

HIGH COURT OF CHHATTISGARH, BILASPUR**F.A No.82 of 2011****Reserved on 09.03.2021****Pronounced on 22.03.2021**

Smt Ramani Soni, W/o Shri Bhagwat Soni, aged about 43 years, R/o Geetanjali Nagar, Kashyap Colony, Bilaspur, Tehsil & District Bilaspur

---- Appellant**Versus**

1. Smt Mala Dubey, W/o Shri TN Dubey, aged about 50 yrs
2. TN Dubey, S/o Shri Chandrika Prasad Dubey, aged about 50 years
Both residents of Geetanjali Nagar, Street No.6, Kashyap Colony, Bilaspur, Tehsil & District Bilaspur (CG)
3. State of Chhattisgarh, through the Collector, Bilaspur **----Respondents**

For Appellant:	Shri Vaibhav Tiwari, Advocate.
For Respondents No.1 & 2:	Shri Siddharth Dubey, Advocate.
For Respondent No.3/State:	Shri Udhaw Sharma, Government Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
C A V Judgment

1. Challenge to this Appeal preferred by the Plaintiff is the order dated 26.03.2010 passed in Civil Suit No.4-A/2010 whereby, the learned trial Court, while allowing the application filed by the Defendants No.1 & 2 under Section 12 of the Code of Civil Procedure, 1908 (for short 'the CPC'), has dismissed the suit holding it to be barred by law.

2. Shri Vaibhav Tiwari, learned Counsel appearing for the Appellant/Plaintiff submits that on the basis of the earlier instituted suit, being Civil Suit No.489-A/2005 filed by the Plaintiff's mother Smt Vidya Devi against the Defendants, the instant suit has been dismissed by misinterpreting the provisions prescribed under Section 12 of the CPC. According to him, the property bearing Khasra No.284/8 and 284/7 was

owned by her mother Smt Vidya Devi, but part of it i.e. Khasra No.284/37 admeasuring 1,490 sq.ft., the suit land, was subsequently purchased by the Plaintiff under the registered deed of sale dated 28.03.2000 and based upon it, a claim for declaration of title, possession and injunction in a mandatory form, which is altogether distinct from the facts involved in the earlier one, has been made and therefore, the Court below ought not to have dismissed the claim as such. Further contention of him is that the earlier suit was filed by the mother Smt Vidya Devi when on 02.02.2004, Defendants Nos.1 & 2 have tried to encroach her land forcefully therefore, the Plaintiff is not debarred and/or precluded from instituting the suit under the said provision.

3. On the other hand, learned Counsel for the Respondents/Defendants No.1 & 2 has supported the order impugned as passed by the trial Court.

4. I have heard learned Counsel for the parties and perused the entire relevant papers of both the suits carefully.

5. The main question which arises for determination in this Appeal is as to whether the subsequent suit instituted by the Plaintiff could be held to be barred by law under Section 12 of the CPC ?

6. From a bare perusal of the instant suit, it appears that the Plaintiff has filed the same claiming declaration of title, possession and injunction in a mandatory form on the basis of the registered deed of sale said to have been executed in her favour by mother Smt Vidya Devi on 28.03.2000 with regard to the land in question bearing Khasra No.284/37 of Plot No.438, Street No.12 admeasuring 1,490 Sq.ft. It was instituted on the premises that on 12.01.2010, Defendants No.1 & 2 have forcefully

demolished her boundary wall and because of that, she has been compelled to file the present claim seeking the relief of restoration of boundary wall. It, therefore, appears that when Plaintiff's possession was disturbed as such on 12.01.2010, the suit in the instant nature was filed. However, perusal of the earlier suit would show that it was instituted on the basis of the cause of action which accrued to Plaintiff's mother Smt Vidya Devi in the month of February, 2004 when Defendants, while disturbing her peaceful possession, were trying to demolish the 'beam' (pillars) erected by her. In view of that, both the suits have been instituted not only on a different cause of action but the reliefs were also different though some of them overlapped with each other. As such, the Plaintiff cannot be held to be precluded and/or debarred from instituting the suit in the instant nature as held by the trial Court.

7. At this juncture, the provisions prescribed under Section 12 of the CPC are to be seen which provides as under:-

“12. Bar to further suit.- Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.”

8. A bare perusal of the aforesaid provision would show that it debars the Plaintiff from instituting a further suit based upon and in respect of such cause of action, if it was the cause of action in earlier suit, else, the Plaintiff would not be precluded from instituting a further suit. It is thus clear that where the earlier suit was not in respect of the same cause of action, the instant suit cannot be held to be barred under the aforesaid provision as in order to attract the bar provided therein, the earlier suit should be founded on the same cause of action on which, the subsequent suit is based.

9. Certain principles laid down by the Supreme Court in this aspect are to be seen in order to consider the issue involved herein.

9.1. In the matter of Deva Ram and Another vs. Ishwar Chand and another reported in (1995) 6 SCC 733 wherein, at paragraphs-15 and 16, it has been observed as under:-

"15. In Sidramappa v. Rajashetty & Ors. : A.I.R. 1970 S.C.1059, it was laid down that if the cause of action on the basis of which the previous suit was brought, does not form the foundation of the subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter namely, the subsequent suit, will not be barred by the rule contained in Order 2 Rule 2, CPC. In Gurbux Singh v. Bhura Lal (A.I.R. 1964 S.C.1810), it was observed:

"In order that a plea of a bar under O.2 R.2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis, it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar."

"16. In view of the above, what is to be seen in the instant case is whether the cause of action on the basis of which the previous suit was filed, is identical to the cause of action on which the subsequent suit giving rise to the present appeal, was filed. If the identity of causes of action is established, the rule would immediately become applicable and it will have to be held that since the relief claimed in the

subsequent suit was omitted to be claimed in the earlier suit, without the leave of the court in which the previous suit was originally filed, the subsequent suit for possession is liable to be dismissed as the appellants, being the defendants in both the suits, cannot be vexed twice by two separate suits in respect of the same cause of action.”

9.2. In the matter of Union of India vs. HK Dhruv reported in (2005) 10 SCC 218 wherein, it was observed as under:-

“4.In order to attract applicability of the bar enacted by Order 2 Rule 2 CPC, it is necessary that the cause of action on which the subsequent claim is founded should have arisen to the claimant when he sought for enforcement of the first claim before any court. On the facts found and as recorded in the judgment of the High Court and with which we find no reason to differ, the second demand raised by the respondent was not available to be made a part of the claim raised in the first application. The bar enacted by Order 2 rule 2 CPC is clearly not attracted.”

9.3. In the matter of State of Maharashtra and another v. M/s. National Construction Company, Bombay and another reported in AIR 1996 SC 2367 wherein, it has been observed at paragraph-7 as under:-

“17. In Sidramappa v Rajashetty, AIR 1970 SC 1059 at pp 1060-61 : (1970) 1 SCC 186 at 189. this Court held that where the cause of action on the basis of which the previous suit was brought, does not form the foundation of the subsequent suit, and in the earlier suit, the plaintiff could not have claimed the relief which he sought in the subsequent suit, the plaintiff's subsequent suit is not barred by Order 2 Rule 2. Applying this ruling to the facts of the present case, it is clear that, in the first suit, the appellants could only claim reliefs in respect of Rs.14,12,836/- which was the maximum amount stipulated in the performance guarantee. They could not have claimed reliefs of Rs.1,13,27,298.16 which they did in the second suit on the basis of the contract relating to the work to be performed by the contractor.”

10. The Rajasthan High Court has also considered the said issue in the matter of Prithvi Raj Singh v . Dalip Kulkarni and others reported in AIR

1999 Rajasthan 201 wherein, it was observed at paragraph-36 as under:-

“36. Likewise, in the instant case earlier suit referred to above, being only confined to grant of damages and compensation as a consequence of breach of terms and conditions of the agreement in question on the part of the respondents whereas in the suit giving rise to the present first appeal, the appellant plaintiff has sought relief for specific performance of terms and conditions of M.O.U. (Ex.1) contained in its clause 6, which have been allegedly breached and violated at the instance of the defendants respondents, hence cause of action being wholly separate and not identical because of the foundation of two suits being different, it cannot be inferred by any stretch of imagination that the present suit which is a subsequent suit would be barred under Order 2, Rule 2, CPC.”

11. In the instant matter as revealed from a bare perusal of its averments and reliefs claimed, it appears that such a relief seeking restoration of boundary wall demolished illegally by Defendants No.1 & 2 on 12.01.2010 could not have been made on the said cause of action in the previously instituted suit as made by the Plaintiff's mother Smt Vidya Devi. Therefore, the subsequent suit based upon the different cause of action cannot be held to be barred by virtue of Section 12 of CPC in the light of the principles laid down in the above referred matters.

12. Consequently, the Appeal is allowed and the judgment and decree dated 26.03.2010 passed in Civil Suit No.4-A/2010 by the 8th Additional District Judge, Bilaspur is hereby quashed and the matter is remitted back to the concerned trial Court with a direction to restore the same to its file and decide the same in accordance with law. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE