

CR No. 1881 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No. 1881 of 2017 (O&M)

Date of decision: 16.3.2017

Tejinder Singh and another

...Petitioners

Versus

Gursewak Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. G.S.Brar, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the impugned order dated 29.10.2016 (Annexure P-6) passed by the learned trial court, whereby application of the petitioners under Order 7 Rule 11(d) of the Code of Civil Procedure ('CPC' for short), was dismissed.

Heard learned counsel for the petitioners.

A bare perusal of the impugned order would show that there was no scope, whatsoever, to invoke Order 2 Rule 2 CPC, with a view to allow the application of the petitioners under Order 7 Rule 11 CPC. It is so said because the cause of action in both the litigations was entirely different. It is a matter of record that earlier suit was for permanent injunction, restraining the defendants therein from interfering in the peaceful possession of the plaintiff of that suit. However, present suit is for declaration to the

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effect that plaintiffs are joint owners in possession of 2/3rd share and the alleged family settlement as well as sale deed were illegal, null and void. In this view of the matter, this Court feels no hesitation to conclude that the learned trial court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

Learned trial court has rightly appreciated true facts of the case as well as relevant provisions of law, in the correct perspective. Learned trial court has assigned cogent reasons in support of the impugned order. Relevant observations made by the learned trial court, which deserve to be noticed here, read as under:-

“The matter directly and substantially in issue in the later suit must be the same matter’ which was directly and substantially in issue in the former suit. “Matter in issue” is distinct from the subject matter and the object of the suit as well as from the relief that may be asked for in it and the cause of action on which it is based, and the rule of res judicata requiring the identity of the matter in issue will apply even when the subject matter, the object, the relief and the cause of action are different. It is the “matter in issue” and not the subject matter of the suit that forms the essential test of res judicata. Explanation III makes it clear that matter cannot be said to have been directly and substantially in issue in a suit unless it was alleged by one party and denied or admitted either expressly or impliedly by the other. Thus, a matter in respect of which no relief is claimed cannot become ‘directly and substantially in issue even if a decree is passed by a competent court. The matter would be ‘directly and substantially’ in issue if the issue was decided and the judgment was, in fact, based upon the decisions. ‘Collateral and incidental issues’ are

ancillary to the direct and substantial issue and refers to a matter in respect of which no relief is claimed but which is put in issue to enable the court to adjudicate upon the matter which is directly and substantially in issue. For example, A sues B for the rent due, B denies, here the claim for rent is the matter in respect of which relief is claimed and thus, a matter directly and substantially in issue. But when A sues B for rent and B claims abatement of rent on the ground that the area is greater than that shown in the lease, the finding as to the excess area is not res judicata for this was not the matter directly and substantially in issue but only ancillary to it. Before the bar of Order 2 Rule 2 is invoked, the following three questions should be asked: (I) whether the cause of action in the previous suit and subsequent suit is identical? (ii) Whether the relief claimed in the subsequent suit could have been given in the previous suit on the basis of the pleadings made in the plaint? (iii) Whether the plaintiff omitted to sue for a particular relief on the cause of action which has been disclosed in the previous suit? The Rule does not compel him to join in the same suit every cause of action or every claim which he has even though they arise from the same transaction. What the rule requires is the unity of all claims based on the same cause of action in one suit. If the evidence to support the two claims is different, then the causes of action are also different.

As earlier suit was for permanent injunction restraining the defendants from interfering in the peaceful possession and from taking forcible possession of the suit land from the plaintiffs over the land measuring 14 marlas and present suit is for declaration to the effect that the plaintiffs are joint owners in possession of 2/3 share of land measuring 14 marlas and

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the alleged agreement family sale deed dated 20.1.2006 allegedly executed by Hardam Singh son of Gopal Singh deceased in favour of Tejinder Singh defendant No.1 is fake, illegal, null and void without consideration, suit for separate possession and suit for permanent injunction restraining the defendants from raising any construction over any part and also from alienating any part of land. Both are different in nature.”

It is also the settled proposition of law that rules of procedures are meant for advancing the cause of justice. Every court of law must make an endeavour to decide the litigation between the parties on its merits and not on technicalities alone. Every party to the litigation must be granted reasonable opportunity to put up its best case. Nobody should be forced to go home with the grievance that sufficient number of opportunities were not granted. While proceeding on the abovesaid settled principle of law, learned courts would achieve twin objects; i) it would avoid multiplicity of the litigation and ii), do complete and substantial justice between the parties to the litigation. That is what has been done by the learned trial court, while passing the impugned order. In this view of the matter, no fault can be found with the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In this view of the matter, it can be safely concluded that learned court below committed no error of law, while passing the impugned order and the same deserves to be upheld.

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No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

16.3.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No