

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-4686-2023

Date of Decision: 21.8.2023

Manjit Singh Bedi

....Petitioner

VERSUS

Hakam Chand @ Hakam Chand Thakur and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Gagandeep Singh Virk, Advocate,
for the petitioner.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioner for setting aside order dated 15.2.2023 passed by the Court of Civil Judge, Senior Division, Sri Anandpur Sahib in Civil Suit No.148 of 2019 titled Hakam Chand @ Hakam Chand Thakur v. Ram and others whereby the application filed by the petitioner/defendant No.2 under Order 7 Rule 11 CPC, for rejection of the plaint, has been dismissed.

2. Counsel for the petitioner *inter alia* submits that the present suit has been filed by respondent No.1 against the petitioner and respondent No.2 seeking decree for permanent injunction with regard to suit property; that previously also, respondent No.1 filed suit seeking decree for permanent injunction with regard to same property against the petitioner and the said suit was dismissed in default under Order 9 Rule 8 CPC by the Court of Civil Judge, Junior Division, Sri Anandpur Sahib vide order dated 22.10.2014 and copy of the said order is Annexure P-5. Counsel for the petitioner further submits that said material fact was concealed by

respondent No.1 in the plaint (Annexure P-1) of the present suit. He further submits that as previous suit was dismissed in default under Order 9 Rule 8 CPC, only remedy available with respondent No.1 was to file an application for restoration of the suit under Order 9 Rule 9 CPC and the said statutory provision further provides that fresh suit in respect of the same cause of action is not maintainable. Counsel for the petitioner further submits that this fact has not been taken into consideration by the learned trial Court while passing the impugned order; that even otherwise, a party which approaches the Court with soiled hands, is not entitled to grant of discretionary relief of permanent injunction and thus, the plaint deserves to be rejected.

3. I have considered the submissions made by the counsel for the petitioner.

4. Provision of Order 7 Rule 11 CPC is mandatory in nature. It states that plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that suit is barred by any law, the Court has no option but to reject the plaint. The Court must be vigilant against any camouflage or suppression and determine whether litigation is utterly vexatious and, an abuse of the process of Court. Hon'ble Apex Court in **Madanuri Sri Ramchandra Murthy v. Syed Jalal** (2017) 13 SCC 174 held that if however by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud so that bogus litigation will end at the earliest stage.

5. From the perusal of Annexure P-5, it appears that previously also, suit for permanent injunction was filed by respondent No.1 against the

petitioner with regard to the property in Mohalla Kuraliwala, Sri Anandpur Sahib and the said suit was dismissed in default under Order 9 Rule 8 CPC vide order dated 22.10.2014 (Annexure P-5). Now, respondent No.1 has again filed suit for permanent injunction against the petitioner and respondent No.2 with regard to the same plot No.728 situated in Mohalla Kuraliwala. As per provisions of Order 9 Rule 9 CPC, a fresh suit on the basis of same cause of action, is not maintainable and only remedy available with petitioner No.1 is to seek restoration of the previous suit. Further, it appears that respondent No.1 while filing fresh civil suit, has not disclosed about the dismissal of the previous suit under Order 9 Rule 8 CPC and it is settled proposition of law that a person who does not come to the Court with clean hands, is not entitled to be heard on merits of his grievance and is not entitled to any discretionary relief. However, these facts were not taken into consideration by the learned trial Court while passing the impugned order.

6. In view of above discussion, the impugned order is hereby set aside being erroneous. Learned trial Court is directed to decide the matter afresh in accordance with law. The petitioner is directed to appear before the learned trial Court on the date already fixed there.

(KARAMJIT SINGH)
JUDGE

August 21, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No