

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5173 of 2017(O&M)
Date of Decision-04.12.2018

Shekhar Verma

... Petitioner

Versus

Raj Gupta and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Rubal Garg, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Present revision petition has been preferred by the petitioner against the order dated 19.05.2017 passed by Civil Judge (Junior Division), Patiala, whereby the application filed by the petitioner under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[2]. Perusal of the record would show that earlier a suit for mandatory injunction was filed by the plaintiffs. Trial Court decreed the suit vide judgment and decree dated 16.07.2018, however, the Lower Appellate Court vide judgment and decree dated 04.04.2011 remanded the case to the trial Court for fresh decision. Thereafter, the plaintiffs did not appear before the trial Court and the suit was dismissed under Order 9 Rule 8 CPC.

[3]. The second suit was filed on the basis of alleged change of cause of action on 18.03.2015. In the second suit,

defendant/petitioner filed an application under Order 7 Rule 11 CPC for rejection of plaint.

[4]. Trial Court dismissed the application and that is how, the present revision petition came to be filed.

[5]. Learned counsel for the petitioner submitted that fresh suit is barred under Order 9 Rule 8 CPC and under Order 23 Rule 1(4) CPC.

[6]. On the other hand, learned counsel for the plaintiffs/respondents submitted that in terms of para Nos.6, 9, 13 and 14 of the plaint, cause of action for filing the second suit is on different parameters, though the parties in both the suits are same. Learned counsel submitted that the plaint has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. Learned counsel referred to **P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others, 2015(2) RCR (Civil) 43.**

[7]. I have heard learned counsel for the parties.

[8]. Perusal of para No.6 of the plaint would show that factum of filing the earlier suit was pleaded only upto the stage of the decree passed by the trial Court on 16.07.2008 vide which defendants were directed to vacate the house within a period of two months. The filing of the appeal before the Lower Appellate

Court, the order of remand passed by the Lower Appellate Court and thereafter, dismissal of the suit by the trial Court in default under Order 9 Rule 8 CPC were not pleaded by the plaintiffs in the plaint. Para No.9 of the plaint would show that when the defendants failed to vacate the portion of the house, the licence to occupy the same was cancelled and they were requested to vacate the portion within a period of 7 days through legal notice dated 18.03.2015. Failure on the part of the defendants to vacate the house, to hand over the possession to the plaintiffs and by not filing the reply to the legal notice, entailed in filing the fresh suit by the plaintiffs. In para No.13 of the plaint, the plaintiffs have mentioned that no such or similar suit was filed earlier except the suit decided by the trial Court. The pleadings of para No.14 are in respect of cause of action, which was based on termination of licence and issuance of legal notice to the defendants to vacate the premises.

[9]. Evidently, the suit property in both the suits is the same. The second suit has been filed only after changing the nomenclature of the suit to the extent of terminating the licence of the defendants and thereafter, a legal notice dated 18.03.2015 was issued. The pleadings to the said extent are clever some pleadings just to create some unfounded illusion regarding cause of action in order to escape from the rigour of Order 9 Rule 9 CPC and Order 23 Rule 1(4) CPC.

[10]. It is a settled principle of law that if a suit is dismissed in default under Order 9 Rule 8 CPC, then fresh suit is barred in terms of Order 9 Rule 9 CPC. The second suit is barred on the same subject matter even as per Order 23 Rule 1(4) CPC. The pleadings in terms of para Nos.6, 9, 13 and 14 would not provide any escape route to the plaintiffs to claim different cause of action in respect of same house, same parties and same cause of action except to allege that in the second suit, licence of the defendants was terminated and a legal notice was issued. The cause of action for seeking mandatory injunction cannot be altered with the aforesaid pleadings in the new suit.

