natural corollary of (supra), the jurisdiction to test the validity of any espousal vis-a-vis the order (supra) becoming intentionally and willfully disobeyed rather became never invested in the Contempt Court. Conspicuously for the reason, that when no mandamus became passed by this Court, through the exercising(s) of jurisdiction over a petition claiming the makings of a

mandamus, whereupon alone, upon, any breach being made to any such mandamus as became passed against the respondent concerned, thus was amenable to be implemented, rather through assumption of jurisdiction over the relevant motion, as cast before the learned Contempt Bench of this Court, otherwise not.

8. Thirdly, the dispute which arose amongst the parties, at contest, generated from a civil suit and resulted in the aggrieved presenting the RSA before this Court. Since the RSA is a continuation of suit as became rendered by the learned Civil Court of competent jurisdiction, thereby when the appropriate motion/remedy as available to become resorted to by the aggrieved became comprised in an application, becoming filed under Order 39 Rule II of the CPC, rather before the learned Civil Court of competent jurisdiction.

9. Since as stated (*supra*), the second appeal is also a continuation of the suit, thereby when any interim injunction is passed vis-a-vis any of the contesting litigants, in the civil suit/RSA, thereupon, on any evident willful disobedience qua the order of interim injunction, thereby the civil remedy, as available to the aggrieved, thus before the Civil Court of competent jurisdiction, rather would be yet available to become resorted to by the aggrieved, hence even before the RSA Court. Reiteratedly, since the jurisdiction to test the factum of any willful breach being made to the interim orders passed by the learned RSA Court, became never invested in the learned Contempt Bench of this Court. If so, in the entertainment of said motion, and, also the passing of orders thereon, by the learned Contempt Bench of this Court, thus makes the entertainment of the said motion to be an ill entertainment

thereof besides also makes the orders rendered thereons becoming hit by the vice of *coram non judice*.

10. Hence, there is merit in the instant appeal and the same is allowed, and the impugned order of 19.09.2016, as became drawn by learned Single Bench is quashed, and, set aside. However, reserving liberty to the aggrieved to recourse the apt civil remedies, if now available.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 14, 2024
Gurpreet/Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No