

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-440-1994 (O&M)
Date of decision: 14.03.2024

SURJIT KAUR

..Appellant

Versus

GURANDITTA SINGH (DECEASED) THROUGH LRS.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Kumar Kataria, Advocate
for the appellant.

Mr. R.K. Singla, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the defendant assails the correctness of the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Late Sh. Sham Singh was owner of various parcels of land in village Pipli. On 22.05.1972, he sold 7 kanal and 12 marlas land comprised in Khasra No.877 to Sh. Lal Chand and others. Sh. Lal Chand and others subsequently sold the aforesaid parcel of land to Sh. Ram Sarup on 25.02.1986, however, Sh. Sham Singh entered into an agreement to sell in favour of the plaintiff Sh. Guranditta Singh on 07.02.1986, with respect to land measuring 7 kanal and 12 marlas comprised in Khasra No.877 on

receipt of Rs.9,900/- out of total sale consideration of Rs.11,500/-. It was evident that the parcel of land, which was already sold by Sh. Sham Singh was again agreed to be sold in favour of the plaintiff. It was also recited that the possession has been delivered. Late Sh. Sham Singh executed sale deed in favour of the plaintiff on 28.02.1986, with respect to the land comprised in Khasra No.877, measuring 7 kanal and 12 marlas on receipt of balance sale consideration of Rs.1,600/-. The plaintiff on the strength of the aforesaid sale deed, filed a suit for injunction claiming that he is in possession. The suit was filed against Sh. Sham Singh and previous purchasers namely Sh. Lal Chand and Sh. Ram Sarup.

4. The aforesaid suit was dismissed on the ground that the possession was already delivered to Sh. Lal Chand by Sh. Sham Singh, which in turn was transferred to Sh. Ram Sarup on execution of sale deed dated 25.02.1986. It was recited in the sale deed that Sh. Guranditta Singh-plaintiff can take equivalent parcel of land from village Pipli, which belongs to Sh. Sham Singh. On 30.11.1988, the plaintiff filed suit for possession of 7 kanal and 12 marlas land comprised in Khasra No.2160, out of land measuring 19 kanal. The trial Court dismissed the plaintiff's suit on the ground that the second suit was barred under Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), which has been reversed by the First Appellate Court on reappreciation of evidence.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

6. The learned counsel representing the appellant submits that the second suit was barred under Order II Rule 2 of the CPC as the plaintiff (Sh. Guranditta Singh) could pray for alternative relief in the first suit. He submits that the second suit would not be maintainable because the cause of action for claiming alternative relief of possession was available on 06.06.1986, when the plaintiff filed the suit.

7. On the other hand, the learned counsel representing the respondent submits that the cause of action for seeking possession of alternative land arose only when the Court held that the plaintiff is not entitled to retain possession because the parcel of land comprised in Khasra No.877 had already been sold by Sh. Sham Singh in favour of Sh. Lal Chand. He submits that Order II Rule 2 of the CPC would not apply in the present case.

8. This Court has considered the submissions of the learned counsel representing the parties.

9. In a recent judgment passed by the Supreme Court while explaining the scope of Order II Rule 2 CPC in **V. Kalyanaswamy (Dead) through Lrs. Vs. L. Bakhthvatsalam (Dead) through Lrs. 2020 SCC (Online) SC 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 II Rule 2 CPC. The Court, after examining Order II 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)."

10. In fact, the expression used in Order II Rule 2 of the CPC 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".

11. This issue has been examined by this Court in para No.16 and 17 of **RSA-1683-2014, titled as "Mohan Singh and others Vs. Smt. Prem Aggarwal", decided on 13.05.2022**, which is extracted as under:-

"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.”*

- 12. It is evident that the cause of action arose to the plaintiff only when his previous suit for injunction was dismissed.
- 13. Hence, no ground to interfere is made out.
- 14. Dismissed accordingly.
- 15. All the pending miscellaneous applications, if any, are also disposed of.

March 14th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No