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

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Date of decision : 05.04.2019

Joginder Singh (deceased) through LRs

... Petitioner

Versus

Gurwinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Shakinder Pal Singh Chakkal, Advocate
for respondent No.1.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 29.01.2018, at the instance of the petitioner-defendant, who sought the dismissal of the Civil Suit No.247 of 2016, claiming declaration that respondent No.1-plaintiff was entitled to the execution and registration of the sale deed, as per the agreement to sell dated 08.03.2011, in respect of land measuring 7 bighas 17½ biswas and further declaration that the judgment and decree 26.10.2016 is being illegal, null and void.

Mr. P.S. Ahluwalia, learned counsel for the petitioner-defendant submitted that the petitioner and respondent No.3, entered into agreement to sell with Gurwinder Singh son of Harpal, for a valuable consideration, with a condition that the plaintiff would get the sale deed registered on or before 10.08.2011. However, the plaintiff did not turn up on the stipulated date i.e. 10.08.2011. On 02.12.2011, the petitioner and respondent No.3, filed a suit titled as "Joginder Singh V/s Gurwinder

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Singh", (Annexure P-1) seeking declaration of the agreement to sell dated 08.03.2011, as null, void and cancelled, with consequential relief of injunction of forcible interference into possession. On the other hand, the plaintiff filed the Civil Suit No.289 of 2012, on 13.01.2012 (Annexure P-2) seeking the specific of the agreement to sell. The lower Court, vide judgment and decree 26.10.2016, disposed of the suit with the following direction:-

"As a consequence of that, the main suit of the plaintiffs (who are defendants in the consolidated suit) titled as Joginder Singh and another Vs Gurwinder Singh is hereby partly decreed. Also the consolidated suit of the plaintiff (who is defendant in the main suit titled as Gurwinder Singh Versus Joginder Singh and another is hereby partly decreed with the observations in favour of the plaintiff namely Gurwinder Singh (defendant in the main suit) by directing him to pay balance sale consideration to the defendants Joginder Singh and others (plaintiffs in main suit) as per the terms and conditions of the agreement to sell in question within a period of one month from the date of order of one month from the date of order or from the date of receiving the copy of judgment and plaintiffs, LR's of Joginder Singh and another (who are defendants in the consolidated suit) are directed to get sale deed executed in favour of Gurwinder Singh defendant (plaintiff in consolidated suit) as per the terms and conditions of the agreement to sell in question after receiving the balance sale consideration from Gurwinder Singh, defendant (plaintiff in consolidated suit). In case plaintiffs, LR's of Joginder Singh and another (defendants in consolidated suit) failed to get sale deed executed in favour of Gurwinder Singh defendant (plaintiff in consolidated suit) then, he is at liberty to get the sale executed through the process of the law. In case, the defendant, Gurwinder Singh (plaintiff in consolidated suit) fails to pay the balance sale

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consideration within one month, then the agreement to sell in question stands cancelled and earnest money allegedly paid by the defendant Gurwinder Singh to the plaintiffs Joginder Singh and another stands forfeited."

The petitioner and respondent Nos.2 & 3, served a legal notice upon Gurwinder Singh/plaintiff (Annexure P-6) to get the sale deed executed, but he did not come forward nor file any appeal, in other words, the judgment dated 26.10.2016 had attained finality, but during the interregnum, the plaintiff again filed present Suit bearing No.297 of 2016, claiming the relief referred to in para 1 of the plaint (Annexure P-7), giving a cause to move an application under Order 7 Rule 11 of CPC, which has erroneously dismissed as the suit is hit by the provisions of Order 2 Rule 2 of CPC, but the Courts below kept the suit alive by holding that all the things are matter of record and can be looked into, after the parties lead evidence, thus, urges this Court for setting aside the impugned order.

Per contra, Mr. Shakinder Pal Singh Chakkal, learned counsel for respondent No.1 supported the impugned order and submitted that it is a mixed question of fact and law. The provisions of Order 2 Rule 2 of CPC and maintainability of the suit, cannot be looked into, as averments in the plaint do not reveal the non-maintainability. No harm and prejudice would be caused, in case the suit is decided on merits and at the best, the issue of maintainability, can be treated as preliminary, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the provisions of Order 2 Rule 2 of

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CPC as well as prayer in the second suit preferred by respondent No.1,
which reads as under:-

"Order 2 Rule 2 of CPC

2. Suit to include the whole claim

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or internationally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

Prayer Clause

"It is therefore, prayed that a decree for declaration to the effect that plaintiff is entitled to get the sale deed executed and registered as per agreement to sell dated 08.03.2011 in respect of land measuring 7Bighas 17 1/2 Biswas situated at Village Madanpur, Tehsil Rajpura, District Patiala as fully described in the head note of the plaint and a decree for declaration to the effect that Judgment and decree dated 26.10.2016 are illegal, null and void and not binding upon the rights of the plaintiffs and a decree for permanent injunction restraining the defendants from selling alienating in any manner the above suit land to any other persons, except the plaintiff as detailed in the head note of plaint and agreement to sell dated 08.03.2011 may kindly be passed in favour of plaintiff and against the defendants, with costs of and consequently delivery

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of possession of the suit land as per agreement dated 08.03.2011."

On conjoint reading of the prayer in the second suit as well as the operative part of the judgment and decree dated 26.10.2016, it is evident that the plaintiff, who was the party to the *lis* and did not come forward for execution and registration of the sale deed, despite having received the legal notice, cannot be permitted to invoke the jurisdiction of the Civil Court under Section 9 of CPC, for challenging the decree, which has attained finality. The legislature in the wisdom incorporating the relief, aforementioned, has prevented the misuse of the process, as the present suit is *prima facie* also hit by "*doctrine akin to res judicata*", for, the parties to the *lis* have already litigated, resulting into, a decree of specific performance of agreement to sell. Such practice is permitted to continue to prevent frivolous litigation. In my view, the order of the trial Court, in keeping the issue alive, is not the correct approach, thus, the order is wholly preposterous and infirm and the same is hereby set aside. The application under Order 7 Rule 11 of CPC, is allowed and the plaint bearing No.247 of 2016 is ordered to be rejected.

With the aforesaid observations, the present revision petition stands allowed.

05.04.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**