

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

(1) RSA-2252-2017 (O&M)  
Date of decision: 10.12.2019

Soma Jassal

...Appellant

Versus

Dhilpreet Singh Gill and others

...Respondents

(2) RSA-5686-2017 (O&M)

Pritam Kaur (since deceased) thr. LRs

...Appellants

Versus

Dhilpreet Singh Gill and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Sumeet Mahajan, Sr. Advocate with  
Mr. Amit Kohar, Advocate for the appellant  
in RSA-2252-2017.

Mr. Puneet Jindal, Sr. Advocate with  
Mr. Tajinder Singh, Advocate for the appellants  
in RSA-5686-2017.

Mr. P.S. Guliani, Advocate for respondent No.1  
in both cases.

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**H.S. MADAAN, J.**

Briefly stated facts of the case are that plaintiff Dhilpreet  
Singh Gill, aged about 51 years son of Harbeant Singh Gill, resident

of Mohali had brought a suit against defendants i.e. Smt. Pritam Kaur wife of late Lal Singh, resident of Village Agwar Gujran, Tehsil Jagraon, District Ludhiana and Smt. Soma Jassal wife of Laslie Jassal, resident of 126-White Barn Lane, Dagenham, England, seeking possession of land measuring 151K-3M, situated at Village Galib Kalan-I, Tehsil Jagraon, District Ludhiana fully described in headnote of the plaint, by way of specific performance of agreement to sell dated 11.12.2004, executed by defendant No.1 Pritam Kaur in favour of the plaintiff, directing the said defendant to execute and get registered the sale deed in favour of the plaintiff on receipt of balance sale consideration, as per terms & conditions of the agreement to sell, besides seeking a declaration that order dated 17.03.2005 passed by the Collector, Jagraon setting aside mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I, which were already sanctioned on the basis of valid exchange effected between the defendants is hit by principle of lispence, estoppel, liable to be ignored being collusive and has been obtained in order to defeat the rights of the plaintiff for specific performance of agreement to sell dated 11.12.2004 and the same is not binding upon the plaintiff; further seeking a declaration that mutation No.1960 of Village Galib Kalan-II, mutation No.14703 of Village Galib Kalan-I and mutation No.25136/1 of Village Agwar Gujran are perfectly legal, valid and binding upon the defendants on

the basis of legal and valid exchange effected and duly acted upon between defendant No.1 and further for a direction to defendant No.2 to join defendant No.1 to execute and get the sale deed registered in favour of the plaintiff. In the alternative, plaintiff has sought recovery of Rs.1,88,75,000/- along with interest @ 18% p.a. from the date of filing of the suit till its realization against defendant No.1 as damages for the loss caused to the plaintiff for act of defendant No.1 having failed to perform her part of contract and in the alternative, the suit for possession of land by way of specific performance of agreement to sell dated 27.10.2004 executed by defendant No.2 through her attorney Parvinder Singh son of Lal Singh directing defendant No.2 to execute and get registered the sale deed in favour of the plaintiff on receipt of balance sale consideration, as stipulated in the agreement to sell dated 27.10.2004 and for recovery of Rs.20,16,500/- i.e. Rs.18,50,000/- being principal amount and Rs.1,66,500/- as interest @ 18% p.a. from 11.12.2004 to 10.06.2005 against defendant No.1 and in the alternative suit for recovery of Rs.1,88,75,000/- along with interest @ 18% p.a. from the date of filing of suit till its realization against defendant No.2 being damages for the loss caused to the plaintiff due to failure of defendant No.2 to perform her part of contract.

As per version of the plaintiff, Soma Jassal defendant No.2 through her attorney Parvinder Singh had entered into an

agreement with plaintiff to sell the suit land measuring 151K-3M @ Rs.10 lacs per acre, receiving earnest money of Rs.50,000/- and an agreement in that regard dated 27.10.2004 was executed. Thereafter, Smt. Pritam Kaur-defendant No.1, who is mother of Parvinder Singh, attorney of defendant No.2, represented that she had got the suit land in exchange from defendant No.2. Accordingly, defendant No.1 entered into an agreement to sell dated 11.12.2004 with plaintiff @ Rs.10 lacs per acre; Rs.50,000/- were paid on 27.10.2004 to defendant No.1 and further amount of Rs.3 lacs was paid by plaintiff to defendant No.1 through cheque bearing No.663763 dated 11.12.2004 of Standard Bank, Feroze Gandhi Market, Ludhiana and another amount of Rs.15,50,000/- was paid in cash. Thus total earnest money paid was Rs.19 lacs. Further, a sum of Rs.7 lacs was paid by the plaintiff to defendant No.1 upto 01.06.2005 and sale deed for half acre of land was to be executed, whereas, sale deed for remaining land was to be executed till 01.12.2005 on payment of balance sale consideration. In the month of February, 2005 due to rising prices, the defendants started negotiations for selling the suit land to some other persons, therefore, the plaintiff filed a suit for permanent injunction, wherein, order of ad-interim injunction, restraining alienation of suit land was passed against defendant No.1. On 01.06.2005, the plaintiff was ready and willing with the balance sale consideration in terms of the agreement and had also attended

office of Sub Registrar, Jagraon but defendant No.1 failed to appear and execute the sale deed in favour of the plaintiff. Defendant No.2 in connivance with defendant No.1 had filed an appeal before the Collector, Jagraon, challenging the order of mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I, pertaining to exchange of the suit land in favour of defendant No.1 in return for the land of defendant No.1 situated at Village Agwar Gujran in favour of defendant No.2 and a collusive order dated 17.03.2005 setting aside aforesaid two mutations was obtained by them to defeat the right of the plaintiff for specific performance of agreement dated 11.12.2004. According to the plaintiff, the oral exchange between defendants was valid and defendant No.1 was owner of the suit land on the basis of said exchange. The plaintiff was entitled to specific performance of agreement to sell dated 11.12.2004. According to the plaintiff, in the alternative, he was entitled to damages to the tune of Rs.1,88,75,000/-, since he has suffered loss to that extent. The plaintiff intended to carve out a posh colony after purchasing the suit land and would have earned a profit to the tune of more than Rs.10 lacs per acre. In case, the Court comes to the conclusion that defendant No.2 was owner of the suit land, in that case, the plaintiff is entitled to specific performance of agreement dated 27.10.2004 executed by defendant No.2 through her attorney Parvinder Singh,

appointed, vide power of attorney dated 16.04.2002, bearing document No.29, registered with Sub Registrar Jagraon, in that eventuality, the plaintiff was entitled to recover amount of Rs.18,50,000/- from defendant No.1 along with interest from 11.12.2004 to 10.06.2005 and in alternative, the plaintiff was entitled to recovery of damages to the tune of Rs.1,88,75,000/- from defendant No.2. According to the plaintiff, he has always been ready and willing to perform his part of contract. He prayed that his suit be decreed.

On getting notice, defendants appeared and filed separate written statements, contesting the suit. In the written statement filed by defendant No.1, she had taken up various legal objections, to wit, that the suit was barred by principle of constructive res-judicata; the plaintiff had never disclosed that an agreement dated 27.10.2004 was executed by Parvinder Singh attorney of defendant No.2; the plaintiff sought to adjust an amount of Rs.50,000/- paid on 27.10.2004 twice i.e. against defendant No.1 as well as defendant No.2; the plaintiff could not seek specific enforcement of agreement dated 11.12.2004, since the same stood frustrated due to the fact that the exchange effected between defendants was set aside by Collector, Jagraon and defendant No.1 was no longer owner of the suit property. Defendant No.1 was ready to return the amount of Rs.19 lacs received by her from the plaintiff; that the alleged agreement to sell dated 27.10.2004

was not properly stamped and was inadmissible and was also a forged and fabricated document, which had not been executed by Parvinder Singh. Inter alia, it was contended that terms of agreement of sale were orally settled by her with the plaintiff on 27.10.2004 and Rs.50,000/- were paid to her through her son Parvinder Singh, while the agreement was reduced into writing on 11.12.2004, in which, receipt of amount of Rs.50,000/- was acknowledged; that exchange between the defendants had already been effected on 06.10.2004 and thereafter, there was no occasion for the plaintiff to enter into any agreement to sell dated 27.10.2004 with defendant No.2 through her attorney Parvinder Singh son of defendant No.1. According to the answering defendant, the appeal filed by defendant No.2 before Collector, Jagraon was hotly contested by defendant No.1 but she could not succeed; that the damages claimed by plaintiff were imaginary and were not admissible since the plaintiff had agreed to liquidated damages. In the end, such defendant prayed for dismissal of the suit.

In the written statement filed by defendant No.2, she had raised an objection that the suit was barred under Order 2 Rule 2 read with Section 11 CPC on account of earlier order dated 14.06.2005 passed in Civil Suit No.42 of 07.05.2002, instituted by the plaintiff. The alleged agreement to sell dated 27.10.2004 was forged and fabricated by the plaintiff after filing of this civil suit in connivance

with Parvinder Singh in order to usurp the land of defendant No.2; that there was no privity of contract between plaintiff and defendant No.2; that defendant No.1 tried to defraud defendant No.2 in collusion with her son Parvinder Singh, who was appointed as attorney by defendant No.2, vide power of attorney dated 16.04.2002, bearing document No.29; that defendant No.1 and Parvinder Singh falsely prepared the agreement of exchange dated 06.10.2004 showing exchange of land measuring 43K-11M of defendant No.1 with the suit land measuring 151K-2M of land of defendant No.2, situated at Village Galib Kalan; on coming to know about it, defendant No.2 filed an appeal against sanctioning of mutation, which was allowed by Collector, Jagraon. The plaintiff has no locus standi to challenge the order dated 17.03.2005 of Collector, Jagraon; that agreement dated 27.10.2004 is a forged and fabricated document, which was merely a receipt and not an agreement; that defendant No.1 had no locus standi to enter into any agreement with the plaintiff with regard to the land owned by defendant No.2. In the end, such defendant also prayed for dismissal of the suit.

Plaintiff filed replications to the written statements submitted by both the defendants, denying the allegations therein, whereas, reiterating the averments in the plaint.

On pleadings of the parties, the following issues were framed:-

1. Whether order dated 17.03.2005 passed by Collector, Jagraon setting aside mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I, is illegal and hit by principle of lis-pendence, estoppel and is liable to be ignored being collusive and sham as alleged? OPP.
2. Whether defendant No.1 entered into an agreement dated 11.12.2004 with plaintiff? OPP.
3. Whether plaintiff is entitled to specific performance of agreement to sell dated 11.12.2004? OPP
4. If issue No.3 is not proved, whether plaintiff is entitled to alternative relief of recovery of earnest money or of damages as claimed? OPP.
5. Whether defendant No.2 entered into an agreement of sale dated 27.10.2004 through her Attorney Parvinder Singh as alleged? OPP.
6. Whether plaintiff is entitled to specific performance of agreement to sell dated 27.10.2004 as alleged? OPP.
7. If issue No.6 is not proved, whether plaintiff is entitled to recovery of earnest money and damages with interest as claimed? OPP.
8. Whether plaintiff has always been ready and willing to perform and is still ready and willing to perform his part

of agreements of sale dated 11.12.2004 and 27.10.2004?

OPP.

9. Whether suit of the plaintiff is barred by principle of constructive res-judicata? OPD.

10. Whether plaintiff has no locus standi to file present suit? OPD.

11. Whether suit is bad for mis-joinder of parties and non joinder of cause of action? OPD.

12. Whether plaintiff is estopped by his act and conduct to file the present suit? OPD

13. Whether plaintiff has got no locus standi to challenge the order dated 17.03.2005 passed by Collector, Jagraon? OPD.

14. Whether the suit is collusive between plaintiff and defendant No.1 along with her son as alleged? OPD-2.

15. Whether suit is barred Under Order 2 Rule 6 and 7 as alleged? OPD-2.

Plaintiff Dhilpreet Singh got his statement recorded as PW1 and submitted his affidavit Ex.PA, repeating on oath case of the plaintiff as given in the plaint, besides tendering various documents.

In rebuttal, Sukhwinder Singh attorney of defendant No.1 appeared as DW1 and submitted his affidavit Ex.DA and

thereafter, defendants closed their evidence.

