JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.672 of 2017
Mahram
Versus
Safdar Hussain and another

Date of Hearing: 04.05.2017
Petitioner by: Ch. Khanzada, Advocate,
Respondent No.1 by: Mr. Akmal Zia Mahmood Khokhar, Advocate.

MIANGUL HASSAN AURANGZEB, J:-Through the instant writ petition, the petitioner, Mahram Khan, impugns the order dated 08.02.2017, passed by the Court of the learned Additional District Judge (East), Islamabad, whereby respondent No.1's civil revision petition against the order dated 15.12.2016, passed by the Court of the learned Civil Judge, Islamabad, was allowed. Vide the said order dated 15.12.2016, respondent No.1's application under Order VI, Rule 17 C.P.C. for amending the suit for declaration and permanent injunction so as to seek the relief of possession, was dismissed.

2. The record shows that on 03.06.2010, Chaudhary Safdar Hussain (respondent No.1) instituted a suit for declaration and permanent injunction against the petitioner. In this suit, respondent No.1 prayed for a declaration to the effect that he is the owner in possession of land measuring 8 Kanals, 1 ½ Marlas in Khewat Nos.466, 468, and 469, Khatooni Nos.808, 812 to 818, Khasra Nos. 3160 to 3162, 2562, 3022, 3182, 3181, 5661/2736, 3019 and 3023 situated in Revenue Estate Sihala, District Islamabad ("suit land"). Respondent No.1 also prayed for permanent injunction restraining the petitioner for taking possession of the suit land or interfering in respondent No.1's peaceful possession of the suit land. Along with the said suit, respondent No.1 also filed an application for interim injunction. The petitioner contested the said suit by filing a written statement. The position taken by the petitioner was that the petitioner had purchased the suit land from respondent No.1's co-sharer, and had also taken over possession of the suit land. It was also pleaded that the petitioner had constructed a house on the suit

land. Vide order dated 23.02.2015, the learned Civil Court dismissed respondent No.1's application for interim injunction. Vide the same very order, the learned Civil Court also framed the issues.

3. On 10.09.2013, respondent No.1 instituted another suit against the petitioner. In this suit, respondent No.1 had also prayed for a decree for possession of the same very land which was the subject matter of the earlier suit referred to herein above. This suit was also contested by the petitioner who filed a written statement. In the written statement, the petitioner took a preliminary objection to the effect that the earlier suit instituted by respondent No.1 was still pending adjudication, therefore the subsequent suit was barred under Order II, Rule 2 of the Code of Civil Procedure, 1908 ("C.P.C."). Vide order dated 11.11.2014, the learned Civil Court dismissed respondent No.1's application for interim injunction which had been filed along with the said suit. On 07.09.2016, the respondent No.1's suit for possession etc. was dismissed for non-prosecution. On 14.11.2016, respondent No.1's application for the restoration of the said suit was dismissed for non-deposit of process fee. On 05.10.2016 (i.e. after the dismissal in default of respondent No.1's suit for possession etc.), respondent No.1 filed an application under Order VI, Rule 17 C.P.C. seeking an amendment in his suit for declaration and permanent injunction by adding a prayer for recovery of possession of the suit land in the said suit. The petitioner contested the said application by filing a written reply. Vide order dated 15.12.2016, the learned Civil Court dismissed respondent No.1's application under Order VI, Rule 17 C.P.C. The learned Civil Court was of the view that the said application under Order VI, Rule 17 C.P.C. had been filed by respondent No.1 to fill up lacunae in his case and that the case was at an advanced stage of recording the evidence. It was also observed that respondent No.1's certificate in his second suit was not proper.

4. Respondent No.1 impugned the said order dated 15.12.2016 in a civil revision petition before the Court of the learned Additional District Judge, Islamabad. Vide order dated 08.02.2017, the said

revision petition was allowed, and the order dated 15.12.2016 was set aside. Resultantly, respondent No.1's application under Order VI, Rule 17 C.P.C. was also allowed. The learned revisional Court was of the view that the proposed amendment would circumvent the litigation between the parties, and will not result in a change in the nature and complexion of the suit. The said order dated 08.02.2017 has been impugned by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner submitted that respondent No.1 deliberately omitted to seek the relief of possession in his suit for declaration and permanent injunction instituted on 03.06.2010; that when the said suit was instituted, the petitioner was already in possession of the suit land; that instead of instituting another suit seeking the relief of possession, respondent No.1 should have sought an amendment in the existing suit; that in the second suit for possession, respondent No.1 did not make any mention of the earlier suit for declaration and permanent injunction; that the certificate of respondent No.1's counsel along with the suit for possession also does not mention the pendency of the earlier suit with respect to the same land; that respondent No.1 concealed this material fact from the learned Civil Court while instituting the suit for possession; that respondent No.1's suit for possession has been dismissed for non-prosecution, and that respondent No.1's application for the restoration of the said suit has also been dismissed; that by seeking an amendment in the suit for declaration and permanent injunction, respondent No.1 wants to include a pray for a relief which was expressly prayed for in the suit for possession, which was dismissed by the learned Civil Court, vide order dated 15.12.2016. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the impugned order dated 08.02.2017 passed by the learned revisional Court to be set aside, and the order dated 15.12.2016 passed by the learned Civil Court to be restored.

6. On the other hand, learned counsel for respondent No.1 submitted that the order dated 08.02.2017 passed by the learned revisional Court was strictly in accordance with the law; that the

relief of allowing amendment in the suit was discretionary in nature; that the learned revisional Court cannot be said to have exercised its discretion (by allowing respondent No.1's application for an amendment in the suit) arbitrarily or unlawfully; that respondent No.1 was dispossessed by the petitioner from the suit land during the pendency of the suit for declaration and permanent injunction; that the amendment sought by respondent No.1 would not in any manner change the nature and complexion of the suit; that respondent No.1 entered the witness box as PW-1, and his examination-in-chief has already been recorded; and that the case is now fixed for the cross-examination of PW-1 who shall not seek for his examination-in-chief to be carried out again. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above, and need not be recapitulated.

8. Now, it is well settled that the relief of declaration and permanent injunction are discretionary in nature. Equitable consideration will apply to such matters. It is an admitted position that in respondent No.1's suit for declaration and permanent injunction, the relief of possession was not sought. The suit for declaration and permanent injunction was instituted on 03.06.2010. Three years later (i.e. on 10.09.2013), respondent No.1 instituted the suit for possession etc. In the said suit, there is no mention of respondent No.1's earlier suit for declaration and permanent injunction. The certificate in the suit for possession etc. also makes no mention of the earlier suit for declaration and permanent injunction. This conduct on the part of respondent No.1 disentitles him from equitable relief. In the case of Sajjad Ahmad Vs. Chairman, Capital Development Authority (2016 CLC 896), I have had the occasion to hold as follows:-

> ***"20. Concealment of a material fact in the pleadings is akin to an abuse of the process of the Court. It is an elementary principle of law that a party, who approaches the court for discretionary relief,***

should candidly and forthrightly narrate all material facts in the plaint and/or the application for the grant of a temporary injunction. A litigant who had failed to make complete disclosure of an earlier litigation in the subsequent suit between the same parties, can be held to have abused the process of law and such an action was considered to be a deliberate attempt to hamper and obstruct due course of judicial proceedings in administration of justice. The petitioner, in the subsequent suit, ought to have disclosed the factum about the earlier litigation between the parties and the result thereof."

9. The learned Civil Court was correct in holding that the certificate along with respondent No.1's suit for possession etc was not correct. I would also agree with the learned Civil Court that (after the dismissal of respondent No.1' suit for possession etc.) respondent No.1's application seeking an amendment in the suit for declaration and permanent injunction was an attempt to fill up the lacunas in his case.

10. As regards the contention of the learned counsel for respondent No.1 that he was dispossessed from the suit land by the petitioner during the pendency of the suit for declaration and permanent injunction, although no pleading to this effect is present in respondent No.1's suit for possession etc., in the event, respondent No.1 succeeds in his suit for declaration and permanent injunction, and also succeeds in proving that he was dispossessed during the pendency of the said suit, there would be nothing preventing the learned Civil Court to grant him the relief of possession in exercise of its inherent jurisdiction.

11. In view of the above, this writ petition is allowed, and the impugned order dated 08.02.2017, passed by the learned revisional Court is set aside, and the order dated 15.12.2016, passed by the learned Civil Court is restored, subject to the above. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

Qamar Khan*

(JUDGE)

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