

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

**RSA No.3588 of 2019 (O&M)
Date of decision: 19.12.2019**

Swaran Singh

.....Appellant

Versus

Jaspal Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Malhar Singh Dhami, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.9773-C of 2019

For the reasons mentioned in the application, same is allowed and
delay of 24 days in re-filing of the appeal is condoned.

CM No.9774-C of 2019

Allowed as prayed for.

RSA No.3588 of 2019

This appeal has been filed against the judgment dated 15.02.2019
passed by the Additional District Judge, Hoshiarpur, dismissing an appeal
filed by plaintiff-appellant (hereinafter referred to as 'the plaintiff') against
the judgment and decree dated 23.11.2016 passed by the Civil Judge (Junior
Division), Hoshiarpur, whereby suit filed by him (plaintiff) for possession
by way of specific performance of agreement to sell, has been partly decreed
to the effect of recovery of Rs.10,000/-.

Swaran Singh-plaintiff (appellant herein) filed the above said suit
with the averments that the suit property was earlier jointly owned by

defendant No.1 and his father Nirmal Singh. Vide agreement to sell dated 29.11.1995, they had agreed to sell the suit property (as detailed in the head note of the plaint) to plaintiff and received Rs.10,000/- as earnest money. It was agreed that the sale deed would be executed after mutation regarding the family partition between Nirmal Singh, Jaspal Singh and their brother was sanctioned by the revenue authority. Possession of the suit property was delivered to the plaintiff. After the death of Nirmal Singh, the suit land was inherited by defendant Nos.1 and 2. As per plaintiff, he was always ready and willing to perform his part of the agreement, but defendants never informed him about sanctioning of mutation of partition. In March, 2012, the defendants tried to forcibly dispossess the plaintiff from the suit property, whereupon he filed a suit for permanent injunction against the defendants. During the pendency of the said suit, defendant No.3 forcibly entered into possession of the said property. Thereafter, plaintiff came to know that defendant Nos.1 and 2 had already sold the suit property in favour of defendant No.3. Hence, the suit.

Upon notice, defendant filed written statement, wherein allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the defendants entered into agreement to sell dated 29.11.1995 with plaintiff and received Rs.10,000/- as earnest money? OPP
2. Whether the plaintiff remained ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled to specific performance of agreement to sell dated 29.11.1995? OPP
4. If issue No.3 is not proved, whether plaintiff is entitled to

recovery of Rs.20,000/- along with interest? OPP

5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit of the plaintiff is within time? OPP
7. Whether the suit is hit by principle of resjudicata? OPD
8. Relief.

In order to prove execution of the agreement to sell dated 29.11.1995 Ex.P1, plaintiff had examined Baldev Singh (PW-2), who was attesting witness of the said document. He deposed that agreement to sell was executed by defendant No.1 and his father in favour of the plaintiff for a total sale consideration of Rs.20,000/-, out of which, Rs.10,000/- were paid as earnest money. Ramjit, Deed Writer (PW-4) deposed about execution of the agreement. He also proved entry with regard to the said agreement, in his register as Ex.PW4/B.

As per agreement to sell, no date was fixed for execution of the sale deed. It was mentioned that the sale deed would be executed after partition of the suit property between brothers/co-sharers was effected. In case defendants refused to execute the sale deed, then cause of action would arise to the vendee to get the sale deed executed through Court of Law. Document Ex.P4 is the order passed by the Lok Adalat in an earlier suit, which was dismissed as withdrawn. Ex.D4 is the copy of plaint of the said suit, a perusal of which shows that plaintiff-Swaran Singh had specifically pleaded regarding execution of the agreement to sell dated 29.11.1995 by Nirmal Singh deceased and respondent Jaspal Singh in his favour. It was also mentioned that sale deed would be executed after the decision of final partition between the brothers. In para No.4 of the plaint, it was specifically mentioned that in the last rainy season, roof of the room had fallen and plaintiff tried to replace the roof of the room, but defendant No.1 objected

and restrained the plaintiff from doing so and also asserted that he had sold the same to defendant No.3. As per para No.6 of the plaint, cause of action arose to the plaintiff (appellant) in the said suit against the defendant a month ago i.e. month prior to 10.03.2012. Vide statement dated 23.04.2012 Ex.P5, Swaran Singh had stated that he wanted to withdraw the suit as the defendant in connivance of the police had taken possession of the suit property during the pendency of the suit. Ex.P8 is the order passed by Sh. Gurjant Singh, then Additional Civil Judge (Sr. Division), Hoshiarpur, in an application for passing of final decree of partition on the basis of preliminary decree dated 12.02.1998.

The lower appellate Court has observed that as per Ex.P8, the partition proceedings were finally decided on 13.12.2010 and plaintiff-Swaran Singh was also party to those proceedings. Suit for permanent injunction was filed on 23.04.2012 and at the time of filing of the suit, plaintiff Swaran Singh was well aware with respect to the finalization of the partition proceedings as per Ex.P8. While filing the suit for permanent injunction, plaintiff had omitted to seek the relief of specific performance of the contract and he did not seek any leave of the Court as well to sue for such relief afterward, at the time, he withdrew the said suit. The Court, while referring to the judgment passed by this Court in **Vipin Kumar vs. Smt. Asha Lata Ahuja & others**, 2009 (3) CCC 737, whereby reference was made to a decision given by Hon'ble the Supreme Court in **Sidramappa vs. Rajashetty & others**, AIR 1970 SC 1959, dismissed the suit of the plaintiff being barred under Order 2 Rule 2 CPC. It has been further clarified that the judgment, as referred to by the plaintiff in **Rathnavathi & another vs. Kavita Ganashamdas**, 2014 (4) RCR (Civil) 904, was not applicable to the

facts of the present case. In the said case, suit for permanent injunction was filed against the owner and subsequent purchaser alleging that they had tried to dispossess the vendee from the demise property and it was in the written statement of the defendant/vendor that he had cancelled the agreement to sell and sold the property to subsequent purchaser and it was thereafter, plaintiff filed a suit for specific performance after initially filing a suit for permanent injunction. In this backdrop, it was held by the Hon'ble Supreme Court that the second suit for specific performance was not barred by virtue of bar of Order 2 Rule 2 CPC as the cause of action in two suits was different.

In the present case, when the suit for permanent injunction was filed, the plaintiff was well aware that partition decree had been passed vide order dated 13.12.2010 Ex.P8, as he was party in those proceedings. However, he filed the suit for permanent injunction in the year 2012. The plaintiff was well aware that defendant Nos. 1 and 2 had sold the property to defendant No.3. Hence, in the suit for permanent injunction, he could have made a prayer for setting aside the sale deed in favour of respondent-defendant No.3. But, after withdrawing the said suit, fresh suit was barred by Order 2 Rule 2 CPC. With these observations, suit of the plaintiff was dismissed being barred by Order 2 Rule 2 CPC.

Heard.

On 09.09.2019, the present appeal was adjourned to 22.10.2019 to enable learned counsel for the appellant to get the written statement filed by the defendants in the suit for permanent injunction. Today, the said written statement has been produced in Court. A perusal of para No.3 of the written statement shows that it had been specifically stated that defendant No.1-

Jaspal Singh and his sister Smt. Jaswinder Kaur had already sold the property of their share to defendant No.3-Balwinder Kaur vide registered sale deed dated 29.02.2012 for a consideration of Rs.5,64,000/-. Defendant No.3 is in exclusive possession of the suit property. In this view of the matter, finding by both the Courts below that plaintiff was aware about the sale made in favour of defendant No.3 when suit for permanent injunction was withdraw, has been rightly given. In that situation, the proper remedy before the plaintiff was to amend the suit and he could not withdraw the suit and file fresh one on the same cause of action.

In view of the above discussion, this Court is of the view that suit filed by the plaintiff (appellant) has been rightly decided by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

19.12.2019
ajp

(RITU BAHRI)
JUDGE

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