

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

**SAO-24 of 2017 (O&M)
Date of Order: 05.07.2023**

Kashi Ram and others**.Appellants****Versus****Ramji Lal (deceased) through LRs and others****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Ajay Jain, Advocate, for the appellants.
Mr. Parvinder Singh, Advocate
for respondent No.1 to 6, 7(i) to 7(vii), 8 & 9.**

ANIL KSHETARPAL, J

1. The learned trial court has dismissed the suit by adopting a strange procedure of framing a preliminary issue and thereafter dismissing the suit on the ground that the previous suit filed for grant of relief of an injunction was withdrawn by the plaintiff. In the subsequent suit, the plaintiffs sought decree of declaration while claiming that the various sale deeds executed by the defendants were required to be declared null and void.

2. The First Appellate Court has set aside the impugned judgment of the trial court. While remitting the case back, the trial court has been directed to decide the suit comprehensively. The correctness of the order passed by the First Appellate Court has been assailed in this appeal.

3. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

4. The learned counsel representing the appellants contends that the cause of action for both the suits, namely, the first suit for grant of decree

and injunction as well as the second suit for grant of decree of declaration is same.

5. The learned First Appellate Court after appreciating the pleadings in both the suits has concluded that the cause of action for filing the subsequent suit for declaration is separate. It has been explained that the defendants subsequently on the basis of mutation of the particular area started preparations for raising the construction and then the cause of action for filing the subsequent suit arose.

6. The learned counsel representing the appellants contends that the subsequent suit is barred under Order 2 Rule 2 of the Code of Civil Procedure, 1908 that bars the plaintiff to file a second suit in respect of the portion omitted or relinquished in the first suit. Because the suit is pending before the trial court, it would not be appropriate for this court to express any final opinion on the merits of the case.

7. The dismissal of the suit on the principles enshrined in Order 2 Rule 2 CPC is permissible only if the court comes to a definite conclusion that the relief claimed in the subsequent suit is based on the same and identical cause of action on which the previous suit was filed and the plaintiffs had the opportunity to include the relief in the previous suit. The reliance placed by the learned counsel representing the appellant on the judgment passed in *Anil Kumar and others vs. Gulab Singh and otehrs, 2020(2) RCR(C) 134*, is misplaced because in that particular case it was held that bar under Order 2 Rule 2 CPC is not applicable in the facts of the aforesaid case.

8. The learned counsel representing the appellants further tried to

submit that the suit filed by the plaintiffs is without substance as some of the co-sharers have sold the property while referring to the specific portion which is in any case amount to sale of share only. He submits that these observations of the trial court are in accordance with law.

9. The dismissal of the suit on a preliminary issue is governed as per the procedure laid in the Code of Civil Procedure, 1908. At this stage, it would not be appropriate for this Court to express any final opinion on the merits of the case. The learned First Appellate Court has only permitted the parties to lead evidence while directing the trial court to decide the suit comprehensively, deciding the suit on merits.

10. Keeping in view the facts that the suit was instituted in March, 2008, it is considered appropriate to request the trial court to decide the suit on a priority basis.

11. Needles to observe that the observations made by the First Appellate Court or by this Court shall not be construed as the final expression on the merits of the case and the trial court will decide the suit independently in accordance with law.

12. Disposed of.

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

July 05, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO