

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL CONTEMPT JURISDICTION

CONTEMPT PETITION NO. 1868 OF 2018

WITH

I.A. NO.30045 OF 2019

WITH

M.A. NO.2485 OF 2018

IN

SPECIAL LEAVE PETITION (C) NO.10022 OF 2016

KAUSHALIYA

...Petitioner (s)

Versus

JODHA RAM & ORS.

... Respondent (s)

J U D G M E N T

M. R. Shah, J.

Present petition has been filed for non-compliance of the order dated 05.05.2017 passed in this Court in Special Leave Petition (C) No.10022 of 2016.

2. Litigation started between the father and daughter namely Jodha Ram and Kaushaliya. Smt. Kaushaliya filed a suit for injunction against her father Jodha Ram with respect to some of the properties. Jodha Ram – father filed a counter claim. Smt. Kaushaliya lost before the Learned Trial Court. However, the counter claim came to be allowed. The matter was ultimately reached to this Court by way of Special Leave Petition (C) No.10022 of 2016. Pursuant to the order passed by this Court dated 24.10.2016, the matter was referred to the Mediation Centre, Supreme Court to explore the possibility of amicable settlement between the parties. Both the parties entered into a settlement agreement dated 10.02.2017. As per the settlement both the parties agreed as under:

“1. It is agreed between the parties that Respondent No.1 (Shri Jodha Ram) i.e. Father of the Petitioner shall purchase another plot bearing No.55, Hudco Scheme, D-Circle, Kirti Nagar, Jodhpur, Rajasthan, admeasuring (30 X 13) 390 Sq.Ft., and get it registered in the name of the Petitioner Ms. Kaushaliya within four weeks from the final settlement/consent order of this Hon’ble Court.

2. It is also agreed the parties that the entire sum for the registry, stamp duty, mutation etc. would be borne by the Respondent No.1 Mr. Jodha Ram.

3. It is agreed between the parties that in view of the Respondent No.1 buying the property as mentioned in clause – 1 and 2 of this settlement agreement, the petitioner shall handover complete, vacant and peaceful possession of the disputed properties (as shown in site map annexed by Petitioner in original Civil Suit No.29 of 2010 filed before Additional Civil Judge, Junior Division, Jodhpur, Rajasthan) bearing Plot No.29D, land adjoining 29D (four parts) and land adjoining 29D (two parts) forming part of Meera Bhawan, Ship House, First Polo, Pawta, Jodhpur, Rajasthan and undisputed properties bearing Plot Nos. 29, 29A, forming part of Jodha Bhawan, Ship House, First Polo, Pawta, Jodhpur, Rajasthan to the Respondent No.1.

4. It is agreed between the parties that complete, vacant and peaceful possession of the properties mentioned in clause no.2 of this settlement agreement shall be handed over by the petitioner to the respondent no.1 simultaneously on respondent no.1 handling over registry and sale documents of property mentioned in clause – 1 of this settlement agreement in favour of the petitioner. The petitioner undertakes not to create any third party right in any manner in respect of the said property till the final settlement.

5. It is agreed between the parties that all necessary steps shall be taken by each party within eight weeks to withdraw all pending litigations between the parties shall be withdrawn by each within four weeks from the final settlement/consent order of this Hon'ble Court.

6. It is agreed between the parties that the petition pending before the sessions court Jodhpur, Rajasthan titled Kailash Vs. Jodha Ram, Kaushaliya and Ors. bearing case no.9 of 2011 will also be settled between the parties. Aforesaid petition is

with regard to ten LIC bonds of Rs.50,000/- each bearing Nos.104200480, 104200481, 104200482, 104200483, 104200484, 104200485, 104200486, 104200487, 104200491 and 104200501, date of proposal of all bonds being 19.03.2007 and date of commencement of being 20.03.2007 for a term of ten years, totaling Rs.5 Lakh, the proceeds of which shall be shared in equal proportion between the petitioner and Respondent No.2 herein Shri Kailash by way of two separate cheques of equal amounts to be received by petitioner and Respondent No.2 from LIC.

7. By signing this agreement, the parties hereto solemnly state and affirm that they have no further claims or demands against each other in respect of the property measuring on all the disputes and differences between the parties relating to the subject matter of the suit have been amicably settled by the parties hereto through the process of mediation.

8. The parties undertake to abide by the terms and condition set out in the above-mentioned Agreement, which have been arrived without any coercion, duress or collusion and undertake not to raise any dispute whatsoever henceforth.

3. This Court vide order dated 05.05.2017 disposed of the aforesaid Special Leave Petition in terms of the Settlement Agreement dated 10.02.2017. This Court directed that both the parties shall abide by the settlement. This Court also further directed the petitioner – Kaushaliya to vacate the premises within

10 days and simultaneously she would be provided further accommodation which has been agreed to by the respondent. The petitioner - Kaushaliya handed over some portion of the premises. However, did not hand over all the properties/entire properties which she was required to hand over as per the Settlement Agreement and the order passed by this Court. Therefore, the respondent – father did not hand over the possession of the premises which he was required to hand over by the petitioner – Kaushaliya. Execution proceedings were initiated in which Kaushaliya and two persons namely Ramu Ram Vishnoi and Rampal Bishnoi applicants in M.A. No.2485 of 2018 also submitted their objections claiming to be in possession of some of the properties namely Plot Nos.29 and 29A forming part of Jodha Bhawan, Ship House (hereinafter referred to as disputed premises). As the respondent did not hand over the properties to the petitioner – Kaushaliya, which she was required to hand over as per the order passed by this Court she has preferred the present Contempt Petition No.1868 of 2018 alleging non-compliance of the order passed by this Court in SLP (C) No.10022

of 2016 by the respondent father – Jodha Ram. In the Contempt Petition, Jodha Ram and others have filed I.A. No.30045 of 2019 for an appropriate order directing the Executing Court to hand over the vacant and peaceful possession of entire Meera Bhawan and Jodha Bhawan in terms of the Settlement Agreement dated 10.02.2017 and the orders dated 05.05.2017 and 11.12.2018 passed in present proceedings. Order passed by this Court dated 11.12.2018 is as under:

“After hearing learned counsel for the parties at length and, particularly, after perusing the order dated 13.09.2017 of the Executing Court, we adjourn these matters by four months.

We may record that in the Settlement Agreement, which was arrived at between the petitioner and her father, it was agreed by the petitioner that she would handover vacant possession of Jodha Bhawan and Meera Bhawan to her father. Now she has come up with the plea that only a portion of the said house was in her possession which she has vacated and other portions are in possession of third parties. It is in respect thereof that execution proceedings are pending.

We also find from the records that insofar as Respondent No.1/father of the petitioner is concerned, he has purchased one house which is to the liking of the petitioner herself and to show his bona fide, he has deposited the keys thereof as well with the Executing Court. His only plea is that the

possession thereof should be handed over to the petitioner after he gets possession of Jodha Bhawan and Meera Bhawan.

In the circumstances, we impress upon the Executing Court to expedite the execution proceedings.”

4. Thereafter applicants Ramu Ram Vishnoi and Rampal Bishnoi have preferred M.A. No.2485 of 2018 alleging *inter alia* that they are in possession of the properties bearing No.29 and 29A forming part of the Jodha Bhawan and they have purchased the said properties vide an Agreement to Sell dated 06.12.2016 for a consideration of Rs.22 lakhs. Therefore, it is the case on behalf of two applicants that as they are the owners of the disputed properties and they are in possession of the said properties, the settlement entered into between Kaushaliya and Jodha Ram and his son are not binding to them as it affects their rights.

5. Ms. Bhati, learned Senior Advocate appearing on behalf of the daughter has vehemently submitted that she is required to be handed over the possession of the properties mentioned in the agreement which the respondent Jodha Ram is required to hand over. It is submitted that she has already vacated that part of the

premises which she was required to hand over to the extent she was in possession. It is submitted that therefore she has fulfilled her part of commitment as per the settlement agreement.

6. Learned Counsel appearing on behalf of Jodha Ram has vehemently submitted that as such applicants of M.A. No.2485 of 2018 have no right title in the disputed properties in Jodha House. It is submitted that they have no locus whatsoever in the present proceedings as well as before the Executing Court. It is submitted that those applicants claim to be in possession and title on the basis of the Agreement to Sell. It is submitted that Agreement to Sell does not confer any right title or interest. It is submitted that till date those two applicants have never filed any suit claiming title/ownership. It is submitted that the suit for permanent injunction was filed in which the learned Trial Court has refused to grant any interim injunction in their favour. It is submitted that at the relevant time applicant No.1 Ramu Ram Vishnoi paid only Rs.51,000/- in the year 2006, however, he did not make any further payment and therefore the Agreement to Sell was cancelled by serving a legal notice in the year 2007 itself. It is further

submitted that even the applicant Ramu Ram, though had no title/ownership transferred the said property on the strength of the Agreement to Sell to one Kishan Gopal Singh on 08.09.2013. It is submitted that Ramu Ram in the said agreement claimed that he purchased the suit property from Jodha Ram and sale deed was executed between them. It is submitted that therefore the applicants Ramu Ram and Rampal are claiming to be the owners and in possession pursuant to Agreement to Sell only. It is submitted that even the applicants Ramu Ram filed the Objection Petition/Objections Proceedings before the Executing Court along with Kaushaliya which came to be dismissed. It is submitted that both Kaushaliya and Ramu Ram are acting in collusion. It is requested to dismiss the application preferred by Ramu Ram Vishnoi and Rampal and also the contempt petition initiated by Kaushaliya. It is requested to direct the Executing Court to hand over the possession of the entire properties, which Jodha Ram is entitled pursuant to order passed by this Court and as per the Settlement dated 10.02.2017.

7. Learned Counsel appearing for Ramu Ram Vishnoi and Rampal Bishnoi has submitted that they are the owners of the premise Nos. 29 and 29A forming part of Jodha Bhawan, Ship House pursuant to the Agreement to Sell for a sale consideration of Rs.22 lakhs. It is submitted that as they are in possession of the said premises/properties and neither Kaushaliya nor Jodha Ram and his son have any right title. It is submitted that in any case, the aforesaid properties cannot be said to be undisputed properties. It is submitted that therefore in the Settlement dated 10.02.2017 it is stated that the properties in Jodha Bhawan is undisputed property of Jodha Ram the same is not correct. It is submitted that in any case when they are in possession of the disputed properties settlement between Kaushaliya and Jodha Ram before this Court in Special Leave Petition (C) No.10022 of 2016 and the order passed by this Court dated 05.05.2017 is not binding to them.

7.1 It is further submitted by Learned Counsel appearing on behalf of the aforesaid Ramu Ram Vishnoi and Rampal that even otherwise the dispute between Kaushaliya and Jodha Ram which

went upto this Court by way of SLP (C) No.10022 of 2016 was not with respect to the disputed properties, more particularly, Plot Nos.29 & 29A. It is submitted that therefore as the disputed properties in question were not the subject matter of the original suit, the disputed properties could not have been the subject matter of the order dated 05.05.2017 and/or Settlement between Kaushaliya and Jodha Ram. For the above, Learned Counsel has relied upon the map attached with the plaint.

7.2 Making above submissions, it is requested to allow M.A. No.2485 of 2018 and recall the final order dated 05.05.2017 passed in SLP (C) No.10022 of 2016 to the extend with respect to Plot No.29 and 29A of the Jodha House.

8. Heard the learned Counsel appearing for the parties respectively at length.

9. At the outset, it is required to be noted that the dispute was between Kaushaliya – daughter and Jodha Ram – father; That matter ultimately reached to this Court by way of SLP (C) No.10022 of 2016. The matter was referred to the Supreme Court

Mediation Centre to explore the possibility of amicable settlement between the parties. In the Mediation, the parties to the SLP namely Kaushaliya and Jodha Ram entered into a Settlement Agreement dated 10.02.2017 and resolved the entire dispute between the parties over and above the dispute before the Trial Court. This Court disposed of the SLP in terms of the Settlement Agreement dated 10.02.2017 and directed both the parties to abide by the terms of the Settlement produced above.

10. It is the case on behalf of Kaushaliya that she has been ousted from the premises that was in her possession on 30.03.2018, however, she has not been given the other accommodation which was agreed to be given simultaneously by Jodha Ram. However, on the other hand, it is the case on behalf of Jodha Ram that Kaushaliya has not vacated the entire premises and he has not been handed over the possession or occupation of entire Jodha House more particularly Plot No.29 and 29A of the Jodha House which he is entitled to under the Settlement Agreement dated 10.02.2017. Applicants of M.A. No.2485 of 2018 claimed to be in possession of the aforesaid Plots Nos.29 and 29A

on the basis of the Agreement to Sell executed by Jodha Ram and they claim to be the owners and they are objecting to the order dated 05.05.2017 passed in SLP (C) No.10022 of 2016. However, it is requested to be noted that Ramu Ram Vishnoi and Rampal Bhisnoi claim to be the owners and in possession pursuant to Agreement to Sell dated 10.02.2017. As per the settled preposition of law, Agreement to Sell does not confer any right, title or interest in the property. Therefore, as such on the basis of the Agreement to Sell, only Ramu Ram and Rampal cannot claim any ownership and/or right title or interest in the disputed properties. Apart from that even the Trial Court in the suit for permanent injunction filed by them has refused to grant injunction in their favour.

