

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

**CR No.15 of 2016 (O&M)  
Date of decision:26.07.2016**

Ashish Mittal and others

... Petitioners

Vs.

Roshan Lal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Mr. Anish Garg, Advocate  
for respondents No.1 to 3.

**AMIT RAWAL J.**

Petitioner-defendants are aggrieved of the impugned order dated 29.04.2015 (Annexure P-1), whereby, an application filed under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as “CPC”), for rejection of the plaint of Civil Suit no.31 of 29.05.2013, has been dismissed.

Mr. Rakesh Gupta, learned counsel assisted by Mr. Karan Gupta, Advocate appearing on behalf of the petitioner-defendants submits that the aforementioned suit had been filed seeking specific performance of the agreement to sell dated 22.11.2010. The target date for execution and registration of the sale deed was fixed as 19.08.2011. The respondent-plaintiffs chose to file the suit on the ground that the costs of the land was fixed as ₹22 lacs per killa (consisting of 4 bighas) and earnest money of ₹1.00 crore (Rupees one crore) purported to have been paid at the time of agreement to sell. The plaint also reveals that for the purpose of

adjudication of the application, the averments made in the plaint have to be seen. The plaintiffs, prior to filing of the aforementioned suit in the month of March 2012, had instituted a civil suit for permanent injunction against the petitioners and along with plaint also attached copy of the previous suit (Annexure P-3). It has also been stated that the aforementioned suit was withdrawn, vide order dated 27.05.2013. A copy of the same had been attached with the suit as P-29. As per the order, no liberty was granted to the petitioners to file a fresh suit. The aforementioned order was sought to be modified by moving an application under Sections 151 and 152 CPC, but the same was also dismissed vide order dated 08.02.2016. He further submits that as per the averments made in the previous suit, according to the respondent-plaintiffs, breach had already occurred and nothing prevented them to seek specific performance of the agreement to sell in view of the law laid down by the Hon'ble Supreme Court in **M/s Virgo Industries (Eng.) P. Ltd. vs. M/s Venturetech Solutions P. Ltd. 2012(4) R.C.R (Civil) 372** and as well as, the judgment rendered by the Delhi High Court in **Sucha Singh Sodhi (deceased) through LRs vs. Baldev Raj Walia and another 2014 (141) DRJ 477**.

It would be total farcical exercise in directing the trial Court to treat the issue of Order 2 Rule 2 of CPC as preliminary issue and grant the liberty to the parties to lead evidence, for, the entire material has already been annexed along with plaint. As already submitted, the averments made in the plaint along with various other documents attached for adjudication of the application moved under Order 7 Rule 11 of CPC, are to be seen, therefore, the alleged defence of the petitioners is not required to be taken

into consideration.

On perusal of the averments made in the plaint and documents, it is irresistibly concluded that suit is barred by provisions of Order 2 Rule 2 of CPC but all these facts have not been noticed by the trial Court and the application has been dismissed by holding that disputed question is mixed question of fact and law and, therefore, would be seen at the time of trial which is not the scope of provisions of Order 7 Rule 11 of CPC, much less, against the settled law as referred supra.

Mr. Anish Garg, learned counsel appearing on behalf of respondents No.1 to 3 submits that previous suit for injunction was filed on 27.03.2012 and the petitioner-defendants had executed a sale deed on 24.05.2012. Since the sale deeds were required to be challenged, accordingly, an application was moved for withdrawal of the suit and the same was ordered to be dismissed as withdrawn. Even otherwise, proper remedy was to seek specific performance of the agreement to sell. Accordingly, the suit, aforementioned had been filed. In support of his aforementioned contention, he relies upon the judgments of the Hon'ble Supreme Court, Delhi High Court, Bombay High Court and Madras High Court rendered in **Coffee Board vs. M/s Ramesh Exports Pvt. Ltd. 2014 (3) R.C.R.(Civil) 104; Kunjan Nair Sivaraman Nair vs. Narayanan Nair and others 2004(2) R.C.R.(Civil) 110; Suresh Kakkar and another vs. Mahender Nath Kakkar and others 2009(1) R.C.R(Civil) 788; Vitthal Ganpatrao Adhaoo and others vs. Shrikisan Nanaji Kondalkar and others 2016 AIR CC 187 and P.Shyamala vs. Ravi 2016(1) Civil Court Cases 107 (Madras)** to contend that the Court should specifically frame an

issue with regard to the bar under Order 2 Rule 2 of CPC but not in the manner and mode as has been chosen by the defendants. Though the application seeking modification/rectification of the order dated 27.05.2013 with liberty to file fresh has been dismissed, but once a statement had been made for withdrawal of the suit with liberty to file suit for specific performance, liberty is inherent and thus, would not come in the way of the plaintiffs to seek vindication of the grievance and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book.

Before advertng to the rival submissions of the learned counsel for the parties, who have argued the matter with great vehemence and eloquence, it would be apt to reproduce the provisions of Order 2 Rule 2 of CPC which read 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.*

The aforementioned provisions came to be debated by the Hon'ble Supreme Court in paragraphs 11 to 14 of M/s Virgo Industries (Eng.) P. Ltd and the ratio decidendi culled out for applicability of the provisions of Order 2 Rule 2 of CPC.

I would be failing in my duty in not referring to the contents of the plaint seeking permanent injunction which had been withdrawn.

