

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 7483 of 2016**

**Date of Decision: 21.07.2022**

Balbir Singh and Another

... Petitioner(s)

Versus

Ravinder Singh and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Jagnahar Singh, Advocate  
for the petitioner(s).

Mr. Madan Lal Saini, Advocate  
for the respondent No.1, 2 and 4 to 6.

**Anil Kshetarpal, J.**

1. The petitioner herein is the plaintiff in a suit for declaration that the various sale deeds, executed and registered in favour of the defendants are illegal, null and void. The plaintiff also prayed for decree of permanent injunction. The entire basis of the suit of the plaintiff is an agreement to sell executed by the defendant No.5 on 15.11.2010 agreeing to sell the suit property. The suit was filed on 12.06.2012. As per the agreement to sell, the parties agreed to execute the sale deed on 14.06.2012. The plaintiff has filed an application for permission to amend the plaint so as to incorporate the relief of specific performance of the agreement to sell for which the cause of action accrued on 14.06.2012. The trial Court dismissed the application on the ground that such an amendment is barred under Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). The trial

Court has relied upon the judgment passed in *M/s Virgo Industries (Engineering) Pvt. Ltd. v. M/s Venture Tech Solutions Pvt. Ltd (2013) 1 SCC 625*.

2. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book.

3. In the considered view of this Court, the order, under challenge, is not sustainable. The cause of action for filing the suit of specific performance of the agreement to sell accrued on 14.06.2012 when the defendant No.5 did not come forward to honour his part of the contract.

Order II Rule 2 CPC is extracted as under:-

**“2. Suit to include the whole claim.—**

**(1)** XXX XXX XXX XXX XXX

**(2) Relinquishment of part of claim.—***Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.”*

4. On a careful reading of Order II Rule 2 CPC, it is evident that the bar to maintainability of the subsequent suit under Order II Rule 2 CPC will be applicable only if the previous suit was based on the same cause of action. A bundle of facts constitute a cause of action. Order II Rule 2 CPC do not provide that if the plaintiff is entitled to claim the relief in the first suit, then the subsequent suit shall be barred under Order II Rule 2 CPC. After considering the judgment passed in the case of *M/s Virgo Industries (Engineering) Pvt. Ltd.(supra)*, the Supreme Court in *V.Kalyanaswamy (Dead) through Lrs. Vs. L. Bakhthvatsalam (Dead) through LRS. 2020*

5. Secondly, the bar under Order II Rule 2 CPC shall have to be examined by the Court after the parties are granted an opportunity to lead the evidence. Further, when the suit is at a preliminary stage, it is considered inappropriate for the trial Court to dismiss the application for permission to amend the plaint by applying Order II Rule 2 CPC. Further, Order II Rule 2 CPC is a penal provision which must be strictly construed. It is debatable “as to whether Order II Rule 2 CPC will be applicable in the same suit or not?”

6. Keeping in view the aforesaid facts, the present revision petition is allowed and the Order, under challenge, is set aside while allowing the plaintiff to amend the plaint. Let the learned trial Court proceeds with the suit forth with, subject to payment of ₹5,000/- as costs, after the amended petition is filed.

**(Anil Kshetarpal)**  
**Judge**

**July 21, 2022**  
**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No