11. At this stage, it is required to be noted that except filing the suit for permanent injunction, Ramu Ram and Rampal, who claim to be the Agreement to Sell in their favour, has never filed any suit for specific performance of the alleged Agreement to Sell. It also appears that even the objection raised by them and Kaushaliya filed before the Executing Court have been rejected by the Executing Court. Under the circumstances, the applicants of M.A.

No.2485 of 2018 cannot claim any ownership and/or the right title or interest in the disputed properties and therefore they have no locus to object to the Settlement Agreement between Kaushaliya and Jodha Ram and the order dated 05.05.2017 passed by this Court in SLP (C) No.10022 of 2016. Under the circumstances, the M.A. No.2485 of 2016 deserves to be dismissed, however, without prejudice to their rights, if any, to be established in a Competent Court of law.

12. Now so far as the submission on behalf of Ramu Ram that as the disputed properties in question were not the subject matter of original suit proceedings and therefore the same could not have been the subject matter of Settlement Agreement entered into between the Kaushaliya and Jodha Ram and/or the order passed by this Court dated 05.05.2017 is concerned, at the outset, it is required to be noted that being the dispute between father and daughter the matter was referred to the Supreme Court Mediation Centre to explore an amicable settlement between the parties. Both the parties agreed to settle all the disputes between the parties in the Mediation. In the Mediation it is always open for the

parties to explore the possibility of an overall amicable settlement including the disputes which are not the subject matter of the proceedings before the Court. That is the benefit of the Mediation. In the Mediation parties may try for amicable settlement, which is reduced into writing and/or a Settlement Agreement and thereafter it becomes the part of the Court's Order and the Court disposes of the matter in terms of the Settlement Agreement. Thereafter the order in terms of the Settlement Agreement is executable irrespective of the fact whether the Settlement Agreement is with respect to the properties which was/were not the subject matter of the proceedings before the Court. Thereafter the order passed by the Court in terms of the Settlement is binding to the parties and is required to be acted upon and/or complied with and as observed above the same is executable. Under the circumstances, the submission on behalf of Ramu Ram and Rampal that as the properties in question were not the subject matter of the suit before the Trial, the same could have been the subject matter of the Settlement Agreement and/or the order dated 05.05.2017 cannot be accepted. The order passed by this Court dated

05.05.2017 in SLP (C) No.10022 of 2016 is required to be complied with and the same is executable. Under the circumstances the Executing Court has to execute the order passed by this Court dated 05.05.2017 in SLP (C) No.10022 of 2016 in its true spirit.

13. In view of the reasons stated above, M.A. No.2485 of 2018 stands dismissed. I.A. No.30045 of 2019 is hereby allowed. In exercise of powers conferred under Article 142 of the Constitution of India and to see that the order passed by this Court dated 05.05.2017 in SLP (C) No.10022 of 2016 is fully complied with, we direct all the concerned persons claiming to be in possession of the disputed properties in questions including Plot Nos. 29 and 29A of the Jodha House to handover the peaceful and vacant possession to Jodha Ram as per the order passed by this Court on 05.05.2017 in SLP (C) No.10022 of 2016, within a period of four weeks from today. Executing Court is hereby directed to see that the present order passed by this Court and its earlier order dated 05.05.2017 in SLP (C) No.10022 is fully complied with. Both the parties Kaushaliya and Jodha Ram - parties to the Settlement Agreement dated 10.02.2017 are hereby directed to comply with

the terms and conditions of the Settlement Agreement dated 10.02.2017 and the order passed by this Court on 05.05.2017 in SLP (C) No.10022 of 2016 fully and in its true spirit. Consequently, the Contempt Petition stands disposed of at this stage.

.....J.
(ASHOK BHUSHAN)

.....J.
(M. R. SHAH)

New Delhi;
November 25, 2019