

RSA No. 3851 of 2014

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

RSA No. 3851 of 2014

Date of Decision: October 06, 2015

Narender Singh & another

...Appellants

Versus

Tara Chand & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder S. Sandhu, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Sonipat, dated 21.05.2011, whereby, the suit filed by the appellant-plaintiffs for possession by way of specific performance of the agreement to sell dated 26.12.2005, according to which, out of land measuring 27 Kanals 0 Marlas comprised in Khasra No.70/17, 70/18, 19, 24, 76/1, 2, 76/2, 3, 70/23, the respondent-defendants agreed to sell 23 Kanals of land for a sale consideration of ₹87,00,000/- at the rate of ₹30,00,000/- per acre and the appellant-plaintiffs have given an amount of ₹9,00,000/- as earnest money and respondent-defendants undertook to get the sale deed executed and registered on or before 15.06.2006, stands dismissed primarily on the ground that the suit is

barred by Order 2 Rule 2 of the Civil Procedure Code (hereinafter referred to as 'the CPC') and the appeal preferred against the said judgment and decree stands dismissed by the Additional District Judge, Sonipat, on 25.03.2014.

Learned Senior Counsel for the appellants has asserted that the findings recorded by the Courts below cannot be sustained as the agreement to sell was entered into between the parties on 26.12.2005 and the date of execution of the sale deed was fixed as 15.06.2006. On the said date, the appellant-plaintiffs were ready and willing to perform their part of the contract but respondents did not turn up and therefore, they were forced to file a suit for injunction on 23.06.2006. During the pendency of this suit on 12.01.2007, the present suit for possession by way of specific performance of the agreement was filed. He contends that since the suit for specific performance has been filed during the pendency of the injunction suit, the same would not be barred under Order 2 Rule 2 of the CPC. He, thus, contends that the findings on this issue recorded by the Courts below cannot be sustained. His further contention is that the Court below have wrongly proceeded on the assumption that the appellant-plaintiffs have not been able to prove the remaining consideration amount to be ready and available for payment at the time of the execution of the sale-deed and therefore, their readiness and willingness to perform their part of the agreement also was not

established, cannot be sustained as it would have been a subsequent stage, had the respondents turned up before the Sub-Registrar for execution of the sale-deed, consideration amount would have been handed over to them. He, thus, contends that the present appeal deserves to be allowed.

Having considered the judgments passed by the Courts below with the able assistance of learned Senior Counsel for the appellant and on considering the submissions made by him, I am unable to persuade myself to accept the same.

To start with the first issue which requires to be considered and decided is with regard to the application of Order 2 Rule 2 of the CPC to the present suit. The facts as have been projected by the learned Senior Counsel for the appellants and recorded above, are not in dispute and need not to be referred again. Suffice it to say that in the light of the judgment passed by the Hon'ble Supreme Court in the case of **M/s Virgo Industries (Eng.) P. Ltd. versus M/s Venturetech Solutions P. Ltd., 2013 (1) SCC 625,** the matter has been conclusively settled by the Hon'ble Supreme Court in para 16 of the said judgment which reads as follows:-

*“16. The learned Single Judge of the High Court had considered, and very rightly, to be bound to follow an earlier Division Bench order in the case of **R. Vimalchand and M.Ratanchand v. Ramalingam, T.Srinivasalu & T.***

Venkatesaperumal (supra) holding that the provisions of Order 2 Rule 2 of the Civil Procedure Code would be applicable only when the first suit is disposed of. As in the present case the second set of suits were filed during the pendency of the earlier suits, it was held, on the ratio of the aforesaid decision of the Division Bench of the High Court, that the provisions of Order 2, Rule 2(3) will not be attracted. Judicial discipline required the learned Single Judge of the High Court to come to the aforesaid conclusion. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order 2 Rule 2 of the Civil Procedure Code as already discussed by us, namely, that Order 2 Rule 2 of the Civil Procedure Code seeks to avoid multiplicity of litigations on same cause of action. If that is the true object of the law, on which we do not entertain any doubt, the same would not stand fully subserved by holding that the provisions of Order 2 Rule 2 of the Civil Procedure Code will apply only if the first suit is disposed of and not in a situation where the second suit has been filed during the pendency of the first suit. Rather, Order 2, Rule 2 of the Civil Procedure Code will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in **Murti v. Bhola Ram, (1984) ILR 16 Allahabad 165** and by the Bombay High Court in

Krishnaji v. Raghunath, AIR 1954 BOM 125.”

In view of the above, the present suit is, therefore, hit by the provisions as contained under Order 2 Rule 2 of the CPC and therefore, the Courts below have rightly held the suit to be not maintainable.

In view of the suit being not maintainable, the second issue raised by the learned Senior Counsel for the appellants with regard to the appellant-plaintiffs being ready and willing to perform their part of the contract does not survive in the present appeal.

Both the Courts below have returned concurrent findings which are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of evidence nor is there any perversity or illegality in the same. Further, no substantial question of law arises in the appeal which requires consideration of this Court.

In view of the above, appeal stands dismissed.

October 06, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**