After hearing arguments, on conclusion of trial, learned Court of Addl. Civil Judge (Sr. Divn.) Jagraon, vide judgment and decree dated 09.10.2015, decreed the suit with costs and was observed that if defendant No.1 failed to execute the sale deed in favour of the plaintiffs then the plaintiff shall be entitled to get the sale deed executed and registered through agency of the Court.

Both the defendants felt aggrieved by the said judgment and decree and preferred separate appeals before District Judge, Ludhiana, which were assigned to Addl. District Judge, Ludhiana, who vide judgment and decree dated 13.02.2017, dismissed both the appeals

Still feeling dissatisfied, the defendants have knocked at the door of this Court, by way of filing separate Regular Second Appeals, notices of which were given to the respondents, however, only respondent No.1 has put in appearance through counsel to offer a contest.

I have heard learned counsel for the parties besides going through the record.

In this case, both the Courts below in the light of facts and circumstances of the case and by analysis of the evidence adduced by the parties have come to the conclusion that execution of agreement to sell dated 11.12.2004 stands duly proved inasmuch as it

is not denied by defendant No.1, who also admits receipt of Rs.19 lacs from the plaintiff as earnest money, including Rs.50,000/- paid to Parvinder Singh, son of defendant No.1 on 27.10.2004. The plea raised by defendant No.1 that she was not competent to honor the agreement dated 11.12.2004, since two mutations bearing Nos.1960 of Village Galib Kalan-II and 14703 of Village Galib Kalan-I with regard to the exchange of land between defendants had been cancelled by the revenue authorities, vide order dated 17.03.2005 of Collector, Jagraon, because she no longer remained owner of the said land, was rejected by the Courts, observing that proceeding before Collector decided, vide order dated 17.03.2005 were collusive between two defendants and was subsequent to execution of agreement Ex.P2 by defendant No.1 in favour of the plaintiff. With exchange having been effected on 06.10.2004, there was no occasion for the plaintiff to enter into agreement to sell dated 27.10.2004 with defendant No.2 through her attorney. The trial Court had observed that oral exchange of land is a valid mode of transfer of ownership in the State of Punjab and exchange of land measuring 43K-11M of defendant No.1 situated at Village Agwar Gujran with land measuring 151K-2M of Village Galib Kalan was a valid and convincing transaction, keeping in view the fact that Galib Kalan-II is at a distance of 10-12 kms from Jagraon, whereas, Village Kothe Jiwan Agwar Gujran is near Jagraon city and land situated at Village

Agwar Gujran carries more value than land located at Village Galib Kalan. Since oral exchange is permissible in the State of Punjab and because Section 18 of the Transfer of Property Act has not been made applicable to Punjab and the said exchange in question was validly effected between the defendants inter se and thereafter defendant No.1 had entered into agreement dated 11.12.2004 Ex.P2 for sale of land with the plaintiff with respect to the land received by her under the exchange from defendant No.2. A plea was raised by the defendants that the suit was barred by principle of constructive resjudicata and under provisions of Order 2 Rule 2 CPC because earlier Civil Suit No.42 of 07.02.2005 filed by the plaintiff for grant of permanent injunction against defendant No.1, restraining alienation of the suit land had been filed when the plaintiff was entitled to file a suit for specific performance, that civil suit had been dismissed as withdrawn on 14.06.2005, vide order Ex.P7; the plaintiff had not been granted permission to file fresh suit for specific performance, despite an application moved by him to that effect. The trial Court has dealt with such aspect in a proper and appropriate manner in para No.16 of the judgment, finding that the terms & conditions of the agreement Ex.P2 were not simply as regards execution of the sale deed by fixed date but it was to be enforced in steps, inasmuch as the first sale deed was to be executed and got registered with regard to half acre of land by 01.06.2005 on

payment of further amount of Rs.7 lacs and thereafter, the sale deed for remaining portion was to be executed by 01.12.2005 on payment of balance sale consideration. On expiry of first stipulated date i.e. 01.06.2005, earlier suit for permanent injunction was withdrawn on 14.06.2005 and subsequently, suit for specific performance was instituted on 27.06.2005. In the order dated 14.06.2005, Ex.P7, the plaintiff had sought permission for filing of fresh suit for specific performance. The Court had observed that there was no necessity for grant of such permission and suit for specific performance could be filed by the plaintiff upon arising of fresh cause of action. Therefore, the plaintiff was granted permission to file suit for specific performance and it could not be said that suit was barred under Order 2 Rule 2 CPC or principle of constructive resjudicata.

The trial Court came to the conclusion that order dated 17.03.2005 of Collector, Jagraon qua setting aside of mutation No.1960 of Village Galib Kalan-II and mutation No.14703 of Village Galib Kalan-I is illegal, collusive and liable to be ignored and agreement dated 11.12.2004 Ex.P2 executed by defendant No.1 in favour of plaintiff deserves to be enforced. Action of Parvinder Singh, being attorney of defendant No.2 in effecting of exchange of suit land was bona fide and there was no collusion with the plaintiff. The plea taken by Parvinder Singh appearing as DW2, stating that he had appended his signatures on blank papers for scribing of receipt

regarding payment of Rs.50,000/-, which is attributed by Parvinder Singh to agreement dated 11.12.2004, executed by defendant No.1, was not accepted, observing that no person of ordinary prudence is expected to append his signatures on blank papers and is expected to record specifically the purpose of receiving of the amount in question and providing the acknowledgment for the same. The trial Court found that execution of agreement to sell dated 27.10.2004 stood duly proved, so has been the exchange of land between defendant No.1 and defendant No.2. Therefore, defendant No.1 is liable for enforcement of such agreement regarding specific performance, therefore, question of granting alternative relief of recovery became redundant. The trial Court has concluded that both the defendants along with Parvinder Singh, son of defendant No.1 and earlier attorney of defendant No.2 have been acting as tandem to stone wall the claim of the plaintiff for enforcement of agreement of sale pertaining to the suit land and trying to deny any relief to the plaintiff. However, it concluded that the plaintiff was ready and willing to perform his part of the contract, therefore, the suit of the plaintiff had been decreed.

On its part, the first Appellate Court was in agreement with the trial Court on all the important aspects and had upheld the judgment and decree passed by the trial Court.

Learned counsel for the appellants have raised almost the

same pleas, which they had agitated before the Courts below and which have been considered and rejected by such Courts, nevertheless, those contentions are being discussed hereunder in short.

The first contention was that once the exchange entered into between defendants No.1 and 2 had been set aside by the revenue authorities, the Civil Court could not have set aside the order of revenue officer in this case, the Collector, since the jurisdiction of the Civil Court in such like matters is clearly barred, whereas, learned counsel for respondent No.1/plaintiff had contended that the exchange was result of collusion between defendant No.1, defendant No.2 and Parvinder Singh, son of defendant No.1 to defeat the rights of the plaintiff and it was rightly ignored. I on my part feel that defendants No.1 & 2 along with Parvinder Singh had got the mutation with regard to the exchange cancelled by colluding with each other. The Court cannot sit as a silent spectator and allow such type of fraud to happen, adversely affecting the legal rights of a person. The Court can certainly look into the genuineness of the exchange, while deciding the matter, therefore, the jurisdiction of Civil Court is certainly not barred to do so. If the order cancelling the mutation on the basis of exchange is found to be illegal, that means defendant No.1 is owner of the land, which she got under exchange. She had entered into an agreement to sell the same with the plaintiff,

receiving earnest money, in that way, she is bound to execute the sale deed in favour of the plaintiff on receipt of balance sale consideration amount and to remove any technical defect, defendant No.2 is also bound to join defendant No.1 in executing the sale deed in terms of the agreement to sell above referred.

One more argument advanced by learned counsel for the appellants was that two agreements in one suit are not permissible. May it be so, but here, the findings by the Courts below is that it stand adequately established on record that defendant No.1 had entered into an agreement to sell the suit land with plaintiff on 11.12.2004, receiving earnest money and since the plaintiff has been proved to have been ready and willing to perform his part of the contract, she is liable to execute the sale deed in favour of plaintiff on the basis of that agreement to sell. Therefore, second agreement has become redundant. The defendants cannot get any advantage thereof by default.