[11]. On the strength of **Gulzari Vs. Zile Singh, 2014(1) PLR 380, Anil Kumar Dev and another Vs. Brijinder Kaur and another, 2011(7) RCR (Civil) 1173, Jyoti Prashad and others Vs. Nathu Ram, 2005(4) Civil LJ 498 (DB) (Delhi), The Moderator, The Church of South India, CSI Synod Centre, No.5, Whites Road, Royapettah, Chennai-14 Vs. RT. Rev. Dr. J.A.D. Jebachandran, Bishop of Thoothukudi Nazareth Discease Bishops, House No.11/32T, State Bank Colony, Thoothukudi-2, 2014(38) RCR (Civil) 195 (Madras), West Bengal Government Employee (F & S) Co-operative Housing Society Vs. Debabrata Sen and others, 2008(56) RCR (Civil) 793 (Calcutta), Sushil Vs. Harishankar Ramnivas Sharma, 2017(1) LJR 399 (Bombay), Pratap Mistry Vs. Sitaram Mistry, 2012(6) RCR (Civil) 3101, Alka Gupta Vs. Narender Kumar**

Gupta, 2010(4) RCR (Civil) 731 (SC) and **Nihal Kaur Vs. Dhan Kaur and another, 2004(3) RCR (Civil) 527** relied by learned counsel for the petitioner, it can be held that if the earlier suit is dismissed in default or withdrawn without permission to file fresh suit on the same cause of action, the second suit is barred in terms of Order 23 Rule 1(4) CPC. In pith and substance, the prayers in both the civil suits are identical. Dismissal of earlier suit under Order 9 Rule 8 CPC would debar the plaintiffs to file fresh suit in view of bar created under Order 9 Rule 9 CPC. Even the second suit is barred on the same subject matter under Order 23 Rule 1(4) CPC. In the second suit, pleadings with some variance would not create any illusion regarding cause of action. An effort has been made by the plaintiffs to create illusion in respect of cause of action, but in pith and substance, the relief claimed in both the suits is identical and same parties are involved in both the suits. Cancellation of alleged licence of the defendants and thereafter, issuance of legal notice on 18.03.2015, would not give rise to different cause of action as the prayer would remain in the form of mandatory injunction to seek possession of the premises from the defendants.

[12]. During course of arguments, it has also come to fore that even an application has been filed for restoration of earlier suit on 18.05.2015. The filing of the aforesaid application is subsequent to filing of second suit on 27.03.2015. The aforesaid

position is suggestive of the fact that the plaintiffs have tried to avail both the remedies.

[13]. There is no dispute with regard to ratio of **P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others case (supra)**, however, no such proposition is involved in the present case as perusal of the plaint in the second suit in terms of para Nos.6, 9, 13 and 14 would show that the cause of action for filing the second suit has been changed only by way of incorporating the plea of termination of licence of the defendants and giving legal notice on 18.03.2015. The aforesaid change in the pleadings would not give rise to any change in the cause of action inasmuch as that prayers involved in both the suits are for grant of mandatory injunction, wherein plaintiffs sought to get the premises vacated. Parties involved in both the suits are the same and factum of earlier suit was disclosed in the second suit only upto the stage of decree dated 16.07.2008 passed by the trial Court. If the application filed for restoration of the second suit is perused, the pleadings to that end were made in the said application.

[14]. In view of above, the facts involved in **P.V. Guru Raj Reddy Rep. by GPA Laxmi Narayan Reddy and another Vs. P. Neeradha Reddy and others case (supra)** were different than the facts involved herein and the ratio of aforesaid judgment cannot be applied.

[15]. For the reasons recorded hereinabove, I am of the considered opinion that the second suit is not based on different cause of action, rather the alleged illusion in respect of different cause of action is nothing, but a clever devise for which the Court is entitled to unveil the curtain and bring out the real intention of the plaintiffs to plead such an event which would not change the basic character of the second suit from the earlier suit which was dismissed under Order 9 Rule 8 CPC.

[16]. For the reasons recorded hereinabove, I find that impugned order dated 19.05.2017 passed by Civil Judge (Junior Division), Patiala suffers from inherent defect which is required to be set aside. Consequently, impugned order is set aside. This revision petition is allowed accepting the application under Order 7 Rule 11 CPC. Resultantly, the plaint of the second suit filed by the plaintiffs is ordered to be rejected in terms of Order 7 Rule 11 CPC.

(RAJ MOHAN SINGH)
JUDGE

04.12.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No