

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3357 of 2017

Date of Decision: February 04, 2019

Gurmej Singh

...Appellant

Versus

Avtar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Naresh Prabhakar, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff not been successful in claiming possession of the land (hereinafter called the suit land) in the earlier round of litigation claiming declaration having become owner in view of the exchange effected on 01.12.1986 and was entitled to possession in respect of the land already taken in lieu of the exchange, which was dismissed upto highest Court simply on the ground that the suit for declaration was hit by the provisions of Order 2 Rule 2 CPC.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of the appellant-defendant submitted that in the previous round of litigation, both the parties were alive to the situation of the exchange deed as they have already been put into possession and the plaintiff was sanguine of the fact that he would succeed in the suit, but could not have visualized or claimed the alternative relief.

I am afraid, the aforementioned argument is not sustainable as

in the earlier round of litigation, exchange deed was rejected on the ground of non-registration. The Legislature in its wisdom has framed the provisions of Order 2 Rule 2 CPC to prevent the parties to invoke the jurisdiction of the court time and again. For the sake of brevity, Rule 2 of Order 2 CPC is reproduced as under:-

“(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.”

From the plain and simple reading of the aforementioned language, it is clear that in case the plaintiff has omitted the relief as sought, in the second suit cannot be permitted to claim after having failed in the first round of litigation.

During the course of hearing, reference of Section 119 TP Act was also made. The same cannot be read in isolation but have to be read in conjunction. There would have been force had the possession been sought in the first round of litigation.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings of fact, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 04, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No