

RSA No.210 of 2018 (O&M)

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

RSA No. 210 of 2018(O&M)

Date of decision: 23.9.2019

Mithu Ram

... Appellant

Versus

Ram Phal

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Manish Kumar Singla, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 31.1.2015, and as even the appeal preferred against the said decree failed and was dismissed on 26.5.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for specific performance of the agreement to sell dated 14.4.2005 and in the alternative, for recovery of Rs. 40,000/-, i.e. double the amount of earnest money, along with interest, which comes to Rs. 50,400/-.

In brief, the case set out by him was that defendant happened to be the owner in possession of a plot measuring 1 biswa, bearing khasra No. 241//24 min G.M.. An agreement to sell dated 14.4.2005 qua the said plot was entered into between the parties for a total sale consideration of Rs. 1,05,000/-. A sum of Rs. 20,000/- were paid as earnest money. The balance sale consideration was to be paid on 18.7.2005, i.e. at the time of registration of the sale deed. The plaintiff has always been ready and willing to perform his part of the contract, but as the defendant did not execute the

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sale deed in his favour, thus the suit.

The defendant, in defence, pleaded, *inter alia*, that suit filed by the plaintiff was not maintainable, as even earlier he had filed a suit No. 574 of 9.8.2005, which was dismissed on 12.1.2007, so the present suit was barred under Section 11 as also under Order II Rule 2 of the Code of Civil Procedure. Though execution of the agreement was admitted by the defendant, but it was maintained that plaintiff failed to turn up before the Joint Sub-Registrar, Dirba, to perform his part of the contract, and thus, suit was liable to be dismissed.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that earlier suit No. 574 of 9.8.2005, filed by the plaintiff, was dismissed on 12.1.2007, wherein he had prayed for a decree for mandatory injunction for execution and registration of the sale deed in his favour. Copies of the plaint and written statement filed in earlier suit were proved on record as Ex.D2 and Ex.D3. The defendant had also brought the copy of the order dated 12.01.2007, passed by Civil Judge (Junior Division), Sunam, vide which the said suit was dismissed in default under Order IX Rule 8 of the Code of Civil Procedure. Though the area of the suit property, as mentioned in the earlier suit, was 2 biswas, whereas, in the present suit a decree for specific performance is being claimed qua a plot measuring 1 biswa and there was also a difference with regard to the measurement of one of the boundaries of the property. But that was inconsequential, for the records showed that agreement to sell, which was subject matter of the earlier suit as also the present suit was the same. Even in suit No. 574 of 9.8.2005, case of the plaintiff was that defendant (Ram Phal), had entered into an agreement to sell dated 14.4.2005, for a sale

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consideration of Rs.1,05,000/-, and Rs. 2,0,000/- were paid as earnest money as in the present suit. Even the date fixed for execution and registration of the sale deed was 18.7.2005. Further, as the defendant failed to perform his part of the contract, the plaintiff in the earlier suit prayed for mandatory injunction, requiring the defendant to execute the sale deed in his favour. That being so, in terms of the provisions of Order II Rule 2 of the Code of Civil Procedure, if a person is entitled for more than one relief as regards same cause of action, he could sue for all but shall not be allowed afterwards to sue for part of that relief, which he omitted at the time of filing of first suit. In other words, if the cause of action upon which the subsequent suit was predicated had already accrued when the first suit was filed or the relief claimed in the subsequent suit could always be sought in the earlier suit, the plaintiff was prohibited to sue for that part of the relief. Defendant-Ramphal (DW2), while appearing as his own witness, stated in his examination-in-chief, that plaintiff even earlier filed suit No. 574 on 9.8.2005 with regard to the same agreement, which was dismissed on 12.1.2007. Significantly, the defendant was not even subjected to cross-examination by the plaintiff in this regard. At any rate, no evidence was led by the plaintiff to prove that agreement with respect whereof the earlier suit was filed was different than the agreement in the present suit. Ex facie, the date fixed for performance of the agreement in question was 18.7.2005, whereas, the earlier suit No. 574 was filed on 9.8.2005. Meaning thereby, the cause of action to sue as regards the agreement to sell in question had already accrued to the plaintiff, when he filed the first suit. Thus, the present suit predicated upon same cause of action was barred by provisions of Order II rule 2 of the Code of Civil Procedure. Still further, in compliance to the provisions of Order 7

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Rule 1 (j) of the Code of Civil Procedure, it was averred in the plaint that no suit with regard to the property of the same nature was filed by the plaintiff, nor any such was pending, though only an injunction suit was filed, which was dismissed in default on 12.1.2007. Therefore, it was admitted that earlier suit filed by the plaintiff was with respect to the same property. Accordingly, in reference to the decision of the Supreme Court in **Dadu Dayalu Mahasabha, Jaipur, Vs. Mahant Ram Niwas and another, 2008(2) RCR (civil) 936**, as also certain decisions rendered by this Court in **Rakesh Kumar Vs. Ajit Singh, 2001 (3) RCR (Civil) 285**, and **Vipan Kumar Vs. Smt. Asha Latta and others, 2009 (3) CCC 737**, it was concluded that suit filed by the plaintiff was apparently barred by Order II Rule 2 of the Code of Civil Procedure. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

September 23, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO