IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.17 OF 2025
WITH CIVIL APPLICATION NO.4669 OF 2025
IN AO/17/2025

1. Vijaykumar S/o Basantilal Kucheriya,
Age : 72 years, Occu. Business & Agri.,
R/o Sardar Patel Road, Kacchi Bazar,
Parbhani.

2. Anilkumar S/o Basantilal Kucheriya,
Age : 72 years, Occu. Business & Agri.,
R/o Sardar Patel Road, Kacchi Bazar,
Parbhani. … **Appellants.**

Versus

Sushilkumar S/o Parasmal Kucheriya,
Age : 51 years, Occu. : Business & Agri.,
R/o Subhash Road, Parbhani. … **Respondent**

WITH
CROSS OBJECTION STAMP NO.13511 OF 2025
IN AO/17/2025

Sushilkumar S/o Parasmal Kucheriya,
Age : 51 years, Occu. : Business & Agri.,
R/o Subhash Road, Parbhani. … **Petitioner.**

Versus

1. Vijaykumar S/o Basantilal Kucheriya,
Age : 72 years, Occu. Business & Agri.,
R/o Sardar Patel Road, Kacchi Bazar,
Parbhani.

2. Anilkumar S/o Basantilal Kucheriya,
Age : 72 years, Occu. Business & Agri.,
R/o Sardar Patel Road, Kacchi Bazar,
Parbhani … **Respondents**

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Advocate for Appellants in AO and for Respondents in X.Obj. : Mr. Milind M. Patil (Beedkar).

Advocate for Respondent in AO & for Petitioner in X.Obj. : Mr. P. V. Sonpethkar.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 01.12.2025
PRONOUNCED ON : 24.12.2025

JUDGMENT :

1. Heard both sides finally with their consent.

2. Appellants are taking exception to the judgment and order dated 03.04.2025 passed in Civil M. A. No. 92 of 2022 awarding punishment of civil imprisonment for one month under Order 39 Rule 2-A of the Code of Civil Procedure. The self same order has been challenged by the respondent seeking enhancement of punishment by way of cross objection.

3. The parties are related inter-se. The subject matter is land Gut No.84. Appellants had filed Regular Civil Suit No. 250 of 2015 for injunction contending that there was partition in the family and they were allotted land Gut No.84. The respondent had obstructed the peaceful possession. The Trial

Court dismissed the suit on 11.02.2020. Being aggrieved appellants preferred Regular Civil Appeal No.29 of 2020.

4. Before the Appellate Court, respondent submitted application Exhibit 12 for injunction under Order 39 Rule 1 and 2 of the CPC. After hearing the parties on 14.07.2022, application Exh.12 was allowed restraining present appellants from creating any third party interest in the suit land admeasuring 2H. 6R. It is contended by the respondent that in defiance of the order, appellant No.2 executed two sale deeds on 18.07.2022 and appellant No.1 executed two sale deeds on 19.07.2022, which amounted to breach of injunction.

5. Learned counsel Mr. Milind Patil Beedkar appearing for the appellants submits that there is no willful disobedience on part of the appellants and they were not liable for the penalty. It is submitted that appellants had no knowledge of the order of injunction passed below Exh.12. It is further submitted that there was no intention to flout the order of injunction. The parties are related inter-se and out of rivalry, respondent filed proceeding under Order 39 Rule 2-A of CPC. It is further submitted that no prejudice is caused to the respondent as he

is not claiming title over Gut No.84 and the alienation would be subject outcome of the appeal. It is further submitted that the appellants have tendered apology. Considering their ages, a lenient view should have been adopted.

6. Appellant in the cross objection would submit that in all four sale deeds were executed and the false statements were made before the registering authority which would amount to willful disobedience. It is submitted that appellants had knowledge. They were present for the hearing. The order in question was signed on 14.07.2022 itself. It is submitted that considering the gravity of the mischief, punishment needs to be enhanced.

7. I have considered rival submissions of the parties. They are related inter-se. In the partition, they were allotted Gut No.84 of which they were in possession. Their Regular Civil Suit No.250 of 2015 for injunction was dismissed and against that Regular Civil Appeal No.29 of 2020 was preferred. Application under Order 39 Rule 1 and 2 was filed at Exh.12 by the respondent. On 14.07.2022 order of injunction was passed. It was checked and signed on 18.07.2022.

8. Parties have led evidence in Civil Misc. Application No.92 of 2022. By impugned order, appellants are held guilty for breach of the order of injunction and awarded civil imprisonment for one month.

9. Lower Appellate Court held that the appellants were present for hearing of application Exh.12 on 12.07.2022 and they were aware of the proceedings of injunction. The theory put up by the appellants that they were not aware of the order as they were out of station and they were not informed the order of injunction is rightly discarded by the Lower Appellate Court. I do not find any illegality in holding that order below Exh.12 was passed on 14.07.2012.

10. In all, four sale deeds were executed on 18.07.2022 and 19.07.2022 by the appellants without ascertaining as to whether any order was passed below Exh.12. In the sale deeds also, the appellants were bold enough to state that no dispute was pending before the Court. Considering the overall conduct of the appellants, the Lower Appellate Court has rightly come to conclusion that there is breach of order of injunction. The findings in the impugned order cannot be said to be perverse.

11. This Court would have confirmed the impugned order of civil imprisonment under normal circumstances. The willful disobedience as contemplated in Order 39 Rule 2-A of CPC has to be assessed not only on the basis of conduct but intention, hardship or prejudice caused to respondent and the merits of the matter also.

12. Appellants have relied on the judgment of ***Future Coupons Pvt. Ltd. and others Vs. Amazon.Com NV Investment Holdings LLC and others [(2022) 12 SCR 299]***. Following is the relevant paragraph :

> *"41. Viewed differently, contempt of a civil nature can be made out Under Order XXXIX Rule 2-A Code of Civil Procedure not when there has been mere "disobedience", but only when there has been "wilful disobedience". The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but "wilful" and "conscious". This Court in the case of Ram Kishan v. Tarun Bajaj (2014) 16 SCC 204, considering the implication of exercise of contempt jurisdiction, held that the power must be exercised with caution rather than on mere probabilities. While delineating the conduct which can be held to be "willful disobedience", this Court held that:*

> *"12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same.* ***Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished.*** *"Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."*
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> *(Emphasis supplied)"*

13. The Lower Appellate Court overlooked that parties are at loggerheads and despite close relations, respondent initiated action against the appellants. It was not the case of the

respondent that he had any title, interest in the subject matter. Appellants' suit for injunction was dismissed and they preferred Regular Civil Appeal No.29 of 2020. There was neither any counter claim nor cross objection at the instance of respondent. The ownership of the appellant is not challenged. Present case falls short of calculated action with evil motive on the part of appellants.

14. It is reported by the parties that RCA. No.29 of 2020 was dismissed subsequently. Presuming that the proceedings continued between the parties, the alienations made by the appellants would have been hit by Section 52 of the Transfer of Property Act. No prejudice can be said to have been caused to the respondent. The purport of the injunction is to prevent the complications and maintained *status quo* of the property.

15. I find that there is absence of any intention on the part of the appellants to cause any prejudice to the respondent or to disregard the majesty of the Court. The wording of Rule 2-A of Order 39 shows that it is the discretion of the Court either to order attachment of the property of a person guilty of disobedience and may also order such a person to be detained

in civil prison. There is room to infer that drastic action of committing a person guilty of disobedience to the civil imprisonment is not contemplated.

16. Considering overall circumstances, I am of the view that the drastic action in question is unwarranted. In view of the supervening events, I find that appellants have made out a case that it was not willful disobedience. In civil application filed along with the appeal they have tendered apology which needs to be accepted.

17. The respondent by way of cross objection has prayed for enhancement of penalty. But no case is made out for enhancement. The acts done by the appellants is pardonable. I, therefore, pass following order :

ORDER

(i) Appeal from order is allowed and cross objection is dismissed.

(ii) Impugned judgment and order dated 03.04.2025 passed in Civil M.A.No.92 of 2022 is quashed and set aside.

(iii) In view of disposal of appeal from order, civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-