

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF FEBRUARY, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE JAYANT BANERJI**

**AND**

**THE HON'BLE MR. JUSTICE K. V. ARAVIND**

**REGULAR FIRST APPEAL NO.1899 OF 2012 (SP)**

**BETWEEN:**

M/S.VARNA BUILDERS AND DEVELOPERS,  
A REGISTERED PARTNERSHIP FIRM  
HAVING ITS OFFICE AT NO.33,  
SWISS COMPLEX, RACE COURSE ROAD,  
BANGALORE-560 001, PRESENTLY AT NO.22/2,  
1<sup>ST</sup> MAIN ROAD CROSS, JAYAMAHAL, BANGALORE.  
REP. BY ITS MANAGING PARTNER,  
SRI V.BHAKTHA KUMAR.

...APPELLANT

(BY SRI SHYAM KOUNDINYA. A.S, ADVOCATE)

**AND:**

1. SRI.G.RAJAPPA  
SINCE DEAD BY LRS
- 1(a) SMT.LAKSHMI RAJAPPA,  
W/O LATE G.RAJAPPA,  
AGED ABOUT 65 YEARS,
- 1(b) SRI.G.R.PRADEEP,  
S/O LATE G.RAJAPPA,  
AGED ABOUT 39 YEARS,
- 1(c) SRI.G.R.SANDEEP,  
S/O LATE G.RAJAPPA,  
AGED ABOUT 36 YEARS,

R1(a) TO (c) ARE R/AT  
NO.562, 20<sup>TH</sup> MAIN, 36<sup>TH</sup> CROSS,  
4<sup>TH</sup> T BLOCK, JAYANAGAR,  
BENGALURU-560 041

2. SRI.JAGANNATHA V. PAI,  
MAJOR,  
R/AT NO.1319, SARAKKI LAYOUT,  
2<sup>ND</sup> PHASE, J P NAGAR,  
BANGALORE-560 078

...RESPONDENTS

(BY SRI.B.N.BALASUBRAMANYA, ADVOCATE FOR R1(a) & (c);  
SRI PRABHUGOUD B TUMBIGI,ADVOCATE FOR R1(b);  
R2 SERVED & UNREPRESENTED)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.11.2011 PASSED IN O.S.NO.15935/2005 ON THE FILE OF XXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE AND MESNE PROFIT.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **JAYANT BANERJI J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI  
and  
HON'BLE MR. JUSTICE K. V. ARAVIND

**CAV JUDGMENT**

**(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)**

The plaintiff-appellant, which is a registered firm, filed a suit for specific performance of the agreement dated 04.10.1994 directing first defendant to execute sale deed in respect of the suit schedule 'C' property. The rent/mesne profit in respect of the said property was claimed. Also sought was vacant possession and costs.

2. For the sake of convenience, the parties are being referred to by their ranking in the suit.

3. The plaintiff's case is that it is a partnership firm registered on 18.08.1994. The objective of the firm is *inter alia* to acquire the property in the name of the firm. In the year 1994, the plaintiff came across an offer made by first defendant in respect of the property bearing No.1319 situated at Sarakki Layout, II Phase, J.P.Nagar, Bangalore measuring 3600 square feet which is suit schedule 'A' property. This property was allotted by BDA<sup>1</sup> and possession certificate was issued on 16.11.1992 with a condition of non-alienation for a period of ten years. The offer of first defendant was that he did not have funds to develop the property and exploit to its maximum potential, as he was a Police Officer in the Government of Karnataka and he was agreeable to share the property, the plaintiff agreed and accepted the offer of the first defendant to develop and share the schedule 'A' property.

4. The plaintiff had to bear the cost of developing the property which thereafter had to be shared mutually to the benefit of the plaintiff and first defendant. The plan was that approximate development of the property would be upto second floor. Based on that, it was agreed by both the parties to share the properties after development. In the basement,

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<sup>1</sup> Bangalore Development Authority

three car parking space were required to be given to the land owner, who is the first defendant, measuring 450 square feet. Since the site was to have a showroom, it was agreed that 500 square feet would be given to the first defendant for showroom purpose and in the first and second floor, 3450 square feet in all was to be given to him. The rest of the area up to second floor would go to the plaintiff, which the first defendant agreed to convey in favour of the plaintiff or anybody the plaintiff nominates. It was agreed that in the event any construction is put up above the second floor, the same shall be shared equally by the plaintiff and first defendant. However, conveying the share of the plaintiff by the first defendant was agreed to be done after completion of lease period, that is, ten years from 16.11.1992. Until then, if the construction was completed, only possession was to be delivered to the plaintiff of its share.

5. The first defendant had already obtained plan sanctioned by the Competent Authority which was not meeting the requirements of the parties. Therefore, it was agreed that a new plan be made. The terms and conditions of the construction, development and conveying of shares in the property had been reduced in writing by an agreement dated

14.10.1994. First defendant had also executed GPA<sup>2</sup> in favour of the Managing Partner of the plaintiff. Reference has been made to various clauses of the aforesaid agreement regarding monetary aspects, obtaining permission from BDA for commercial complexes etc., sharing of the building, exploitation of the property described in scheduled 'A', the execution of authorization in favour of the plaintiff by the first defendant, obtaining of financial assistance etc.

6. It is stated that the first defendant was required to get the lease cleared from the BDA and register the undivided interest in the land of the plaintiff in lieu of the undivided interest in favour of the plaintiff and handing over the original documents, the plaintiff was required to handover the built up area as provided in the Clauses 4 and 5 of the agreement. It is stated that the first defendant did not deliver the original documents of the property which would enable the plaintiff to obtain financial assistance. Therefore the plaintiff was compelled to stop construction in the third floor in the month of March 1999 to enable him to get finance from other sources. The first defendant, who was enjoying the portion of the constructed building, got issued a notice dated 10.05.1999

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<sup>2</sup> General Power of Attorney

through his advocate, unilaterally cancelling the Agreement and the GPA.

7. It is stated that a suit of 2000<sup>3</sup> was filed by the plaintiff challenging the aforesaid unilateral act of the first defendant and injunction was also sought. It is stated that at the time when the unilateral action of notice of cancellation of the agreement/GPA was made by the first defendant, the plaintiff had completed 70% of the work spending ₹36,00,000/- and another sum of ₹14,00,000/- to construct a total area of 15360 square feet building including the third floor. He had used 80 metric tonnes of steel, 12,000 bags of cement and other building materials worth a huge sum of money. It is stated that the agreement entered into between the plaintiff and the first defendant on 14.10.1994 is not a time bound agreement and the terms and conditions and other contingencies have been complied with, and the building is to be registered in proportion to the shares agreed to be registered in favour of the plaintiff. Therefore, with a view to get the property registered in terms of the aforesaid agreement, given the fact that the plaintiff was ready and willing to register the property, asked the first defendant to do

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<sup>3</sup> O.S.No.6023/2000

the needful. But there was no response. Accordingly, a decree for specific performance of the agreement dated '04.10.1994' was sought and for directing the first defendant to execute a sale deed in respect of suit schedule 'C' property and for other reliefs including rents, *mesne profit*, and vacant possession of suit scheduled 'C' property.

8. A written statement was filed by the first defendant wherein *inter alia*, it was denied that the plaintiff is a registered partnership firm. It was stated that the suit is for specific performance of an agreement dated '04.10.1994'. However instead of filing the suit for specific performance of that agreement, the plaintiff filed suit of 2000 for vague relief of declaration that the first defendant herein was not entitled to cancel or rescind the GPA and the construction agreement dated 14.10.1994 and other reliefs. It was stated that the first defendant had entered appearance and filed a detailed written statement in the aforesaid suit of 2000 stating that the GPA and the alleged agreement dated 14.10.1994 were cancelled by the first defendant and therefore the plaintiff had no right under the said agreement. It was therefore stated that the relief for specific performance and that too in respect of suit schedule 'C' property is wholly untenable and totally barred by

law. It was stated that though the first defendant had performed all the obligations cast upon him under the agreement dated 14.10.1994, and executed GPA in favour of the plaintiff's Managing Partner, yet the plaintiff chose not to obtain the requisite building plan sanctioned from the authorities concerned for putting up the construction of the suit schedule property, even till 10.05.1999. Left with no option, the first defendant terminated the contract dated 14.10.1994. It was stated that to the legal notice sent by the first defendant dated 10.05.1999, which was duly received by the plaintiff, there was no reply sent by the plaintiff to the legal notice. The other allegations made in the plaint were also denied. The pleas of bar of limitation and bar of Order II Rule 2 of CPC were also raised.