Learned counsel for the appellant in support of his contentions in RSA-2252-2017 had referred to judgments i.e. **Shyam Narayan Prasad Vs. Krishna Prasad and others, (2018) 7 SCC 646, Gurdial Singh Vs. Ajmer Singh, 1987 PLJ 124, Satyawar Vs. Raghbir, 2002(2) RCR (Civil) 669, Tara Singh (since deceased) thr. LRs and others Vs. Kehar Singh and others, 1989 Supp (1) SCC 316 and Shiv Ram Vs. Smt. Bimla Devi, 2000(2)**

**RCR (Civil) 471.**

Learned counsel for the appellant(s) in support of his contentions in RSA-5686-2017 had referred to judgments i.e. **Pal Singh and others Vs. Uma Mehta and others, 1997(1) RCR (Civil) 376, Shiv Charan Vs. Siri Ram & Anr., 2008(3) RCR (Civil) 454 and Richhpal Singh Vs. Sandhura Singh, 2014(9) RCR (Civil) 70.**

Whereas, learned counsel for respondent No.1 had also referred to the following judgments to bring home his point i.e. **Tek Chand Vs. Deep Chand, 2001(3) RCR (Civil) 251, Sukhnandan Singh etc. Vs. Jamiat Singh & Ors. 1971 PLJ 278, Gurdev Singh Vs. Mukhtiar Singh & Ors., 2015 (3) PLR 446, Sucha Singh Sodhi (D) thr. LRs Vs. Baldev Raj Walia & Anr., 2018 (2) RCR (Civil) 782, Inbasegaran & Anr. Vs. S. Natarajan (dead) thr. LRs 2014(6) RAJ 130, Rathnavathi & Anr. Vs. Kavita Ganashamdas, 2015(2) WLN 147, Rameshwar Dass Gupta Vs. Kailash Chander Sharma, 2015(4) PLR 778, Horil Vs. Keshav & Anr. 2012 (2) RCR (Civil) 852, Raj Kumar & Anr. Vs. Om Parkash & Ors., 2019 (1) RCR (Civil) 663, Sucha Singh and Balwant Singh VS. Nand Singh & Ors. 1976 PLJ 183, Karan Singh & Ors. Vs. Raghbir Singh & Ors., 2014 (4) RCR (Civil) 539, Bachan Singh & Ors. Vs. Bant Singh & Ors., 2007(1) PLJ 554 and Mulakh Raj Vs. Kishan Kaur & Ors. 2014 (37) RCR (Civil) 52.**

Learned counsel for the appellants had submitted that suit was hit by Order 2 Rule 2 CPC since earlier a suit for permanent injunction was filed which was withdrawn and no permission was granted by the Court to file a fresh suit for specific performance on the same cause of action.

Whereas, learned counsel for the respondents has contended that such contention has been dealt with in detail by the Courts below. Nevertheless, a suit for specific performance was not hit by Order 2 Rule 2 CPC since the cause of action in both the suits was different. In support of his contention, he had referred to a judgment *Sucha Singh Sodhi (D) thr. LRs Vs. Baldev Raj Walia & Anr.*, 2018 (2) RCR (Civil) 782, wherein, it was observed that first, the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot include the other and vice versa. In other words, a plaintiff cannot claim a relief of specific performance of agreement against the defendant on a cause of action on which he has claimed a relief of permanent injunction.

After hearing the counsel and going through the judgments referred to by learned counsel, I find that bar of Order 2 Rule 2 CPC does not come into play in the present case. The Courts below have also observed so. Therefore, this contention is rejected.

I find that the judgments passed by the Courts below are

quite detailed, well reasoned and do not suffer from any illegality or infirmity. The concurrent findings recorded by the Courts below do not deserve to be upset. No substantial question of law arises in these cases. The case law cited by the learned counsel for the appellant(s) are not applicable due to different facts and circumstances and the context in which such observations had been made. The appeals are found to be without merit and are dismissed accordingly.

10.12.2019

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**(H.S. MADAAN)**  
**JUDGE**

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|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |