



2024 : DHC : 2501



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 7th February, 2024**
Judgment pronounced on: 1st April, 2024

+ C.R.P. 72/2019 & CM APPL. 13166/2019
GAURAV MANGLA & ORS Petitioners
Through: Mr. Sachin Chopra & Mr.
Kamal Bansal, Advs.

versus

ROHIT MANGLA Respondents
Through: Mr. Praveen Mishra, Ms.
Hardeep Kaur, Mr. Arun
Kumar & Ms. Sandhya Pandey,
Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present civil revision petition filed by the petitioners under Section 115 of the Civil Procedure Code, 1908¹, assailing the impugned order dated 15.11.2018 passed by the learned Additional Sessions Judge, Tis Hazari Courts, Delhi², in CS No. 10265/2016, whereby the respondent's/petitioner's application under Order VII Rule 11, CPC and application under Order XII Rule 6 were dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, the present revision petition has been filed by the

¹ CPC

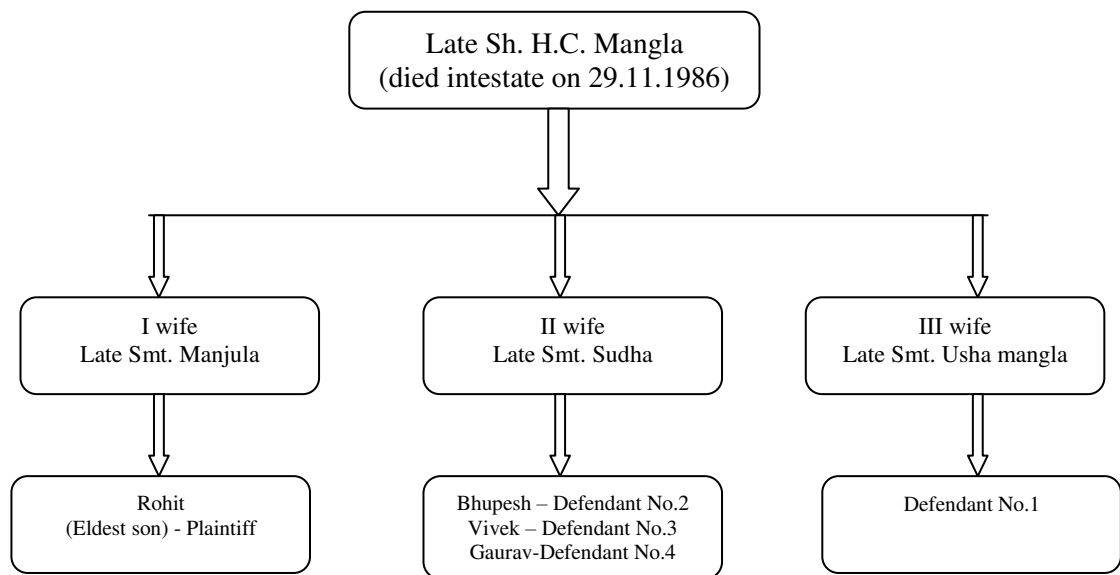
² Trial Court



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revisionist/defendant, Gaurav Mangla, who is the eldest son from the first wife (deceased) of Late Harish Chandra Mangla, who died intestate on 29th November, 1986, leaving behind the petitioners and the defendants as the legal heirs. Defendant No.1 is the third wife and defendants No.2 to 4 are the children/sons from the second wife (deceased). It would be expedient to reproduce the family tree, which goes as under:



3. Shorn of unnecessary details, the respondent No.1/plaintiff Rohit had filed a suit for permanent injunction, bearing suit No.155/1987 titled as '*Rohit Mangla Vs. Usha Mangla & Ors.*³, which was in respect of monies and dues of the said Late H.C Mangla with LIC India and Delhi Electric Supply Undertaking⁴, wherein a compromise deed was entered into between the parties on 05.02.1988. As per the compromise deed executed between Rohit Mangla and

