Rajiv Kumar Agrawal & Anr vs Rabindra Narayan Agrawal & Ors on 9 May, 2013

Author: Mungeshwar Sahoo

Bench: Mungeshwar Sahoo

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.475 of 1999

Rajiv Kumar Agrawal & Anr
.... Appellant/s

Versus

Rabindra Narayan Agrawal & Ors
.... Respondent/s

Appearance :
For the Appellant/s : Mr. Sanjay Kumar
Mr. Anjani Kumar Sharan
Mr. Jitendra Prasad Singh
Mr. Niraj Kumar
Mr. K.K.Sinha
Mr. Mukesh Kumar Sinha
Mr. Anita Raghvendra
For the Respondent/s : Mr. Ravi Ranjan
Mr. /Mrs.Soni Srivastava
Mr. Niraj Kumar Sinha
Mr. Suman Kumar
Mr. Amar Nath Singh
Mr. Mukesh Kumar Jha
Mr. Sanjeev Ranjan
Mr. Mukesh Kumar Sinha
Mr. Sanjay Kumar Pandey
Mr. Anita Raghavendra
Mr. Abhishek
Mr. Vijay Kumar Vimal
Mr. Sanjay Kumar Pandey
Mr. Siddharth Prasad
Mr. Ambuj Nayan Prasad
Mr. Manoj Kumar
Mr. Md.Anis Akhtar

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

CAV ORDER

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1. I have heard the learned counsels, Mr. Ambuj Nayan Choubey on behalf of the respondent No.1 and 2, learned senior counsel, Mr. Dhruv Narain, on behalf of the appellant and the learned counsel,

Mr. Sanjeev Ranjan on behalf of the respondent No.8 on the interlocutory application No. (i) 2867 of 2006 (ii) I.A. No.2868 of 2006 (iii) I.A. No.1435 of 2007 (iv) I.A. No.5704 of 2008 (v) I.A. No.2946 of 2007.

2. The First Appeal was filed by the plaintiff-appellant P2 / 16 against the order dated 10.9.1999 passed by Sub Judge V, Begusarai in title partition suit No.188 of 1997 whereby the learned Court below had rejected the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure.

3. By terms of Judgment dated 01.04.2010, the First Appeal was allowed and the impugned order rejecting the plaint was set aside. The matter was remanded back to the Court below and the Court below was directed to proceed according to law.

4. The respondents Aabha Rani filed Special Leave to Appeal (Civil) No.18492 of 2010 before the Hon'ble Apex Court and the respondent Jitendra Narain Agarwal filed SLP (c) 30616 of 2010 giving rise to Civil Appeal No.8497 of 2012 before the Hon'ble Supreme Court.

5. The Special Leave to Appeal (Civil) No.18492 of 2010 was dismissed by the Hon'ble Supreme Court by terms of order dated 20.8.2010. The Hon'ble Supreme Court in Civil Appeal No.8497 of 2012 arising out of S.L.P.(C) No.30616 of 2010 set aside the order passed by this Court in so far as the same dismissed interlocutory Nos.2867 of 2006, 1435 of 2007, 2946 of 2007, 2868 of 2006 and 5704 of 2008 and directed this Court to take all these interlocutory applications and pass appropriate orders on the same in accordance with law after hearing learned counsels for the parties. Accordingly, in view of the direction of the Apex Court, the parties are heard at length.

6. Let us consider the aforesaid interlocutory applications one by one.

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7. I.A. No. 5704 of 2008 :- The interlocutory application No.5704 of 2008 has been filed by respondent No.1, Rabindra Narain Agarwal under Order 39 Rule 2A read with Section 151 C.P.C. praying therein to initiate a proceeding for deliberate and contumacious disobedience of the order dated 27.7.2000 passed in I.A. No.2971 of 2000.

8. The learned counsel for the respondent No.1 submitted that I.A. No.2971 of 2000 was filed by the appellant praying for restraining the respondents from transferring or alienating the suit property on 27.07.2000, the said interlocutory application was rejected with a direction that the parties would transfer any suit property in case of emergency only after obtaining permission of the High Court. In violation of the said direction, the appellant connived and disobeyed the order of this Court by setting of his causing Deep Kumar Maskara as proposed vendor and sold Schedule III land. In all the sale deeds executed by Deep Kumar Maskara, the appellants is the witness and thereby he intentionally violated the order of this Court. According to the learned counsel in the plaint in Schedule IV, the property is detailed which could not have been sold by the appellants without the permission of the Court but he got the same sold through his causing Deep Kumar Maskara wherein he became the witnesses.

9. On the contrary, according to the learned senior counsel, Mr. Dhruv Narain appearing on behalf of the appellant, in fact the appellant is a junior family member and had no knowledge about the existence of properties because all the documents are in possession of the respondent No.1 In such circumstances at P4 / 16 paragraph 13 of the plaint, a statement has been made that if and when the appellant will come to know the existence of any other property, the appellant may file amendment application for inclusion of those property in the partition suit. According to the learned counsel, the property sold by Deep Kumar Maskara was the property of the family but in the year 1970, the father of the appellant had already sold the same to the Deep Kumar Maskara. The appellant did not know this fact, therefore, he had mentioned this property in Schedule IV. When he came to know that the property sold by his father is included in Schedule IV, he filed an application in the Court below for deleting the said property which was rejected by the Court below and thereafter against the said order, the appellant has filed an application under Article 227 of the Constitution of India before this Hon'ble Court. On these facts, the learned counsels submitted that no case under Order 39 Rule 2A is made out and the appellant had not violated any order passed by this Court. According to the learned counsel, the respondent No.1 with ulterior motive only with a view to pressurize the appellant has filed this application which is frivolous and not maintainable. The learned counsel further submitted that this respondent No.1 is the root cause for the disturbance in the family and to cover up his ill motive, this application has been filed which is not maintainable.

10. Admittedly, there is no injunction order against Deep Kumar Maskaraa. He is not a party to the suit or appeal. The appellant has not sold the property rather Deep Kumar Maskara has sold the property. In the sale deed the appellant has signed as P5 / 16 witness only. According to the appellant by mistake, the sold property was included in Schedule IV. In the counter affidavit, it has clearly been mentioned that amendment application was filed praying for deleting this property which was rejected. From the above facts, it appears that the respondent No.1 is trying to get undue advantage of mistaken statement made in the plaint whereby the property was included in Schedule IV. It is not denied by the parties that the property had already been sold by father of the appellant to Deep Kumar Maskara. Only the prayer of the respondent No.1 is the appellant must be prosecuted for the violation of the order. In my opinion, therefore, in view of the above discussion, it appears that this application is misconceived and has been filed under misconception of law. As such this application is not maintainable. Accordingly, it is rejected.

11. I. A. No. 2946 of 2007 :- The I.A. No.2946 of 2007 has also been filed by the respondent No.1 under Article 215 of the Constitution of India read with order 39 Rule 2A C.P.C. Prayer has been made for initiating the contempt proceeding against the appellant for abusing the process of Court. According to the learned counsel for the respondent No.1, a collusive and misleading compromise petition purporting to be under Order 23 Rule 3 C.P.C. was filed by the appellant and his brother with a view to nullify the various decrees of the Courts in last 3 generations according to which the parties are in their respective exclusive right. The said compromise petition in pith and substance amounts to self style, mutual adjustment, mutual exclusiveness based on mutual transfer or exchange, nullifying the allotment made earlier P6 / 16 in various Judgments and Decrees. The said compromise application is in the teeth of order dated 27.07.2000 passed by this Court whereby the parties were directed not to transfer any suit property without obtaining the permission of this Court.

12. On these facts, the learned counsel for the respondent submitted that a contempt proceeding may be initiated against the appellant for willful disobedience of the order of this Court.

13. On the contrary, the learned senior counsel, Mr. Dhruv Narain appearing on behalf of the appellant submitted that after remand of the case, all the facts and figures and the disputes between the parties is to be resolved by the trial Court on the basis of the evidences and materials that may be brought by the parties and to overreach the process of the Court, the respondent No.1 is trying to keep the matter pending before this Court because in fact on the basis of the compromise application, the appeal has not been disposed of. In the compromise application, the appellant compromised with his brother and the Court never accepted the said compromise application and no order has been passed. It was only kept on record for consideration at the time of hearing. Because on merit, the appeal has been disposed of and the said compromise application was never pressed, impliedly it will mean that it was rejected or the Court did not take cognizance of that comprise application. Accordingly, the learned counsel submitted that this interlocutory application is devoid of any merit and speaks about the intention of the respondent No.1. On these grounds, the learned counsel prayed that the application may be rejected.

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14. It is admitted fact that although the compromise application was filed but it was never signed by all the parties and the appeal was never disposed of on the basis of compromise. The compromise application was not accepted by the Court. In other words, the said compromise application was never pressed by the appellant nor ever he prayed that the appeal be disposed of on the basis of the said compromise application. According to the respondent No.1, the property has been divided among the appellant and his brother by this compromise application and the appellant has obtained a larger area than he was allotted in the earlier suits. Can it be said by any stretch of imagination that compromise application is in violation of the order passed by this Court dated 27.7.2000? The answer will be no.

15. It is settled principle of law that violation of injunction order has to be willful in order to be punishable and the person alleging disobedience must prove the allegation not less stringently then in a criminal case. Proceeding for contempt are initiated not for the benefit of the party, but for the vindication of the jurisdiction of the Court and for giving effect to orders passed by the Court. Here, the only allegation is that in the compromise application, the appellant has obtained larger area. However, as stated above, the compromise application is never accepted by the Court and no order has been passed on the basis of the compromise. In my opinion, therefore, there is no violation of the order dated 27.07.2000 passed by this Court. Accordingly this interlocutory application is also rejected as not maintainable.

16. Interlocutory application No. 2867 of 2006 :- This P8 / 16 application has been filed by the respondent No.1 under Section 340 read with Section 195 (1) (b) of the Code of Criminal Procedure for making inquiry and thereafter initiating a criminal complaint against the plaintiff appellant Rajeev Kumar Agarwal and respondent No.6, Sanjeev Kumar Agarwal on the ground that they are indulged in filing false affidavit before this High Court on behalf of Ms. Mridula Man Singhika

causin of plaintiff appellant as well as own sister of respondent No.6, Dr. Sanjeev Kumar Agarwal .

17. The learned counsel for the respondent No.1 submitted that the appellant produced a fictitious person in place of said Ms. Mridula Man Singhika before the Oath Commissioner of this High Court and obtained her signature in the compromise application. In fact the compromise application does not bear the signature of Ms. Mridula Man Singhika. Therefore, after making preliminary enquiry, a complaint has to be filed against the appellant. On the other hand, the learned counsel for the appellant submitted that one application has already been filed on behalf of the respondent No.8, Smt. Ms. Mridula Man Singhika accepting the compromise between the appellant and respondentNo.6. The learned counsel for the respondent No.1 submitted that the respondent No.8 is the best person to deny her signature on the compromise application. Here, the respondent No.1 is making statement that respondent No.8 has not signed. Therefore, it is a matter of controversy as to whether the same has been signed by respondent No.8 or she was impersonated which relates to respondent No.8 and not respondent No.1.

18. According to the allegation, respondent No.8 has not P9 / 16 singed the compromise application. It is also admitted fact that the compromise application filed by the appellant alleged to have been signed by the appellant and respondent No.6 and respondent No.8 was never accepted nor the First Appeal has been disposed of on the basis of the said compromise. Now, therefore, whether she had signed the compromise or no compromise can not be decided without their being any evidence and moreover here the respondent No.8 although appeared and filed application to the effect that she accept the compromise between two brothers. She never denied that she had not signed the compromise application.

19. I.A. No.2868 of 2006 : - Again this application has been filed by the respondent No.1 under Section 340 of the Code of Criminal Procedure for filing a complaint against the appellant for making false affidavit before this Court. The learned counsel for the respondent No.1 submitted that Khata No.602 plot No.13 is not the subject matter of the suit. In other words, it is not the suit property but interlocutory application No.29671 of 2000 was filed by the appellant under Order 39 Rule 1 & 2 read with Section 151 C.P.C. praying for issuance of injunction against the respondents wherein statement has been made that respondent No.1 has sold the suit property khata No.602 plot No.13 during the pendnecy of the appeal. According to the learned counsel, the appellant knowing fully that it is not the suit property, such false statement has been made in the injunction application.

20. On the contrary, the learned senior counsel, Mr. Dhruv Narain appearing on behalf of the appellant submitted that the said injunction application was rejected and no injunction order was P10 / 16 passed. Moreover, it appears that because of bonafide mistake, it was stated that suit property has been sold. Merely, because such bonafide statement has been made in the injunction application, no complaint can be filed under Section 340 Cr.P.C. It is not that on the basis of that statement, the respondent was restrained. Moreover, the respondent was at liberty to file counter affidavit and to show the Court that in fact the said property is not the suit property. According to the learned counsel, every such statement which are said to be incorrect no complaint can be filed because in civil cases, one fact is asserted by one party which is denied by the other party. Here as

stated above, the injunction application was rejected and no restraint order was passed on the basis of such statement made by the appellant.

21. It is admitted fact that the injunction application was rejected and no restraint order was passed. According to the appellant, it is bonafide mistaken statement and no injury has been caused to the respondent because of the said statement.

22. I.A. No.1435 of 2007 :- This application has again been filed by the respondent No.1 under Section 340 of the Code of Criminal Procedure for filing complaint against the appellant alleging that in compromise, the appellant fraudulently increased the area in his share which would be evident from comprise application No.4791 of 2005. According to the learned counsel for the respondent No.1 the respondent No.6 filed the copy of compromise with affidavit earlier which defers from the compromise filed by the appellant No.1 and in the counter affidavit filed by respondent No.6, the respondent No.6 stated that every P11 / 16 thing has been done by the appellant which clearly indicate that the appellant is indulged in filling false affidavit before this Court.

23. On the contrary, the learned counsel for the appellant submitted that this is also frivolous application which has been filed for the ulterior purpose and it can be termed as luxurious litigation. According to the learned counsel, the respondent No.1 is in the habit of filing this type of frivolous application and the public time is being killed by him for the purpose of his luxury. The learned counsel further submitted that whatever allegation has been made in this interlocutory application is to be decided on merit before the trial Court as the compromise was not accepted by High Court.

24. Further, he submitted that whether the statement made in the compromise application is wrong or right that cannot be decided at this stage because it will prejudice the party in the trial Court. The intention of the respondent No.1 is to keep the proceeding alive before this High Court and to keep pressure on the appellant and keep pending the trial because the respondent No.1 is enjoying the valuable properties and harassing the appellant by filing these type of frivolous application.

25. From perusal of this application, it appears that various facts has been alleged regarding trust properties and it is alleged that Will was created and the beneficiaries were given benefits in the manner stated in paragraph 3. The Will was probated in case No.35 of 1980. On the expiry of 20 years, the sole trustee determined the trust on 11.9.1999 and distributed the property between the beneficiaries. The respondent No.6 got his name P12 / 16 mutated in revenue records as well as municipal with regard to his share and also filed eviction suit. All of sudden, the appellant and the respondent No.6 joined and collusively and fraudulently filed compromise petition with incorrect area, direction and also against the statement made in their affidavit sworn before this Hon'ble Court as well as sworn affidavit before the lower Court with intention to play fraud upon the Court to snatch any order in their favour. Sanjeev Kumar has filed affidavit showing half of the trust property from south whereas in the earlier affidavit, he admitted that plot No.1332 was given to Rajeev Kumar Agarwal and likewise appellant has shown 3 katha 13 dhur 10 dhurki from south in plot No.1331/1334 which is quite fraudulent and mischievous. These statements made in this application is nothing but defence of the respondent No.1. Whether it is correct or not, whether

there was any trust which was determined and whether any property was distributed or not, all these matters are to be considered during the course of trial.

26. It may be mentioned here that the plaint was rejected under Order 7 Rule 11A C.P.C. After remand of the case, now the written statements have been filed. The hearing of the case is yet to be started. In such circumstances whether the statement made by the respondent No.1 in these applications regarding those facts are to be decided on the basis of affidavit only? In my opinion, it is not the ambit of Section 340 Cr.P.C. that for the purpose of filing a complaint application, the main controversy between the parties is to be decided later and complaint is to be filed first then parties should be allowed to enter into trial of the partition suit.

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27. The learned counsel for the respondent relied upon a decision reported in 1967 criminal law journal page 6 = A.I.R. 1967 SC 68 Babban Singh Vs. Jagdish Singh. From perusal of paragraph 2 of the above decision, it appears that compromise application had been filed, said to have been singed by Dharichhan Kuer and it is alleged that she received Rs.4,000/- under the terms of compromise and put her thumb impression. Babban Singh had identified Dharichhan Kuer. The said compromise was filed on 23rd July, 1953. Babban Singh filed affidavit ext.'B' denying the compromise or that his wife had received Rs.4000/-. This affidavit was filed on 31st July, 1953. On September 9, 1953 Dharichhan Kuer also filed affidavit ext. 'A' in support of her husband. Therefore, the compromise was disputed and enquiry was held. Witnesses were examined. Report was received to the effect that comprise is genuine. Thereafter, the First Appeal was disposed of and During pendency of First Appeal, application under Section 476 was filed and the question to be decided was whether a complaint for prosecuting Babban Singh and Dharichhan Kuer for an offence under Section 493 I.P.C. could be filed in the High Court because Babban Singh and Dharichhan Kuer had deposed not before the Court but before the Registrar. Here, in the present case, it is the only allegation of respondent No.1 that false statement has been made in the compromise application. It is reiterated that no order was passed on the basis of compromise.

28. Section 340 (1) Cr.P.C. reads as follows :

> "340. Procedure in case mentioned in Section 195 :- (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of P14 / 16 Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary -
>
> (a) record a finding to that effect;
> (b) make a complaint thereof in writing'
>
> (c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the

alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

29. In view of the above provision, particularly to make an enquiry, a Court must be satisfied that in its opinion, it is expedient in the interest of justice that an enquiry should be made into any offence, then only enquiry should be made. The literal meaning of 'expedient' according to chambers dictionary is suitable or appropriate, profitable or convenience rather than fair or just, advisable. Now, therefore, whether for every allegation of false affidavit, a complaint should be made. Whether it is advisable to file a compliant and whether filing a complaint is advisable for the ends of justice.

30. In the case of K.T.M.S. Mohd. Vs. Union of India 1992 (3) SCC 178, the Hon'ble Supreme Court has held that "exercise of power under Section 340 Cr.P.C. should be on a careful consideration as regards expediency in the interest of justice".

31. In the case of Iqbal Singh Marwah Vs. Meenakshi Marwah 2005 (4) SCC 370, a five Judges Bench of the Hon'ble P15 / 16 Supreme Court held at paragraph 23 as follows :-

"23. In view of the language used in Section 340, Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded."

32. It is also settled principle of law as has been held by the Madras High Court in 2000 (2) Crimes 478 Bishop Thorp College Vs. B. Anandshekhram Selbherajan that the provisions of the Section cannot be allowed to be served as handmade of private parties to secure their own ends of revenge against another private party. The Court must consider whether there is any ulterior object which the party seeking to invoke the power under this Section wants to achieve indirectly by using the Court an instrument for its own ends.

33. In view of the above settled proposition of law laid down P16 / 16 by the Apex Court some inaccuracy in a statement, which may be innocent or inadvertent or immaterial, may not justify a prosecution as expedient in the interest of justice. There must be prima facie case of deliberate falsehood on a matter of substance and the Court must be satisfied that there is reasonable foundation for the charge and that prosecution of the offender is necessary in the interest of justice. Otherwise time of the Court which has to be usefully devoted dispensation of justice will be wasted on such enquiries.

34. In view of my above discussion, I find no merit in the aforesaid interlocutory applications. There is no reasonable foundation for the charge for the offence alleged to have been committed by the appellant and in my opinion, it is not expedient in the interest of justice to file complaint against appellant. It appears to me that the respondent No.1 is trying to invoke the power of this Court under Section 340 Cr.P.C. only with a view to achieve his goal by indirectly using the Court as an instrument for the operation.

35. In the result, all the interlocutory applications, including I.A. Nos.2867/06, 2868/06 and 1435/07, mentioned above are dismissed.

Sanjeev/- (Mungeshwar Sahoo, J)