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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4659 of 2023
Date of decision : 23.09.2024

Jasreen Alag and othersPetitioners

Versus

Amanjit SinghRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Aashish Chopra, Sr. Advocate with
Ms. Rupa Pathania, Advocate and
Ms. Nitika Sharma, Advocate
for the petitioner.

Mr. B.S. Patwalia, Advocate with
Mr. Gaurav Jagota, Advocate and
Mr. Abhishek Masih, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

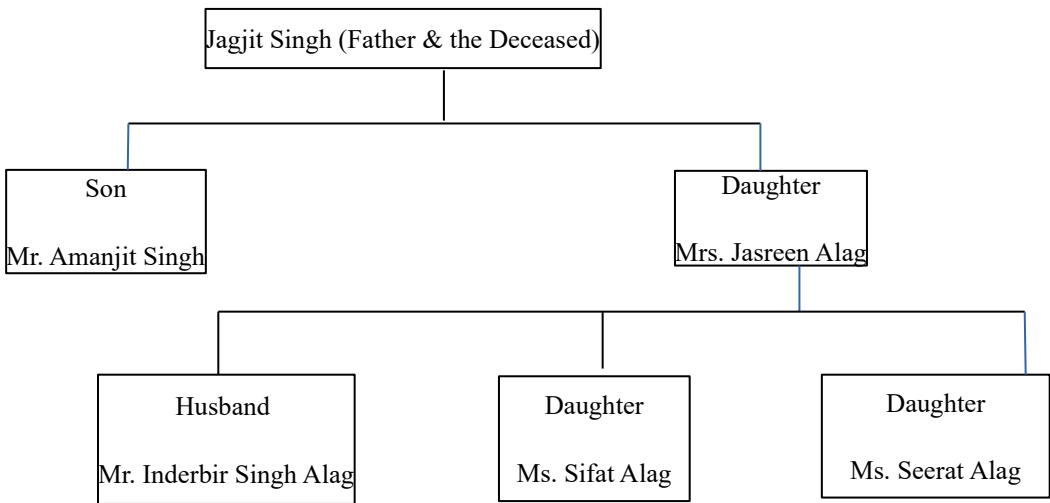
The instant revision petition is directed against the order dated 17th of July, 2023 passed by Additional Civil Judge, Sr. Divison, SAS Nagar, Mohali whereby application filed by the defendants/petitioners No.1, 3 & 4 seeking dismissal of the suit being not maintainable under Order II Rule 2 of the Code of Civil Procedure, 1908 stands declined.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the petitioners as the defendants and the respondent as the plaintiff.

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3. Parties to the *lis* are related to each other. Pedigree table as mentioned in the plaint of Civil Suit bearing No.121 of 2002 depicting the relationship between the parties, reads as under:



4. Respondent Amanjt Singh, the plaintiff filed suit seeking decree of permanent injunction in form of restrain against the defendants from interfering in his peaceful and exclusive possession over a suit property bearing house No.135, Phase VII, Mohali. The dispute relates to estate left by Jagjit Singh. On the same day, another civil suit i.e. Civil Suit bearing No.123 of 2022 was filed wherein the plaintiff sought recovery of an amount of Rs.30,21,901/- along with future interest against the petitioners.

5. Petitioners filed written statement pleading various preliminary objections including the one that the subsequent suit is not maintainable being barred by principle of constructive *res judicata* as the plaintiff omitted to incorporate the relief claimed in the subsequent suit in the first suit.



6. Defendants filed application under Order II Rule 2 read with Section 151 of the Code of Civil Procedure seeking dismissal of the suit being barred by Order II Rule 2 CPC. The application was responded to by the plaintiff by filing reply claiming that though the suits were based upon different cause of actions and thus subsequent suit would not be barred by the principle of constructive *res judicata*.

7. Trial Court dismissed the application holding that in the first suit wherein the plaintiff claimed decree of permanent injunction, cause of action of plaintiff was *qua* immovable property, whereas in the subsequent suit the cause of action was against withdrawal of the amount from the account of Jagjit Singh and refusal of defendants No.1 and 2 to return the amount.

8. Present revision petition is directed against the aforesaid order.

9. Ld. Senior Counsel representing the petitioners while assailing the impugned order submits that the Trial Court failed to appreciate the fact that both the suits are based upon the same cause of action. He has drawn attention of this Court to the pleadings raised in the first plaint filed in Civil Suit No.121 of 2022 wherein the fact w.r.t. withdrawal of the amount has been specifically mentioned. He thus submits that from the pleadings raised in plaint of initial suit, it is evident that the same is based upon plaintiff propounding his right to the estate of Jagjit Singh. On the same basis, the subsequent suit has also been maintained. He thus submits that both the

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suits being based upon same cause of action, the present suit would be barred under Order II Rule 2(3) CPC. He further submits that the Trial Court has based its order distinguishing the prayer clause without appreciating that the cause of action is common. In support of his contention, Ld. Senior Counsel has relied upon law laid down by the Supreme Court in **Gurbux Singh vs. Booralal, AIR 1964 SC 1810, M/s Virgo Industries (Eng.) P. Ltd vs. M/s Venturetech Solutions P. Ltd. (2012) 1 SCC 625** and **Vurimi Pullarao S/o Satyanarayana vs. Vemari Vyankata Radharani w/o Dhankoteshwarrao and another, (2020) 14 SCC 110.**

10. Per contra, Mr. Patwalia counsel for the respondent has drawn attention of this Court to specific pleadings raised in Para No.14 of the first suit wherein the factum of filing subsequent suit for recovery was specifically mentioned by the plaintiff. Mr. Patwalia submits that the first suit filed is w.r.t. cause of action arising out of persistent threat that the plaintiff faced apprehending dispossession from the suit property. Whereas subsequent suit has been filed w.r.t. wrongful withdrawal from the accounts of late Shri Jagjit Singh. Mr. Patwalia in order to support his contention relies upon law laid down in the case of **Sucha Singh Sodhi (D) through LRs vs. Baldev Raj Walia and another, (2018) 6 SCC 733, Coffee Board vs. M/s Ramesh Exports Pvt. Ltd.- Civil Appeal No.5527 of 2014 (Arising out of SLP (C) No. 26157 of 2012) decided on 9th of May, 2014,**

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Piara Singh vs. Mehar Chand and other, 2004 (1) SimLJ 305, Suresh Jain vs. Sunil Kumar, 2013(5) R.C.R.(Civil) 652 and T. Mohanraj vs. Akila Thiruvudancore Siddha Vaidhya Sangam, Munchirai, Puddukkadai Post, K.K. District, having its Brach Office at 17, C.K. Street, Aynavaram, Chennai-23 represented by L.N. Noelraj, Director/Acting President, 2012 (7) R.C.R.(Civil) 1398

11. I have heard counsel for the parties at length and have carefully examined the records of the case.

12. In order to appreciate the rival contentions, provision as contained under Order II CPC needs to be perused. Order II Rule 2 and Order II Rule 3 of the Code of Civil Procedure, 1908 read as under:

“Order II

Rule 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 and 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.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims

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arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Rule 3. Joinder of causes of action.—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

13. As per the mandate of Order II Rule 2(3) CPC wherever a person entitled to more than one relief in respect to same cause of action omits to sue for any relief in the suit preferred *qua* the same cause of action, he is barred from maintaining suit afterwards claiming the same relief. Order II Rule 2(1) casts obligation upon the plaintiff to conclude whole of the claim which he is entitled to make in respect of the cause of action in the same suit. The objective behind the provision has been elaborated by the Supreme Court in the case of **M/s. Virgo Industries (Eng.) P. Ltd. vs. M/s. Venturetech Solutions P. Ltd.**, (supra) observing as under :

“10. The object behind enactment of Order 2 Rule 2 (2) and (3) of the Civil Procedure Code is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have

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been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order 2 Rule 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment of the Constitution Bench of this Court in ***Gurbux Singh v. Bhooralal, AIR 1964 Supreme Court 1810*** may be usefully recalled below :

"In order that a plea of a bar under Order 2, Rule 2 (3), Civil Procedure Code should succeed the defendant who raises the plea must make out(1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief,(3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar."

The above principles have been reiterated in several later judgments of this Court. Reference by way of illustration may be made to the judgments ***Deva Ram & Anr. v. Ishwar Chand & Anr., 1995(3) R.R.R. 717 : 1995 (6) SCC 733 and M/s. Bengal Waterproof Ltd. v. M/s Bombay Waterproof Manufacturing Co.& Anr., AIR 1997 Supreme Court 1398.***

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11. The cardinal requirement for application of the provisions contained in Order 2 Rule 2(2) and (3), therefore, is that the cause of action in the later suit must be the same as in the first suit. It will be wholly unnecessary to enter into any discourse on the true meaning of the said expression, i.e. cause of action, particularly, in view of the clear enunciation in a recent judgment of this Court in the ***Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012(3) Recent Apex Judgments (R.A.J.) 600 : 2012(3) RCR (Civil) 811 : JT 2012(6) SC 149***. The huge number of opinions rendered on the issue including the judicial pronouncements available does not fundamentally detract from what is stated in Halsbury's Law of England, (4th Edition). The following reference from the above work would, therefore, be apt for being extracted hereinbelow:

"Cause of Action" has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular action the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

14. Order II Rule 3 CPC deals with a situation wherein there are more than one cause of action. Option has been provided to the plaintiff to join the same or to sue them separately as the expression used in the

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provision is 'may'. Thus, the basic issue that needs to be adjudicated in the present revision is :

“Whether both the suits are based upon the same cause of action or arise out of the different cause of action?”

15. Thus the primary question will be what the expression 'cause of action' means. The classic definition of cause of action is found in the case of **Cooke vs. Gill, (1873) 8 CP 107** wherein Lord Brett observed as under :

“‘cause of action’ means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”

16. The aforesaid definition was reiterated by Supreme Court in the case of **Alchemist Ltd. vs. State Bank of Sikkim, (2007) 11 SCC 335** observing as under :

“20. It may be stated that the expression 'cause of action' has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.”

17. In the case of **A.B.C. Laminart (P) Ltd. vs. A.P. Agencies, (1989) 2 SCC 163**, Supreme Court observed as under :

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“12. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

18. The ratio in the case of **A.B.C. Laminart (P) Ltd. vs. A.P. Agencies, (1989) 2 SCC 163** (supra) was followed with approval in the case of **Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniyamman Educational Trust, (2012) 8 SCC 706** observing as under :

“14. In *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem, (1989)2 SCC 163*, this Court explained the meaning of "cause of action" as follows :

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the

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defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

15. It is useful to refer the judgment in *Bloom Dekor Ltd. v. Subhash Himatlal Desai & Ors.*, (1994) 6 SCC 322, wherein a three Judge Bench of this Court held as under :

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (*Cooke v. Gill*, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

19. In the latest judgment rendered in the case of **State of Goa vs. Summit Online Trate Solutions (P) Ltd., (2023) 7 SCC 791** Apex Court reiterated the words of Lord Brett in **Cooke's** case (supra) observing as under:

"16. The expression 'cause of action' has not been defined in the Constitution. However, the classic definition of 'cause of action' given by Lord Brett in *Cooke v. Gill* (1873) 8 CP 107 that "cause of action means every fact which it would be necessary for the

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plaintiff to prove, if traversed, in order to support his right to the judgment of the court", has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such 'cause of action' is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed."

20. Applying the aforesaid definition of 'cause of action' to cull out principles governing the principle of *res judicata* as enumerated under Order II Rule 2 CPC, Privy Counsel in **Mohd. Khalil Khan vs. Mahbul Ali Mian, 1948 SCC OnLine PC 44** observed as under :

"24. The Privy Council proceeded to summarize the principles in paragraph 61, which reads as follows:

"61. The principles laid down in the cases thus far discussed may be thus summarized:

(1) The correct test in cases falling under Order 2, Rule 2, is "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit.

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment.

(3) If the evidence to support the two claims is different, then the causes of action are also different.

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical.

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the

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plaintiff. It refers..... to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

21. Applying the aforesaid parameters to the present case, it cannot be denied that so far as pleadings w.r.t. withdrawal of the amount from the account of late Jagjit Singh is concerned, the same finds mention in both the complaints. However, it is Para No.16 to Para No.18 which form cause of action to file the initial suit.

22. At this stage, Mr. Chopra points out that so far as Para No.20 of the complaint is concerned, though the same deals with cause of action but the same does not say so, in so many words.

23. The argument raised is misconceived. The pleadings raised in Para No.20 itself shows that the cause of action relates to the persistent threat. Once the amount already stood withdrawn there was no question of threat. Rather Para No.20 makes it even more clear that the cause of action pleaded in the first suit is w.r.t. threat of dispossession and, therefore, the suit was maintained only for permanent injunction. So far as the subsequent suit is concerned, in that the plaintiff is aggrieved of wrongful withdrawal from PPF account of late Jagjit Singh by the defendants in violation of rights of the plaintiff to inherit the same. Meaning thereby, the plaintiff had two separate cause of actions to seek relief against the defendant. In his own wisdom he filed two separate suits without joining the separate cause of actions which is permissible under Order II, Rule 3 CPC.

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24. In view of above, this Court finds that the Trial Court has rightly held that so far as both suits are concerned, the same are based upon different cause of actions and thus would not be hit by Order II Rule 2(3) CPC.

25. In view of above, it is evident that the embargo as enumerated under Order II Rule 2 CPC can be invoked only if the claim which is omitted or relinquished and the reliefs not claimed arise from one cause of action. Wherever, there is more than one cause of action, provision as contained under Order II Rule 2 cannot be invoked.

26. In view of above, finding no merit in the instant revision, the same is ordered to be dismissed.

September 23, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes