

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

RSA-1683-2014 (O&M)
Date of decision: 13.05.2022

MOHAN SINGH AND OTHERS

..Appellants

Versus

SMT. PREM AGGARWAL

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate
with Mr. Kulwant Singh, Advocate
for the appellants.

Mr. Sunil Chadha, Sr. Advocate,
with Mr. Akshay Chadha, Advocate
and Mr. Divanshu Jain, Advocate
for the respondent.

ANIL KSHETARPAL, J.

1. While assailing the concurrent findings of the fact arrived at by the Courts below, the defendants have filed this Regular Second Appeal.

2. Some facts are required to be noticed. Late Sh. Jagjit Singh was owner of House No.1022, Sector 21-B, Chandigarh, measuring 2 kanals. It was a two storey house constructed on a plot. On the death of Sh. Jagjit Singh, his three sons namely Sh. Mohan Singh, Sh. Kuldeep Singh and Sh. Paramjit, inherited the property. Sh. Mohan Singh, on his own behalf as well as on the behalf of his two brothers who had executed a General Power of Attorney in favour of Sh. Mohan Singh, entered into an agreement to sell dated 12.06.1989, while agreeing to sell House No.1022, Sector 21-B, Chandigarh, on receipt of Rs.25,000/- as earnest money out of the total sale consideration which was fixed at Rs.14,50,000/-. The plaintiff-Smt. Prem Aggarwal filed a suit for specific performance of the agreement to sell claiming that the defendants have failed to honour the agreement. She

asserted that the defendants have refused to honour the agreement, whereas, she was always ready and willing to perform her part of the contract. Defendants contested the suit while denying execution of the agreement to sell dated 12.06.1989, as put forth by the plaintiff in the plaint. It was asserted that in fact, another agreement to sell was signed between the parties on 12.06.1989, for a total sale consideration of Rs.19,25,000/-. It was asserted that the plaintiff had kept the original, whereas, its carbon copy was given to the defendants. It was also claimed that the present suit is barred under Order 2 Rule 2 CPC as the previous suit filed by the plaintiff for grant of decree of permanent injunction on 22.02.1990 was the first suit arising on the same cause of action.

3. The trial Court, on appreciation of pleadings, culled out the following issues:-

“1. Whether the plaintiff is entitled for specific performance of the agreement to sell dt. 12.6.1989? OPP

2. Whether the present suit is not maintainable in the present form? OPP

3. Whether the plaintiff has got no locus standi to file the present suit? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD

5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD”

On 13.09.2000, two additional issues were framed which are extracted as under:-

“6. Whether the property is HUF? OPD

7. Relief.”

4. The plaintiff appeared as PW-1 and examined Sh. Amar Singh Oberoi as PW-2. PW-3 Sh. Yashpal Kohli is another witness of the agreement to sell. She also examined PW-4 Sh. Yogesh Joshi, PW-5 Sh.Y.S. Kaushik, PW-6 Sh. Jasbir Singh, PW-7 Sh. Vitar Pal, PW-8 Sh.

of the plaintiff).

Per contra, the defendants examined DW-1 Sh. Surjit Singh, DW-2 Sh. Vibhushan Kumar, DW-3 Sh. Harnam Singh, DW-4 Sh. Mohan Singh, DW-5 Col. Iqbal Singh, DW-6 Jassi Anand, a private handwriting and fingerprint expert. In rebuttal evidence, the plaintiff examined PW-1 Sh. Sanjay Joshi, PW-12 Sh. Rajender Kumar Aggarwal, PW-13 Sh. N.K. Jain.

As already noticed, both the Courts have granted decree for specific performance of the agreement to sell dated 12.06.1989.

5. This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook and the record which was requisitioned. The learned counsel representing the parties has also filed the list of dates and events along with synopsis.

6. In the considered opinion of the Court, the following question of law arises for consideration:

If the cause of action to file the suit for specific performance had not arisen on the relevant day on which the suit for grant of permanent injunction was filed, then, whether the subsequent suit for grant of specific performance of the agreement to sell shall be barred under the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908 or not?

7. The learned counsel representing the appellant contends that the suit filed by the plaintiff is barred under Order 2 Rule 2 CPC. He submits that the plaintiff filed a previous suit for grant of decree of permanent injunction on 22.02.1990, but did not claim the relief of specific performance, particularly when she was aware that the defendants are not prepared to perform their part of the contract. He relies upon the judgments

Ltd. Vs. M/s Venture Tech Solutions Pvt. Ltd., (2013) 1 SCC 625, and,
Vurimi Pulla Rao Vs. Vemuri Venkata Radha Rani, (2020) 14 SCC 110.

He further contends that the suit of the plaintiff is liable to be dismissed because Ex.D1, is the actual agreement between the parties. Further, while referring to the evidence, he submits that there is lot of variation in the price as being projected by the plaintiff. While elaborating, he submits that as per Ex.D1, the price was settled at Rs.19,50,000/-, whereas, she, in her statement stated that the price of the house was settled at Rs.14,80,000/- and subsequently, she states that the defendant had been paid Rs.25,000/- as earnest money as well as an amount of Rs.6000/-, subsequently. She further goes on to state that defendant No.1 had taken Rs. 36,000/- in cash from her. He further contends that application for getting no objection certificate was allegedly submitted by the plaintiff herself. Consequently, it is not proved to be submitted by the defendants.

8. Per contra, the learned counsel representing the respondent has contended that the plaint of the previous suit is not a part of the record, therefore, cannot be relied upon. He further submits that cause of action for both the suits are different, therefore, the suit is not barred under Order 2 Rule 2 CPC. He, in support thereof, relies upon the judgment passed by the Supreme Court in *Gurbux Singh Vs. Bhooralal AIR 1964 SC 1810*, and *Gurinderpal Vs. Jagmittar Singh (2004) 11 SCC 219*. He further submits that the defendants do not dispute that they entered into an agreement to sell with the plaintiffs. They, also, failed to prove Ex.D-1. While drawing the attention of the Court to the findings of fact arrived at by both the lower Courts, he submits that Ex.D-1 has been forged by the defendants as not only first two papers of the alleged agreement to sell are different but even

two pages are not signed by any other party. He further submits that there is no variation in the price of the property agreed to be sold as the defendant had executed a receipt dated 24.09.1989, for Rs.30,000/- which he received as token money. Consequently, he prayed for dismissal of the appeal.

9. Before this Court examines and analysis the arguments of the learned counsel representing the parties, it is considered appropriate to carefully examine the agreement to sell dated 12.06.1989 (Ex.P-1), as well as document Ex.D-1. Ex.P-1 is available on the trial Court record at Page 767. This agreement to sell is scribed on stamp paper worth Rs.3/- which was been issued in favour of Sh. Mohan Singh son of Sh. Jagjit Singh on 12.06.1989. Sh. Mohan Singh has signed the agreement for himself as well as in the capacity of attorney on behalf of his two brothers namely Sh. Kuldeep Singh and Sh. Paramjit Singh. It runs into three different sheets of paper. On the first page, Sh. Mohan Singh has signed at three different places. Two signatures are on the left hand margin of the paper, whereas, the third signature is at the bottom of the page. Similar is the position with regard to leaf No.2. In leaf No.3, Sh. Mohan Singh has signed the document at two different places including left hand margin and at a place where the recitals of the agreement to sell finish. The agreement to sell is attested by two witnesses namely Sh. Amar Singh Oberoi as well as Sh. Yashpal Singh. It is also signed by Smt. Prem Aggarwal. Sh. Mohan Singh as well as his brothers are residing out of the country. The signatures of Sh. Mohan Singh are in English and all the signatures are in complete harmony with each other.

10. This Bench now proceeds to examine Ex.D-1. This is again on three sheets of paper. Page No.1 and 2 are not signed by any of the party.

Page No.3 is with regard to terms like commission payable etc. The alleged

price, agreed to between the parties, is on page No.2, which is not signed by any of the parties. Both the Courts have concurrently recorded a finding that first two papers are different from paper No.3. Both the Courts have also found that the case set up by the defendant that it is only a carbon copy is also factually incorrect. Both the Courts have further found that the spacing and left hand margin of all the three pages is different. The statement of Sh. Mohan Singh has not been found to be reliable. Thus, both the Courts have found that the agreement to sell between the parties is Ex. P-1 and not Ex.D-1.

11. As regards the first argument of the learned counsel representing the appellant, on the question of maintainability of suit in view of bar contained in Order 2 Rule 2 CPC, it may be noticed that the plaint of the previous suit was sought to be produced in additional evidence before the First Appellate Court, the permission of which was declined. However, the First Appeal Court has examined the pleadings in the previous suit. This Court has also examined its contents. In the aforesaid suit, the plaintiff claimed that the defendant is threatening to dispossess her from the ground floor of the suit property. The suit was filed on 22.02.1990. The question is whether the cause of action for filing the suit for specific performance of the agreement to sell had arisen by that date or not. For that matter, one has to look at the terms of the agreement to sell. As per the agreement to sell Ex.P-1, the sale deed was to be executed after the vendors take the required steps like clearance from Income Tax, occupation/completion certificate and after giving at least 2 month's notice to the purchaser, on completion of aforesaid steps, to come and execute the sale deed. It is admitted that the proposed vendors failed to obtain the No Objection Certificate though application for permission to transfer the property in favour of the plaintiff was made. In

such a situation, the question is whether the suit for specific performance was maintainable on 22.02.1990 or not?

12. On a careful reading of the plaint in the suit filed for grant of relief of permanent injunction, it is evident that the plaintiff has nowhere pleaded that the defendants have refused to honour the agreement. She has only stated that she apprehends forcible dispossession from the ground floor of the premises and she has been threatened yesterday only that she will be forcibly dispossessed and the defendants will alienate the property. It was in this context that the previous suit was filed. In para 13 of the plaint, the defendants had assured the plaintiff to fulfill their part of the agreement by completing the formalities. In these circumstances, it will not be appropriate to hold that the cause of action for filing the suit for specific performance had already arisen, when the suit for grant of permanent injunction was filed.

13. The learned counsel representing the appellants relies upon the judgment in *M/s Virgo Industries (Engineering) Pvt. Ltd. case (supra)*. In the aforesaid case, two agreements were executed. Before the suit for grant of decree of permanent injunction was filed, the other party (the proposed vendors) had informed the plaintiffs of their refusal as well as returned the amount of earnest money. In that context, the Supreme Court held that the second suit was barred under Order 2 Rule 2 CPC. The next judgment relied upon by the learned counsel is in *Vurimi Pulla Rao's case (supra)*. This Court has carefully read the aforesaid judgment. The Court noticed that the cause of action for filing a suit for specific performance had arisen when the plaintiff had noticed denial by the defendant to perform the contract. On 30.10.1996, when the suit for grant of decree of permanent injunction was

Court also noticed that the defendant had replied upon the notice sent by the plaintiff on 13.10.1996, whereas, the suit for injunction was filed on 30.10.1996. Thus, the Court, in the facts of the aforesaid case, held that the suit for specific performance was barred under Order 2 Rule 2 CPC.

14. A Five Judge Bench judgment in *Gurbux Singh's case (supra)*, explained the scope of Order 2 Rule 2 CPC. The judgment passed in *M/s Virgo Industries (Engineering) Pvt. Ltd. (supra)* has further been explained in *Rathnavati and others Vs. Kavita Ghanshyam Dass (2015)5 SCC 223*. In that case also, the suit for specific performance was filed after filing the suit for injunction. Subsequently, in another judgment i.e. *Sucha Singh Sodhi (Dead) Vs. Baldev Raj Walia and others (2018)3 SCC 733*, the position was same. In both the judgments, after considering the judgment in *M/s Virgo Industries (Engineering) Pvt. Ltd. (supra)* the Court held that the suit for specific performance of the agreement to sell based on a different cause of action, is maintainable.

15. It may be noted here that there is a recent judgment passed by the Supreme Court while explaining the scope of Order 2 Rule 2 CPC in *V. Kalyanaswamy (Dead) through Lrs. Vs. L. Bakhthvatsalam (Dead) through Lrs. 2020 SCC (Online) 584* in which it has been held that the mere fact that the relief claimed in the subsequent suit could have been claimed in the previous suit is not, in itself, sufficient to invoke the bar under Order 2 Rule 2 CPC. The Court, after examining Order 2 Rule 2 CPC, held that the Court is required to examine whether the cause of action in the subsequent suit is same or not. The relevant discussion is in para 67, which is extracted as under:-

“67. Thus, be it the omission or intentional relinquishment of a claim arising out of a cause of action under Order II Rule 2(2) or not seeking a relief under

Order II Rule 2 (3), the fatal consequences they pose, will arise only if the cause of action is the same. Though we are not oblivious to the fact that the plaintiffs in O.S. No. 36 of 1963 could have sought a declaration about the compromise Decree in O.S. No. 71 of 1958, qua all the properties covered under the Will, we would think that, in the facts of this case, the cause of Action in O.S. No. 36 of 1963 and the present Suit (O.S. No. 1989 of 1983) are clearly distinct, having regard to what we have discussed and having regard to the factum of the date of the death of R. Krishnammal. It is significant to note that the cause of action in OS No. 36 of 1963 was the threat of alienation of the items scheduled therein. We would perceive O.S. No. 36 of 1963 more as a protective action by persons who had vested interest in the property under Section 119 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Indian Succession Act', for short). We must also not be unmindful of the principle that cause of action is not to be confused with the relief which is sought. It has more to do with the basis for the relief which is sought. We are only reiterating in this regard, what the Privy Council has laid down, when it said "it refers to the media upon which the plaintiff asked the court to arrive at a conclusion in his favour" (See Mohammad Khalil Khan v. Mahbub Ali Mian)."

16. Order 2 Rule 2(3) of the Code of Civil Procedure, 1908, uses the expression "the same cause of action" which is not synonymous with the expression "with all the reliefs accruing with regard to the subject matter till the date of filing of the previous suit". It is a penal provision which debars the maintainability of the subsequently filed suit and is, therefore, required to be constructed strictly. Each word used in the provision has to be given its proper meaning while keeping in view its object/purpose. If the lawmakers have used the expression "the same cause of action", it would not be justified to interpret it to include all the connecting reliefs which the plaintiff is entitled to seek while filing the previous suit against the defendants even when the cause of action of the previous and subsequent suit are different. If that was the intent behind Order 2 Rule 2, then the expression employed in the statute would have been different. The

expression employed in the statute is the clubbing of reliefs arising from same/identical cause of action, which refers to the bundle of events, facts and occurrences giving rise to a certain cause of action. Order 2 Rule 2 is based on the policy that every suit should include the whole claim arising from one and the same cause of action but does not provide that the suit shall include all the claims arising from every cause of action which the plaintiff may have against the defendant. A Division Bench in **Smt. Bhagwan Kaur Vs. Sh. Harinder Pal Singh, 1991 Punjab Law Journal 681**, after discussing the provision held as under:-

7. The learned counsel also contended that the suit is barred under Order II Rule 2(2) of the Code. This contention has also to be rejected on the ground that such a plea was never raised. However, since the plea was argued at some length on the basis of certain authorities by the learned counsel, we propose to discuss its merits as well. The contention is that in the earlier suit filed by the plaintiff seeking injunction against the appellant, the relief of specific performance should also have been claimed, since the same was available to him. We are not inclined to accept this contention also. Order II Rule 2(2) of the Code reads as under:-

"2. Suit to include the whole claim.-(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(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.

(3) Omission to sue for one of several reliefs.- Explanation..."It may be seen from its plain terms that what this rule provides is that the plaintiff may be precluded from claiming that portion of the claim which he intentionally omits to sue or which he intentionally relinquishes. It may be mentioned that the plaint in the earlier suit had not been filed. However, from a narration of facts in the judgment of the learned Single Judge, it appears that the cause of action in the earlier suit was the alienation made or threatened to be

made by the defendant-appellant. May be that while narrating the facts, the plaintiff also made a mention of the agreement to sell but then it is evident that the cause of action was not founded upon that agreement. The alienations made by the defendants necessitated the filing of the suit and formed the cause of action. The cause of action mentioned in Order II rule 2(2) of the Code obviously means the cause of action for which the suit was brought. In order that the cause of action in both the suits may be the same it is necessary not only that the facts which would entitle the plaintiff to the right claimed must be the same, but also that the infringement of his right at the hands of the defendant must have arisen, in substance, out of the same transaction as held by the Privy Council in Mohammad Khan V. Mahbub Ali Mian, A.I.R. 1949 P.C. 78. a rough test although not a conclusive one, as to whether the cause of action in subsequent suit is the same as that in the former suit is to see whether the same evidence will sustain both suits. Regard has to be had to the allegations in both the suits. It need not be emphasised that in a suit for specific performance, it is necessary for the plaintiff to aver and prove his readiness and willingness to perform his part of the contract which was apparently not necessary to be pleaded in the earlier, suit filed by the plaintiff claiming injunction. We may usefully refer to a Division Bench decision of the Lahore High Court in Lachha Mal-Sardari Mal v. Hirde Nath, A.I.R. 1925 Lah. 459 D.B. There also, the plaintiff who had an agreement of sale in his favour filed a suit for injunction against the defendants. That suit was held as not maintainable and dismissed. Subsequent suit for specific performance of the agreement was held to be maintainable and Order II Rule 2 of the Code was ruled as no bar to the maintainability of the subsequent suit for specific performance. This Division Bench precisely answers the issue against the appellant and in favour of the respondent.

17. Thus, if the relief is such which accrued on the exact cause of action as in the previous case and could be claimed on the date of the suit, then the bar of Order 2 Rule 2 shall apply but where cause of action is different, the bar shall not apply. Identical cause of action in both suits is the *sine qua non* for the application of Order 2 Rule 2. Hence, the issue framed

in para No.6 of the judgment is answered in negative.

18. This matter can be examined from yet another perspective. The suit for grant of decree of permanent injunction was filed only against Sh. Mohan Singh. The agreement to sell was executed by Sh. Mohan Singh as well as on behalf of his two brothers. Further, on the date the suit for injunction was filed, the defendant failed to complete the formalities. In view of the aforesaid, this Court expresses its inability to accept the argument of the learned counsel representing the appellant with regard to the application of Order 2 Rule 2 CPC to the facts of the present case.

19. The next argument of the learned counsel representing the appellant is with respect to agreement to sell Ex.D-1. This Court has already explained that the document Ex.D-1, is neither a genuine document nor the first two pages are signed by the parties. Both the Courts have already recorded a firm finding of fact which does not need any interference.

20. The argument of the learned counsel representing the appellant is with reference to the statement of Smt. Prem with respect to variation in the total sale price. The learned counsel has drawn the attention of the Court to the testimony of Smt. Prem Aggarwal wherein she states that initially, the total sale price was settled at Rs.14,80,000/- but after the defendant No.1 executed a receipt of Rs.31,000/-, subsequently, another agreement to sell was executed for a total sale price of Rs.14,50,000/-. He further draws the attention of the Court to the statement of Smt. Prem Aggarwal stating that the defendant No.1 had received Rs.36,000/- from her.

21. It may be noted here that Ex.PW-2/1/A, is the receipt executed by Sh. Mohan Singh admitting the receipt of amount of Rs.31,000/-. In the aforesaid receipt, the total sale price has been referred to as Rs.14,80,000/-.

This receipt is signed by Sh. Mohan Singh at two different places. Under the

second signature, Sh. Mohan Singh has himself noted that such receipt was executed on 24.04.1989. Whereas, the agreement to sell was executed on 12.06.1989. In other words, there was some cash transaction between the parties before the execution of the formal agreement to sell. In that context, if we read the statement of Smt. Prem Aggarwal, it is evident that she has, sufficiently, explained the difference in the price. In any case, Ex.P-1 is a written contract between the parties. In the absence of any material variation, the written contract is considered the best evidence. It is also well settled that a civil suit is required to be decided on the basis of preponderance of evidence. One sentence in the deposition cannot be read in isolation from the entire statement. She has specifically stated in unequivocal terms that the agreement was executed for Rs.14,50,000/-, whereas, there was a separate receipt of Rs.31,000/- which was executed one and a half month prior to the agreement to sell. Hence, the aforesaid difference in the price stands explained.

22. The last argument of the learned counsel is with reference to the application submitted for No Objection Certificate. In the city of Chandigarh, before a sale deed is executed, the seller is required to obtain a No Objection Certificate from the Estate Office. In this regard, an application Ex.PH was submitted by defendant No.1 on 22.11.1989. It is also evident that along with the application, Smt. Prem Aggarwal had attached her affidavit. The learned counsel representing the appellant has submitted that Smt. Prem Aggarwal, in an application, has admitted that such application was submitted by her. It may be noted here that once the application for No Objection Certificate was required to be accompanied by the affidavit of the purchaser and Sh. Mohan Singh has, also, signed the

aforesaid application, the same cannot be doubted. Furthermore, Sh. Mohan

Singh while submitting another application for grant of No objection Certificate on 29.01.1989 did pray for cancellation of the previous application submitted for this purpose. If Sh. Mohan Singh had never submitted the application on 22.01.1989, there was no necessity for him to make a request for cancellation of the previous application. It may be noted here that Sh. Mohan Singh, at that stage, never took a stand that agreement to sell Ex.P-1 has been forged or there is some difference in the price.

23. It has also come in evidence that after entering into an agreement to sell, the property which was previously in the name of their predecessor-in-interest was required to be transferred in their favour. There is a letter written by Smt. Prem Aggarwal, in this regard, to Sh. Mohan Singh who was residing out of the country. She has explained that the property has already been transferred in the favour of the defendants and she has also applied for permission to get No Objection Certificate. Thus, it is obvious that the plaintiff was looking after the work of getting necessary permission from the Court. This document is Ex.D-5, written by Smt. Prem Aggarwal to Sh. Mohan Singh. This rather shows that there was a mutual understanding between the parties that the purchaser will get the necessary documents from the office. In such circumstances, the argument of the learned counsel that the application for No Objection Certificate was submitted by Smt. Prem Aggarwal is not sufficient to doubt the correctness of the agreement to sell.

24. It may be noted here that along with the appeal, an application for permission to lead additional evidence has been filed by the appellant. The respondent has also filed reply thereto. The appellant wishes to produce certain documents to show that the respondent and her husband are a land

orders passed by the Court, however, the defendant has never been found guilty for any such offence. In the reply, it has been pointed out that false cases were registered against the defendant in which either he has been acquitted or the proceedings have been dropped by the Magistrate, at the threshold, on the basis of cancellation report filed by the Police.

25. In the considered view of the Court, such FIRs, challan or interlocutory orders passed by the Court does not prove that the respondent is not entitled to the decree for specific performance. Both Civil Courts and Criminal Courts function independently and findings of one are not relevant to that of other, unless where it has been expressly provided.

26. In view of the aforesaid discussion, finding no merit, the appeal is dismissed.

27. All the pending miscellaneous applications, if any, are also disposed of.

13th May, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No