

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO No. 11/2022
CM No. 3416/2022
CAV No. 1075/2022

Pronounced on: 02.06.2023

Mohd. Ramzan Bhat

.... Petitioner/Appellant(s)

Through:- Mr. P.S. Ahmad, Advocate.

V/s

Nazir Ahmad Wagay and others

.....Respondent(s)

Through:- Mr. B.A. Malla, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. This appeal has been filed against the order dated 14.06.2022 passed in a suit titled "*Mohammad Ramzan Bhat vs. Nazir Ahmad Wagay and another*" in the Court of learned Principal District Judge, Kulgam whereby the application for grant of interim injunction was dismissed.

02. A civil suit for declaration seeking cancellation of instrument (General Power Of Attorney) executed on 06.06.2012 registered by the Sub-Registrar (Ld. 3rd Additional Munsiff), Jammu was filed by the appellant (plaintiff therein). A decree of permanent prohibitory injunction was also sought against the defendants (respondents herein) from causing any sort of interference in the suit property measuring 11 Marlas falling under Survey No. 62 and 64 (02 Marlas) (09 Marlas) and land measuring 18 Marlas falling under Survey No. 101 (old 68) situated in village Damidullah, Kulgam.

03. The trial Court, vide order dated 31.12.2020, directed the parties to maintain status quo on spot subject to the objections from the other side

and till next date of hearing. The defendants (respondents herein) filed their written statement and sought dismissal of the *ad interim* injunction.

04. The defendants in their written statement had stated that the plaintiff had concealed material facts, as such, the suit was liable to be dismissed. It was contended that the appellant had earlier also filed suit before the Court of Sub-Judge, Kulgam, regarding suit land falling under Survey No. 101 (new) (old 68) situated in village Damidullah, Kulgam and the suit was returned by the learned Sub Judge vide order dated 04.10.2019, as it pertained to migrant property, the appeal against the said order is still pending. One more suit titled 'Mohd. Ramzan Bhat vs. Nazir Ahmed Wagay and others' was filed regarding the same subject matter before the Court of Munsiff, Kulgam, and the same was also been dismissed by this Court vide order dated 13.03.2019.

05. The learned trial Court vide its order dated 14.06.2022, dismissed the application for grant of interim injunction on the ground that the same was without any merit. The appellant, aggrieved of the same, has filed the present appeal on the ground that the order of the trial Court is illegal and perverse as there was no concealment of facts in the plaint.

06. The contention of the appellant is that the order of trial Court is perverse in law, as there is no concealment of fact as observed in the impugned order. The trial Court has failed to consider the pleading of the parties and without determination of their rights has permitted the defendants to use the suit property. The trial Court without considering the plea of the appellant that respondent No. 2 had illegally and fraudulently executed Power of Attorney in favour of respondent No. 1, has dismissed the

application of injunction and vacated the order of *status quo* which has resulted in miscarriage of justice. It is submitted that the trial Court has not taken into consideration the principle of injunction, i.e., *prima facie* case in favour of party claiming the relief, balance of convenience and irreparable loss and injury. The impugned order has been issued only on the ground that respondent No. 2 being a migrant has executed a Power of Attorney in favour of respondent No. 1.

07. It is submitted that the appellant has not concealed any fact and disclosed all the proceedings in the plaint and the same has been pleaded in Para E of the plaint. It is also stated that the trial Court had to maintain the order of *status quo* regarding suit property which has been illegally and fraudulently executed out of a fraud and deception dismissed the same. The Court below had also, while looking into the pleadings, had failed to come under the correct appreciation of law and has not considered the mandate of Order 39 Rule 1 and 2 that there existed a *prima facie* case in favour of the party claiming the relief and the balance of convenience also lies in his favour and that he would suffer irreparable loss of injury, in case, the order is not passed in his favour.

08. The respondents submitted that the plaintiff had filed the suit after concealing the material facts, as such, the suit is required to be dismissed. A suit titled “*Mohd. Ramzan Bhat vs. State of J&K and another*” was filed before the Sub-Registrar, Kulgam regarding suit land covered under Survey No. 101 situated in village Damidullah, Kulgam, however, this suit was returned back by the learned Sub Judge vide order 04.10.2019, as the same pertained to migrant property. An appeal against the said order

was also pending before the Court. Another suit titled “*Mohd. Ramzan Bhat vs. Nazir Ahmad Wagay*” was also filed regarding the same subject matter before the Munsiff, Kulgam which was dismissed vide order dated 13.03.2019. Thus, the suit has been filed by concealing these facts, as such, the plaintiff is not entitled to any equitable relief.

09. The appellant submits that he had enclosed all the material facts and regarding litigations pending between the parties in Para C and E of the plaint. Para C and E of the plaint reads as under:

“(c). That the interference of some governing authorities at the behest of the defendants with respect to the aforesaid land is continuous and unabated which prompted the plaintiff to seek appropriate remedy independent of the rights involved in the instant matter against some State officials and defendants which is still pending adjudication.

(e). That though the case *inter se* the parties regarding the subject matter involved in the case is *sub judice* where the rights of the parties are yet to be adjudicated upon and determined; the Tehsildar concerned despite being a party to the case when initiated parallel proceedings and passed the orders for eviction of the plaintiff; plaintiff was constrained to initiate revision proceedings as all the proceedings of the Tehsildar concerned are illegal and the result of arbitrary exercise of powers and the Dy. Commissioner, Kulgam, has been pleased to call for the records of the Tehsildar concerned and the said revision proceedings are pending adjudication”

10. A perusal of the aforesaid paras reveal that Para (c) only refers to the interference of government authorities at the behest of the complainant with respect to the aforesaid land and the fact that the rights involved in some matters are pending adjudication. Para (e), however, refers to the fact that the case *inter se* parties is regarding subject matter is *sub judice*, where the right of parties are adjudicated and determined and the Tehsildar concerned, despite being a party to the suit has initiated parallel proceedings.

11. There is no mention of the aforementioned two suits that the

appellant had filed, one which was before the Munsiff, Kulgam which was dismissed on 13.03.2019 and the other one which was before the Sub Judge which was returned by Sub Judge and appeal against which has been filed.

12. The Court, while exercising discretion, no doubt the Court has to consider the terms of Order 39 Rule 1 and a temporary injunction is to be granted where the property in dispute is in danger of being wasted, damaged or alienated or where the defendant tends to dispose the property, however, temporary injunction can be granted to protect the *lis* or to prevent damage of wastage to any property which is in dispute but the same has to be exercised only on the principles enunciated where there is balance of convenience, *prima facie* case and irreparable loss and injury.

13. It is also a settled law that once the trial Court exercises its discretion to grant or refuse to grant the relief sought, the appellate Court generally would not interfere unless such exercise is palpably perverse, arbitrary, capricious or against the settled principles of law but equally important is the fact that for seeking equitable discretionary relief, the parties are required to approach with clean hands, a litigant's approach to the Court with untrue facts, designed to mislead the Court on the basis of untrue facts described in to seek compassion which is generally reserved for truthful and *bona fide* litigants.

14. The appellant admittedly has not come to the Court with clean hands for seeking the relief, as such, the sanctity of the proceedings and inaccurate misrepresentation had resulted in grant of status quo as held by the trial Court.

15. The Hon'ble Apex Court in **“Vijay Seyal and another vs. State of Punjab and others”**, (2003) 9 SCC 401 held as under:

“In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.”

16. In **‘K.D. Sharma vs. Steel Authority of India Ltd. and others’**, (2008) 12 SCC 481, it was observed that:

“39. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and ‘clean breast’ cannot hold a writ of the Court with ‘soiled hands’. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.”

17. Thus, the trial Court had rightly held that the appellant has not come

forward with all the true facts and has chosen to state facts in a manner which suited him and which resulted in grant of discretionary relief and has rightly held that the plaintiff had approached the Court with concealment of material facts, as such, was not entitled to claim equitable relief, therefore, the trial Court had rightly dismissed the applications for *ad interim* injunction.

18. In view of the aforesaid facts and discussion, there is no merit in this appeal and the same is accordingly **dismissed**.

(Sindhu Sharma)
Judge

Jammu:
02.06.2023
Michal Sharma

