

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4303 of 2018(O&M)
Date of decision: 05.08.2022

Chajja Singh and others

..Petitioners

Versus

Simran Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate, for the petitioners.
Mr. A.S.Likhari, Advocate, for the respondent

ANIL KSHETARPAL, J(Oral)

1. The petitioners herein are the defendants in a suit for specific performance seeking directions to the defendants to transfer 19 marlas of land on the basis of agreement to sell dated 01.07.2002. Previously, the plaintiff filed a suit for declaration on the basis of the same agreement which has been dismissed.

2. The defendants pray for rejection of the plaint on account of bar under Order 2 Rule 2 CPC as well as lack of pleadings with regard to cause of action.

3. The trial court has dismissed the application while observing that the suit for specific performance is based on a fresh cause of action.

4. The learned counsel representing the petitioners contends that the filing of previous suit for grant of declaration is admitted by the plaintiff in para 2 of the plaint. He submits that, hence, the subsequent suit shall be barred under Order 2 Rule 2 CPC. He further contends that in the plaint the plaintiff has failed to specify the fresh cause of action.

5. For proving bar to the maintainability of the subsequent suit

under Order 2 Rule 2 CPC, it is required to be proved that both the suits were filed on same cause of action. Hence, the plaint of the previous suit is required to be produced and proved. Hence, it will not be appropriate to examine the bar under Order 2 Rule 2 CPC, at the stage of Order 7 Rule 11 CPC, particularly when the court is only required to examine the contents of plaint in the presently filed suit and the copy of the plaint of the previous suit.

6. The second argument of the learned counsel representing the petitioners is firm as the respondent has not specifically pleaded the fresh cause of action. However, paragraph 7 of the plaint reads as under:-

“7. That in order to get the instant suit property transferred to the name of the plaintiff, the defendants were sent one notice the same to appear on 27.02.2017. However, the plaintiff felt unwell and was unable to present on the date. The plaintiff informed the defendants of the said reason and once again requested them to be present on 07.03.2017 before the Sub-Registrar, Kharar. The defendants in spite of being served never appeared before the Sub-Registrar, Kharar. The notice dated 27.02.2017 bearing the attendance of the plaintiff appended herewith as Annexure A-6. The postal receipts dated 27.02.2017 are appended herewith as Annexure A-7.”

7. The plaint has been drafted in a casual manner. However, it is evident from the careful reading of para 7, that the plaintiff while filing the suit claimed that she called upon the defendants to honour the agreement to sell in 2017 but despite notice, the defendants never appeared before the sub-registrar to honour the agreement. Thus, it is obvious that the plaintiff, though, not to clearly made an attempt to claim that the cause of action accrued in the year 2017. However, this court is not expressing any final opinion on the aforesaid matter while leaving the parties to prove their respective case before the trial court after the evidence is led by them.

8. With these observations, the revision petition is disposed of.
9. All the pending miscellaneous applications, if any, are also disposed of.

August 05, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:

Yes/No

:

Yes/No