

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

RSA No.438 of 2007 (O&M)
Date of decision: 28.02.2019

Birender Kumar and another

..... Appellants

Versus

Brijesh Desai and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Bains, Advocate for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiffs filed a suit for specific performance of the agreement to sell dated 08.10.1991. During the pendency of the suit, no agreement to sell was produced. Only three receipts of Rs.10,000/- each were produced according to which the sale deed was to be executed and registered on 20.12.1991. The plaintiffs filed a suit for permanent injunction on 17.04.1994 Ex.D-A on the record. The suit was instituted after the target date fixed for the execution and registration of the sale deed. On that day, when the suit for injunction was instituted, cause of action to file the suit for specific performance of the agreement to sell had already arisen. In such circumstances, both the Courts have held that the suit was barred under Order 2 Rule 2, CPC.

Learned counsel for the appellants has relied upon a judgment passed by the Hon'ble Supreme Court in the case of Sucha Singh Sodhi (D)

through LRs Vs. Baldev Raj Walia and another, AIR 2018 SC 2241. The aforesaid judgment is not dealing with a situation where the suit was filed after the target date for execution and registration of the sale deed had already elapsed. In the aforesaid case, intended purchaser was put in possession and since his possession was sought to be disturbed, therefore, he filed the suit. Hence, the aforesaid judgment would have no applicability. This aspect has been examined in detail by the Hon'ble Supreme Court in the case of M/s Virgo Industries (Eng.) P. Ltd. Vs. M/s Venturetech Solutions P. Ltd., 2013(1) SCC 625. In the aforesaid judgment, the Court examined the plea of Order 2 Rule 2, CPC in the context of first an injunction suit having been filed followed by a suit for specific performance of the agreement to sell. In the aforesaid case, the earnest money had been refunded. Hence, the Court held that Order 2 Rule 2, CPC is applicable because the cause of action to file the suit for specific performance had already arisen on the day the injunction suit was filed. The basic (underlined) principle under Order 2 Rule 2, CPC is to avoid multiple litigation and if on the day when the first suit is instituted, the plaintiff is entitled to claim and cause of action has accrued for more than one relief, than he has to include the same in the first suit itself otherwise the same shall be held to be abandoned. In the present case, this is proved because the target date for execution and registration of the sale was in 1991 whereas the suit for injunction was filed in 1994.

In view thereof, there is no ground to interfere.

The pending misc. application, if any, shall stand disposed of.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

28.02.2019
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No