

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

CR-867-2021 (O&M)

Date of Decision: September 06, 2022

Tejpal Singh and another

...Petitioners

VERSUS

Piara Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vaibhav Sehgal, Advocate
for the petitioners.

Mr.Chanakya Batta, Advocate
for the respondents.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 23.12.2020 passed by learned Addl. District Judge, whereby, an order dated 30.10.2020 passed by learned Civil Judge, thereby dismissing the stay application, filed by the respondents, has been set aside.

The material facts, as culled out from the paper book are as follows:-

That, the respondents-plaintiffs had filed a suit, thereby seeking permanent injunction restraining the defendants from taking forcible possession, changing the nature of the suit property by way of raising any kind of construction, excavating, diminishing the value and utility or creating any kind of hindrance or obstruction in using the land, cutting the

trees comprised in Khewat no.53/53, Khatauni no.57, Khasra no.12//22/1(1-1), 12//22/2 (5-19), 12//26/1 (0-7), Khewat no.50/50, Khatauni no.54, Khasra no.20//2/2 (5-3), 20//5/1 (6-12), Khewat no.51/51, Khatauni no.55, Khasra no.19//1 (8-0), 19//2/1 (1-8), Khewat no.54/54, Khatauni no.58, Khasra no.12//23/1 (0-7), 20//3 (7-13), 20//4 (8-0), 20//5/2 (1-8), 20//8 (8-3), 20//9 (2-2), Khewat No.42/42, Khatauni no.45, Khasra no.12//9/2 (0-7), situated in the area of village Jajja Khurd, Tehsil Phillaur, District Jalandhar.

Therein, it was stated that the suit land is joint between the plaintiffs, defendants and others and they are cultivating, using the land in dispute, jointly as per their share and is yet to be partitioned. Also, they stated about the defendants to be threatening to change the nature of the suit property and to raise the construction and excavate it, without the consent and permission of the plaintiffs, without getting the land partitioned and want to diminish the value and utility of the agricultural land, for which they have no right.

In paragraph 8 of the plaint, there is specific mention made that no other case or litigation, with regard to the subject matter in question, is pending or decided between the parties, except a case titled as **Piara Singh and another vs. Navjit Kaur and another, pending for 01.10.2020** and **'Tej Pal Singh vs. Gurbakash Kaur' pending for 19.10.2020**.

An application under Order 39 Rule 1 and 2 CPC was also filed along with the suit.

At the inception stage, ad interim injunction was granted, thereby, restraining the defendants from taking forcible possession, changing the nature of the suit land by way of raising any kind of

construction, excavating, diminishing the value and utility or creating any kind of hindrance or obstruction in using the suit land or cutting the trees of the suit land, as detailed in the head note of the plaint, till the next date.

In pursuance of the notice issued by the Court, present petitioners-defendants made appearance and filed written statement, thereby taking preliminary objection that plaintiffs (respondents of the present case), have not approached the Court with clean hands and have suppressed the material facts from the Court. Therein, it was stated that three cases had already been filed by the plaintiffs against the defendants, one after the other, regarding the same cause of action and when the injunction was not granted, two suits were withdrawn. The details of filing of three suits and the manner of withdrawal of the two suits, had been given in the written statement.

It was also asserted that in fact, the plaintiffs are playing fraud by misleading/not disclosing the Court about the fact of previous litigation. Besides, taking other objections, vis-a-vis, locus standi of the plaintiffs to file the present suit, maintainability and cause of action, on merits, it was asserted that parties are in separate possession of the suit property to the extent of their respective shares, without any element of jointness. Further, it was also asserted that plaintiffs themselves admitted that the parties to the suit are co-owners and cultivating and using the land jointly, as per their shares.

After hearing the arguments, vide order dated 30.10.2020, learned lower Court, while observing the conduct of the plaintiffs, with regard to their being suppression of material facts and trying to mislead the Court, dismissed the application under Order 39 Rule 1 and 2.

