

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 10th OF JANUARY, 2024

MISC. APPEAL No. 3114 of 2023

BETWEEN:-

1. **SMT. BRIJBALA SONI W/O SHRI SURESH KUMAR SONI, AGED ABOUT 63 YEARS, OCCUPATION: BUSINESS 776 USHA NAGAR EXTENSION, DISTRICT INDORE (MADHYA PRADESH)**
2. **SURESH SONI S/O SHRI RAMKRISHNA SONI, AGED ABOUT 69 YEARS, OCCUPATION: BUSINESS 776, USHA NAGAR EXTENSION, INDORE (MADHYA PRADESH)**

.....APPELLANTS

(SHRI VIJAY KUMAR ASUDANI, LEARNED COUNSEL FOR APPELLANTS)

AND

M.S RSD DEVELOPERS PVT. THROUGH ITS DIRECTOR SMT. PRACHI DAGA W/O SHRI LUV SONI OCCUPATION: BUSINESS 401 A BLOCK SILVER MALL 8 RNT MARG, DISTRICT INDORE (MADHYA PRADESH)

.....RESPONDENT

(SHRI RAJAT RAGHUWANSHI, LEARNED COUNSEL FOR THE RESPONDENT)

.....
This appeal coming on for orders this day, the court passed the following:

ORDER

This appeal has been filed by the appellants being aggrieved by the order dated 06.05.2023 passed by leaned 11th District Judge, Indore in RCS.No.313-A/2023 whereby the trial Court dismissed the application filed by the appellants/plaintiffs under Order 39 Rules 1 and 2 of CPC.

2. The brief facts of the case is that appellants/plaintiffs filed a suit for

declaration and permanent injunction thereby stating that they hv become he owner of he suit property vide registered sale deed dated 31.03.2021 wherein the share of the plaintiffs was 62.5% and that of defendant was 37.5% but the defendant are trying to sale the property the plaintiffs were forced to file the suit in question. The plaint is Annexure-B. With the suit, the plaintiffs filed an application for temporary injunction Annexure-C for not alienating the suit property till disposal of the suit.

3. Respondent/defendant filed a reply to the application for grant of temporary injunction and along with the reply, respondent filed two unregistered and unstamped relinquishment deeds which were allegedly signed by plaintiff no.2 only and as per which the share of plaintiffs in the suit property was relinquished in favour of defendant. The defendant also filed consent deed as well as an unregistered agreement to sale. Copy of reply of defendant is Annexure-D.

4. Thereafter, the plaintiffs filed a counter affidavit thereby categorically stating that they have come into knowledge of the alleged relinquished deed, agreement to sale or consent letter only after filing of the reply by defendant and on these documents, either there are no signature of plaintiffs or there are forged signature of plaintiff. Even otherwise any document creating any interest in immovable property is required to be compulsorily registered, hence, the said documents are not legally having any relevance. Copy of counter affidavit is Annexure -E.

5. The trial Court vide the impugned order dated 06.05.2023 dismissed the application for grant of temporary injunction by holding that there is no prima facie case in favour of the plaintiffs, hence, even if balance of

convenience and equity and irreparable loss is in favour of the plaintiffs, they cannot be granted injunction.

6. Being aggrieved by the aforesaid order, the appellants/plaintiffs filed this miscellaneous appeal on the ground that whether prima facie case means that there is some question to be tried, hence there are various questions to be tried i.e. whether the plaintiffs have executed the said relinquishment agreement to sale and consent letter; whether any interest in any immovable property can be created without registered document and without payment of stamp duty. The trial Court erroneously came to the conclusion that there is no prima facie case in favour of the plaintiffs and it was held that plaintiffs have not approached the Court with clean hands. He further submitted that trial Court wrongly held that plaintiffs suppressed various documents in suit filed by some Pankaj Chhajer in which plaintiff filed the written statement. The written statement is Annexure-F. Hence, the plaintiffs prayed for setting aside the impugned order dated 06.05.2023 passed by 11th District Judge, Indore in RCS No.313-A/2023 and grant temporary injunction in favour of the plaintiffs.

7. On the other hand, respondent/defendant supported the impugned order and prays for dismissal of this appeal.

8. Learned counsel for the appellants relied on the judgment in the case of **Maharwal Khewaji Trust Faridkot Vs. Baldev Dass reported in (2004)**

8 SCC 488 wherein the Apex Court has held as under:-

"10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal

proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.

9. On the other hand, respondent's counsel argued that plaintiffs suppressed various documents. He further submitted that plaintiffs have not approached the Court with clean hands and suppressed the written statement filed in a suit filed by one Pankaj Chhajed and also giving notice dated 18.05.2013 to the defendant, admitted these documents. In support of his contention he has relied on the judgment passed by this Court in the case of **Pragati Petrol Pump and Anr. Vs. Indian Oil Corporation and Ors. W.P.No.3408/2012 decided on 03.09.2013** in which the Co-ordinate Bench of this Court held as under:-

"In Ramjas Foundation Vs. Union of India, (2010) 14 SCC 38, it is held:--

21. 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 a bearing on adjudication of the issue(s) arising in the case.

10. In the case of **Central Warehouse and Anr. Vs. Union of India and Ano. R.P.No.161/2015 decided on 11.05.2015** wherein it has been held as under :-

"R.P.No.161/2015 (Central Ware House & Ano. v. Union of India & Ano.) In a catena of judgments including *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449, the Apex Court held in para 35 as under:-

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

On the basis of said Supreme Court judgments, following principles may be culled out:-

1. A writ remedy is an equitable one. While exercising extraordinary power a Writ Court certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court.
2. Litigant before the Writ Court must come with clean hands, clean heart, clean mind and clean objective. He should disclose all facts without suppressing anything. Litigant cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back)/ conceal other facts.
3. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation which has no place in equitable and prerogative jurisdiction.
4. If litigant does not disclose all the material facts fairly and truly or states them in a distorted manner and misleads the Court, the Court has inherent R.P.No.161/2015 (Central Ware House & Ano. v. Union of India & Ano.) power to refuse to proceed further with the examination of the case on merits. If Court does not reject the petition on that ground, the Court would be failing in its duty.

5. Such a litigant requires to be dealt with for Contempt of Court for abusing the process of the Court.

6. There is a compelling need to take a serious view in such matters to ensure purity and grace in the administration of justice.

7. The litigation in the Court of law is not a game of chess. The Court is bound to see the conduct of party who is invoking such jurisdiction."

11. In the case of **Dalip Singh Vs. State of U.P. Civil Appeal No.5239/2022 decided on 03.12.2009** it has been held as under:-

"21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority."

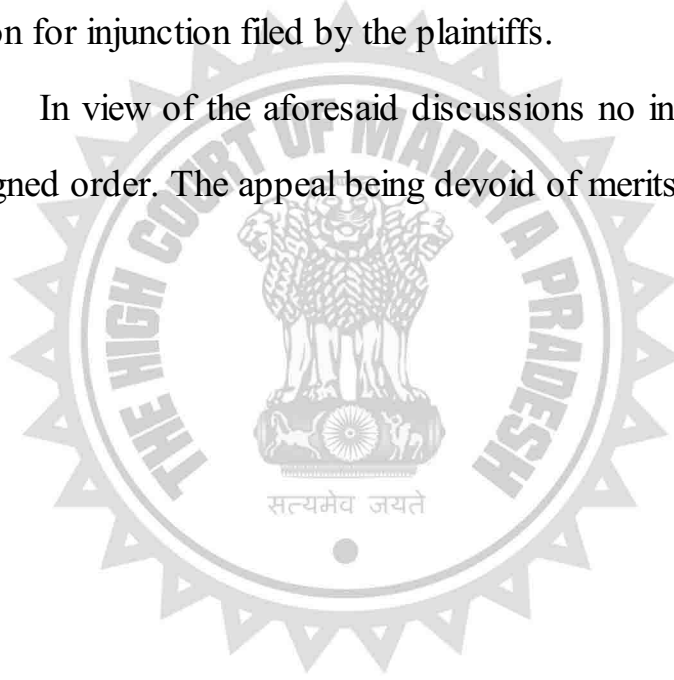
12. Keeping in view the submissions of the learned counsel for the parties and perusal of the impugned order, it is found that it is true that unregistered agreement to sale cannot confer title to the person, but in the present case the appellants/plaintiffs suppressed the documents before the trial Court and they also accepted these documents substantially in a notice given by him to the respondent/defendant. No doubt, while dealing with the application for injunction, the Court has not taken into account the fact and appreciation of evidence, but it is the duty of the plaintiffs to disclose all the facts before the Court. It is the duty of the party to come before the Court with clean hands and not to suppress any fact. The party who seek relief from the Court cannot get the said relief if he does not come before the Court with clean hands.

13. Considering the documentary evidence adduced by the defendant, it clearly shows that plaintiffs suppressed the documents relinquished deed,

agreement to sale and suit pending before the Civil Court in which plaintiffs is the defendants with the respondent in which subject matter of this suit is involved. Therefore, considering the documents produced by both the parties it is found that plaintiffs had not dare to disclose this fact before the Court. So it is the weakness of the plaintiffs. It clearly appears that plaintiffs had not come before the trial Court with fair and clean hand and suppressed the several facts relating to the suit property. After taking into consideration the submissions advanced by the learned counsel for both the parties, in the considered opinion of this Court, the trial Court has not committed any error in rejecting the application for injunction filed by the plaintiffs.

14. In view of the aforesaid discussions no interference is called for in the impugned order. The appeal being devoid of merits is hereby dismissed.

RJ



**(HIRDESH)
JUDGE**