

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.406 of 2015
Decided on: 06.04.2016**

Mahabir and another

....Petitioners

Versus

Hanuman and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Satyaveer Singh, Advocate
for the petitioners.

Mr. Mohit, Advocate
for Mr. R.A. Sheoran, Advocate
for respondent No.1.

REKHA MITTAL, J.

The present petition has been directed against order dated 10.10.2014 (Annexure P-1) passed by the Civil Judge (Junior Division), Hisar whereby application filed by the plaintiff/respondent No.1 (Hanuman) for additional evidence has been allowed.

Counsel for the petitioners would contend that plea of the respondent raised in para 3 of the application (Annexure P-2) that he came to know about filing of civil suit for pre-emption by Sh. Mohan Lal son of Sh. Hira Lal bearing No.58-C and decided on 07.11.1981, five days back is falsified and belied from the document marked as Ex.P-15 by the respondent wherein there is reference to the said civil suit as well as its decision and the said fact was brought on record in the proceedings before Collector, Hisar, initiated at the instance of

Surinder Kumar against respondent/plaintiff (Hanuman) and Ex.P-15 is an order dated 27.09.2013 passed by the said authority in appeal No.15-E.A. 2012-13. Another submission made by counsel is that the learned trial Court despite having noticed that the plaintiff/applicant has not approached the Court with clean hands but still proceeded to decide the application in his favour and allowed him to adduce additional evidence. It is argued with vehemence that a party who approaches the Court by concealing or mis-stating material facts is not entitled to any relief.

Counsel for the contesting respondent, on the contrary, has supported the impugned order with the plea that order Ex.P-15 (Annexure P-4) makes reference to the aforesaid civil suit and its decision on 07.11.1981 but the exact contents of the said suit came to knowledge of the respondent just few days before filing of the application. It is further argued that on the basis of impugned order, the respondent has already adduced additional evidence by examining a handwriting expert on the basis of comparison of signatures/thumb-impressions of Sh. Mohan Lal on the sale deed in question with his signatures and thumb-impressions on the documents filed in the earlier suit that came to be decided in the year 1981. According to counsel, the petitioner is guilty of concealing the material facts in regard to the respondent having already adduced additional evidence and the witness examined by way of additional evidence has been cross-examined by the petitioner/defendant.

I have heard counsel for the parties and perused the

records.

It is an admitted position of the case that plea of the respondent/plaintiff raised in para 3 of the application for additional evidence is falsified and belied from the document Ex.P-15 produced by the respondent. The learned trial Court has also noticed the said fact and held that the applicant has not come to the Court with clean hands. Despite this, the trial Court by taking into consideration that interest of justice demands that any evidence which is necessary for the just and proper decision of the case should be brought, accepted plea of the respondent/plaintiff and allowed the application.

There cannot be any dispute about the settled position in law that a person who approaches the Court with unclean hands is not entitled to indulgence of the Court.

The impugned order was passed by the trial Court on 10.10.2014. The respondent examined the expert witness (additional evidence) in November, 2014. The present petition was filed in January, 2015 without disclosing the fact that the additional evidence permitted to be adduced by way of impugned order has already been produced before the trial Court. Counsel for the petitioner has not denied that the expert witness examined by the respondent was also cross-examined at the instance of the petitioner. There is nothing on record suggestive of the fact that at the time of examination of additional evidence, the petitioner or counsel representing him before the trial Court ever raised any protest much less to seek adjournment for the purpose of cross-examination by expressing his intention to challenge the order

impugned before this Court. As soon as the petitioner permitted examination of the witness by way of additional evidence and even cross-examined him without any objection, implicitly he waived his right to challenge the impugned order. This apart, as the petitioner is guilty of concealing material facts in regard to additional evidence already having been adduced before the trial Court, he has dis-entitled himself to seek any relief from this Court. That being so, the petition is liable to be dismissed and ordered accordingly.

06.04.2016*yakub***(REKHA MITTAL)
JUDGE**