

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8355 of 2016

Date of Decision:12.12.2016

Murti Devi and others

.....Petitioners

Versus

Smt. Veena Kundrai and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sachin Luthra, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged order dated 04.11.2016 passed by Civil Judge (Junior Division), Karnal whereby application under Order 9 Rule 13 read with Section 151 CPC was allowed and judgment and decree dated 07.08.2014 was set aside.

[2]. Plaintiffs-petitioners filed a suit for permanent injunction against the applicants-defendants on the ground that plaintiffs were in possession of the suit property and defendants No.1 and 2 were bent upon to dispossess them. Defendants No.1 and 2 were sought to be served by means of substituted service and were ultimately proceeded against ex parte. Ex parte judgment and decree was passed against them.

[3]. It was asserted by the defendants that filing of the suit

itself was an abuse of process of law. Plaintiffs had earlier filed a suit in respect of same property. Plaintiffs laid claim to the property on the basis of plea of adverse possession. In the aforesaid suit, an application for *ad interim* injunction was also filed.

[4]. Applicants-defendants contested the said suit. Ultimately, the trial Court dismissed the application on the ground that the possession of the plaintiffs over the land was illegal and unauthorized. They had no right to seek injunction against the true owner in respect of suit land. Plaintiffs were held to be trespassers as they had occupied the property in question by taking advantage of absence of the applicants-defendants. Plaintiffs remained unsuccessful in appeal and even before this Court. The factum of earlier litigation was conveniently withheld and concealed in the present suit filed for permanent injunction in which applicants-defendants were proceeded against ex-parte.

[5]. It was submitted by the applicants-defendants that at the time of filing of the suit, plaintiffs intentionally had given wrong address of the applicants-defendants in order to secure ex parte judgment and decree. Applicants-defendants further submitted that they had never received any summons from the Court. No Process Server or Postman had ever gone to their

place to effect service of summons, nor the applicants had ever refused to accept the summons. When the earlier litigation went upto this Court and the plaintiffs remained unsuccessful therein, thereafter, they intentionally with a view to grab the property, concealed the factum of earlier litigation and were instrumental in getting applicants-defendants to be proceeded against ex parte by illegal means. The address of 52-LD, Pritampura, New Delhi was wrong as the defendants never resided on the said address for the last 8 years. Even as per report of the Process Server, it was recited that the defendants had already left the said address.

[6]. Thereafter on 5 consecutive hearings, plaintiffs did not give the correct address, nor filed any registered A.D. The alleged service of the defendants on the same address by means of publication was nothing, but an evil design of the plaintiffs in furtherance of their continued illegal activities, including concealment of material facts from the Court.

[7]. Trial Court after framing of necessary issues and material on record has found existence of sufficient ground for setting aside the ex parte judgment and decree dated 07.08.2014. I find no reason to differ with the findings recorded by the trial Court. The pleadings made in the plaint are conspicuously silent about earlier litigation in which the

possession of the plaintiffs was held to be illegal and that of trespassers. Plea of adverse possession was not accepted by the Court.

[8]. It is a settled principle of law that a person who has not come to the Court with clean hands does not deserve equitable relief at the hands of the Court. Moreover, the applicants-defendants were found to be not properly and lawfully served in the case, therefore, indulgence granted by the trial Court in setting aside the ex parte judgment and decree cannot be held to be the result of any misreading of evidence, nor suffered with any perversity. This revision petition is accordingly dismissed.

12.12.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No