Feeling aggrieved by the aforesaid order, plaintiffs filed an appeal before lower Appellate Court. After hearing the arguments, learned lower Appellate Court reached the conclusion that suit property is joint and that existing situation of suit property should be preserved. **Status quo regarding construction by both the parties was ordered.** With regard to the submissions made, vis-a-vis, concealment of material facts, it was observed that there was no element of concealment, as valid explanation has come forth from the plaintiffs, with regard to non-mentioning of the previous suits. It was also observed that withdrawal of the earlier suits for injunction does not bar the parties from pursuing fresh litigation. Thus, appeal was partly accepted vide order dated 23.12.2020.

Feeling aggrieved by the aforesaid order, petitioners-defendants Tejpal Singh and Navjot Kaur have filed the present revision petition.

In pursuance of the notice, respondents have made appearance through counsel.

At the very outset, it is pertinent to mention that Order VII of CPC deals with the particulars to be contained in the plaint. Apart from the particulars, as so mentioned in Rule 1(a to i), in Punjab, there is also an amendment made and the following clause has been added:-

“(j) a statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has been previously instituted or finally decided by a Court of competent jurisdiction or limited jurisdiction, and if so, with what results.”

Thus, it is the requirement that the party, who files a suit, has to disclose about the suits, previously instituted or finally decided by the Court of competent jurisdiction or limited jurisdiction and if so, is also required to

give the result of the same.

At this juncture, it is pertinent to mention that in the civil suit filed, out of which, the present revision petition, has arisen, there is mention of the pendency of the two cases, one filed by respondents-plaintiffs and other filed by the petitioners-defendants. From the paper book, it is evident that there were multiple suits filed prior to the suit in question. At first instance, the plaintiffs-respondents filed **civil suit No.450 titled as 'Piara Singh vs. Tejpal Singh and another'** and this suit was filed on **16.07.2020**, thereby seeking permanent injunction against the defendants, from taking the possession forcibly, illegally and also restraining from digging out/uprooting the underground pipes, vis-a-vis, land measuring 7 Kanal 7 Marla, as detailed in the headnote of the plaint.

Close perusal of the same reveals that the land mentioned in the headnote of the plaint i.e. Khewat no.53, also contains part of the land, which forms the basis of the suit in hand. However, at the inception stage, ad interim injunction was not granted by the Court concerned, when the file was taken up on **16.07.2020**. Notice was issued and thereupon, on the next date i.e. on **28.07.2020**, the suit was withdrawn by the plaintiff-respondent, on the basis of the statement made by the counsel.

Thereafter, **civil suit No.618 of 2020** was filed on **31.08.2020**. This suit was filed by **Piara Singh and Harpal Singh** against the present **petitioners-defendants**. However, names of defendants were interchanged to avoid matching of the earlier cases by the filing agency. However, the relief sought was same regarding **Khewat No.53/53 and 54/54**. Therein also, same assertion was made regarding the jointness of the land and there was specific recital made that **there is no suit or other litigation pending**

or decided by any competent Court of law, between the parties to the suit, on the same subject matter. Thus, there was suppression of the earlier suit, so filed.

This case was firstly taken up by the Court on **31.08.2020** and no ad interim injunction was given and notice was issued for **16.09.2020**. On the next date, counsel had given the statement that he does not want to pursue with the present suit and accordingly, he withdrew the suit. Not only this, another civil suit **No.623 of 2020, titled as 'Piara Singh and another vs. Navjot Kaur and another'** was filed on **02.09.2020** and it was also relating to the same suit property as the earlier two suits. This suit was taken up for hearing by the lower Court on **02.09.2020** and it was observed that no ground is made out for grant of interim injunction and notice was issued to the defendants for **09.09.2020**. It was only this suit, which has been disclosed, in the subsequent case i.e. the suit in hand. It was only thereafter that **civil suit No.724 of 2020** had been filed.

Close perusal of the pleadings of the various suits, so filed, speaks about the clever drafting of the complaints and that disguise was there by use of variable terminology but in essence, the relief sought was same. In the suit in hand, there is mention made only of third suit filed by the respondents-plaintiffs, which is pending. It does not make mention of two earlier suits filed, which were withdrawn, immediately, when no ad-interim injunction was granted. Thus, there is total silence about the earlier two suits, so filed.

The suit property in the earlier suit was relating to Khewat No.53, 54, but after adding two other Khewats, the subsequent suit has been filed. It should be noted that in the earlier suits filed also, everywhere there

is mention made about there to be no other suit pending or decided between the parties, relating to the subject matter. Even, in the third suit, there is recital made, only disclosing about one suit, which was pending.

Though, it is now submitted by learned counsel for the respondents that cause of action is different but it is not so. However, there is only interchange of words and use of variable terminology, on the basis of smart drafting. Seemingly, there is deliberate refrain on the part of the respondents-plaintiffs, from mentioning the details of the cases instituted earlier by them, in respect of the suit land.

During the course of arguments, it is submitted by learned counsel for the respondents-plaintiffs that in replication, sufficient explanation has been put forth, about there being no mention of the third case, on account of dementia of one of the plaintiffs but however, this submission is not tenable. Though, it is stated that there is no mention of one case, but however, the paper book, as observed aforesaid, reveals about there being suppression of two cases, instituted earlier, which were later on withdrawn. Even if, one of the plaintiff was patient of dementia, then the question arises, how he could indulge in filing of the multiple suits, giving details of the suit land and grievance, he had from the conduct of the petitioners-defendants. It is not believable that he will not remember the details of the cases, disclosure whereof, will go against him.

The suppression of the material facts of the earlier litigation did weigh the mind of the Civil Judge, who dismissed the application under Order 39 Rule 1 and 2 CPC, even though, at the inception stage, ad interim injunction was granted by the same very Court.

In Ramjas Foundation and another vs. Union of India and

others, 2011(1) RCR (Civil) 176, it was observed by the Hon'ble Supreme Court that *the principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.*

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Reference therein was made to the English Law, wherein, an observation was made, as herein given:-

“and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts – facts, not law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement.”

Also, further it was observed by the Hon'ble Apex Court that *the above noted rules have been applied by this Court in large number of cases for declining relief to a party whose conduct is blameworthy and who*

has not approached the Court with clean hands. The detail of the case law was also given therein. Lastly, mention was made to ***Dalip Singh vs. State of U.P., 2010(2) SCC 144***, wherein, an observation was made, which was reiterated in the aforesaid judgment as under:-

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In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

Considering the conduct of the party concerned, the appeal was dismissed by the Hon'ble Supreme Court.

Suffice to make mention that the aforesaid case law has been further followed by the Courts, time and again.

The suppression of material facts by itself is a sufficient ground to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the Court with clean hands and raise all the material facts, which may, one way or the other, affect the decision. A person deliberately concealing the material facts from the Court, is not entitled to any discretionary relief.

In the case in hand, as already observed aforesaid, three suits were filed, prior to the filing of the suit in hand, out of which, the present revision petition has arisen. However, there was not honest disclosure made of the earlier suits, so filed and withdrawn, though, mention was made only

of one suit, which was pending. Thus, there is material suppression of facts, which would have weighed the mind of the Court, at the time of grant of ad-interim injunction, at inception stage, which has been obtained by the respondents-plaintiffs, in the case in hand and considering the suppression of the previous suits, the application was dismissed finally by the Civil Judge. However, lower Appellate Court, which ordered to maintain status quo, had not properly appraised the fact of suppression of material facts and has erroneously reached one step ahead to conclude about the preservation of the suit property and ordered status quo.

Though, submissions relating to locus standi of the respondents-plaintiffs to file the suit and maintainability of this case, have also been made but there is not necessity, to touch these aspects, looking at the conduct of the respondents-plaintiffs as detailed aforesaid, which is sufficient for denial of relief, to the respondents-plaintiffs.

Keeping in view the aforesaid observations, the present revision is hereby allowed and the impugned order dated 23.12.2020 passed by learned Addl. District Judge being erroneous, is hereby set aside.

September 06, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No