9. Second defendant also filed his written statement denying all the averments made by the plaintiff in the plaint as false, frivolous and vexatious. He denied being party to the agreement entered into between the plaintiff and the first defendant and stated that that agreement is not binding on him. He pleaded ignorance regarding the revocation of earlier agreement and GPA between the plaintiff and the first defendant.

10. The trial Court framed the following issues and additional issues:

- (i) Whether plaintiff proves that it was always ready and willing to perform its part of the contract dated 04.10.1994 and it was defendant No.1 who has fallen back from the promise?
- (ii) Whether plaintiff proves payment of consideration amount as stated in the plaint?
- (iii) Whether plaintiff proves that, the defendants are bound to pay mesne profit concerning 'C' schedule property, if so how much amount and at what rate?
- (iv) Whether plaintiff is entitled to actual possession of 'C' schedule property?
- (v) Whether plaintiff is entitled to the relief claimed?
- (vi) What order or decree?

**Additional Issues framed on 20.02.2010:**

- (i) Whether the suit is barred by law of limitation?
- (ii) Whether the suit is barred under Order II Rule 2 of CPC?
- (iii) Whether the suit is undervalued? And the Court fee paid is insufficient?

11. In support of the case of the plaintiff, the Managing Partner of the plaintiff's firm got himself examined as PW.1 and got marked 16 documents as Exs.P1 to P16 and closed his side.

In support of the case of the defendants, learned Counsel for the first defendant got exhibited four documents as Exs.D1 to D4 and closed his side. The defendants did not appear before the Court for giving their evidence, so their oral evidence was taken as 'nil' and the recording of evidence was closed.

12. The points for determination in this appeal would be:

- (i) Whether the trial Court correctly decided that the suit is barred under Order II Rule 2 of CPC?
- (ii) Whether the trial Court correctly decided that the suit is barred by law of limitation?
- (iii) In case the answer to both the aforesaid points is in the negative, then, whether the suit for specific performance can be decreed?

13. The trial Court observed that the plaintiff who appeared as PW.1, admitted filing of the suit of 2000 against the first defendant seeking the reliefs of declaration and injunction, but only xerox copy of its plaint was produced by the plaintiff. In that plaint, though the terms and conditions of the development agreement were narrated, but it was not stated that the plaintiff had already completed construction of that building up to second floor. As is stated in the plaint in the

suit of 2005<sup>4</sup>, if at the time of issuance of notice dated 10.05.1999 (Ex.D1), there was any document with the plaintiff to demonstrate that he had completed the construction work of the entire building, then in the suit of 2000 itself, the plaintiff would have sought the relief which had been sought in the suit of 2005. If the cause of action did arise after issuance of the notice Ex.D1, then, if he had already completed the development work of the property, he could have sought for specific performance of contract claiming his share in the construction etc. On failure of the plaintiff to prove the fact of complete development work of that property, as per the development agreement dated 14.10.1994 (Ex.P5), then the plaintiff is not entitled for the discretionary relief of specific performance of contract with respect to the suit schedule property against the defendants.

14. The relief of specific performance of contract, being a discretionary power vested with the Court, the plaintiff failed to prove the fact of actual development work done over the suit schedule property by expending amounts as reflected in Exs.P12 to P14 and P16. The receipts prepared by the plaintiff are undated and did not reflect on which dates the amounts

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<sup>4</sup> O.S.No.15935/2005

were paid to the contractor. No photographs regarding the construction work were produced by the plaintiff.

15. It was further observed that in the cross examination of PW.1, he admitted that under the development agreement, the plaintiff had not paid any amounts to the first defendant. Therefore, there being no evidence, the fact of payment made by the plaintiff to the first defendant is not proved.

16. With regard to the relief of specific performance of contract to the suit schedule 'C' property and for mesne profit of the same, only when the plaintiff could have proved that he has properly performed his part of development work (contract), he could claim the same. Therefore, it was held that the plaintiff is not entitled for mesne profit and possession of the suit schedule 'C' property.