Paragraphs 5 to 9 of the same read thus:-

*“5. That after some time, the present plaintiffs requested to the present defendants for the registration of the sale deed, but again defendants requested the plaintiffs for more time to get the sale deed be registered.*

*6. That since August 2011, the present defendants are making excuses regarding the registration of the sale deed, whereas, the plaintiffs were ready and willing and are still ready and willing for the registration of the sale deed as per terms and conditions settled in the agreement to sell dated 22.11.2010.*

*7. That the present plaintiffs have paid huge amount in the shape of earnest money to the present defendants, whereas, the defendants are still not ready to get the sale deed be registered in favour of the plaintiffs as the plaintiffs knew from their reliable sources that the present defendants negotiating with some third party for selling the land in question as the price of the land in the same locality has increased.*

*8. That the plaintiffs many times requested the defendants*

*to get the sale deed be registered in favour of the plaintiffs, but now, they have flatly refused to do so and threatened the present plaintiffs with dire consequences.*

9. *That the intention of the defendants became mala fide and the present plaintiffs are in every apprehension that due to the act and conduct of the defendants, the defendants can sell the land to any other third party and if the defendants succeeds in their ill motive and evil design, then the plaintiffs shall suffer an irreparable loss and injury which cannot be compensated in any manner, otherwise.”*

On perusal of the aforementioned contents of the plaint, it is evident that there is already alleged breach on the part of the vendor as per the respondent-plaintiffs. Nothing prevented them to seek the specific performance of the agreement to sell instead of seeking injunction. In my view, as well as, the ratio decidendi culled out by the Hon'ble Supreme Court in M/s Virgo Industries (Eng.) P. Ltd (supra), and Delhi High Court in Sucha Singh's case (supra), the respondent-plaintiffs have abandoned the right to seek specific performance of the agreement to sell. Even otherwise, the sale deed is of 24.05.2012 but the suit was withdrawn, vide order dated 27.05.2013, almost one year thereafter. Even in the present suit seeking specific performance of the agreement to sell, there is an averment qua filing of the previous suit and the order passed therein. The relevant paragraphs 5 and 8 of the suit are reproduced herein below:-

*“5. That since August 2011, the defendants No.1 to 7, were making excuses regarding the registration of the sale deed*

*whereas the plaintiffs always ready and willing for the registration of the sale deed. It is pertinent to mention here that the defendants No.1 to 7, received the amount of Rs.1 crore and signed the Agreement to sell. When the defendants No.1 to 7 did not bothered regarding the request of the plaintiffs for the execution of the sale deed, then the plaintiffs enquired about the matter. The plaintiffs came to know that from their liable sources that the defendants No.1 to 7, are negotiating with some third party for selling the land in question as the price of the land in the same locality has increased. When the defendants No.1 to 7, again approached by the plaintiffs then they have flatly refused to do so. The plaintiffs because of apprehension that the defendants no.1 to 7 can sell the land to any other third party, filed the suit for permanent injunction against the defendants no.1 to 7, in the month of March 2011. The notice was issued and registered summons were sent to the defendants no.1 to 7. The defendants No.1 to 7, due to the malafide intention and to deceive the plaintiffs, did not appear before the Court despite the service of the summons, on 02.05.2012, the Ld. Civil Judge, Jr. Division, Derabassi, passed the following order:-*

*“Present: Sh. Anish Garg Adv. For the plaintiff.*

*File taken up today as I was on Medical Leave on 01.05.2012, RC was issued to the defendants no.1 to 6 but not received back. The counsel for the plaintiff already furnished*

*postal receipt of RC on 30.03.2012. The stipulated period of 30 days has already expired. Therefore, the defendants No.1 to 6 are proceeded against ex parte. Summons of the defendant no.7 not received back. Let fresh notice to the defendant no.7 be issued for 30.05.2012 through RC”.*

*A bare perusal of the order passed by the Ld. Civil Judge, Jr. Division, shows that the defendants No.1 to 7 intentionally did not appear before the Court. The copy of the plaint is attached herewith as Annexure P-3.*

8. *That in view of the above said facts the defendants no.1 to 7 have committed breach of terms of Agreement to sell by not execution of the sale deed in favour of the plaintiffs and embezzled the earnest money of the plaintiffs. Whereas, the defendants No.8 to 13 despite of the knowledge of the deal between the plaintiffs and the defendants No.1 to 7, executed the sale deeds in their favour. All the defendants have cheated to the plaintiffs in connivance with each other.”*

The parameters for adjudication of the application are no longer *res integra*. It is now settled law that for the purpose of entertaining the application, the averments made in the same have to be seen. As noticed above, there is a categorical pleading in the plaint itself qua institution of the suit and withdrawal thereof. Thus, this Court is not required to look into defence purported to be taken. Even the order for withdrawal of the suit is also part of the record of the plaint.

On juxtaposition of the plaint and Annexure thereto, it is a clear



cut case which falls within the provisions of Order 2 Rule 2 of CPC.

Accordingly, the impugned order is set aside and the suit is ordered to be rejected in view of barred by provisions of Order 2 Rule 2 of CPC.

Accordingly, revision petition stands allowed.

**(AMIT RAWAL)**  
**JUDGE**

**July 26, 2016**  
savita

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |