

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 5037 of 2014 (O&M)**

**Date of Decision: 17.02.2016**

Major Singh and Others

... Appellants(s)

Versus

Mahesh Garg and Another

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. Kanwaljit Singh, Senior Advocate  
with Mr. Amit Chaudhary, Advocate  
for the petitioner(s).

Mr. Chetan Mittal, Senior Advocate  
with Mr. Kunal Dawar, Advocate  
for the respondent(s).

**Shekher Dhawan, J.**

Present petition is challenge to the order dated 11.7.2014, whereby application filed by present petitioners under Order 7 Rule 11 CPC, raising the plea of maintainability of civil suit as per provisions of Order 2 Rule 2 CPC, was dismissed.

Relevant facts of the case that plaintiffs Mahesh Garg and another had filed a suit for permanent injunction on 21.12.2015 on the ground that agreement of sale of suit land was executed on 18.7.2005

and the target date for execution of sale deed was 30.11.2005. The said target date was extended upto 29.12.2005. Suit for permanent injunction was filed on 21.12.2005. An application for amendment of plaint so as to convert the suit for permanent injunction into suit for specific performance was filed on 16.1.2006 and the same was dismissed on 16.8.2010. Thereafter, revision petition was filed before this Court and the same was allowed from the date of application i.e. 16.1.2010. On 17.8.2012, amended plaint was filed. Written statement was filed taking objection that suit is barred.

Learned senior counsel representing the petitioners took the plea that as the main suit was not maintainable, the same was to be rejected. As per learned counsel for the petitioners, Order 2 Rule 1 CPC requires that plaintiffs to include whole of the claim and where plaintiffs chose to relinquish his claim, the same shall be treated having been given up. Learned counsel for the petitioners mainly submitted that at the time of filing of the suit for permanent injunction, plaintiffs were to file suit for specific performance as defendants had made their intentions clear by the overt act. On this point, reliance was placed upon judgment rendered by the Hon'ble Supreme Court in case ***M/s Viirgo Industries (Eng.) P. Ltd. V. M/s Venturetech Solutions P. Ltd. 2012(4) Civil Court Cases 307 (SC)***, wherein such a view was taken.

Learned senior counsel representing the respondents submitted that on 21.12.2005, suit for permanent injunction was filed. Thereafter, application was filed for amendment of the plaint. Revision

petition was decided by this Court that amendment is legally permissible, so there was no question of there being any bar under Order 2 Rule 2 CPC for rejection of the plaint and the Court below has rightly dismissed the application and present petition is without any merit and the same be dismissed as such.

Having considered the submissions made by learned counsel for the parties and also gone through the judgment rendered by the Hon'ble Apex Court, this Court is of the considered view that amendment application was contested upto Hon'ble the Supreme Court but no such plea was ever raised by the applicant and the decision on the application for amendment has already attained finality.

The Court below has also rightly taken the view that defendants had refused to execute the sale deed on 19.12.2005. The only point involved is whether on 19.12.2005 or on 21.12.2005 when suit for permanent injunction was filed, whether suit for permanent injunction was to be filed or suit for specific performance only was to be filed. The Court below has also rightly taken the view that the respondents had rightly taken the view and were genuinely waiting for the present petitioners to comply with their part of contractual liability. Their intention was sincere and that is why plaintiffs had put in appearance before the Sub Registrar on 29.12.2005 for execution of sale deed and thereafter on 12.1.2006 after giving notice to the defendants to execute the sale deed. Needless to mention that there was no legal notice having been issued by the petitioners regarding rescinding of the contract and mere oral refusal before arrival of the

target date was not giving a clear cause of action to the plaintiffs to file suit for permanent injunction. Plaintiffs were under bonafide impression that filing of suit for specific performance on 21.12.2005 may not be dismissed being premature. The Court below had rightly taken the view that cause of action is a bundle of facts and the said action cannot be taken on the single line. For that purpose, entire facts have to be taken into consideration. On this point, reliance was placed upon the judgment rendered by the Hon'ble Supreme Court in cases ***Swamy Atmanand v. Sri Ramakrishna Tapavanam 2005(3) RCR (Civil) 404*** and ***Bhagwan Kaur v. Harinder Pal Singh 1992(1) Recent Revenue Reports 59***, wherein earlier suit for permanent injunction was dismissed and subsequent suit for specific performance would not be barred. Learned trial Court has rightly placed reliance upon the judgment of Delhi High court in case ***Suresh Kakkar and Another v. Mohinder Nath Kakkar & Others 2008(3) 2009(1) RCR (Civil) 788 (Delhi)***, wherein a view has been taken that a plaint cannot be rejected under Order 7 Rule 11 CPC if it is hit by the principle of Order 2 Rule 2 CPC.

In view of above, the Court below has rightly taken the view that application under Order 7 Rule 11 CPC is not maintainable and same was dismissed. Hence, present petition is without any merit and same stands dismissed.

**(Shekher Dhawan)**  
**Judge**

**February 17, 2016**

"DK"/anju