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

**CM-14365-CII-2018 in/and
CR No.8620 of 2017
Date of Decision : 07.08.2018**

Kamaljit

.....Petitioner

Versus

Municipal Committee Mukerian

.....Respondent

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Sunil Agnihotri, Advocate
for the petitioner.

B.S. Walia J. (Oral)

CM-14365-CII-2018

Allowed, as prayed for, Jamabandi for the year 2015-16
(Annexure P-6) is taken on record.

CR No.8620 of 2017 (O&M)

1. Revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 11.10.2017 (Annexure P-4) passed by the learned Additional District Judge, Hoshiarpur upholding order dated 08.10.2015 (Annexure P-3) passed by the learned Civil Judge (Jr. Divn.), Mukerian dismissing the application under Order 39 Rules 1 and 2 read with section 151 CPC filed by the petitioner-plaintiff.

2. The petitioner-plaintiff had filed a suit for permanent injunction for restraining the respondent/defendant i.e. Municipal Committee, Mukerian from interfering in his peaceful possession forcibly, illegally by raising

construction in any part of plot measuring 0 Kanal 10 Marlas comprised in Khewat No.245/244, Khatoni No.270, Khasra No.160 (9-3) as per jamabandi for the year 2010-11 and bounded as per details given in the head note of the plaint (Annexure P-1). Along with the suit, an application was filed under Order 39 Rules 1 and 2 CPC.

3. The learned Civil Judge (Jr. Divn.), Mukerian dismissed the application inter-alia on the ground that earlier the petitioner's co-sharers had filed a suit for permanent injunction regarding the same property alongwith an application under Order 39 Rules 1 & 2 CPC but the same was dismissed whereafter the petitioner-plaintiff had filed the suit on similar grounds along with application under Order 39 Rules 1 & 2 CPC. The learned Civil Judge (Jr. Divn.), Mukerian came to the conclusion that the petitioner-plaintiff could not seek relief under Order 39 Rules 1 & 2 CPC as the same had already been denied to the other co-sharers regarding the same property and the same was to the knowledge of the petitioner-plaintiff.

4. Appeal by the petitioner-plaintiff against order dated 08.10.2015 passed by the learned Civil Judge (Jr. Divn.), Mukerian was dismissed by the learned Additional District Judge, Hoshiarpur vide order dated 11.10.2017 on the ground that although the petitioner-plaintiff had filed copy of jamabandi showing suit property to be the ownership of many persons but a tube-well was shown to be existing there as per revenue record and even though mutation had been sanctioned in favour of the petitioner-plaintiff, neither the petitioner-plaintiff nor her predecessor was shown to be in exclusive possession over any portion of the suit property besides the petitioner-plaintiff had neither pleaded nor mentioned in the site plan whether there is or was a tube-well beside had also not disclosed that water

supply was being made to the city from said tube-well whereas the defendant-Municipal Committee had filed a site plan showing existence of electric motor room and main water supply pipe existing in the suit property. The learned Additional District Judge, Hoshiarpur dismissed the appeal by observing that the petitioner-plaintiff had not come to Court with clean hands and had concealed the existence of a tube-well in the suit property from where water was being supplied to the city, therefore, the possession of the Municipal Committee over the suit property was fully established. The learned Additional District Judge, Hoshiarpur relied on the decision of this Court in Shri Sanatam Dharam Education Society Vs. Anil Goel, 2013 (1) CCC 697 (P&H), to hold that public interest could not be scarified or put to peril in any manner by granting injunction as prayed for thereby affecting water supply to the city.

5. Learned counsel for the petitioner-plaintiff has not been able to controvert that earlier other co-sharers of the petitioner-plaintiff had filed a civil suit for permanent injunction regarding the same suit property and the same was pending adjudication and the application under Order 39 Rules 1 & 2 CPC filed by the co-sharers of the petitioner-plaintiff was dismissed whereafter the petitioner-plaintiff filed a suit on the same and similar grounds but with different pleadings. Learned counsel has also not been able to controvert the findings recorded by the learned Civil Judge (Jr. Divn.), Mukerian of the petitioner-plaintiff having deliberately concealed fact of civil suit having been filed by the co-sharers as also of the application in the same having been dismissed.

6. Learned counsel has also not been able to show the exclusive possession of the petitioner-plaintiff over the suit property as jamabandi

shows the suit property to be the ownership of many persons besides a tube-well is shown to be in existence therein as per revenue record. Learned counsel has also not been able to show the petitioner or her predecessor in interest to have been in exclusive possession of any part of the suit property besides it has also not been denied that water supply is being made to the city from the tube-well over the land in question. In the circumstances, the decision in Anil Goel's case (supra) is squarely applicable to the facts of the case as no Court would be a party to an order which would affect public interest in any manner.

7. Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

August 07, 2018
rajesh k.khurana/sandeep

(B.S.Walia)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No