17. As regards limitation, it was observed that the time prescribed for filing a suit for specific performance of contract is within three years from the date of execution of document and if date is not mentioned, then within three years from the date of receipt of notice. The development work was required to be completed within 24 months from the date of execution of Ex.P5. But the same was not done. It was observed by the trial

Court that since the plaintiff admitted filing of the suit of 2000 against the first defendant, he was at liberty to seek the relief for which he was entitled. But in the suit of 2000, the relief of specific performance was not sought. Therefore, he could have sought leave of the Court in the suit of 2000 to file a fresh suit in respect of the present relief, which he did not. Therefore, it was held that the suit of 2005 is hit by Order II Rule 2 of CPC. It was noted that the first defendant had revoked the development agreement and the GPA by issuing the notice Ex.D1 which is dated 10.05.1999. Therefore it was held that the suit is filed beyond three years from the date of issuance of the notice. The trial Court answered the issues and the additional issues of the suit being barred by limitation and the suit being barred under Order II Rule 2 of CPC in the affirmative. Accordingly, the trial Court dismissed the suit of the plaintiff.

18. It is seen from the record that on behalf of the defendants, that a certified copy of the order passed on I.A.Nos.I to III in the suit of 2000 was filed as Ex.D3 apart from the following documents:

- Ex.D1      Legal notice dated 10.05.1999
- Ex.D2      Postal acknowledgement

Ex.D4      Certified copy of the order passed in  
M.F.A.No.4754/2004 (CPC)

19. Ex.D3 is an order passed on I.A.Nos.I to III on 31.03.2004 in the suit of 2000. I.A.No.I was filed seeking an order of temporary injunction restraining the defendant from interfering with the construction activities of the plaintiff on the suit property pending disposal of the suit. I.A.No.II was filed praying for an order of temporary injunction restraining the defendant from entering into any agreement with third party for putting up construction on the suit property. I.A.No.III was filed by the plaintiff praying for temporary injunction restraining the defendants from encumbering the suit property by way of sale, mortgage, lease or creating any charge in respect of the suit property pending disposal of the suit. The aforesaid applications came to be rejected by means of the order of 31.03.2004.

20. Ex.D4 is a certified copy of the order passed in M.F.A.No.4754/2004 (CPC) which was filed by the plaintiff/appellant, challenging the order rejecting the application seeking an order of injunction against the respondent from alienating the property. The said appeal was dismissed by the High Court.

21. As is evident from the aforesaid, Ex.D1 is the legal notice dated 10.05.1999 sent by the first defendant to the plaintiff. No record of the suit of 2000 was filed by any party. Neither the plaint, written statement nor the judgment and decree of the suit of 2000 were filed. The trial Court has based its finding regarding the bar of suit under Order II Rule 2 of CPC based on the admission of PW.1 in its testimony. It was held by the trial Court that non-production of earlier plaint and evidence of the defendant is not necessary for considering the plea of bar of Order II Rule 2 of CPC.

22. Order II Rule 2 of CPC reads thus:

**"2. Suit to include the whole claim.**-(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

**(2) Relinquishment of part of claim.**- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

**(3) Omission to sue for one of several reliefs.**- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

**Explanation:-** For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

23. The Supreme Court in **Gurbux Singh v. Bhooralal**<sup>5</sup> referred to a conflict of judicial opinion on the question whether a suit for possession of immovable properties and a suit for the recovery of *mesne profits* from the same property are both based on the same cause of action, and if only these two reliefs are based on the same cause of action then the plea of Order II Rule 2 of CPC could succeed. The terms of Order II Rule 4 of CPC was also referred to by the Supreme Court as an aid to the construction of the term 'cause of action', and the expression 'relief' based on the 'same cause of action' in Order II Rule 2 of CPC, the Court held as follows:

"6. In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to

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<sup>5</sup> AIR 1964 SC 1810

*establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under O. 2. r. 2, Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in C.S. 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under O. 2. r. 2, Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under O. 2. r. 2, Civil Procedure Code was not maintainable. Learned counsel for the appellant, however, drew our attention to a passage in the judgment of the learned Judge in the High Court which read:*

*"The plaint, written statement or the judgment of the earlier court has not been filed by any of the parties to the suit. The only document filed was the judgment in appeal in the earlier suit. The two court have, however, freely cited for the record of the earlier*

*suit. The counsel for the parties have likewise done so.  
That file is also before this Court."*

(Emphasis supplied)

24. In yet another case of ***Rathnavathi v. Kavita Ganashamdas***<sup>6</sup> one of the questions that was being considered by the Supreme Court was whether under the facts and circumstances of that case, the bar contained in Order II Rule 2 of CPC is attracted? In that case, the plaintiff has initially filed a civil suit in the year 2000 against three defendants seeking permanent injunction restraining them jointly and severally from interfering in the plaintiff's possession over the suit house. The case of the plaintiff was that for purchase of the suit house, an agreement was entered into between the plaintiff and defendant No.2, in which certain sums of money were advanced towards the sale consideration. The plaintiff was placed in actual physical possession of the suit house and was continuing in possession. However, defendant No.2 did not execute the sale deed despite having received the full sale consideration from the plaintiff. When a total stranger, defendant No.1 tried to interfere with the possession of the plaintiff, the suit was filed. Later in the year 2000 itself the plaintiff filed another suit against the defendants for specific

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<sup>6</sup> (2015) 5 SCC 223

performance of the agreement in relation to the suit house. The defendants, apart from denial of material allegations regarding payment of the sale consideration, also contested the suit on two legal grounds. First was on the ground of maintainability, in view of the bar contained in Order II Rule 2 of CPC. That did not permit the plaintiff to file the suit for specific performance of agreement against the defendants when she had filed the first suit for permanent injunction. Secondly, the bar of limitation from the date of accrual of cause of action as provided in Article 54 of the Limitation Act, 1963 was raised. The suits were consolidated for trial and the issues were framed. Evidence was led. While answering some issues in the plaintiff's favour, the suits were eventually dismissed on the ground that the plaintiff was not put in possession of the suit house pursuant to the agreement in question; that the plaintiff was not ready and willing to perform his part of the agreement; that the suit is barred by limitation; that the plaintiff was not entitled to claim the relief for specific performance; that the plaintiff was not entitled to claim the relief for grant of permanent injunction; that the suit was hit by the bar contained in Order II Rule 2 of CPC because the plaintiff did not obtain leave to file second suit for specific performance while filing the first suit for grant of permanent injunction. While

referring to its judgment in **Gurbux Singh's** case (supra) as well as other judgments, the Supreme Court held that the bar of Order II Rule 2 of CPC is not attracted because of the distinction in the cause of action for filing of the two suits. It was held that the ingredients to file the suit for permanent injunction are different than that of the suit for specific performance of the agreement. Therefore, both the suits were found on different causes of action and hence could be filed simultaneously. The Supreme Court held as follows:

*"26. One of the basic requirements for successfully invoking the plea of Order 2 Rule 2 CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order 2 Rule 2 CPC to successfully non-suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.*

*27. Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order 2 Rule 2 CPC could be allowed to be raised by the defendants and how it was sustainable on such facts.*

28. *We cannot accept the submission of the learned Senior Counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff prior to filing of the first suit, the second suit was hit by bar contained in Order 2 Rule 2 CPC.*

29. *The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order 2 Rule 2 CPC. It is the cause of action which is material to determine the applicability of bar under Order 2 Rule 2 CPC and not merely the pleadings. For these reasons, it was not necessary for the plaintiff to obtain any leave from the court as provided in Order 2 Rule 2 CPC for filing the second suit.*

30. *Since the plea of Order 2 Rule 2 CPC, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, the reliefs claimed in both the suits and lastly, the legal provisions applicable for grant of reliefs in both the suits."*

25. The Supreme Court in **Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Limited and Another**<sup>7</sup> held as follows:

**"47.** On a conspectus of the aforesaid discussion, what follows is that:

- i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.*
- ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.*
- iii. Several definitions have been given to the phrase "cause of action" and it can safely be said to mean - "every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court". Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.*
- iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of*

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<sup>7</sup> 2025 SCC Online SC 82

*each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.*

- v.** *The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.*
- vi.** *The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.*
- vii.** *Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.*

- .....
- 56.** *Order VII Rule 11(d) reads as - "where the suit appears from the statement in the plaint to be barred by any law". In light of the aforesaid, it follows that before rejecting the plaint under Order VII Rule 11(d), the Courts must ensure that the plaint is read*

*as a whole and its entire averments are looked into. A few lines or passages must not be read in isolation and it is imperative that the pleadings are read as a whole for ascertaining the true import of the averments therein. In performing such a holistic reading, it must be deduced whether the causes of action in both the suits are identical in substance in order to sustain a successful plea under Order II Rule 2. It would be a reductive approach to only cull out the cause of action paragraphs from the respective complaints and decide that they disclose the same cause of action on mere comparative overview.*

- .....
- 86.** *It is established law that the principles governing the applicability of the provisions of Order II Rule 2 do not operate as a bar when the subsequent suit is based on a cause of action different from that on which the first suit was based and that the identity of the causes of action in both the suits must be the material consideration before the court which decide the applicability of this provision to a second suit filed by the plaintiff. It would be incorrect for us to hold that merely because the pleadings in the complaint filed in O.S. No. 28 of 2008 and the complaint filed in O.S. No. 122 of 2008 are similar to some extent, the causes of action are also identical. Rejecting the complaint in the second suit i.e., O.S. No. 122 of 2008 would result in depriving the respondent no. 1 from claiming the relief of specific performance of the agreement for sale dated 24.01.2007 and the cancellation of the sale deed dated 24.01.2008. In this regard, we have examined the entire factual matrix along with the causes of action on which both the suits were*

*founded, through a holistic reading of the complaints placed before us. In our opinion, the reliefs in the subsequent suit are in fact founded on a cause of action which is distinct from that which is the foundation of the former suit. The facts which are necessary to be proved and the evidence to support the claims in the second suit are also different from that of the first suit. Therefore, it cannot be said that the respondent no. 1 could have prayed for the reliefs claimed in the subsequent suit at an earlier stage."*

26. For the bar of Order II Rule 2 of CPC to operate, the defendants would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which claim in the later suit is based there would be no scope for the application of the bar. The factual matrix has to be carefully examined in both the suits. For that, the pleadings in the previous suit must necessarily be on the record as held by the Constitution Bench of the Supreme Court in **Gurbux Singh's** case (supra). In view of the aforesaid, the finding of the trial Court in the affirmative on the issue that the suit is barred under Order II Rule 2 of CPC cannot be sustained and it is therefore set aside. Therefore, the first point for determination is answered in the **negative**, that is

to say, that the trial Court incorrectly decided that the suit is barred under Order II Rule 2 of CPC.

27. Now coming to the second point for determination, Article 54 of the Schedule to the Limitation Act provides limitation for specific performance of a contract which reads as under:

| <b>Article</b> | <b>Description of Suit</b>             | <b>Period of limitation</b> | <b>Time from which period begins to run</b>                                                                                  |
|----------------|----------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------|
| 54             | For specific performance of a contract | Three years                 | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |

28. The legal notice sent by the first defendant dated 10.05.1999 is Ex.D1, which is admitted by the plaintiff. Reference is made to the agreement dated 14.10.1994 in the legal notice and it is stated that the first defendant had performed all the obligations cast upon him under the contract and although he had executed in favour of the plaintiff, in terms of the contract, a GPA, so as to facilitate him to obtain the requisite sanction on his behalf, the plaintiff had chosen not to obtain the requisite sanction from the authorities concerned in the matter of putting up of the constructions over the plot, which is the subject matter of the agreement aforesaid. Therefore, while reserving right of the first defendant to

proceed against the plaintiff for damages sustained, the first defendant terminated the contract dated 14.10.1994 regarding construction and development of the suit schedule 'C' property. Accordingly, the GPA dated 14.10.1994 was stated to be terminated.

29. In the aforesaid legal notice dated 10.05.1999, it is clearly mentioned that the aforesaid agreement stood terminated. Ex.P5 the deed of agreement for construction and development is dated 14.10.1994 which is an unregistered document. Therefore, the notice of termination Ex.D1 is a notice by which the first defendant has refused performance of the agreement. Therefore, time of three years for filing a suit for specific performance of a contract in a case where time is not the essence of the contract, would run when the plaintiff has notice that performance is refused. PW.1 has admitted receipt of the notice in his examination-in-chief. Therefore even prior to the suit of 2000 seeking declaration and injunction, the legal notice dated 10.05.1999 Ex.D1 was admittedly received by the plaintiff. Thus, the suit of 2005 is held to be barred by limitation. The second point for determination is therefore answered in the **affirmative**, that is to say, that the trial Court has correctly decided that the suit is barred by limitation.

30. Since the second point for determination has been answered in the affirmative, therefore there is no need to answer the third point for determination.

31. In view of the aforesaid, we pass the following:

**ORDER**

The appeal is **dismissed** with cost.

**Sd/-  
(JAYANT BANERJI)  
JUDGE**

**Sd/-  
(K. V. ARAVIND)  
JUDGE**