

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3140 of 2014(O&M)

Date of Order:25.07.2022

Reserved On:15.07.2022

Rukmani Devi and others

...Appellants

Versus

Kamla Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate, for the appellants.

Mr. Chetan Mittal, Sr. Advocate, with
Mr. Ishan Gupta, Advocate and
Mr. Kunal Mulwani, Advocate,
for the respondents.

ANIL KSHETARPAL, J

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**
2. While assailing the correctness of the findings of fact arrived at by the courts below, the plaintiffs have filed the present appeal.
3. Their suit for grant of the following relief has been dismissed by both the courts below:-

“17. That it is therefore prayed that a decree of joint possession to the extent of 1/3 share in land as detailed in the head note of the plaint, be passed in favour of the plaintiffs and against the defendants with costs of the suit.”

4. Issues which arise for adjudication

4.1 In the considered view of the Court, the following questions arise for consideration:-

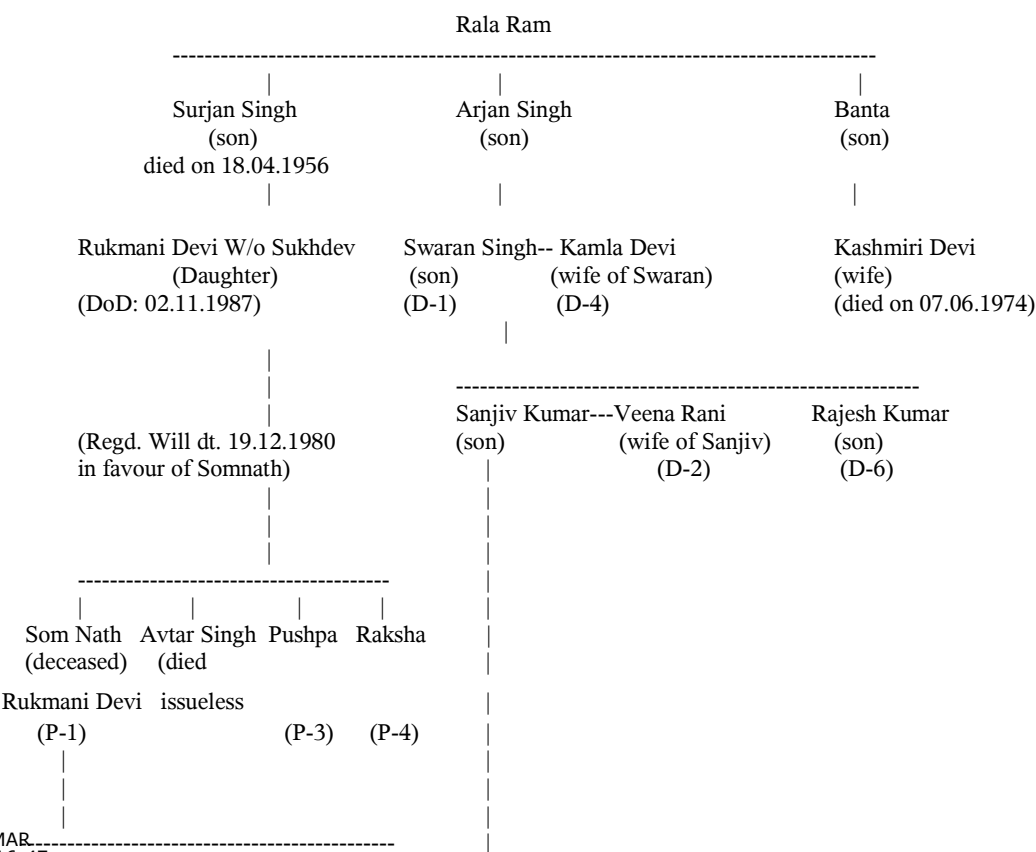
- (1) Whether the subsequent suit is not maintainable in view of the bar contained in Order II Rule 2 CPC?
- (2) Whether the present suit was filed within the prescribed time?

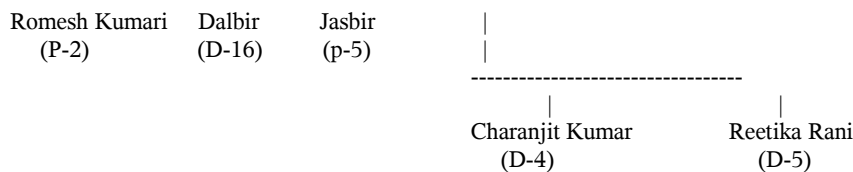
5. Some peculiar facts are required to be noticed.

6. The plaintiffs are as under:-

- 1. Rukmani Devi w/o Som Nath s/o Sukhdev Singh.
- 2. Smt. Romesh Kumari d/o Som Nath s/o Sukhdev Singh
- 3. Pushpa Devi
- 4. Raksha Devi Ds/o Rukmani Devi w/o Sukhdev Singh all through Jasbir Singh s/o Som Nath their attorney.
- 5. Jasbir Singh s/o Som Nath, all rs/o village Jadla the & Distt. Nawanshahr.

7. In order to have a better understanding of the relationship between the parties and the dispute involved, it is considered appropriate to draw a pedigree table, which is as follows:-





8. Sh. Rala Ram had three sons, namely, Surjan Singh, Sh. Arjan Singh and Sh. Banta. Sh. Surjan Singh died on 18.04.1956. He left behind a daughter, namely, Smt. Rukmani Devi, who was already married to Sh. Sukhdev Singh. The Hindu Succession Act, 1956 came into force with effect from 17.06.1956. Thus, sh. Surjan Singh died before the enforcement of the Hindu Succession Act, 1956. At the time of his death, Sh. Banta Ram had already died. The revenue authorities mutated the entire land in favour of Sh. Arjan Singh and Smt. Kashmiri Devi. Before his death, late Sh. Surjan Singh executed a surrender deed /Tabliqnama/transfer deed in favour of his daughter Smt. Rukmani Devi with respect to land measuring 50 kanals and odd marlas which after the consolidation of land holdings came to 37 kanals and 2 marlas of land. Smt. Kashmiri Devi (widow of Sh. Banta Ram) executed a registered will with respect to her share in the property in favour of Sh. Swaran Singh (son of Sh. Arjan Singh). Smt. Kashmiri Devi died on 07.06.1974 and the property was mutated in favour of Sh. Swaran Singh. Smt. Rukmani Devi is stated to have executed a registered Will in favour of her two sons namely Sh. Som Nath and Sh. Avtar Singh, without giving any details of the property sought to be bequeathed. A previous suit filed on 12.02.1990 by Sh. Som Nath and Sh. Avtar Singh, both the sons of Smt. Rukmani Devi (daughter of Sh. Surjan Singh) for grant of decree of declaration that the plaintiffs are the owners and in possession of land measuring 37 kanals and 2 marlas, on the strength of the surrender deed dated 01.08.1950, was decreed on 20.08.1996. It was held that the limited life estate given to Smt. Rukmani Devi has enlarged into complete

ownership in view of Section 14 of the Hindu Succession Act, 1956. On 18.12.2001, the first appeal challenging the judgment and decree passed by the trial Court was dismissed. In other words, the two sons of Smt. Rukmani Devi were declared owners in possession of the land measuring 37 kanals and 2 marlas. On 31.07.2003, the plaintiffs filed the present suit. The caption of the suit reads as under:-

“(Suit for possession of joint possession to the extent of 1/3 share of the following lands:-

1. Land measuring 222Kls. 71s. Bearing Khewat no.356, Khatauni No.408, 407 Rect. 29, Killa No.7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19/1, 24/2, Rect. 31, Killa No.24, 25/1 Rect. 32 Killa No.19/2, 20/3, 21, 22, 24/2, 25, Rect. 47, Killa No.4/2, 4/3, 5, Rect No.80 Killa No.10/3, Rect 71, Killa No.23, 24, 25, Rect. 80 Killa No.2, 3, 4, 5, 6, 7, 8, 9, 12/1, 13/1, 14/1/2, 15/1, 26.

2. Land measuring 171 Kls. 4 Mls. Bearing Khewat No.358, Khatauni 410, Rect. 32, Killa No.23, 24/1, Rect. 47, Killa No.1, 2, 4/1, 6, 7, 11/2, 12, 13, 14, 15, 16, 17, 18, 19/1, 26, Rect No.48, Killa No.4, 5/1, 5/2, 6, 7, 13, 14, Rect. 48, Killa No.15/1, 15/2, 326, 327, 332 as entered in the jamabandi for the year 1997-98, situated in the area of village Jadla the & Distt. Nawanshahr.) “

9. In para 3, the plaintiffs asserted that Sh. Surjan Singh (son of Sh. Rala) died some years ago. Paras 3, 6 and 13 of the plaint read as under:-

“3. That Suraj Singh son of Rala died about some years ago and on the death of Suraj Singh, his daughter Smt. Rukmani Devi was alive and she succeeded to the estate of Surjan Singh as she was the only heir of Surjan Singh under custom and also under Hindu Law and Swarn Singh defendant did not succeed to the estate of Surjan Singh and he could not succeed.

6. That on being asked about a month ago from the heirs of Sanjiv Kumar, Rajesh Kumar and Swarn Singh, it was claimed by Saran Singh defendant no.1 that on the death

of Surjan Singh, he succeeded to the estate of Surjan Singh and also claimed that he being the heir of Surjan Singh, became the owner of the estate of Surjan Singh and he also claimed that he had rightly transferred the land in favour of his two sons. Sh. Swarn Singh did not succeed to the lands of Surjan Singh, so he had no right in the land of the share of Surjan Singh and hence the alleged alienation of Swarn Singh in favour of Sanjiv Kumar and Rajesh Kumar is not binding on the plaintiff. Even Swarn Singh did not get any estate of Surjan Singh and if there is any such mutation, it is of no effect.

13. That the plaintiffs asked the defendants to deliver possession of 1/3 share of land but they have refused for the last one week. The cause of action has arisen to the plaintiffs and defendant no.16 for the last one week.”

10. The suit was contested by the defendants. Separate written statements were filed by the defendants. The plaintiffs, while filing the replication, admitted that the previous suit filed by Sh. Som Nath was decreed.

11. On appreciation of pleadings, the trial Court culled out the following issues:-

1. *Whether the plaintiffs are entitled for possession to the extent of 1/3rd share of the suit property, as alleged?OPP*
2. *Whether the pedigree table mentioned in para No.1 of the plaint is correct?OPP*
3. *Whether the plaintiffs have succeeded qua land of Surjan Singh?OPP*
4. *Whether the plaintiffs have been come into possession on any part of the suit property after the death of Surjan Singh? If so its effect?OPP*
5. *Whether the suit is not maintainable in the present form?OPD*
6. *Whether the plaintiffs are barred by their act and conduct to file the present suit under order 2 rule 2 CPC?OPD*
7. *Whether the custom of Riwaj-i-am was prevailing interest the parties, as alleged?OPD No.1*
8. *Whether the suit is bad for misjoinder and nonjoinder of necessary parties?OPD*

9. *Whether the civil court has no jurisdiction to try and entertain the present suit?OPD*
10. *Whether the plaintiffs have got no locus standi to file the present suit?OPD*
11. *Whether the counter claimants are entitled for declaration as alleged?OPCC*
12. *Whether the counter claimants are coparceners and governed under Hindu Succession Act, 1956?OPCC*
13. *Whether the counter-claimants are entitled for joint possession as alleged?OPCC*
14. *Whether the counter-claimants are entitled for permanent injunction as prayed for?OPCC*
15. *Whether the counter-claimants are entitled for possession in the alternative, as alleged?OPCC*
16. *Whether the counter-claim is not properly valued for the purpose of court fee and jurisdiction?OPCR*
17. *Relief.*

The following additional issue was framed vide order dated 14.05.2009:-

- 16A. *Whether Rukman Devi during her lifetime in sound disposing mind executed will dated 19.12.1980 in favour of her sons Som Nath and Avtar Singh?OPP”*

12. On behalf of the plaintiffs, Sh. Jasbir Singh son of Sh. Som Nath appeared in evidence and reiterated the facts asserted in the plaint. The plaintiffs admitted that as per the revenue record, Sh. Swaran Singh is in possession of the property. The plaintiffs also examined the attesting witness of the Will dated 19.12.1980 and the concerned Registration Clerk.

13. In order to rebut the evidence, the defendants examined DW1 Sh. Mohinder Singh, who was working as Clerk with Sh. Gian Chand Sarin, Advocate, at the relevant time. He proved certified copy of the plaint Ex.D1. Sh. J.S.Rana, Advocate, was examined as DW2. Sh. Raghbir Singh, Record Clerk, Judicial Record Room was examined as DW3 and DW4 Sh. Charanjit Thakur (son of Sh. Sanjiv Thakur) deposed in their support.

The trial Court as well as the First Appellate Court dismissed

the suit while observing that the present suit is barred under Order 2 rule 2 CPC. It has been held that the suit is bad for non-joinder of necessary parties.

15. The First Appellate Court while noticing the deposition of Sh. Jasbir Singh (plaintiff) has recorded the following observations, correctness whereof is not disputed:-

“His cross examination reveals certain vital points. In his cross examination, he stated that he did not know if Surjan Singh died on 18.04.1956. He did not know if the suit property was self purchased by Surjan Singh or not. He did not know if the property in the hands of Surjan Singh was ancestral coparcenary property. Therefore, it is strange that the plaintiffs, who have filed the instant suit, did not know even the date of death of Surjan Singh through whom they claimed to have succeeded the suit land. Further he did not even know whether the suit land regarding which they have filed the present suit, was self purchased by Surjan Singh or not. This statement of Jasbir Singh shows that he had no idea about the date of death of Surjan Singh and even the nature of the suit property whether it was self purchased by Surjan Singh or not. So much so, he did not even know if the property in the hands of Surjan Singh was ancestral coparcenary property. This statement of the plaintiff puts the very case of the plaintiffs into doubt and clearly shows that plaintiff Jasbir Singh, who shouldered the burden of proving the case of all the plaintiffs, did not know even the date of death of their predecessor Surjan Singh and he did not even know whether the suit land was self purchased by Surjan Singh or not and even did not know whether the property in the hands of Surjan Singh was ancestral coparcenary property. Further he admitted that earlier a suit was filed titled as Som Nath and others vs. Swaran Singh and also admitted that the said suit related to the land measuring 37 kanals. Regarding this land even, he did not know if the said land was owned by Surjan Singh or not. He did not know even if limited estate was created

in favour of Rukmani Devi by Surjan Singh or not and admitted that the said suit was decided on 20.08.1996 by the court of Sh. Karamjit Singh, the then learned Addl. Civil Judge (Sr. Div.), Nawanshahr and according to him, the said suit was not filed regarding the present suit property and he volunteered that they were in possession of that portion of land and he did not know whether their possession was reflected in the record or not. Not only this, he even admitted that Rukmani Devi died in the year 1987 and she did not file any suit regarding the suit land, subject matter of the suit during her lifetime. It is also strange that Rukmani Devi the daughter of Surjan Singh, through whom the plaintiffs claimed to have received the suit property, never filed any suit regarding the suit land/subject matter of this suit her lifetime. He did not know if after the death of Surjan Singh till 1987, the mutation was sanctioned regarding the suit property in favour of Rukmani Devi or not. He did not know if the mutation of inheritance of Surjan Singh was sanctioned in favour of Arjan Singh and Kashmir Devi in the year 1958 or not. He did not know if any entry was made regarding ownership or possession of Som Nath and Avtar Singh after the death of Rukmani Devi till date. He admitted that at present the suit property is reflected in the ownership and in possession of Swaran Singh and his sons, however volunteered that earlier his mother was in possession of the suit land. Further in his cross examination Jasbir Singh has admitted that Ralla ram @ Ralla had three sons, i.e., Surjan Singh, Arjan Singh and Banta and admitted that Kashmir Kaur was the wife of Banta and admitted that the consolidation in the village took place in the year 1956. Further he admitted that Ralla had sons belonging to Hindu Rajput clan Jalandhar District and admitted that the suit property was an agricultural land. He also admitted that the present suit was filed after the decision of civil suit No.803 of 1991, decided on 20.08.1996.”

16. The First Appellate Court found that the suit filed by the plaintiff is the result of concealment of material facts. The Court further

held that Smt. Rukmani Devi never inherited the estate of her father Sh. Surjan Singh except land measuring 37 kanals and 2 marlas which was surrendered in her favour vide registered document dated 01.08.1950 and during her life time she never claimed any right, although she remained alive upto 02.11.1987, while her father died on 18.04.1956. The Court further held that the present suit is barred under Order II Rule 2 CPC.

17. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book as well as the record which was requisitioned. The learned counsels representing the parties have also filed synopsis along with the gist of their arguments.

18. The learned counsel representing the appellants, while assailing the findings of the courts below, has submitted that the suit filed by the plaintiffs is not hit by Order II Rule 2 CPC. He submits that the bar under Order II Rule 2 is applicable only if while filing the previous suit, the plaintiffs omitted to seek any further relief which was based upon the same cause of action. He relies upon the judgments passed by the Supreme Court in *V.Kalyanaswamy (dead) by LRs and others vs. L.Bakthavatsalam (dead) by LRs and others 2020 (3) R.C.R(Civil) 404* and *Kewal Singh vs. Lajwanti, AIR 1980 SC 161*. He further contends that the daughter was entitled to inherit the property by virtue of Hindu Law of Inheritance Act, 1929 and Hindu Womens Right to Property Act, 1937. He submits that the suit based on title cannot be dismissed on the ground of limitation because the plaintiffs claim the property on the basis of inheritance. He submits that the plaintiffs are not required to challenge that the various transfers of the property are void. In conclusion, he prayed for acceptance of the appeal.

19. Per contra, the learned senior counsel representing the respondents has submitted that the judgment passed in *V.Kalyanaswamy (supra)* is not applicable to the facts of the present case. He submits that the suit is barred by Order II Rule 2 CPC. He relies upon the judgment passed by the Supreme Court in *Parmod Kumar vs. Zalak Singh, (2019) 6 SCC 621*. The suit filed by the plaintiffs is barred by limitation as they were required to file the suit within a period of three years from the date on which the cause of action first accrued. He relies upon the judgments in *Shyam Lal @ Kuldeep vs. Sanjeev Kumar and others, AIR 2009 SC 3115* and *Harbhajan Singh (since deceased) through LRs vs. Atma Singh, 2019 (4) R.C.R (Civil) 650*. He further submits that the property is coparcenary in nature and therefore, the property has devolved by the doctrine of survivorship. He further submits that the succession of the property, cannot be kept in abeyance and Smt. Rukmani Devi during her life time never claimed the suit property although she remained alive for a period of 33 years after the death of her father. He further submits that a substantial part of the property has already been sold and the vendees have not been impleaded as party to the suit, therefore, both the courts have correctly dismissed the suit.

20. DISCUSSION ON the ISSUES AFTER EXAMINING THE RESPECTIVE ARGUMENTS OF THE LEARNED COUNSELS.

Issue No.1

20.1 For deciding the question of applicability of the bar to the maintainability of the suit under Order II Rule 2 CPC, it is important to examine the respective complaints filed in the previous suit as well as in the

present suit. The plaint in the previous suit is Ex.D1. In the aforesaid suit, Sh. Som Nath and Sh. Avtr Singh (sons of Smt. Rukmani Devi) asserted that Sh. Surjan Singh, the father of Smt. Rukmani Devi had executed a surrender deed on 01.08.1950 and on the basis thereof, Smt. Rukmani Devi was in possession of the land measuring 37 kanals and 2 marlas. It is alleged that the revenue authorities, on the death of Smt. Rukmani Devi, have wrongly entered the mutation of the estate of Smt. Rukmani Devi in favour of defendant no.1 and the defendants are now threatening to dispossess them. The plaintiffs also prayed that if the defendants forcibly dispossess the plaintiffs then, in that case, the plaintiffs are entitled to a decree for possession of the land as owners. In para 8 of the plaint of the previous suit, the plaintiffs asserted the facts constituting the cause of action which is extracted as under:-

“8. That the plaintiff asked the defendant No.1 to admit the claim of plaintiff as the plaintiff are the owners and in possession of the suit land as a consequential relief defendant No.1 was asked not to eject the plaintiff forcibly but he has refused to the land two days. The cause of action has arisen for the land two days. The plaintiff also asked the defendant No.1 that if he ejects the plaintiff during the pendency of the suit, then he should deliver possession of the land as owner in the alternative.”

20.2 On a careful reading of the plaint in the present suit, it is evident that the plaintiffs have asserted that the heirs of Sh. Sanjiv Kumar, Sh. Rajesh Kumar and Sh. Swarn Singh have refused to acknowledge the plaintiffs to be the owners of the suit property. In this suit (subsequent) para 13 of the plaint, which has already been extracted above, it has been claimed that the cause of action accrued only a week before the date of filing of the

suit when the defendants refused to deliver possession to the plaintiffs and defendant no.16. In the opinion of the Court, the cause of action, in both the suits, cannot be said to be same or common. The cause of action, in any suit, is based upon a bundle of facts. For the applicability of bar of Order II Rule 2 CPC, the cause of action must be identical. In absence thereof, the bar under Order II Rule 2 CPC would not be applicable. This matter has been examined in detail by a Five Judge Bench in **Gurbax Singh vs. Bhura Lal, AIR 1964 Supreme Court 1810.** Recently, once again the Supreme Court in para 60 of the judgment passed in **V. Kalyanaswamy (dead) by LRs and another vs. L. Bakthavatsalam(dead) by LRs and others 2020 SCC Online SC 584** has reiterated the aforesaid view, which is extracted as under:-

“60. Order II Rule 2 of the CPC has been a subject matter of a large number of decisions of this Court. Order II Rule 2 (2) of the CPC postulates a situation where a plaintiff omits to sue in respect of any portion of his claim or intentionally relinquishes any portion of his claim. Then, he is debarred from suing in respect of the portion so omitted or relinquished. A plaintiff entitled to more than one relief arising from the same cause of action, can do two things. He may sue in respect of all the reliefs arising from the same cause of action in the same suit. He may, if he omits to sue for one or more of the reliefs open to him under the same cause of action, seek leave of the court to sue for all such reliefs, and if the court grants such leave, then, he may institute a suit, though based on the same cause of action in the earlier suit, in a fresh suit. The effect of not seeking the leave of the court, however, in regard to any of the reliefs, which it was open to him to sue for on the same cause of action, is that, he is barred from suing for any other reliefs so omitted. The difference between Order II Rule 2(2) and Order II Rule 2(3) of the CPC may be noticed. The law contemplates a distinction between a case where a claim arising out of the cause of action is either intentionally relinquished or omitted to be sued upon. Such a claim cannot be the subject matter of a fresh suit. However, when more than one reliefs are available stemming from the same cause of action, then, seeking further reliefs than sought in the first suit, except where leave is obtained, would be barred. However, present the grant of leave by the court, his subsequent suit seeking the reliefs which were originally not sought but for which leave is granted, is permissible. The principle of this provision is actually captured in Order II Rule 2 (1) of the CPC which is that every suit is to include the whole of the claim which arises out of the cause of action and which the plaintiff is entitled to make. It further declares that it is open to a plaintiff to omit any portion of the claim. However, the consequences of the same are

declared in Order II Rule 2 (2) of the CPC. We notice that similar views have been expressed in the decision of this Court in *Virgo Industries (Eng.) (P) Ltd. v. Venturetech Solutions (P) Ltd.* 2013 (1) SCC 625. In paragraph 9, it was held as follows:

“9. Order 2 Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order 2 Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order 2 Rule 2 CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order 2 Rule 2(2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order 2 Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order 2 Rules 2(2) and (3) CPC that the aforesaid two sub-rules of Order 2 Rule 2 contemplate two different situations, viz., where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit provided that at the time of omission to claim the particular relief he had obtained leave of the court in the first suit.”

20.3 The reliance placed by the learned counsel representing the respondent on ***Parmod Kumar vs. Zhalak Singh, (2019) 6 SCC 621*** is not applicable to the facts of the present case. In the aforesaid case, two sale deeds in respect of two portions of land were, consecutively, executed by the same person. The first suit was filed for setting aside the first sale deed. Though, at that time, both the sale deeds had already been executed. In those facts, the subsequent suit, challenging the second sale deed, was held to be barred by Order II Rule 2 CPC because both the complaints were found containing identical averments with regard to the two sale transactions. The court found that the cause of action in both the suits stem from one single

cause of action and not two different cause of action. In the humble opinion of the Court, the judgment passed in **Parmod Kumar (supra)** is not applicable. Hence, there is merit in the first argument of the learned counsel representing the appellants. The judgment passed by both the courts below, on the question of applicability of Order II Rule 2 CPC, are set aside.

Thus, the first issue is answered in favour of the appellants.

Issue No.2

20.4 Now, the Bench proceeds to examine “As to whether the present suit was filed within the prescribed period of limitation or not?”

20.5 The question of limitation is a mixed question of law and fact and depends upon the pleadings and the evidence led by the parties. Para 3, 6 and 13 of the plaint have already been reproduced. The plaintiffs claim that one month before the filing of the suit, Sh. Sanjeev Kumar, Sh. Rajesh Kumar and Sh. Swaran Singh claimed that the property has rightly been transferred in their favour. In para 13, the plaintiffs claim that a week before the filing of the present suit, they requested the defendants to deliver them the possession of 1/3rd share of the suit property, but they refused. The plaintiffs claim that the cause of action for filing the suit had arisen on the refusal of the defendants to deliver possession.

20.6 The evidence of Sh. Jasbir Singh (plaintiff) makes an interesting reading. The relevant deposition of Sh. Jasbir Singh in examination-in-chief is extracted as under:-

“Surjan Singh s/o Rala was the owner of 1/3 share in land indispute situated of village Jadla. Surjan Singh s/o Rala died about some years ago and on the death of Surjan Singh, his daughter Smt. Rukmani Devi was alive and she succeeded to the estate of Surjan Singh as she was the only heir of Surjan Singh under/custom and also

under Hindu Law and Sarwan Singh defd. did not succeed to the estate of Surjan Singh and he could not succeed. Swaran Singh defdt. No.1 took possession of the land owned by Surjan Singh taking undue advantage of being Rukmani Devi is dead.”

20.7 In the cross-examination, he maintained his stand that he does not know whether Sh. Surjan Singh had died on 18.04.1956. However, he admits that the previous suit filed qua 37 kanals and 2 marlas of land was decreed. He claims that the suit was not filed prior in time because they were in possession of the property. However, on further questioning, he admits that he has no knowledge as to whether their possession was reflected in the revenue record or not. He has not mentioned the date, time or period during which he or his predecessors were dispossessed. In the plaint, he does not claim that their predecessors (Smt. Rukmani Devi or Sh. Som Nath) were ever in possession of the 1/3rd share. On the death of Sh. Surjan Singh on 18.04.1956, the property was mutated in favour of. Sh. Arjan Singh and Smt. Kashmir Devi (widow of Sh. Banta Ram). Smt. Kashmir Devi also died in 1974 and even her share was mutated in favour of the family of Sh. Swaran Singh. Thereafter, the property was transferred by Sh. Swaran Singh in favour of his two sons and daughter-in-laws. However, the plaintiffs did not take any steps during all this time.

20.8 Keeping in view the aforesaid facts, it is evident that the present suit has been filed after a period of 47 long years from the death of Sh. Surjan Singh. In the absence of evidence to prove that Smt. Rukmani Devi had ever remained in possession of her share, the plea taken by the plaintiffs that the defendants refused to acknowledge the plaintiffs to be owners of the suit property only a month before the date of filing of the suit is factually

incorrect. Further, it is noted that that the plaintiffs or their predecessors filed the previous suit on 12.02.1990, which the defendants while filing the written statement on 23.05.1990 contested and asserted that they are exclusive owners of the property. The plaintiffs still failed to file the suit within a period of 3 years from the date of filing such assertions in the previous suit.

20.9 Though the suit has been styled as a suit for grant of decree of joint possession, however, essentially, this is a suit for grant of decree of declaration governed by Article 58 of the Schedule attached to the Limitation Act, 1963, which reads as under:-

<u><i>“Description of suit</i></u>	<u><i>Period of limitation</i></u>	<u><i>Time from which period begins to run</i></u>
<i>To obtain any other declaration</i>	<i>Three years</i>	<i>When the right to sue first accrues.”</i>

20.10 The expression used in column no.3 is “first accrues”. The expression first accrues denotes that the time would begin to run from the date when the right to sue accrues for the very first time. In the considered view of the Court, the right to sue, in the facts of the present case, first accrued on the death of Sh. Surjan Singh i.e. on 18.04.1956. Again, it accrued on 12.02.1990 when the plaintiffs and their predecessor filed the previous suit.

20.11 Keeping in view the aforesaid discussion, the suit filed by the plaintiffs is held to be barred by limitation.

20.12 It may be noted here that on the question of limitation, a Division Bench judgment of the jurisdictional Court in **Mahinder Singh (died) represented by Lrs and otehrs vs. Kashmira Singh , 1985, Punjab**

Law Journal, 82, is cited by the learned counsels for the appellants, to contend that the suit for possession on the basis of inheritance does not have any limitation period. On a careful reading of the aforesaid judgment, it is evident that in the aforesaid case, the Bench adjudicated upon the correctness of the view taken in Naginder Singh and others vs. Chanan Singh and others, 1983, Current Law Journal, 432. In para 7, the Court framed the question in the following manner:-

“The only question that has been raised by the learned counsel for the appellants is that the suit of the plaintiffs was not within limitation, that the defendants had become owners of the property by adverse possession and that the findings of the courts below to the contrary are erroneous. It is contended by him that the mutation of the land was attested in favour of appellant Nos. 1 2, 8-A and 8-B and Jangir Singh on 20th August, 1956 and from that date they are in its possession. The suit for possession should have been brought within twelve years, after the date of death of Dewa Singh. He further urges that the defendants were in hostile possession of the property since the date of death of Dewa Singh. According to him, in that situation the suit was not within limitation and the appellants had also become owners by adverse possession.”

20.13 While deciding, the Division Bench, in para 6, held that the ownership of the property never remains in abeyance i.e. without owner and on the death of a person, the heirs become the owners of the property with immediate effect. It was in that context the court held that any suit for possession on the basis of inheritance is not barred by limitation unless the other side proves that they have perfected their title by way of adverse possession. The Division Bench held that the opinion formed in Naginder Singh's case (supra) to the effect that the suit should be filed within a period of 12 years from the date when the inheritance opens was held to be an incorrect view which was rectified. In the opinion of this Court, the

aforesaid judgment has no application in the present case. The question of limitation on the ground of inheritance cannot be decided as an abstract proposition of law. The Limitation Act, 1963, does not provide for any special period of limitation for claiming the property on the basis of inheritance. Thus, the suit is required to be decided on the basis of the pleadings and the evidence led. The question of limitation, generally, being a mixed question of law and facts, is required to be decided on appreciation of the pleadings and evidence produced by the parties.

20.14 In the present case, the plaintiffs have failed to lead cogent and convincing evidence to prove that Smt. Rukmani during her life time ever asserted her title or claimed possession, after the death of Sh. Surjan Singh, her father, qua the property in dispute. There are no averments that Smt. Rukmani during her life time ever took any step to secure her share in the property during her life time. Smt. Rukmani died in the year 1987. She remained alive for a period of 31 years after the death of Sh. Surjan Singh. Even after the death of Smt. Rukmani in the year 1987, the plaintiffs did not take any steps for a long period of time and finally, filed the suit in the year 2003. It is apparent that the plaintiffs remained silent for a period of 16 years even after the death of Smt. Rukmani. In such circumstances, this court is of the view that the suit has correctly been dismissed by both the courts on the ground of limitation.

20.15 On 29.10.2015, the court, while admitting the appeal, culled out two substantial questions of law which are extracted as under:-

- i) *Whether the courts below were not in error in finding that the defendants who claimed as representatives of Arjan Singh had succeeded to the estate of Surjan Singh as heirs, failing to note that a daughter was a heir at law to the father even prior to the Hindu Succession Act,*

1956 and her own right in the property as a limited owner was enlarged under Section 14(1) of the Hindu Succession Act?

- ii) *Whether the courts below were not in error in accepting the case of the defendants that set up title on the basis of a custom in Punjab without any proof of such custom as prevailing for a brother or brother's widow to claim any priority to the daughter of propositus?"*

20.16 As regards the first question as extracted above, it may be noted here that the plaintiffs had approached the court claiming 1/3rd share in the suit property. It was claimed that share of the Surjan Singh devolve upon to Smt. Rukmani Devi which, in turn, would devolves upon the plaintiffs. It was for the plaintiffs to prove that they are entitled to the suit property after a period of 47 years. The case of the plaintiffs is required to stand on its own legs. Once their suit has been found to be filed beyond the period of limitation and issue number (2) is answered in the negative, it is not considered desirable to answer questions of law no.(i), (ii) elaborately.

21. There is another aspect of the matter which requires the attention of the Court. It is very much evident that the plaintiffs did not come to the court with clean hands. It has also been noticed that both the courts below have, concurrently, found that the plaintiffs did not implead all the necessary parties. On the examination of the revenue record, the trial court has observed that a large number of sale deeds were executed by Sh. Swarn Singh and his successors. It has been found that the sale deeds were executed between 1960 till the year 2000. While returning the finding, the court has made the following observations:-

"The sales have been made in favour of bawa Singh son of Chhaja Singh, Swaran Singh son of Mangal Singh son of Gujjar, Nek Singh Ajit Singh son of Nagina, Shiv Singh Kehar Singh sons of Basant Singh by Kashmir Devi. The

property was also mortgaged by Surjan Singh in favour of Bishan Singh, mangu as well as in favour of Swarna and bachna by the other legal heirs. Rukman Devi is shown in possession of residential portion within the ambit of Tamleek Nama. The property was also sold by legal heirs to Babu son of Mangu, Karma Bachna sons of Chhaju, Waryama and others, Kirpa son of Chetu, Niku, Beeru sons of Chanan, Bagtu Gokul sons of Niku, Isher Singh, Jaimal Amiya sons of Raja, Dalip, Sheru, Santa son of Road, Jagu son of Telu, Nanda son of Rodu, Jaggu son of Telu, Sadhu, Milkhi, Sansara sons of Fakira, Dheru son of Hamira, Pagu, Sheru son of Hamira, Chuhar son of Vazira. The property is also mortgaged in favour of Kishna, Jawala, Kartara, Bakshish Singh son of Prem Singh, Swaran son of Mangal, Jawala son of Hakam, Joginder son of Hazura, Kesra son of Teja, Koda son of Rulda, Hazara son of Khushal Singh, Mangal, Singh, Rai Singh son of Suchet Singh and no reference is made either in the pleadings or in the evidence whether these sales which were being made by the contesting defendants and their names being entered in the column of ownership as well as possession, show clear ouster of Rukman Devi and thereafter sales being made were within knowledge of the plaintiffs or not. Not even reference has been made to the above said sales and mortgages. From the revenue entries, it is apparent that some part of the property was agricultural and some part of the property was residential. Now the nature of the property which is falling within the area of Jadla apparently has been changed as most of the property is now abadi and different above said purchasers after purchase of property on the basis of entries in the revenue record appears to be in possession and they have not been made party in this case.”

22. The learned counsel representing the appellants contends that the transfers made by Smt. Kashmir Devi, Sh. Arjun Singh, Sh. Swaran Singh, Sh. Sanjeev Kumar and Sh. Rajiv Kumar were void, therefore, they were not required to be challenged. In the considered view of the Court,

even if such sale deed, are not required to be challenged, however, the subsequent vendees, who have purchased the property for a valuable consideration were required to be impleaded as defendants in the suit for complete and proper adjudication of the dispute. The reliance placed by the learned counsel on the judgment passed in *Ujjagar Singh vs. Badan Singh and other 2010(4) R.C.R (Civil) 419* is not applicable to the facts in the present case. In the aforesaid case, the court was required to examine the effect of Punjab Custom (Power to contest) Amendment Act, 1973. The court decided the case on the basis of question of law framed in para 7 of the concerned judgment which does not relate to the requirement of impleadement of the necessary parties.

23. There is yet another aspect of the matter which needs some discussion.

24. As already noticed, the plaintiffs, while filing the suit, prayed for decree of joint possession while trying to project that Sh. Surjan Singh died some time back. In the written statement, the defendants disclosed that Sh. Surjan Singh died even before coming into force of the Hindu Succession Act, 1956 i.e. 47 years before the filing of the concerned suit. In the replication, the plaintiffs pleaded that the daughters of the owner of the property are entitled to the property on the basis of the prevalent custom. However, the plaintiffs did not lead any evidence to prove this fact or any custom governing them. Hence, the findings of fact arrived at by the courts below, on this aspect, are also affirmed.

25. Consequently, findings no merit, the appeal is dismissed.

26. In view of the detailed discussion, Question no.2 is decided against the appellants and their suit is found to be barred by the law of

limitation.

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

25th July, 2022
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO