

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

RSA No. 2367 of 2017(O&M)

Date of decision: 4.5.2018

Sita Rani

....Appellant

VERSUS

Khushi Malik

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harish Bhardwaj, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of contract dated 25.11.2010 in respect of shop in question was decreed by the trial Court and the appeal preferred against the judgment and decree dated 31.01.2015 passed by the trial Court did not find favour with the Additional District Judge, Rohtak.

Counsel for the appellant has raised two legal issues to assail judgments of the Courts. It is argued that prior to institution of the suit for possession by way of specific performance of contract in December 2011, the respondent/plaintiff filed a suit for injunction on 14.09.2011 seeking restraint against alienation of the suit property by the appellant/defendant on the premise that appellant/defendant has threatened to alienate the suit property to someone else and did not pay heed to the request made by the respondent/plaintiff to dissuade from alienating the property in question, therefore, suit for possession by way of specific performance is barred

under Order 2 Rule 2 of the Code of Civil Procedure, 1908 (in short 'CPC') as the respondent/plaintiff could claim the relief of possession by way of specific performance in the previously instituted suit for injunction.

Another submission made by counsel is that the suit for injunction was pending before the Court when suit for possession by way of specific performance was filed, therefore, there were two suits pending in the Court with respect to the same cause of action. In addition, it is argued that the respondent/plaintiff, at best, could file an application for amendment of the suit for injunction in place of filing an independent suit for specific performance that led to multiplicity of proceedings between the parties. In support of his contentions, he has relied upon judgments of this Court **Latta Rani Vs. Prem Chand and another, 1994(3) RRR 436** and **Vipan Kumar Tyagi Vs. Sukhdev Singh and another, 2014(4) RCR (Civil) 524**. Further reference has been made to judgments of the Delhi High Court **Ashok Aggarwal Vs. Bhagwan Das Arora, 2002(1) RCR (Civil) 28** and **Sucha Singh Sodhi (deceased) through LRs Vs. Baldev Raj Walia and another, 2014(17) RCR (Civil) 425**.

I have heard counsel for the appellant, perused the paper-book particularly judgments passed by the Courts.

Before adverting to the submissions made by counsel for the appellant, it is appropriate to take note of certain facts pleaded by the respondent/plaintiff. As per case set up by the respondent/plaintiff, the appellant/defendant entered into agreement of sale dated 25.11.2010 for sale consideration of Rs.4,50,000/- in respect of the suit property and received an amount of Rs.4,00,000/- towards earnest money. The sale deed was agreed to be executed on or before 25.11.2011. The respondent/plaintiff served legal notice dated 06.08.2011 when the

appellant/defendant threatened to alienate the suit property and filed the suit for injunction on 14.09.2011 even before the stipulated date for execution of sale deed has arrived. As the stipulated date for execution of sale deed was yet to expire, apprehending that the appellant/defendant may alienate the suit property despite having created an obligation under the agreement of sale, the respondent/plaintiff filed the suit for injunction restraining the appellant/defendant from alienating the suit property. As the suit for injunction was filed before the stipulated date for execution of the sale deed arrived, it is difficult to accept contention of the appellant that relief of specific performance was available or could flow from the cause of action pleaded in the suit for injunction in order to attract the bar under Order 2 Rule 2 CPC. In **Ashok Aggarwal's case** (supra), suit for specific performance was said to be barred by Order 2 Rule 2 CPC as four months' time fixed for execution of the sale deed including payment of balance sale consideration had already elapsed before suit for injunction was filed. In **Vipan Kumar Tyagi's case** (supra), the plaintiff filed suit for injunction when cause of action for filing suit for specific performance had already become available to him but he still failed to claim that relief. In those circumstances, it was held by this Court that subsequent suit filed for specific performance is liable to be dismissed being barred under Order 2 Rule 2 CPC. Counsel for the appellant has failed to draw similarity between the facts of the case at hand and that of the referred authorities in order to derive advantage to his contention that suit for specific performance, in the given circumstances, is barred under Order 2 Rule 2 CPC. In this view of the matter, contention raised by counsel for the appellant is highly misconceived and liable to be rejected.

So far as the plea that suit for injunction was pending in the Court when suit for specific performance was filed, the respondent/plaintiff either could file an application for amendment in the suit for injunction seeking relief of specific performance after accrual of cause of action in this regard or he could maintain an independent suit seeking specific performance of the agreement and relief of injunction could be added therein. The mere fact that two suits remained pending before the Court at one point of time, in no circumstances would enure to benefit of the appellant to assail concurrent findings recorded by the Courts.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

MAY 4, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no