

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

RSA-1278-2002(O&M)

Date of decision:-28.2.2023

Shri Uday Ram

...Appellant

Versus

Diwan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sukhdeep Singh, Advocate for
Mr.Lokesh Sinhal, Advocate
for the appellant.

Mr.Aseem Aggarwal, Advocate for
Mr.Harsh Aggarwal, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Diwan Singh and others, all residents of village Garkhera, Tehsil Ballabgarh, District Faridabad had brought a suit against defendant Uday Ram son of Sh.Paltu Ram, resident of that very village seeking possession by way of specific performance of agreement to sell dated 23.5.1989.

2. As per the case of the plaintiffs, the defendant being owner of the suit land bearing Khewat No.196/183 min, khatoni No.350 min,

rectangle no.42, killa no.1/2 (4-7), 10/2(2-10) total land measuring 7 kanals 17 marlas situated within revenue estate of village Garkhera, Tehsil Ballabgarh, District Faridabad had entered into an agreement to sell that land with father of plaintiffs i.e. Ramji Lal on 23.5.1989 for a sum of Rs.35,000/-, receiving Rs.6,720/- as earnest money; father of the plaintiffs, namely, Ramji Lal had expired on 23.8.1989 leaving the plaintiffs as his only legal heirs. According to the plaintiffs, the defendant had mortgaged the suit land with their father for a sum of Rs.16,500/- vide a registered mortgage deed dated 25.5.1985, in that way, the plaintiffs are in possession of the suit property as mortgagees; as per the terms and conditions of the agreement dated 23.5.1989, the sale deed was to be executed on or before 23.5.1990 on receipt of balance sale consideration amount of Rs.41,780/-; the plaintiffs have always been ready and willing to perform their part of contract and they offered the balance sale consideration amount to the defendant by serving legal notice dated 23.5.1990 sent as per registered post; vide that legal notice the defendant was asked to execute the sale deed in terms of the agreement within 15 days from the date of receipt of notice but the defendant intentionally failed to do so, giving rise to a cause of action to the plaintiffs to bring the suit in question.

3. On notice the defendant appeared and filed the written statement contesting the suit raising various preliminary objections to the effect that the suit was not maintainable; the plaintiffs had no locus standi to file the suit; the plaintiffs were estopped by their own act and conduct from filing the suit; the suit was bad for non-joinder and misjoinder of

necessary parties; the plaintiffs have no cause of action etc. According to the defendant the alleged agreement had been entered into between father of the plaintiffs and defendant and it was not agreed that it would be binding on the LRs of the parties, so the suit of the plaintiffs was not maintainable; the suit land was mortgaged with possession in favour of Ramji Lal vide mortgage deed dated 25.5.1985 and on 23.5.1989 the defendant took further loan of Rs.6,000/- from Ramji Lal on interest @ 12% per annum and in lieu thereof, Ramji Lal got executed a pronote and receipt from him and it seemed that in garb of that Ramji Lal obtained the thumb impressions of defendant on alleged agreement to sell dated 23.5.1989; after death of Ramji Lal, he offered to return the loan amount of Rs.6,000/- along with interest to the plaintiffs but they put off the matter on one pretext or the other; the defendant denied having received any legal notice sent by the plaintiffs. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were framed:

1. Whether the defendant entered into an agreement of sale with respect to the land in dispute on 23.5.1989 with the father of the plaintiff Ramji Lal, since deceased and received a sum of Rs.6,720/- as earnest money out of the total consideration of RS.65,000/- if so its effect? OPP.
2. Whether the plaintiffs, prior to them their father have been ready and willing to perform their part of contract in terms of the agreement? OPP.

3. Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit? OPD.

4. Whether the plaintiffs are estopped by their act and conduct from bringing the present suit? OPD.

5. Whether the suit is bad on account of non-joinder of necessary parties? OPD.

5(a) Whether the suit is barred under Order 2 Rule 2 CPC? OPD.

6. Relief.

5. Both the parties led evidence in respect of their respective claims.

6. After hearing the learned counsel for the parties, the trial Court of Additional Civil Judge(Sr.Divn.), Faridabad dismissed the suit of the plaintiffs. This was so done vide judgment and decree dated 25.1.2001.

7. The plaintiffs were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Faridabad, who vide judgment and decree dated 16.2.2002 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs, issuing a direction to the defendant to execute and get registered the sale deed within six weeks from the date of judgment in favour of the plaintiffs in respect of the suit property on payment of balance amount of Rs.41,780/-, failing which, they would have a right to get the sale deed executed and registered through Court.

8. Now it was turn of the defendant to feel dissatisfied and he has filed the present regular second appeal before this Court, notice of

which was issued to the respondents, who have appeared through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. In this case, the plaintiffs relying upon agreement to sell dated 23.5.1989 said to have been entered into between their deceased father Ramji Lal and defendant Uday Ram, although Uday Ram did not admit having entered into such agreement with Ramji Lal stating that as a matter of fact he had raised a loan from Ramji Lal executing pronote and receipt in his favour and in garb thereof Ramji Lal might have got his thumb impressions on some papers, converting those into agreement to sell. However, the plaintiffs by bringing sufficient oral and documentary evidence have successfully proved the execution of such agreement by defendant in favour of Ramji Lal. In terms of this agreement the date for execution of sale deed was fixed as 23.5.1990. Since the defendant had not executed the sale deed in favour of the plaintiffs by that date, a cause of action had arisen to the plaintiffs on that very date. It is proved on record that the plaintiffs had filed a suit for grant of permanent injunction against the defendant on 30.5.1990, which had been withdrawn by them on 28.8.1991 and while doing so, they had not sought permission from the Court to file a fresh suit with regard to specific performance of agreement to sell on similar cause of action. It being so, the suit for specific performance filed by the plaintiffs on 13.6.1990 was clearly hit by Order 2 Rule 2 CPC. This aspect has been dealt with in a very fine and detailed manner by the trial Court. Before referring to the discussion on this aspect by the trial Court, it would be pertinent to refer to the relevant provision.

Order 2 Rule 2 CPC provides that 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.

11. Therefore, when the plaintiffs had filed a suit for grant of permanent injunction against the defendant on 30.5.1990, cause of action to file a suit for grant of specific performance had already arisen to them. But they omitted to seek relief of specific performance of agreement to sell and filed a simple suit for grant of permanent injunction and to make the situation worse, they withdrew the suit on 28.8.1991 without seeking permission of the Court to file fresh suit for specific performance on similar cause of action. Therefore, their case squarely fall within the mischief of Order 2 Rule 2 CPC and suit for specific performance filed by them on 13.6.1990 was bound to fail for the said reason.

12. The trial Court has gone into this aspect in a very minute and analytical manner and discussion in that regard deserves to be reproduced for proper understanding of the matter, which is as under:

10. The onus to prove this issue is on the defendant and the defendant has to prove that the suit of the plaintiff is barred under Order 2 Rule 2 CPC. The learned counsel for the defendant argued that as per the alleged agreement the last date for the execution of the sale deed was 23.5.1990 and on 23.5.1990 cause of action had arisen in favour of plaintiff to file the suit for specific performance since the defendant had not allegedly executed the sale deed in terms of the agreement. He contended that the plaintiff

instead of filing the suit for specific performance filed a suit for permanent injunction on 30.5.1990 which was withdrawn by the plaintiff on 28.8.91 without permission to file a fresh. He contended that since the plaintiff omitted to sue in respect of a claim of specific performance the present suit is barred under Order 2 Rule 2 CPC. He relied upon the authority of Hon'ble Punjab & Haryana High Court reported in 1996 PLJ 291 wherein it was held that all reliefs for a particular cause of action is to be joined in one suit and the second suit for relief which was available when first suit was filed is barred under Order 2 Rule 2 CPC.”. He also relied upon the authority of Hon'ble Punjab & Haryana High Court reported in 1997(2) PLJ 173. In that case the suit was filed by the plaintiff for recovery of earnest money and damages for failure of defendant to execute the sale deed and earlier to that suit the plaintiff had filed a suit for injunction. On the date suit for injunction was filed, a right had accrued to plaintiff to sue a suit for specific performance of contract or sue for recovery of amount. Plaintiff omitted to sue for specific performance of contract or for recovery of earnest money and did not seek any leave of Court to sue afterwards. It was held that subsequent suit was barred under Order 2 Rule 2 CPC. He also relied upon the authority of Hon'ble Punjab & Haryana High Court reported in 1997(2) PLJ 268 and 1998(2) PLJ 305 wherein similar law was laid down.

13. However, learned District Judge, Faridabad by total wrong

interpretation of the law concluded that the suit was not hit by Order 2 Rule 2 CPC. The reasons given for saying so are least convincing. Learned District Judge had observed that since the plaintiffs had served notice Ex.P2 dated 23.5.1990 upon the defendant calling upon him to execute the sale deed within 15 days of notice, therefore the plaintiffs could not have filed a suit for grant of specific performance before the expiry of that period. As such, on the day when the suit for specific performance was filed no cause of action was available to them to seek specific performance of agreement to sell.

14. Such reasoning given is not legally sustainable. The plaintiffs could not have unilaterally extended the date for execution of the sale deed in such a manner. Once the date agreed upon by the parties had arrived, it is to be taken that cause of action was available to the plaintiffs on that very date and service of any notice by them on defendant cannot postpone the cause of action date.

15. Learned counsel for the appellant/defendant has referred to judgments *M/s Virgo Industries (Eng.) P. Ltd. Versus M/s Venturetech Solutions P. Ltd., (2012) 7 SCR 933, Rakesh Kumar Versus Ajit Singh, 2001(3) RCR(Civil)285, Surjeet Kumar Versus Anil Kumar, 1998(1) RCR(Civil)368* and *Tarsem Singh Versus Sib Ram, 1998(2) RCR(Civil) 222* in support of his contention that the suit for specific performance filed by the plaintiffs was hit by Order 2 Rule 2 CPC.

16. I find myself convinced by the submissions made by learned counsel for the appellant/defendant, which are supported by the judicial precedence. The judgment and decree passed by the trial Court was quite

detailed, well reasoned and based upon proper appraisal of evidence and correct interpretation of law. There was no reason whatsoever for learned District Judge, Faridabad to upset the said judgment and decree by allowing the appeal, in the process decreeing the suit of the plaintiffs, which was clearly barred under Order 2 Rule 2 CPC and was rightly dismissed by the trial Court. That wrong is being undone by acceptance of the present appeal.

17. Resultantly the judgment and decree passed by District Judge, Faridabad are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiff are restored.

18. The appeal stands allowed accordingly with costs.

Since the main appeal stands allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

28.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No