

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.731 of 2022

Reserved on : 20.12.2022

Date of Decision : 04.01.2023

Kanwarjit Singh and Another

....Petitioners

VERSUS

Sukhdev Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harsh Aggarwal, Advocate for the petitioners.

Mr. Parminder Singh, Advocate for the respondent.

ALKA SARIN, J.

The present revision has been filed challenging order dated 07.01.2022 whereby the application filed by the plaintiff-respondent for amendment of the plaint has been allowed.

The brief facts relevant to the present *lis* are that on 12.06.2020 the defendant-petitioners entered into an agreement to sell with the plaintiff-respondent for sale of land measuring 108 *kanals* 17 *marlas* situated in village Mangoli Rangran, Sub Tehsil Babain, District Kurukshetra. Various amounts were paid by the plaintiff-respondent - Rs.10 lakhs having been paid in cash, Rs.1.4 crores by RTGS in the account of Kanwarjit Singh, Rs.30 lakhs in the account of Darshan Kaur and Rs.20 lakhs by cheque on 17.05.2020. The target date in the agreement to sell was 30.04.2021. It transpires that a legal notice was served by the plaintiff-respondent calling upon the defendant-petitioners to come present to execute the sale deed on 25.11.2020. It was further the stand taken by the plaintiff-respondent that he remained present on 25.11.2020, however, the defendant-petitioners did not come present to perform their part of the contract. The suit was filed for permanent injunction on 10.12.2020 for restraining the defendant-petitioners

herein from selling, mortgaging or creating any charge over the suit property. Consequently, an application for amendment of the plaint was filed on 21.09.2021. The said application was contested and vide the impugned order the application was allowed by the Trial Court. Aggrieved by the said order, the present revision petition has been preferred by the defendant-petitioners.

Learned counsel for the defendant-petitioners would contend that the amendment is barred by the provisions of Order II Rule 2 CPC inasmuch as intention of the defendant-petitioners was clear at the time when the legal notice was served on 21.11.2020 wherein it is stated that the defendant-petitioners were delaying the matter. It is further the contention that the suit for specific performance should have been filed at the first instance and now the same is barred by the provisions of Order II Rule 2 CPC.

Per contra learned counsel for the plaintiff-respondent has contended that the target date for execution of the sale deed in the present case was 30.04.2021 and the suit was filed on 10.12.2020 and hence there was no question of the suit being barred by the provisions of Order II Rule 2 CPC. In support of his contention, learned counsel for the plaintiff-respondent has relied upon the judgment of Hon'ble Supreme Court in the case of **Rathnavathi & Anr. vs. Kavita Ganashamdas [2014 (4) RCR (Civil) 904]** to contend that a subsequent suit for specific performance would not be barred by the provisions of Order II Rule 2 CPC as the two suits are different in causes of action.

I have heard learned counsel for the parties.

In the present case admittedly the target date was 30.04.2021.

The contention of counsel for the defendant-petitioners is that the suit was

initially filed on 10.12.2020 for grant of injunction after vide the legal notice dated 21.11.2020 the target date was sought to be preponed. However, in response, the defendant-petitioners had called upon the plaintiff-respondent to withdraw the legal notice, hence, there was no concluded contract between the parties for preponing the date to 25.11.2020 and the date stood as 30.04.2021. As such, a suit for specific performance before the target date would not lie.

Hon'ble Supreme Court in case of **Rathnavathi** (*supra*) has held as under :

“33. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order II Rule 2 of CPC to successfully non suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.

34. Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order II Rule 2 could be allowed to be raised by the defendants and how it was sustainable on such facts.

35. We cannot accept the submission of learned senior counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff

prior to filing of the first suit, the second suit was hit by bar contained in Order II Rule 2 of CPC.

36. The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order II Rule 2 of CPC. It is the cause of action which is material to determine the applicability of bar under Order II Rule 2 and not merely the pleadings. For these reasons, it was not necessary for plaintiff to obtain any leave from the court as provided in Order II Rule 2 of CPC for filing the second suit.

37. Since the plea of Order II Rule 2, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, reliefs claimed in both the suits and lastly the legal provisions applicable for grant of reliefs in both the suits.

38. In the light of foregoing discussion, we have no hesitation in upholding the finding of the High Court on this issue. We, therefore, hold that second suit (OS No.2334 of 2000) filed by the plaintiff for specific

performance of agreement was not barred by virtue of bar contained in Order II Rule 2 CPC.”

Thus, in the present case also the suit cannot be said to be barred by the principles of Order II Rule 2 CPC. The suit is at the initial stage and no prejudice would be caused to the defendant-petitioners if the said application for amendment of the plaint is allowed, rather it would avoid multiplicity of litigation.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.01.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO