

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

CR No.6994 of 2018

Date of Decision : 20.11.2018

Mewa Singh

.....Petitioner

Versus

Davinder Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Ankit Rana, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

This revision is directed against the order passed by the Ld. District Judge, Fatehgarh Sahib in Civil Misc. Appeal No.02 of 2018 on 31st May, 2018, whereby the said appeal preferred by the petitioner had been dismissed.

2. The petitioner had originally sought a temporary injunction under Order 39 Rules 1 and 2 CPC in his suit pending in the Court of Ld. Additional Civil Judge (Senior Division), Fatehgarh Sahib (CS/507/17), wherein the prayer was to restrain the defendants/respondents and others claiming through them from interfering/obstructing in the peaceful use and enjoyment of the petitioner over 1/3rd share of the Tubewell Electric Motor Connection No.AP29/0065, H.P.20 and another Tubewell Electric Motor Connection bearing

No.AP29/728, H.P.10 situated over the disputed lands.

3. It transpires that the petitioner and both the respondents are closely related. Respondent No.1 is the real brother and respondent No.2 is the mother of petitioner.

4. There had been litigation previously between the parties, which ultimately ended by way of Compromise Deed dated 19th September, 2016 (Annexure P-8). Both the Ld. Courts below, however, rejected the petitioner's prayer after holding that he had been guilty of suppression of material facts before approaching the Trial Court for the equitable relief for injunction.

5. There is a specific reference to a document in the form of an affidavit purportedly executed by the petitioner himself, in which he is stated to have acknowledged that he had no concern or connection with the electric Tubewell bearing No.FR 65 of 20 HP, and that he has no objection if the said connection stands transferred in the name of respondent No.1-Davinder Singh.

6. Although the petitioner did not reveal in the original application that he had filed any replication/rejoinder against the aforesaid contention raised on behalf of the respondents/defendants, but Ld. Counsel for the petitioner today has tendered an un-authenticated copy of the purported replication (undated) to submit that the aforesaid contention of the respondents was controverted by the petitioner before the Ld. Trial Court.

7. At the outset, it may be observed that no reliance ought to be placed on such unauthenticated document which admittedly is not a part of the actual case record. Nevertheless perusal of the same still would not help the petitioner to any great extent since the specific averment in relation to the aforesaid contention of the respondent, as noted in para 4 of the replication to the preliminary objections merely states, *“It is further wrong to state that on dated 16-6-2016, the plaintiff himself gave his duly attested affidavit in favour of the defendant No.1 that he has no concern or connection with electric tubewell connect FR-65AP of 20 BHP and he has no objection if the said connection is to be transferred in the name of defendant No.1 and that now the plaintiff has no right, title or interest with the electric tubewell connection running in the suit property”*.

8. It is therefore seen that even on this question the petitioner was very evasive in denying the respondents' contention. If it was his case that no such document/affidavit had been executed or sworn by the petitioner, then it would naturally also been asserted that any such document/affidavit relied upon by the respondents was to be either forged or fictitious. But the petitioner carefully appears to have refrained from making such assertion even in his unauthenticated replication.

9. Consequently, this Court is in complete agreement with the view of both the Ld. Courts below that the petitioner had not come with

clean hands while seeking the equitable relief for temporary injunction and had apparently concealed about the execution of the material document/affidavit by himself acknowledging that he had no concern or connection with the disputed tubewell.

10. No grounds are, therefore, made out to interfere with the impugned order(s).

11. Dismissed.

November 20, 2018

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No