

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.R. No. 3361 of 2015 (O&M)

Date of decision:- 05.11.2015

Rattan Lal

...Petitioner

Versus

Kuldeep Singh.

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.K. Bhatti, Advocate
for the petitioner.

RITU BAHRI J.

Challenge in this revision petition is to order dated 30.01.2015 passed by learned Addl. Civil Judge (SD) S.A.S Nagar, vide which the application filed by the defendant/petitioner (herein after to be referred as 'the petitioner') under Order 2 Rule 2 CPC, has been dismissed.

Plaintiff/Respondent filed a suit for possession by way of specific performance of agreement to sell dated 07.12.2010 with a direction to the petitioner to execute a legal and valid instrument of sale deed favouring the respondent and to get the same registered before Sub-Registrar, Nawanshahar. An alternative prayer was made for recovery of Rs.35,00,000/- i.e Rs.30,00,000/- as earnest money and Rs.5,00,000/- as damages (P-1). The petitioner filed his written

statement taking the preliminary objection for maintainability and being hit by Order 2 Rule 2 CPC as the respondent had filed earlier suit on the same cause of action regarding the same property for permanent injunction which was at that time pending and fixed for hearing on 30.07.2011 (P-2).

In pursuance to the application under Order 39 Rule 1 and 2 CPC, ad interim injunction was granted by the learned Addl. Civil Judge (Sr. Divn.) SBS Nagar, vide order dated 12.05.2011 (P-3).

Thereafter, the petitioner filed an application under Order 2 Rule 2 CPC with a prayer that the suit be dismissed as it is barred by Order 2 Rule 2 CPC since the respondent had filed earlier suit on the same cause of action prior to the filing of the present suit. The application was dismissed for want of prosecution on 08.07.2014 and fresh application was moved on 16.10.2014.

After going through the impugned order dated 30.01.2015, the learned trial Court had rightly dismissed the application of the petitioner on the ground that the earlier suit filed by the respondent was for injunction on the basis of an agreement to sell dated 07.12.2010 qua the suit land for restraining the defendant from alienating the suit land to anybody else except the plaintiff but the defendant did not execute the sale deed on the stipulated date and

the plaintiff has filed the present suit by withdrawing the earlier suit. The only remedy with the respondent was to amend his earlier suit for permanent injunction to specific performance or to file the subsequent suit on withdrawing the earlier one. Further more than sufficient time has elapsed for cross examining the witnesses of the plaintiff and the matter is getting delayed on filing one application or the other.

No ground is made out to interfere in order dated 30.01.2015 passed by learned Addl. Civil Judge (SD) S.A.S Nagar.

The petition stands dismissed accordingly.

November 05, 2015
G Arora

(**RITU BAHRI**)
JUDGE