

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

CR-1909-2017 (O&M)

Date of decision : 12.3.2018

Avtar Singh and another

..... Petitioners

Versus

Avtar Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. D.S. Gurna, Advocate for the petitioners.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Saroj Malakar, Advocate for the respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 1.3.2017, passed by learned Additional Civil Judge (Senior Division), Patiala, vide which an application filed by the petitioners-defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short 'the CPC') the for rejection of the plaint was dismissed.

Heard.

Respondent-plaintiff filed a suit for permanent injunction restraining the defendants-petitioners from interfering into the peaceful possession of the respondent-plaintiff over the suit land measuring 24 *bighas 5 biswas* and further alienating or creating any type of charge on the basis of agreement to sell dated 3.2.2006 executed by defendants in favour of respondent-plaintiff.

It comes out that earlier respondent-plaintiff filed a suit for specific performance for agreement to sell dated 3.2.2006 over the suit land measuring *24 bighas 5 biswas* out of which sale deed regarding the land measuring *12 bighas 7¾ biswas* has already been executed by defendants-petitioners and the prayer was to execute the sale deed regarding *11 bighas 17¼ biswas*. Permanent injunction was also sought regarding the suit land for restraining the defendants-petitioners from interfering into the peaceful possession of the respondent-plaintiff and from alienating; transferring; mortgaging or creating any type of charge upon the suit land.

It comes out that vide order dated 30.10.2012 (Annexure P-2), this Court directed learned trial Court to treat the issue of limitation as a preliminary issue and decide the same accordingly.

Learned trial Court vide its judgment dated 5.8.2016 (Annexure P-3) dismissed the suit being time barred. Appeal filed against the said judgment dated 5.8.2016 is admittedly pending before the lower Appellate Court. The prayer in the present plaint would show that it is regarding the injunction over the land measuring *24 bighas 5 biswas* which was the subject matter of the said agreement. Prayer of defendants No. 1 and 2 in the application filed under Order VII Rule 11 of the CPC is that the suit is barred under Order II Rule 2 of the CPC and is also hit by the principle of *res judicata* under the provisions of Section 11 of the CPC, 1908.

Learned trial Court has taken a view that suit for specific performance was dismissed on the ground of limitation but the possession of the plaintiff-respondent is to be determined after appreciating the evidence, therefore, dismissed the application to reject the plaint.

I am of the view that impugned order dated 1.3.2017, passed by learned Additional Civil Judge (Senior Division), Patiala is liable to be set aside. The previous suit was for specific performance and permanent injunction. Rightly or wrongly, learned trial Court dismissed the entire suit as time barred and appeal against the same is still pending. In the previous suit, injunction was sought regarding possession over the entire suit land and not limited to the land measuring *11 bighas 17¼ biswas* regarding which sale deed was sought to be executed.

I am of the view that once the relief has been sought in the previous suit and the same has been declined and the matter is already subjudiced, the second suit claiming simple injunction on the basis of same agreement to sell dated 3.2.2006 is barred by the principal of *res judicata*.

In view of the admitted facts, present plaint is patently barred under the provisions of Section 11 of the CPC, 1908. Consequently, impugned order dated 1.3.2017, passed by learned Additional Civil Judge (Senior Division), Patiala is set aside and the plaint stands rejected.

However, respondent-plaintiff can always pursue his remedy before the lower Appellate Court, praying that his suit regarding injunction should have survived.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

12.3.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No