

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

CR 3319 of 2012

Date of Decision: March 18, 2015

Parminder Singh and another

.....Petitioners

Vs.

Amarjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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**Present:- Mr.Rakesh Gupta, Advocate
for the petitioners.**

**Mr. Aman Bansal, Advocate
for respondent No.1.**

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M.M.S. BEDI, J. (ORAL)

This is defendants' revision petition against the order dated April 10, 2012, annexure P-1 passed by Civil Judge (Junior Division), Patiala, dismissing the application for rejection of plaint under Order 7 Rule 11 CPC. Copy of the plaint annexure P-2 placed on the record shows that the plaintiff- respondent No.1 filed a suit for specific performance of agreement of sale dated May 15, 2000 seeking relief for execution of the sale deed with regard to the property mentioned in heading of the plaint and also sought relief of permanent injunction to restrain the petitioners to sell the property in dispute to any other person. An application under Order 7 Rule 11 CPC read with Section 151 CPC was filed by the petitioners

alleging that plaintiff- respondent No.1 alongwith Surinder Pal Singh, Gurpal Kaur, Charandeep Singh, Paramdeep Singh and Charanjit Kaur, proforma respondents have filed a similar suit for mandatory injunction and permanent injunction seeking relief on the basis of the agreement of sale dated May 15, 2000 against the defendant- petitioners. The said suit has been withdrawn without obtaining leave of the Court to sue for the relief claimed in the present suit as such the subsequent suit of the plaintiff- respondent No.1 was not maintainable. The plaintiff- respondent No.1 objected to the application under Order 7 Rule 11 CPC admitting that the earlier suit for mandatory injunction had been withdrawn on the objection of the defendant- petitioners by making a statement that the plaintiff- respondent No.1 shall file a suit for specific performance of the agreement. The suit of specific performance having been filed on the same day, the same cannot be dismissed. The trial Court vide impugned order dated April 10, 2012 has dismissed the application under Order 7 Rule 11 CPC.

Counsel for the petitioners Mr. Rakesh Gupta, has vehemently contended that similar suit for mandatory injunction to the effect that the defendant- petitioners be directed to transfer by sale the suit property and for permanent injunction restraining the defendant- petitioners into peaceful possession of the plaintiff- respondent No.1 was based upon the same agreement of sale but the said suit was withdrawn vide order dated November 10, 2010, annexure P-8. The statement of plaintiff Amarjit Singh and his advocate made on November 10, 2010 reads as follows:-

“I withdraw the present suit and the same may be dismissed as withdrawn. I shall file suit for specific performance of the agreement.”

The trial Court on November 10, 2010 passed the following order:-

“Present: Counsel for parties.

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In view of the statement of the plaintiff, recorded separately, the instant suit stands dismissed as withdrawn. File be consigned to the record room.”

Learned counsel for the petitioners has argued that the cause of action for filing the second suit for specific performance was available to the plaintiff- respondent No.1 but having omitted to include the said relief, the plaintiff- respondent No.1 was not entitled to sue for the same cause of action and that the plaint was liable to be rejected. It has been argued that the defendant- petitioners should not be harassed twice for the same cause of action. It was also argued that the plaintiff had withdrawn the previous suit by making a statement that he will file a suit for specific performance but relief of specific performance being available to respondent No.1 in the earlier suit as well, the second suit will be barred under Order 2 Rule 2 CPC. Counsel for the petitioners has placed reliance on the provisions of Order 7 Rule 11 CPC and Order 2 Rule 2 CPC. Reliance has also been placed on the judgment in **2012 (3) Apex Court Judgments 312 (SC)**.

I have heard learned counsel for the petitioners and considered his contentions and gone through the relevant provisions of law. As per Order 2 Rule 2 CPC, suit should include the whole claim which the plaintiff is entitled to make in respect of the cause of action. Order 2 Rule 2 (3) CPC reads as follows:-

“2. Suit to include the whole claim:

- 1. xxx xxx xxx
- 2. xxx xxx xxx
- 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 such reliefs, he shall not afterwards sue for any relief so omitted.”

The objection of the defendant- petitioners is not that the plaintiff- respondent No.1 had relinquished part of the claim but the objection is that it is a case where on account of omission to sue relief of specific performance in earlier suit, the plaintiff- respondent No.1 is not entitled to sue for the relief so omitted. A careful perusal of the provisions of law, mentioned hereinabove indicates that if a plaintiff omits, without the leave of the Court, to sue for any of the reliefs, which he is entitled to claim in respect of the cause of action, he shall not afterwards sue for the relief so omitted by him but as per Order 2 (3) CPC, where a plaintiff is entitled to

more than one relief in respect of the same cause of action but omits to ask for some of them, he shall not, except with the permission of the Court, sue again for them. The leave of the Court need not be expressed but must be inferred from the circumstances of the case. In this context, a reference can be made to a Full Bench judgment of Patna High Court in **AIR 1921 Patna 193**. In the earlier case , the plaintiff- respondent No.1 had sought mandatory injunction against the defendant- petitioners pertaining to the same property but he had sought the leave of the Court to withdraw the suit and to file a fresh suit on the same cause of action by making a statement in the Court. As mentioned hereinabove, the statement made on November 10, 2010 clearly indicates the intention of the plaintiff-respondent No.1. The trial Court had permitted the withdrawal of the suit. The suit for specific performance seems to have been filed on the same cause of action on November 30, 2010. In view of said circumstances, the bar of Order 2 Rule 2 CPC will not be operative, the first suit on the same cause of action having been withdrawn with the leave of the Court.

In view of said circumstances, the application for dismissal of the suit under Order 7 Rule 11 (d) CPC cannot be allowed as the suit of the plaintiff is not barred by the law as claimed by counsel for the defendant-petitioners.

Dismissed.

March 18, 2015
sanjay

(M.M.S.BEDI)
JUDGE