



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2024
**[Arising out of Special Leave Petition (Civil) No.2159 of
2016]**

**M/S SHAH ENTERPRISES THR. PADMABEN
MANSUKHBHAI MODI ...APPELLANT (S)**

VERSUS

**VAIJAYANTIBEN RANJITSINGH SAWANT
& ORS. ...RESPONDENT (S)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. The present appeal arises out of the order dated 9th December 2015 passed by the Division Bench of the High Court of Gujarat at Ahmedabad in Misc. Civil Application (For Contempt) No. 3364 of 2015, thereby dismissing the said Contempt Petition filed by the present appellant.

FACTS

3. The facts, in brief, giving rise to the present appeal are as under:

3.1 In the years 1953-54, the land bearing Survey Nos. 505, 506, and 507 was given on lease to one Bapusaheb Bajirao Sawant by one Nawab Mir Fakruddin Hussein Khan Vigore and three others (“the Original Owners”) for 99 years.

3.2 In the year 1956, the said lease deed was cancelled by the Original Owners by way of a notice.

3.3 In the year 1969, the land in question was bought by 67 persons. However, the sale deed was originally executed in the name of four persons. The land in question was subsequently divided into 67 divisions.

3.4 In the year 1972, after the death of Bapusaheb Bajirao Sawant, his legal heirs including one Ranjitsingh Bapusaheb Sawant filed Special Civil Suit bearing Nos. 23, 24, and 25 of 1972 in the Court of the Civil Judge (S.D.), Surat, claiming possession over the land in question based on the lease deed.

3.5 In the said suits, a compromise agreement was entered into between the heirs of Bapusaheb Bajirao Sawant and the Original Owners of the subject property, whereby it was agreed that the lease issued in the year 1953 had been cancelled in the year 1956 and after the cancellation of the lease deed, the legal heirs had no right, title, and interest in the subject property based on heirship. The said compromise agreement was recorded as consent decree by the learned Civil Judge (S.D.) Surat, vide order dated 18th September 1972.

3.6 In the year 1986, the appellant herein bought land admeasuring 20 acres out of the land bearing Survey No. 506 vide a registered sale deed.

3.7 In the year 2008, Ranjitsingh Bapusaheb Sawant expired.

3.8 In the year 2014, i.e., after the death of Ranjitsingh Bapusaheb Sawant, who was the legal heir of Bapusaheb Bajirao Sawant, his legal heirs filed Regular Civil Suit No. 645 of 2014 in the Court of learned Principal Civil Judge, Surat against 264 defendants, including the appellant herein, for declaration and permanent injunction.

3.9 In the year 2015, the appellant sent legal notices to all the respondents herein and brought to their attention the consent decree passed in the year 1972 and, therefore, requested them to withdraw the suit filed before the Principal Civil Judge, Surat.

3.10 Since the respondents did not withdraw the suit, the appellant filed a Contempt Petition being Misc. Civil Application (For Contempt) No. 3364 of 2015 before the High Court of Gujarat at Ahmedabad. The said petition came to be dismissed vide the impugned judgment.

3.11 Hence the present appeal.

4. This Court vide order dated 22nd February 2016 had issued notice. We have heard Shri Amar Dave, learned Senior Counsel appearing on behalf of the appellant and Mr. Nachiket Anil Dave, learned counsel appearing on behalf of the respondents.

SUBMISSIONS

5. Shri Amar Dave, learned Senior Counsel submitted that the finding of the High Court that mere filing of a suit cannot be construed to be within the scope of Contempt jurisdiction is erroneous and contrary to the law laid down by this Court in the

case of ***Delhi Development Authority vs. Skipper Construction and another***¹. It is submitted that, in the present case, a *lis* between the parties had culminated into a compromise agreement leading to passing of a consent decree in a judicial proceeding. It is, therefore, submitted that filing of the suit contrary to the consent decree, which has received the imprimatur of the Court, would amount to contempt of the Court. Learned Senior Counsel submitted that the filing of the suit was nothing else but a brazen act to undermine the judicial process by filing multiple proceedings and that too after a period of four decades.

6. Per contra, Shri Nachiket Anil Dave, learned counsel for the respondents submitted that the appellant herein was not a party to the consent decree in question dated 18th September 1972. It is, therefore, submitted that the appellant cannot be permitted to allege contempt of the consent decree to which it was not a party.

7. Shri Nachiket Anil Dave submitted that various disputed questions of fact and law are pending adjudication in the civil

¹(1995) 3 SCC 507=1995 INSC 105

suit i.e. RCS No. 645 of 2014. He submitted that filing the contempt petition was nothing else but an attempt to preempt RCS No. 645 of 2014. It is further submitted that the civil suit filed is for asserting the rights of the plaintiffs/respondents over the ancestral agricultural land admeasuring about 2082 acres in relation to Survey Nos. 505, 506 and 507, whereas the claim of the appellant herein is only restricted to its purchase of 20 acres in Survey No. 506. It is submitted that there are 264 defendants in RCS No. 645 of 2014 filed by the respondents herein and the Contempt Petition in question was filed only by one of them i.e., the present appellant.

8. Shri Nachiket Anil Dave further submitted that the appellant had also filed an application under Section 11 read with Order XIV Rule 2 and Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for framing preliminary issues of limitation and *res judicata* in the subject suit. It is submitted that the learned trial judge vide Order Below Exh. 337 dated 22nd December 2017 had allowed the said application and preliminary issues had been framed.

9. It is further submitted that an application had also been filed under Order VII Rule 11(d) of the CPC for dismissal of the subject suit. However, the learned trial judge vide order dated 31st December 2018 had rejected the said application. It is, therefore, submitted that the said order has not been challenged and the same has attained finality.

CONSIDERATION

10. The High Court while rejecting the petition of the present appellant vide the impugned order has observed that though there cannot be a dispute with the proposition that even consent terms incorporated in the Court's order when breached would give rise to allegations of contempt, in the present case, by mere filing of a civil suit asserting certain legal rights over the lands in question, it cannot be stated that the plaintiffs have breached the consent terms. The High Court held that the act of the respondents in filing the said civil suit may be one of annoyance or nuisance to the contempt petitioner (appellant herein), however, mere filing of the suit would not amount to contempt.

11. Undisputedly, the suit filed by the respondents is against 264 defendants. The claim of the respondents is over a vast stretch of lands admeasuring about 2082 acres in relation to Survey Nos. 505, 506, and 507. The claim of the appellant is only about 20 acres in Survey No. 506. Out of 264 defendants, only the appellant herein has filed the contempt petition.

12. It is further to be noted that after being summoned in the Regular Civil Suit i.e. RCS No. 645 of 2014, the appellant has filed an application under Section 11 read with Order XIV Rule 2 and Section 151 of the CPC for framing preliminary issues of limitation and *res judicata*. The said application was heavily contested by the respondents. After hearing the parties, the learned Principal Civil Judge, Surat has passed the following order:

“1. This present application of the defendant No.155 is hereby allowed.

2. The following issues have been framed as preliminary issues:

(I) Whether defendant No. 155 proves that above suit is barred by law of limitation?

(II) Whether defendant No.155 proves that above suit is barred by principal of Res judicata?

(III) What orders.”

13. It could thus be seen that in the said suit, the preliminary issues have been framed at the instance of the present appellant. Not only that, but an application was filed under Order VII Rule 11(d) of the CPC for rejection of the plaint. The learned Principal Sr. Civil Judge, Surat vide order dated 31st December 2018 passed the following order:

“That considering all the above facts and read the record plaintiff has filed the suit against so many other defendants except these defendants who are the necessary parties in this suit while deciding any application when entirely seen then it could be decided. In this case whatever relief claimed by the plaintiff wherein the present defendants are like a link whatever reliefs are claimed by the plaintiff against defendants as under this plaint to protect their right share they have claimed, and wherein the present defendants should also be there as the party in the suit it is necessary. Moreover whatever there is bar of limitation to a suit or not? That is mixed question of law and facts that could not be decided without recording the evidence that

could not be decided. The judgments relied upon by the defendants are read and not applicable to present case because this suit is not against present defendants but also as against other defendants. Under these circumstances present application not deserved just to allowed so the order is passed as under-

Order

This application is rejected cost to be as according final order. “

14. It can thus clearly be seen that the present appellant has not only participated in the proceedings before the Principal Civil Judge, Surat, but has also made an application for framing preliminary issues. The application for framing preliminary issues has been allowed, whereas the application for rejection of the plaint has been rejected.

15. Insofar as the reliance placed by the learned Senior Counsel for the appellant on the judgment of this Court in the case of **Skipper Construction** (supra) is concerned, in the said case, there was a dispute between the Delhi Development Authority (“DDA”) and M/s Skipper Construction Co. (P) Ltd. (“Skipper Construction”), leading to the filing of various proceedings and finally reaching this Court.

16. After failing in various suits, Skipper Construction filed a writ petition being CWP No.2371 of 1989 before the Delhi High Court. The said CWP No.2371 of 1989 was dismissed by a Division Bench of the Delhi High Court vide judgment and order dated 21st December 1990, directing Skipper Construction to pay to the DDA by cash or demand draft a sum of Rs.8,12,68,789/- within 30 days and to stop construction till payment is made. It further directed that in the event of non-payment by Skipper Construction, DDA would be entitled to enter upon the property and forfeit the monies received by it.

17. Against the dismissal of the CWP No. 2371 of 1989, Skipper Construction filed the Special Leave Petition (Civil) No.186 of 1991 before this Court. On 29th January 1991, an interim order came to be passed by this Court, which reads as under:

“(i) That the petitioners herein shall deposit a sum of Rs 2.5 crores (Rupees two crores and fifty lakhs only) in cash/bank draft with the Delhi Development Authority within one month from today and the petitioners will further deposit similar amount by cash/bank draft by 8-4-1991.

- (ii) That the petitioners shall be permitted to resume the construction of the building in question only after making the first deposit as stated in clause (i) above.
- (iii) That if the petitioners fail to deposit the amounts as aforesaid, the Delhi Development Authority will be free to act in accordance with the impugned order dated 21-12-1990 of High Court in CWP No. 2371 of 1980.
- (iv) That the petitioners shall not induct any person in the building or create any right in favour of any third party.
- (v) That the matter be listed for further orders before this Court on 9-4-1991.”

18. In utter disregard to the interim order passed by this Court, Skipper Construction issued advertisements in the leading newspapers seeking to create third party rights. Consequently, vide order dated 25th January 1993, the Special Leave Petition (Civil) No.186 of 1991 filed by the Skipper Construction came to be dismissed. By virtue of the dismissal of the SLP, DDA on 10th February 1993 re-entered and took physical possession of the said property, free from all encumbrances. The monies paid by Skipper Construction were also forfeited.

19. Notwithstanding all these, Skipper Construction filed yet another suit on the original side of the High Court of Delhi, being Suit No. 770 of 1993 for the reliefs of—

- (i) permanent injunction restraining the DDA from interfering with the title and possession of the property;
- (ii) for mandatory injunction directing the DDA to recompute the principal amount and interest payable by Skipper Construction;
- (iii) for a declaration that the present calculations are wrong;
- (iv) for a declaration that re-entry/re-possession and determination of the rights of Skipper Construction are bad in law and non est;
- (v) for a declaration that all dues have been paid by Skipper Construction to the DDA; and
- (vi) a declaration that clause 15 of the licence agreement dated 11-8-1987 is non est and bad in law.

20. The observations of this Court in paragraph 35 in the case of ***Skipper Construction*** (supra), which read as under, and

which are heavily relied on by Shri Amar Dave, learned Senior Counsel have to be read in this factual background.

“35. Mr Arun Jaitley, learned counsel for the DDA would submit that the filing of Suit No. 770 of 1993 is nothing but an abuse of process of court. The matter had reached finality by orders of this Court. Yet to say the suit was filed to protect the rights of the contemners is ingenious. By filing a suit (No. 770 of 1993) and obstructing the course of justice after this Court dismissed SLP (C) No. 186 of 1991, is a clear case of criminal contempt as laid down in *Advocate General, State of Bihar v. Madhya Pradesh Khair Industries* [(1980) 3 SCC 311, 315 : 1980 SCC (Cri) 688] . This Court had come down heavily upon persons who indulge in obstructionist methods to defeat or delay justice as laid down in *Bloom Dekor Ltd. v. Subhash Himatlal Desai* [(1994) 6 SCC 322, 327].”

21. It could thus be seen that after the matter reached finality by the orders of this Court, the suit was filed to protect the rights of the contemners. This Court found such a conduct to be ingenious. This Court found that filing a suit and obstructing the course of justice after this Court dismissed Special Leave Petition (Civil) No. 186 of 1991, was a clear case of criminal contempt.

22. Similarly, the observations made by this Court in paragraphs 54 to 57, which read as under, have to be construed in the background of the aforesaid factual scenario.

“**54.** The filing of the Suit No. 770 of 1993 is nothing but a wilful action on the part of the contemnors to undermine the dignity of this Court and the majesty of law. The conduct of the contemnors tends to bring the authority and administration of law into disrespect or even disregard. It equally tends to interfere with or prejudice the litigants during the litigation. Abuse of the process of court calculated to hamper the due course of judicial proceeding or the orderly administration of justice is a contempt of court. In *Advocate General, State of Bihar v. Madhya Pradesh Khair Industries* [AIR 1962 SC 1089 : 1962 Supp (3) SCR 127] at page 315, this Court observed: (SCC para 7)

“While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But, on

the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and effects the interest of the public in the administration of justice.”

55. Again as stated by Sir John Donaldson in *Attorney General v. Newspaper Publishing plc* [(1987) 3 All ER 276] , C.J. Miller Contempt of Court, 1989, Clarendon Press, Oxford:

“An action for contempt of court arose—
‘where the conduct complained of is specifically intended to impede or prejudice the administration of justice. Such an intent cannot be expressly avowed or admitted, but can be inferred from all the circumstances including the foreseeability of the consequences of the conduct’.”

56. At this stage, it is worthwhile for us to quote Lord Hardwicke, L.C. in *St. James's Evening Post* [(1742) 2 Atk 469, 471 : 26 ER 683] :

“There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.”

57. Thus, we are clearly of the opinion that the contemnors are guilty of criminal contempt as defined under Section 2(c) of the Act.”

CONCLUSION

23. It can thus be seen that the facts in the case of ***Skipper Construction*** (supra) are totally different from the facts of the present case.

24. In the present case, there is no adjudication. No doubt that the consent terms entered into between one of the predecessors-in-title of the respondents and the Original Owners have received the imprimatur of the Court. However, the respondents claiming their ancestral rights over more than 2000 acres of land and also claiming that the said consent decree was obtained in collusion, had filed the suit in question. Not only this, but the appellant has participated in the said proceedings. At his instance, preliminary issues have been framed with regard to limitation and *res judicata*. Further, the application for rejection of the plaint under Order VII Rule 11(d) of the CPC has also been rejected.

25. We find that, by no stretch of imagination, it could be said that the filing of the suit for asserting the rights of the plaintiffs/respondents could be said to be amounting to contempt of the Court.

26. In that view of the matter, we find that no interference is warranted in the impugned order. The appeal is accordingly dismissed. There will be no order as to costs.

27. Needless to state that the observations made hereinabove are only restricted to the maintainability of the contempt proceedings. They shall have no bearing on the proceedings of the suit which will be decided on its own merits.

28. Pending applications, if any, shall stand disposed of.

.....**J.**
[B.R. GAVAI]

.....**J.**
[RAJESH BINDAL]

.....**J.**
[SANDEEP MEHTA]

NEW DELHI;
MARCH 06, 2024