

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

R.S.A. No.1796 of 2011 (O&M)

Date of decision: 14.01.2016

Harnek Singh

...Appellant

Versus

Harjit Singh and anr.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Rajwinder Kaur, Advocate for
Mr. Tribhawan Singla, Advocate for the appellant.

Mr. Rajan Bansal, Advocate for respondent No.1.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 21.07.2010, passed by the learned Additional District Judge, Barnala, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 22.08.2008, passed by the learned Civil Judge, Sr. Divn., Barnala, (for short, the 'trial Court'), has been dismissed.

The learned counsel for the appellant contends that the learned Courts below have failed to appreciate that the previous suit

filed by the appellant for injunction only restraining the respondents-defendants from making obstructions in selling the crop through other commission agents not for restraining them from recovering any amount from the appellant-plaintiff. The cause of action of the said and the present suit are different, therefore, the present suit is not barred under Order 2 Rule 2 CPC, as illegally held by the learned Courts below.

On the other hand, the learned counsel for respondent No.1 states that the learned Courts below have rightly observed that the appellant-plaintiff has no locus standi to file the suit. Further, he is estopped by his own act and conduct from filing the said suit, which is also not maintainable as held by the learned Courts below. The learned counsel further states that the respondent/defendant No.1 also issued receipt to the appellant against the produce brought by him.

I have heard the learned counsel for the parties and carefully gone through the entire record on file.

The learned Courts below have rightly observed that the present suit is barred by Order 2 Rule 2 of the CPC as the previous suit, filed by the same plaintiff against the same defendants, for the relief of permanent injunction, was on the basis of same cause of action on the basis whereof, the present suit for rendition of accounts has been filed. In view of provisions of Sub-Rule 3 of Rule 2 of

Order II of the CPC coupled with the order 23(4) of the CPC, the present suit is not maintainable as the appellant omitted to claim the relief of rendition of accounts in the previous suit, which was filed for permanent injunction.

In Alka Gupta Vs. Narender Kumar Gupta, 2010 (10)

SCC 141 it has been held that the object of Order 2 Rule 2 of the Code is twofold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action.

On consideration, this Court finds that the contentions have no merit as these only relate to the appreciation of evidence. No evidence has been shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

14.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE