

Shanti Sarup Gupta

Vs

Anjuman Isnai Ashria

And

Anjuman Isnai Ashria

Vs

Shanti Sarup Gupta

Civil Miscellaneous Petitions Nos. 5416 and 15683 of 1982 and Contempt Petition No. 15669 of 1981

(D. A. Desai, Baharul Islam JJ)

19.08.1982

ORDER

1. Anjuman Isnai Ashria, a society under the Societies Registration Act filed a suit against one Shanti Sarup Gupta in the court of the Senior sub-Judge, Delhi, for possession of property particularly demarcated in red colour in the map annexed to the plaint. This suit ended in a decree. By the decree defendant had to hand over vacant and peaceful possession of the property. He was, however, entitled to demolish the superstructure raised by him on the suit property. Defendant preferred an appeal in the District Court which came to be dismissed on April 3, 1979. The second appeal preferred by the defendant was dismissed by the High Court of Delhi in limine. Thereupon the defendant approached this Court under Article 136 of the Constitution. The Vacation Judge of this Court made the following order :

Special leave petition refused. But by consent of parties petitioner is granted time for two years, i.e. upto May 31, 1981, to vacate and hand over premises on his filing undertaking on an affidavit by tomorrow that he would give peaceful and vacant possession of the premises to the respondent on or before May 31, 1981, and during this period he would not induct anyone in the premises. The petitioner shall also pay Rs 50 per month effective from May 1, 1979 to the respondent as use and occupation charges of the premises. If the petitioner commits three defaults in payment of the charges for use and occupation, the respondent will be at liberty to move this Court for appropriate direction.

When the time given by this Court to the defendant was about to expire, defendant filed C.M.P. No. 11157 of 1981 on April 30, 1981, for extension of time contending that if he is required to surrender possession according to the undertaking he would be ruined and he would not be able to recoup his losses suffered because of disobedience of this Court's order by the respondent. Tulzapurkar, J. rejected this application on May 26, 1981. Thereafter, original plaintiff moved this Court on July 29, 1981, requesting the Court to hold original defendant in contempt of this Court because he has committed wilful breach of the solemn undertaking given to this Court.

2. The Court issued a notice to Shri Gupta to show cause why he should not be held in contempt of this Court. On the notice being served the contemner appeared and contended that he is willing to hand over possession of that part of the property which was subject-matter of litigation but further contended that he is in possession of some other portion of the plot which he could not be asked to vacate under the hanging sword of contempt proceedings. This Court directed the contemner to hand over possession on March 19, 1982. A further order was made directing him specifically to vacate the area which he claimed to be in possession and which did not form part of the decree by March 20, 1982. Subsequently, on April 16, 1982, an order was made for issue of non-bailable warrant to arrest and produce the contemner before his Court on Friday, April 23, 1982. Thereafter on April 23, 1982, substantive notice on the contempt petition was issued Mr R.H. Dhebar, learned counsel appeared for the contemner and sought time to file his affidavit in reply. The contemner was held in custody but as he was operated upon he was confined to the hospital. On May 4, 1982, the Court directed that the Sub-Divisional Magistrate having jurisdiction over the locally where the property involved in the dispute is situated should proceed to that place and seal the entire premises and should not permit the petitioner to carry on any business in the premises. This Order was executed and the open space near the hall is now in custody of the Sub-Divisional Magistrate under the order of this Court.

3. When the matter was taken up for hearing Mr Dhebar learned counsel for the contemner was keen to impress upon us that Shri Gupta has not committed contempt of the court because the undertaking given by him was to hand over possession of the premises in respect of which the suit was filed and that the contemner is always ready and willing to vacate and hand over peaceful possession of the premises. Mr Dhebar, however, contended that the contemner was in possession of a large area than the area in respect of which suit was filed and he could not be accused of committing breach of the undertaking if he did not vacate the area which did not form part of the decree or which was not covered by the decree. We would have meticulously examined this contention but after some discussion Mr Dhebar pointed out to us that in respect of the area outside the decretal portion contemner Shanti Sarup Gupta has already filed a suit in 1976 for a declaration of his title to that portion of the land and for injunction and that if this Court proceeds to investigate whether the contemner was in possession of any area other than the area for which suit was filed by the plaintiff this Court would prejudice the issue and that would cause irreparable harm to the contemner and his suit would become infructuous.

4. We, therefore, asked Mr Dhebar whether the contemner agrees that this Court should hand over the property taken possession of by the learned Sub-Divisional Magistrate under Orders of the Court to the plaintiff till the decision in the suit filed by the contemner. After consulting his client Mr Dhebar informed the Court that his client agrees that the property taken possession of by the learned Sub-Divisional Magistrate under Orders of this Court be handed over to Anjuman Isnai Ashria and that learned counsel on behalf of Anjuman Isnai Ashria agrees that the parties will abide by the decision arrived at in the suit filed by the contemner Shanti Sarup Gupta.

5. Contemner has also filed his affidavit and has shown his readiness and willingness to carry out the undertaking given by him. Therefore, we refrain from taking any action against him.

6. We accordingly dispose of this contempt petition and the allied petitions by directing that the Sub-Divisional Magistrate shall hand over possession of the premises taken possession of by him under the orders of this Court to the authorities of Anjuman Isnai Ashria. We record that whoever be the authorities in charge of Anjuman Isnai Ashria would abide by the decision of the suit filed by Shanti Sarup Gupta.

7. We have avoided making any observation on the merits of the contention and have also avoided adjudicating upon the rival contentions in the contempt proceedings. However, anything herein said or any action taken by this Court in contempt proceedings shall be wholly without prejudice to the rights of the parties being adjudicated in the suit filed by Shanti Sarup Gupta and no court shall take any notice of any part of the contempt proceedings or anything contained in the contempt proceedings.

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