³ Injunction suit

⁴ DESU



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Usha Mangla, Bhupesh, Vivek and master Gaurav Mangla (through his step-mother Usha Mangla), respondent/petitioner (Rohit) was acknowledged as one of the legal heirs and it was stipulated that he will get 1/5th share in movable and immovable properties left behind by the deceased Sh. H.C. Mangla. The relevant clause of the said agreement is reproduced as under:

“3. WHEREAS the first party is entitled to the assets both movable and immovable to the extent of one fifth (1/5th) share, **the second party agrees and promises to pay / deliver the first party one fifth (1/5th) of the movable and immovable assets of the deceased.**”

4. Needless to state, the said suit bearing no. 155/87 was dismissed as compromised and the application under Order XXIII Rule 1 CPC filed by respondent/plaintiff was allowed vide order dated 11.02.1988 of the Court, in terms whereof the said injunction suit was dismissed as unconditionally withdrawn, without seeking any liberty to file or institute any suit on the same cause of action, whatsoever, in the future.

5. The grievance of the petitioners is that respondent no. 1/ plaintiff is re-agitating the disputes which were settled pursuant to the aforementioned compromise and now has filed a suit for partition, possession, permanent injunction and rendition of accounts being CS(OS) No.146 of 1995 (185/2011) titled '**Rohit Mangla vs. Usha Mangla & ors.**'⁵ before the Hon'ble High court (later transferred to Tis Hazari Courts for the change in pecuniary jurisdiction).

6. It is pertinent to mention that in the earlier matter, the parties

⁵ Partition suit





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arrived at a Settlement in terms whereof the petitioner/defendant No.2 agreed to transfer USD 500,000/- to the respondent/plaintiff (Rohit) for the settlement of property disputes between parties and in lieu whereof the respondent/plaintiff would withdraw the said suit.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT:

7. In the said background, the petitioners/ defendants filed an application under Order VII Rule 11 CPC challenging the maintainability of the suit on the following grounds:

- “a) That present suit is hit by res-judicata.
- b) That present suit is hit by Order II Rule 2 CPC.
- c) That present suit is also barred by limitation as the same is filed several years after the earlier suit, without any fresh cause of action (mentioned as fourth ground earlier)”.

8. The learned Trial Court dealt with such objections one by one and rejected each one assigning detailed reasons, upon which, I shall delve into later on in this order. It is pertinent to mention that the learned Trial Court held that it would not go into the issue of Benami Transaction because it is not the case of defendants that all the properties, which are the subject matter of the present suit, are covered by Benami Transaction (Prohibition) Act; and the learned Trial Court observed that the said question is not being finally decided, as even if it were so, the plaint cannot be rejected, because it is also with respect to several movable and immovable properties which were owned by Late Sh. H.C. Mangla. Based on such premise, the application under Order XII Rule 6 CPC was dismissed too.



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GROUND FOR APPEAL:

9. The impugned order is assailed *inter alia* on the grounds that the learned Trial Court erred in appreciating that the Suit is not barred by the law of limitation, as a suit for partition is governed by Article 113, Limitation Act, 1963, and therefore, such a suit is to be brought within 3 years from the date when the right to sue accrues, i.e., from the date of the said Injunction Suit in 1987 or latest by 1991 i.e. 3 years after the said compromise deed, pursuant where to the said Injunction Suit was withdrawn. Further, learned Trial Court failed to appreciate that as per the said Compromise deed dated 05.02.1988, in terms whereof the said earlier suit was decreed vide order dated 11.02.1988 had fructified the shares of the parties. It is submitted that, as on date, even the execution of the said Compromise Decree/Deed would be barred by limitation.

10. The respondent's plea is that cause of action arose in 1987 when the dues from Life Insurance Corporation India⁶ and the erstwhile DESU of which the deceased was an employee were attempted to be cornered by the defendants. It further arose on 09.03.1993 when a Registered A.D. legal notice was served upon the petitioners/defendants and no compliance was made; and thus, it is urged that the cause of action is a continuing one.

ANALYSIS

11. I have heard the learned counsels for the rival parties at the Bar and have also perused the record. I have also gone through the case law cited at the Bar.

⁶ LIC



12. It would be expedient to reproduce the reasons that prevailed in the mind of the Learned Trial Court as regards plea of *res-judicata* under Section 11 of the CPC, which read as under:

“(i) The matter directly and substantially in issue in the present suit was not directly and substantially in issue in the previous suit. The present suit is for partition, whereas the previous suit was for injunction and that too not with respect to properties of late Sh. H.C. Mangla, but with respect to the LIC policy and dues with DESU.

(ii) The previous suit and the present suit are not between the same parties or between parties under whom they or any of them claim litigating under the same title. In the earlier suit defendant No.2, 3 and 4 were never impleaded as defendant and their statements were al so not recorded at the time of disposal of suit.

(iii) The previous suit was not finally decided by the court, rather the same was dismissed as withdrawn. Before an earlier decision can be considered to be *res-judicata*, the same must have been heard and finally decided. However, even a compromise decree or order does not operate as *res-judicata* because the same is merely the record of a contract between the parties to a suit, to which is super imposed the seal of the court and the court does not decide anything. Thus, the principle of *res-judicata* as contained in Section 11 of CPC is not applicable in this case.

13. In so as far as the plea that the suit is hit by provisions of Order II Rule 2 CPC, learned Trial Court distinguished the decision in the case of **Deepa Dua v. Tejinder Kumar Muteneja**⁷, relied upon by the petitioners/defendants, finding that in the cited case, the plaintiff had executed a registered Relinquishment Deed with respect to the suit property, wherein she sought no relief in the first suit but included relief with respect to the said relinquishment deed in the second suit, without seeking liberty from the first court at the time of

⁷ 2013 SCC OnLine Del 3236



its withdrawal. It was held that *the facts of the cited case were quite different from that of the present case since the subject matter of both the cases was the same property at Preet Vihar, whereas in the present case, subject matters are different.*

14. It was observed by the learned Trial Court that the first suit was filed by the plaintiff only with respect to the LIC policy of Late Sh. H.C. Mangla and the dues outstanding in the name of deceased with DESU. Hence, it was held that the provisions of Order II Rule 2 CPC were not applicable to the present suit which is based on a separate cause of action with respect to different properties. It was held that *“though, the plaintiff could have prayed for the relief of partition in the earlier suit, but that does not preclude him from claiming that the same relief now in this suit. The earlier suit was with respect to different dues, whereas the present suit is with respect to different properties, the earlier suit was for injunction whereas the present suit is for partition by metes and bounds”.*

15. As regards plea of the suit being barred by limitation, learned Trial Court further distinguished the decision in the case of **Mahender Kumar Khurana v. Rajinder Khurana**⁸, on facts. It was held that *“admittedly, in the present case an out of court settlement was arrived at between the parties, which was also filed in the court in the previous suit, as per which the defendants promised to “pay/deliver the first party one fifth (1/5th) of the movable and immovable assets of the deceased.” However, as per the settlement the assets were not delivered and the promise was not fulfilled, hence, the present suit”.*

⁸ 2013 SCC OnLine Del 4161



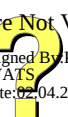
APPLICATION UNDER ORDER XII RUL 6 CPC:

16. Dismissing this application too, the learned Trial Court observed as under:

“In the application under Order XII Rule 6 CPC, the plaintiff seeks "partial decree in respect of partition with metes and bounds with regard to the properties situated at 16/5, Doctor's Lane, Gole Market, New Delhi and Flat No.913, 9th Floor, Arunachal Building, 19 Barakhamba Road, New Delhi and properties/shops situated at Palwal, Haryana of Late Sh. H.C. Mangla" on the ground that the said properties belonged to late H.C. Mangla. It has been submitted by the defendant that the suit is not maintainable as the suit is itself barred by law and an application under Order VII rule 11 CPC is already pending disposal.

The present application for a partial partition is also contested on the ground that the respondent/plaintiff had settled the matter with the defendants outside the court for a sum of US \$500,000/- dated 23.03.12 and the fact that having received the said amount, has been admitted by the Respondent/plaintiff before the Hon'ble High Court. Lastly, it is stated that there is no unconditional and unambiguous admission by the defendants as stated in the application. The objection that the said application is not maintainable as the suit is itself barred by law is without merits as the application under Order VII Rule 11 CPC relating to the maintainability of the suit were dismissed by the learned trial court.”

17. Suffice to state that the learned Trial Court held that the same was not permitted as a decree of partial partition of the properties by metes and bounds is not permissible under the law in a suit for partition. The partition of the properties of the deceased should include all the properties of the deceased and the partition is complete only when all such properties are included within the ambit of partition and considered for the purpose of partition of the properties by metes and bounds. It was held that a partial decree of partition by metes and bounds is not envisaged either by the Code of Civil Procedure or by the Partition Act, and therefore, the





respondent/plaintiff's plea to pass a partial decree cannot be permitted. Thereby, the application under Order XII Rule 6 was dismissed too.

DECISION:

18. Evidently, the first suit filed by respondent No.1/plaintiff bearing CS No.155/1987 was withdrawn on 11.02.1988 consequent to a compromise deed involving all the parties on 05.02.1988. However, the said suit was based not in respect of all the moveable/immovable assets of late Sh. H.C. Mangla but, only with regard to the disbursement of amount towards LIC policy of the deceased and the outstanding dues recoverable from the DESU. The previous suit for permanent injunction involved only respondent No.1/plaintiff and Smt. Usha Mangla i.e., the third wife and all the legal heirs of late Sh. H.C. Mangla had not been impleaded in the same. Although the previous suit was not finally adjudicated upon and it resulted in a compromise, there has been rendered no findings so to constitute issue of estoppel or constructive *res judicata* except for the fact that it was agreed upon that each of the legal heirs of the deceased from the three wives would be entitled to 1/5th share in the properties left behind by him.

19. At this juncture, it would be relevant to refer to the provision of Order II Rule 2 of the CPC which provides 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- 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.”

20. A bare perusal of the aforesaid provision would show that it is an omission to sue in respect of, or an intentional relinquishment, of any portion of the claim, that cannot be entertained in a later suit. Order II Rule 2 CPC is based on the principle that no person should be vexed twice for one and the same cause of action. It disallows splitting-up of claims, and thus, splitting of remedies. Omission to sue in respect of the claim which would have been available, disentitles the plaintiff to sue afresh in respect of the same in a subsequent suit. However, the rule does not preclude a second suit based on a distinct and separate cause of action. There are two pertinent conditions that must be satisfied: firstly, that the previous suit and the present suit must arise out of the same cause of action, and secondly, that the two suits must be involving the same contesting parties or the parties under whom they had been litigating.

21. Reverting back to the instant matter, the subsequent suit is for partition and other consequential reliefs in respect of the properties left behind by late Sh. H.C. Mangla and thus, it is altogether based on a different cause of action. Indeed, *inter alia*, respondent No.1/Rohit Mangla in the present suit, does reiterate that his 1/5th claim in the property has been acknowledged in the previous suit. However, the relief of partition of the property by metes and bounds is an altogether



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a different cause of action and moreover, it now involves all the legal heirs of the deceased in the instant matter. It would not be out of place to mention that for some time, the properties were held jointly by parties and there was an agreement to share the rental proceeds and other benefits but since evidently it did not work out, respondent No.1/plaintiff has chosen to seek partition and other consequential reliefs for his separate share in the properties.

22. Before finally pulling down the curtains in this civil revision, let us have a look at the case law cited at the Bar. In the cited case of **Eldeco Housing and Industries Ltd. v. Ashok Vidyarthi**⁹, a Memorandum of Understanding was entered into between the parties regarding sale of the property in question, wherein it was specifically provided that a litigation was pending amongst the family members of the second party, and therefore, it was stipulated that once the litigation is over, the second party would consider getting the Sale Deed registered. It appears that while the litigation was pending as amongst the family members of the second party i.e., the vendor/seller, there arose an apprehension in the mind of the buyer/plaintiff that the second party was going to dispose, sell or alienate the property to a third party to his detriment and a suit for permanent injunction was filed. The same was dismissed on the undertaking given by the second party that he had no intention to dispose of or sell/create any third-party rights. Later, when the litigation between the second party and his family members was over, a suit for specific performance was filed by the plaintiff/buyer as the

⁹ (2023) SCC OnLine SC 1612



second party was not willing to execute a Sale Deed,

23. In the said context, examining the scope and ambit of Order VII Rule 11(d) of the CPC, it was held that the broad principle for consideration of the court when an application of such nature is moved is that at that stage, the court would not consider any evidence or enter into a disputed question of fact or law. Reference was made to a decision in **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)**¹⁰.

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In *Azhar Hussain v. Rajiv Gandhi* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

¹⁰ (2020) 7 SCC 366



23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, **a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint** [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

“14. Production of document on which plaintiff sues or relies.—(1) *Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.



23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [*Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [*Hardesh Ores (P) Ltd. v. Hede & Co.*, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* [*D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941] .

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain case* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji*





Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

{bold portions emphasized}

24. To sum up, it was held that the second suit was not hit by Order II Rule 2 of the CPC and/or for that matter under Order VII Rule 11(d) of the CPC. Coming to the cited case of **Sucha Singh Sodhi v. Baldev Raj Walia**¹¹, the original plaintiff had paid an amount as sale consideration in respect of the property and was placed in possession of the same as well. It was alleged that the seller/vendor later demanded more money or else threatened to dispossess the plaintiff from the suit premises and also made unsuccessful attempts in that regard. The buyer filed a suit for grant of permanent injunction and it was contested by the seller/vendor to the effect that he had already transferred the suit premises to the second respondent, and therefore, the remedy for the plaintiff was to file a civil suit for specific performance. The plaintiff withdrew the suit for permanent injunction and filed a suit for specific performance. The second suit was held to be not barred by Order II Rule 2 CPC, wherein it was held as under:

23. Order 2 Rule 2(1) of the Code 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. Liberty is, however, granted to the plaintiff to relinquish any portion of his claim with a view to bring the suit within the jurisdiction of any court.

24. It is clear from the reading of Order 2 Rule 2(1) of the Code that whenever the plaintiff files a suit on the basis of a cause of

¹¹ (2018) 6 SCC 733





action pleaded in the plaint, he is under a legal obligation to include and claim all the reliefs against the defendant, which have accrued to him on the cause of action pleaded by him in his plaint. In other words, if on the basis of cause of action pleaded by the plaintiff in the plaint, he is entitled to claim two reliefs, namely, 'A' and 'B' against the defendant(s), then he is under an obligation to claim both 'A' and 'B' reliefs together in the suit. Order 2 Rule 2(1) of the Code enables the plaintiff to relinquish any portion of his relief with a view to bring the suit within the jurisdiction of any court.

25. Order 2 Rule 2(2) of the Code, however, provides that where a plaintiff omits to sue or intentionally relinquishes, any portion of his claim/relief in his suit, then in such event, he shall not be allowed afterwards to sue in respect of the claim/relief so omitted or/and relinquished by him in his suit. In other words Rule 2(2) does not permit the plaintiff to file second suit to claim the omitted or/and relinquished relief.

26. In our opinion, the *sine qua non* for invoking Order 2 Rule 2(2) against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit on the causes of action pleaded in the previous suit against the defendant and yet not claimed by the plaintiff.

27. Therefore, we have to examine the question as to whether the plaintiff was entitled to claim a relief of specific performance of agreement in the previous suit on the basis of cause of action pleaded by the plaintiff in the previous suit against the respondents/defendants in relation to suit property.

28. In other words, the question that arises for consideration is whether Sucha Singh (original plaintiff) could claim the relief of specific performance of agreement against the respondents/defendants in addition to his claim of permanent injunction in the previously instituted suit.

29. Our answer to the aforementioned question is in favour of the plaintiffs (appellants) and against the defendants (respondents). In other words, our answer to the aforementioned question is that the plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit for the following reasons:

29.1. First, the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot





include the other and vice versa. In other words, a plaintiff cannot claim a relief of specific performance of agreement against the defendant on a cause of action on which he has claimed a relief of permanent injunction.”

{bold portions emphasized}

25. In the last, as a matter of fact, the decision of this Court in the case of **Sat Bhan Singh v. Mahipat Singh**, CS(OS) No.1385/2011, decided on 31.08.2012, is a case where the facts were more or less similar to the instant matter before us. It was a case where a suit for partition, declaration and permanent injunction was filed by the plaintiffs who claimed themselves to be co-owners of the suit land along with the defendants. The plaintiffs had claimed to be in joint physical possession of the suit property and it was stated that they have made requests to the defendants for partition of their property by metes and bounds or to sell the same and divide the sale proceeds, which had not been acceded to. The defendants filed an application under Order VII Rule 11 CPC seeking rejection on the ground that earlier, the plaintiffs had filed a suit claiming permanent injunction but did not seek relief for partition in the suit, and therefore, the subsequent suit for partition in the suit property was barred under Order II Rule 2 CPC. Dismissing such objections and thereby dismissing application under Order VII Rule 11(d) of the CPC, this Court referred to another decision of this Court in **M/s Fiitjee Ltd. v. Dr. Kanwal Sujit**, RFA No.669/2003, decided on 09.07.2007, wherein it was held as under:

“6. Order II Rule 2 of the Code of Civil Procedure is based on the principal that the defendant should not be twice waxed for one and same cause of action. **This Rule does not preclude second suit based on a distinct and separate cause of action, therefore,**



before this Rule can be invoked, two conditions need to be satisfied firstly that the previous suit as well as subsequent suit should arise out of the same cause of action and secondly that they must be between the same parties. The requirement of law thus is that the whole of the claim in respect of one cause of action should be included in one suit. Splitting of the claims based on the same cause of action is prohibited.

7. As held by the Supreme Court in Swamy Atmananda v. Swami Bodhananda & Ors., 2005 (3) SCC 734, a cause of action comprises every fact which 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 that the law applicable to those facts gives a right to the plaintiff to claim a relief against the defendant.

In Mohammad Khalil Khan and Others, AIR (1949) Privy Council 78, the following principles were laid down to ascertain whether the subsequent suit was barred by Order 2 Rule 2 of the Code of Civil Procedure or not.

- (1) The correct test in cases falling under O. 2 R. 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 plaintiff. It refers....to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.”

In Sidramappa v. Rajashetty and Ors., AIR 1970 Supreme Court 1059, the Apex Court was of the view **that if the cause of action mentioned in the earlier suit afforded a basis for a valid claim but did not enable the plaintiff to ask for any relief other than those he prayed for in that suit, the subsequent suit would not be barred under Order 2 Rule 2 of the Code of Civil Procedure.”**
{bold portions emphasized}



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26. In view of the aforesaid propositions of law, reverting to the instant matter, without further ado, it is but apparent that Rule 2 of Order II of the CPC *bars a subsequent suit if and only if it is with regard to the very same cause of action*, which was subject matter of the previous suit as also between the same parties. In the instant matter, the first suit was filed by respondent No.1/plaintiff in regard to certain outstanding amount due on account of death of deceased under LIC policy as also claimable from the DESU that was filed against Smt. Usha Mangla. The second suit was then filed for a different cause of action i.e., the failures of the other parties to partition the suit by metes and bound, despite requests by respondent No.1/plaintiff.

27. In view of the foregoing discussions, this Court finds that the learned Trial Court has committed no jurisdictional error. The impugned order dated 15.11.2018 does not suffer from any patent illegality, perversity or incorrect approach in law.

28. Accordingly, the present revision petition is dismissed.

29. The pending application also stands disposed of.

30. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the case.

31. Copy of this order be sent to the learned Trial Court for information and the record.

DHARMESH SHARMA, J.

APRIL 01, 2024

ck

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