

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/MISC. CIVIL APPLICATION NO. 827 of 2021**  
**In R/CIVIL APPLICATION NO. 1474 of 2020**

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VIMALABEN PRABHUNATH MISRA  
Versus  
KETAN CHANDRAVADAN SONI

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Appearance:  
MR JAY KANSARA, M/S WADIAGHANDY AND CO(5679) for the  
Applicant(s) No. 1  
MR JF MEHTA(461) for the Opponent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
and  
**HONOURABLE DR. JUSTICE A. P. THAKER**

**Date : 23/08/2022**

**ORAL ORDER**  
**(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

1. Rule. Learned Advocate, Mr. Mehta, waives service of rule for the opponent.

2. This is an application filed by the applicant, under the provisions of the Contempt of Courts Act, 1971 ( in brief, 'the Act'), read with Article 215 of the Constitution of India, whereby, he has prayed to initiate the proceedings under the Act against the present opponent for willful and intentional disobedience of the order of this Court, Dated: 17.03.2020, passed in Civil Application No. 1474 of 2020.

3. Heard, learned Advocate, Mr. Jay Kansara, for Wadia Gandhi and Co. for the applicant and learned

Advocate, Mr. J.F. Mehta, for the opponent.

4. Learned Advocate, Mr. Kansara, appearing for the applicant submitted that the present opponent, in connivance with one Parsottamdas Savjibhai Chovatiya, filed Special Civil Suit No. 540 of 2016, before the Court of the learned 4<sup>th</sup> Addl. Senior Civil Judge, Mirzapur, Ahmedabad (Rural). During the pendency of the aforesaid Suit, the parties settled their disputes and a consent decree was passed by the concerned Civil Court on 09.09.2017.

4.1 It was submitted that the present applicant was not a party to the said Civil Suit and therefore, when she came to know about the decree passed by the concerned Civil Court, the applicant filed Leave to Appeal before this Court along with Civil Application No. 1474 of 2020 for condonation of delay.

4.2 It was submitted that looking to the facts of the case, this Court vide order, dated 17.03.2020, issued Rule and also granted *ad-interim-relief*, by directing that the opponent to maintain *status quo* with regard to the title and the encumbrance of the suit property, till the returnable date.

4.3 The applicant, thereafter, submitted an application before the concerned Executing Court in January, 2021, where, the execution proceedings were pending. A copy of the said application is produced

at Page-209 of the compilation.

4.4 It appears that, pursuant to the above, the present opponent also filed an application before this Court on 17.03.2021 for vacating the interim relief granted by this Court vide order dated 17.03.2020. A copy of the said application is produced at Page-213 of the compilation.

4.5 Learned Advocate, Mr. Kansara, therefore, submitted that the present opponent was fully aware of the order passed by this Court on 17.03.2020, whereby, the opponent has been directed to maintain status quo with regard to the title and encumbrance on the Suit property.

4.6 Learned Advocate, Mr. Kansara, submitted that an application for modification of the sale deed was filed by the opponent in the execution proceedings, which was pending before the concerned Execution Court.

4.7 It was submitted that on 20.11.2019, the Executing Court passed the order below application Exhibit-37, which was filed by the opponent, wherein, it has been specifically observed that the present opponent as well as Parsottamdas Savjibhai Chovatiya do not have any title documents in respect of the Suit land, including the sub-plots.

4.8 It was submitted that in spite of the aforesaid order, which was passed on 20.11.2019, the present opponent submitted an application before the concerned Revenue Authority for mutation of the entry in the revenue record, on the basis of the registered Sale Deed executed by Parsottamdas Savjibhai Chovatiya in favour of the opponent. On the basis of the Execution Proceedings No. 17 of 2017, aforesaid application was submitted on 08.04.2021, which was served on the Revenue Authority on 25.05.2021.

4.9 Learned Advocate, Mr. Kansara, therefore, submitted that the opponent has given the said application with a view to create clout on the Suit property, which is nothing, but, an attempt to overreach the process of this Court as well as the order passed by this Court on 17.03.2020.

4.10 Learned Advocate, Mr. Kansara, hence, urged that the proceedings under the Contempt Act be initiated against the opponent.

4.11 Learned Advocate, Mr. Kansara, submitted that even in the affidavit filed by the opponent, she does not dispute the aforesaid aspect.

4.12 In support of his submissions, learned Advocate, Mr. Kansara, has placed reliance on the decision of the Hon'ble Apex Court in the case of '**SULOCHANA CHANDRAKANT GALANDE VS. PUNE MUNICIPAL TRANSPORT AND**

**OTHERS'**, reported in (2010) 8 SCC 467, more particularly, the observations made in Paragraph-14 thereof.

5. On the other hand, learned Advocate, Mr. Mehta, appearing for the opponent has strongly opposed this application and has submitted that there is no willful or intentional disobedience of the order passed by this Court on 17.03.2020.

5.1 It was submitted that the present opponent, in fact, has maintained the status quo with regard to the title and there is no encumbrance on the suit property, as is submitted by the applicant, herein.

5.2 Learned Advocate, Mr. Mehta, submitted that the application was given to the concerned Revenue Authority for mutation of the entry on the basis of the Execution Proceedings and the Revenue Authority has simply recorded the same.

5.2.1 Learned Advocate, Mr. Mehta, submitted that the order certifying the said entry has, now, been set aside by the appellate authority.

5.3 It was, therefore, urged that the present application may not be entertained.

6. We have heard the learned Advocates for the parties and have also perused the material on record.

This Court passed following order on 17.03.2020;

*“Rule returnable on 15.04.2020. Normally before adjudication of the issue of delay, this Court would not issue an injunction; however, in view of peculiar facts emerging from the submissions of learned counsel for the applicant that the applicant is a title holder of the suit property and has not conveyed the title either directly or through power of attorney; and that the opponents in collusion; instituted a suit and invited a decree on compromise as also they in collusion instituted the execution petition whereupon despite the original defendant having no title to the disputed property was able to convey the applicant's title, the opponents are directed to maintain the status-quo with regard to the title and encumbrance of the suit property till the returnable date. Direct service is permitted.”*

6.1 It is the case of the applicant that after the aforesaid order was passed by this Court, the opponent, herein, submitted an application before the Revenue Authority and on the basis of the same, Entry No. 12813 came to be mutated in the record on 25.03.2021 with regard to the Suit property and thereby, the opponent has willfully and intentionally disobeyed the order dated 17.03.2020.

6.2 Here, it is pertinent to note that the present opponent has neither got the Suit property

transferred nor is there any encumbrance created on the same, as is submitted by the applicant.

6.3 It would be relevant to refer to the observations made by the Apex Court at Paragraph-14 in the case of '**SULOCHANA CHANDRAKANT GALANDE**' (Supra), which reads thus;

*"14. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (Vide Collector of Bombay Vs. Nusserwanji Rattanji Mistri & Ors., AIR 1955 SC 298; H.P. State Electricity Board & Ors. Vs. Shiv K. Sharma & Ors., AIR 2005 SC 954; and Al Champdany Industries Ltd. Vs. Official Liquidator & Anr.."*

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6.4 From the aforesaid observations made by the Apex Court, it becomes clear that an encumbrance must be a charge on the property and it must run with the property.

6.4.1 In the case on hand, there does not appear to be any encumbrance on the Suit property and therefore, the contention raised by learned Advocate,

Mr. Kansara, is misconceived.

6.5 It is contended, in this application, that the opponent was very well aware of the order passed by this Court on 17.03.2020, as after the filing of the application by the applicant in the execution proceedings before the Executing Court, the opponent, herein, also preferred an application, for vacating *ad-interim-relief* and despite that the opponent submitted an application for mutation of entry in the revenue record.

6.5.1 Aforesaid contention raised on behalf of the applicant is also misconceived, for the simple reason that there is no breach of *status quo* with regard to the title and the encumbrance of the suit property, in any manner, as observed herein above.

6.6 Just because the opponent made an application for entering her name in the revenue record, it cannot be said that there is willful and intentional disobedience of the order of this Court dated 17.03.2020.

6.7 Here, it is pertinent to note that the present applicant challenged the order of the revenue authority, certifying the entry in favour of the opponent, before the appellate authority and the appellate authority has ordered to set aside the order certifying the said entry.



6.8 For the reasons stated herein above, this Court is of the considered view that there is no willful or intentional disobedience of the order of this Court dated 17.03.2020 on the part of the opponent. This application, therefore, deserves to be dismissed.

7. Resultantly, this application fails and is accordingly, **REJECTED**. Rule is discharged.

(VIPUL M. PANCHOLI, J)

(DR. A. P. THAKER, J)

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