

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.8729 of 2014
Date of decision: 20.02.2015

Lachman Singh

....Petitioner

Versus

Gian Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Lakhwinder Singh Mann, Advocate for the petitioner.

G.S.Sandhawalia J.(Oral)

The petitioner-plaintiff has challenged the order dated 15.10.2014 (Annexure P/4) whereby the appeal of the respondents-defendants has been allowed and injunction granted by the trial Court has been vacated.

Counsel for the petitioner has vehemently argued that admittedly he is in possession of the property in question and therefore the Lower Appellate Court was not justified in vacating the injunction order. It is submitted that in the counter claim also the defendants have sought the relief that the goods left by the plaintiff in the plot in dispute should be picked up and also prayed for mesne profits. Reliance has been placed upon the judgment of the Apex Court in **Rame Gowda (D) by L.Rs. Vs. Mr. Varadappa Naidu (D) by L.Rs. and another (2004) 1 SCC 769** and **Prithi Pal Singh and another Vs. Amrik Singh and others (2013) 9 SCC 576** and judgment of this Court in **Hukam Singh Vs. Tara Singh 1992(2) PLR 331** to argue in support of the proposition.

There is no dispute regarding the proposition that a person in possession can only be dispossessed in accordance with law. However, one factor has to be taken into consideration is that person who approaches the Court with soiled hand is not to be granted relief of injunction. The present case is a classic case of concealment by the plaintiff. There is no dispute that sale deed dated 7.9.2011 (Annexure P/5) of 5 marlas of land in favour of Mandeep

Singh, respondent no.2 was executed by the plaintiff himself and possession of the land was given to the purchaser on the spot. The plaintiff thereafter filed a suit for permanent injunction against the said purchaser and his mother alleging that he was in possession of the property which he sold on the basis of sale deed dated 19.10.2004 to show that he has title of the property in question. Not a word was mentioned in the plaint that he had sold the land in question to respondent no.2/defendant no.2. When the defendants filed written statement and pleaded that they had purchased the property in question which had been sold by the plaintiff himself and he had paid a sum of ₹ 1,75,000/-, the plaintiff very cleverly filed an application for amendment of his suit and incorporated the relief that the sale deed in favour of defendant no.2 was result of fraud and misrepresentation in connivance with the Deed Writer and witnesses and was likely to be declared null and void. The consequential mutation in favour of defendant no.2 was also challenged by way of amendment which has been allowed and paragraph no.2-A was allowed to be incorporated along with paragraph nos.8-A and 8-B. Thus, on the basis of this amendment made, the trial Court without noticing these facts granted the benefit of injunction on 19.10.2013 to the plaintiff. The appeal has now been allowed as noticed above.

The reasoning which has weighed with the Addl. District Judge, Jalandhar reads as under:-

“10. It has been pleaded by the appellants/defendants that after delivery of possession the plaintiff had sought time to lift away the goods lying in three rooms as the other house of the plaintiff was under repair. So, the appellants/defendants on compassionate ground allowed the plaintiff to keep his goods in the property in dispute. Thereafter the defendants had been requesting the plaintiff number of times to remove his goods from the portion of house but he instead of taking goods from the portion of the property in dispute, has filed the instant suit. The above said facts show that the appellant/plaintiff has not come to the Court with clean hands and he has kept the appellants in dark and filed the instant suit with malafide intention in order to harass the appellants. In this way,

irreparable loss is being causing to the appellants/defendants because appellants/defendants have paid whole of the sale consideration and got the possession but is not able to enjoy the suit property due to malafide intention to the plaintiff.

11. It is also pertinent to mention here that in the original plaint the plaintiff has not taken the plea that he has mortgaged the property to the defendants and this plea was taken by him for the first time by filling amendment application only after when the sale deed was produced by the appellants. Further more, the plaintiff has taken the plea in his plaint that he had taken loan of Rs. 75,000/- from defendant no.2 and for the purpose of security of repayment, the plaintiff agreed to mortgage his property in favour of defendant no.2 but defendant no.2 by playing fraud and misrepresentation in connivance with deed writer and witnesses succeeded to get the sale deed dated 7.9.2011 executed in his favour. It means the plaintiff is indirectly admitting the execution of the sale deed dated 7.9.2011. The plea of mortgaging the property was not taken by the respondent/plaintiff in the original plaint and it has been taken for the first time by filing amendment application only after when the sale deed was produced by the defendants. It is settled law that no injunction can be granted against a true owner.”

It is settled principle that Courts are to adjudicate upon disputes and grant injunction in favour of a person who come to the Court with clean hands. Once the petitioner has approached this Court without disclosing true facts and tried to misuse the process of Court, in such circumstances, even though he is in possession, he is not entitled for any relief of injunction.

A Full Bench of this Court in **Chiranji Lal and others Vs. Financial Commissioner, Haryana and others** 1978 AIR (Punjab) 326 discussed the issue of suppression of material facts in writ jurisdiction and the attempt to over reach the Court with malafide and calculated suppression of material facts to secure interim relief. The Full Bench went on to hold that the Court would not even go into the merits of the case and the writ petition was liable to be dismissed on this ground alone. The said principle can be equally applied to the

grant of injunction which is again a discretionary relief.

In **Ram Niwas Vs. Jai Ram alias Tej Ram 2000(3) R.C.R. (Civil) 738**, while discussion the issue of co-owners it was also held that injunction was a relief of equity and the person who seeks equity must do equity. Discretion could not be used in favour of a person who approaches the Court with soiled hands.

Similarly in **M/s Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others (1995) 5 SCC 545**, the Apex Court has held that injunction was a purely equitable relief and the conduct of the party seeking injunction is to be free from any blame. The Courts would not grant injunction in each and every case. Consideration of conduct of the plaintiff is thus an important element. The relevant observations read as under:-

“49. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the CPC, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.”

Once the sale deed was already executed and the petitioner himself had gone and his photograph has been appended on the sale deed and

document had been registered, there is a presumption of truth attached to the said document. Respondent no.2 is the owner of the property measuring 5 marlas and the petitioner himself has sold the land. In such circumstances, the Lower Appellate Court, Jalandhar was well justified in declining the injunction keeping in view the settled principle.

The judgments which have been relied upon by the petitioner are not based on such facts whereby a dishonest litigant can approach the Court and plead that he is entitled to the benefit of protection. In such circumstances, the said principle cannot be applied to such a person. Accordingly, finding which had been recorded by the Lower Appellate Court, Jalandhar does not suffer from any infirmity which would warrant interference while exercising the supervisory jurisdiction of this Court. However, needless to say that anything observed herein only for the purpose of deciding the present revision petition and shall not prejudice the trial Court.

Accordingly, the present revision petition is dismissed.

20.02.2015
Pka

(G.S.SANDHAWALIA)
JUDGE