

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1471 of 2009 (O&M)
Date of Order:01.10.2018

Parduman Singh and another

..Appellants

Versus

Kartar Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Robit Dutt, Advocate,
for the appellants.

Mr. S.K.Chawla, Advocate,
for respondents no.2 to 5.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below

This appeal has been remitted back by the Hon'ble Supreme Court vide order dated 02.12.2013. Operative part of the order passed by the Hon'ble Supreme Court is extracted as under:-

“2. Learned counsel for the parties submit and, in our view fairly, that the High Court committed serious error of law in allowing Regular Second Appeal No.1471 of 2009, titled as “Parduman Singh and another vs. Kartar Kaur and others” without following the mandate of Section 100 of Code of Civil Procedure, 1908 (CPC) inasmuch as the High Court framed no substantial question of law and yet allowed the second appeal.

3. In view of the above, impugned judgment is set-aside insofar as second appeal is concerned. Regular Second Appeal No.1471 of 2009 is restored to the file of the High Court for fresh hearing and consideration in accordance with Section 100 of CPC. We expect the High Court to hear and decide the above second appeal expeditiously and preferably within six months from the date of production of copy of order of this Court.

Civil Appeal is allowed as above with no orders as to costs.”

Although, as per the subsequent judgment passed by the Constitution Bench of the Hon'ble Supreme Court of India in the case of **Pankajakshi(Dead) Through L.Rs. v. Chandrika & Ors, (2016) 6 SCC, 157**, the question of law are not required to be framed as second appeals in this court are governed by Section 41 of the Punjab Courts Act, however, keeping in view the mandate of the Hon'ble Supreme Court, this court would make an attempt to answer the questions as proposed by learned counsel for the appellants in the grounds of appeal, which are extracted as under:-

- “(i) Whether a suit for specific performance on the basis of an agreement to sell is maintainable subsequent to the filing of the suit for permanent injunction?*
- (ii) Whether cause of action in a suit for permanent injunction and subsequent suit for specific performance is different?*
- (iii) Whether in the facts and circumstances of the present*

case, Order 2 Rule 2 is applicable?”

Only on one issue, learned first appellate court has concurred with the trial court, i.e. whether the present suit is barred under Order 2 Rule 2 of the Code of Civil Procedure.

Facts as found by the courts below are that defendant no.1 (respondent) entered into an agreement to sell with the plaintiffs on 16.11.1988 with respect to land measuring 15 kanals and 18 marlas. As per agreement to sell, the target date for execution and registration of the sale deed was 16.01.1989. As per the agreement to sell, earnest money of Rs.70,000/- was paid.

Plaintiffs filed a suit for permanent injunction on 27.01.1989. Plaintiffs pleaded in his plaint dated 27.01.1989, as under:-

“5. That on dated 16.01.1989 the plaintiffs approached the office of Sub-Registrar, Moga, for getting the sale deed registered but the defendant did not come. The photostat copy of the application is attached herewith.

6. That now the defendant is threatening to alienate the suit land to some other person except the plaintiffs, illegally and against the terms and conditions of the agreement of sale. This act of the defendant casts clouds over the valuable rights of the plaintiffs. If the defendant will succeed in doing so, the plaintiff will suffer an irreparable loss which cannot be compensated later on in terms of money.”

This suit for injunction was withdrawn on 16.11.1989 by the plaintiffs after filing the present suit for specific performance of the

agreement to sell, on 29.05.1989.

Learned first appellate court has held that on 27.01.1989 when the suit for injunction was filed, the cause of action for filing the suit for specific performance of the agreement to sell had already accrued in favour of the plaintiffs.

Learned counsel for the appellants submitted that the suit filed on 27.01.1989 was only between plaintiffs-appellants and respondent no.1. In that suit, sale deed executed in favour of defendants no.2 to 4 was not challenged and on that day cause of action for challenging the sale deed dated 22.02.1990 had not arisen. Hence, he submitted that the suit for injunction and suit for specific performance were based on different cause of action.

This court has considered the submissions, however, find no substance therein.

Suit for specific performance of agreement to sell was filed on 29.05.1989, even on that day sale deed in favour of defendants no.2 to 4 had not been executed and registered as it came to be registered only on 12.02.1990.

Still further once the plaintiffs have pleaded that the defendant is not ready to honour the agreement to sell and she did not come for execution and registration of the sale deed on 16.01.1989 i.e. the target date and now the defendant is threatening to alienate the suit land to some other person except the plaintiffs, the cause of action for filing the suit for specific performance of the agreement to sell had already accrued to them. Order 2 Rule 2 of the Code of Civil Procedure clearly stipulates that if on a particular date when a previous suit is filed, plaintiff is entitled to more than

one relief but he omits to claim/pray for the same, then he would be debarred from filing the subsequent suit. In the present case, those ingredients of Order 2 Rule 2 of the Code of Civil Procedure stand fulfilled. A division Bench of this court in the judgment reported as *Smt. Bhagwan Kaur v. Harinder Pal Singh, 1992 Civil Court Cases, 176* has already laid down authoritatively that if the injunction suit is filed before the target date, such suit would not bar subsequent suit for specific performance, whereas otherwise, the bar would apply.

Now the stage is set for answering the questions of law.

In view of the aforesaid discussion, answer to questions No.1 (i), (ii) & (iii)) as all are different facets of bar under Order 2 Rule 2 of the Code of Civil Procedure has already been dealt with by this court.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

October 01, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No