



107

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

**RSA-2289-2015 (O&M)
Reserved on 09.07.2025
Pronounced on : 01.10.2025**

Ajit Singh

....Appellant

Versus

Shingara Singh & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Atul Jain, Advocate
for the appellant.

Mr. Arshit Goel, Advocate for
Mr. Vikram Anand, Advocate
for respondent No.4.

PANKAJ JAIN, J.

1 Plaintiff is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as plaintiff and respondents as defendants.



2 Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 10.10.2000 and in the alternative prayer is for grant of a decree of recovery of Rs.4,73,500/- with the consequential relief of permanent injunction restraining defendants from alienating the suit property.

3 As per plaintiff, defendant No.1 agreed to sell 9K-13M of land in his favour vide written agreement dated 10.10.2000 for a total sale consideration of Rs.3,61,875/-. Rs.3,00,000/- was paid as an earnest money. Parties agreed to get the sale deed executed on or before 10.10.2003 i.e. after three years. Plaintiff claims that he always remained ready and willing to perform his part. Subsequently when plaintiff approached defendant No.1 he came to know that defendant No.1 has already alienated suit land in favour of defendant No.2 & 3 vide two different sale deeds dated 04.07.2003. The Government offices were closed from 10.10.2003 to 12.10.2003 on account of holidays. On 13.10.2003 the plaintiff appeared before the Sub Registrar. Defendant No.1 failed to come present to execute the sale deed. Plaintiff served legal notice calling upon defendant No.1 to execute the sale deed which remained un-responded. The present suit was instituted on 18.12.2003.

4 Suit was contested by defendants No.1 & 2 who filed joint written statements. Execution of agreement to sell by defendant No.1 in favour of plaintiff was denied. It was denied that defendant No.1 received Rs.3,00,000/- as earnest money. Defendant No.1 claimed that he was in need of money. Plaintiff lent him Rs.1,00,000/- and as a security got signatures of defendant No.1 on blank papers. The blank papers have been subsequently



converted into agreement to sell. Defendants No.1 & 2 claimed that the land now stands further sold to defendant No.4. Alienation of land by defendant No.1 in favour of defendants No.2 & 3 by way of sale deeds dated 04.07.2003 was admitted. Defendants No.2 & 3 claimed themselves to be Bonafide purchasers.

5 Defendant No.4 was impleaded as party during the pendency of the suit. He claimed to be a bonafide purchaser and sought protection under Section 41 of the Transfer of Property Act, 1882.

6 Suit filed by the plaintiff was put to trial framing following issues :-

“1. Whether defendant No.1 entered into an agreement to sell the suit land on 10.10.2000 for a total sale consideration of Rs.3,61,875/- in favour of plaintiff? OPP

2. Whether defendant No.1 received Rs.3,00,000/- as earnest money on the date of execution for sale? OPP

3. Whether defendant No.1 received Rs.3,00,000/- as compensation from the plaintiff? OPP

4. Whether plaintiff has been ready and willing and is still ready and willing to perform his part of the agreement? OPP

5. Whether plaintiff is entitled for specific performance of the agreement to sell or in the alternative for recovery of Rs.3,61,875/- OPP

6. Whether plaintiff is entitled for permanent injunction as prayed for? OPP

7. Whether suit is not maintainable? OPD

8. Whether suit is bad for non-joinder of necessary parties? OPD



9. Whether the suit is barred by limitation? OPD

10. Whether the plaintiff has concealed the material facts by filing the present suit? OPD

11. Whether the plaintiff has got no cause of action to file the present suit? OPD

12. Relief.”

7 Plaintiff examined Jaswinder Singh, the attesting witness as PW1. Deed Writer Bhajan Singh was examined as PW2. Plaintiff appeared as PW3. Suman Rani, Record Clerk from the office of Sub Registrar was examined as PW-4.

8 The Court of the First Instance while deciding issues No.1 to 6 came to the conclusion that even though the plaintiff claims to have paid huge amount of Rs.3,00,000/- out of total sale consideration of Rs.3,65,000/- yet the date for execution of sale deed was fixed three years beyond the date of execution of agreement to sell. The conduct being unnatural fans suspicion. The agreement to sell being shrouded by mysterious and suspicious circumstance the plea for specific performance is not sustainable. Trial Court further noticed that after defendant No.1 executed sale deed in favour of defendants No.2 & 3 qua the land in question on 04.07.2003, plaintiff instituted suit for permanent injunction on 16.07.2003 against defendant No.1. The said suit was withdrawn without seeking liberty to pursue suit for specific performance. Accordingly, the plaintiff having failed to incorporate relief of specific performance of agreement to sell dated 10.10.2000 even though he had a cause to sue for the same in earlier suit, the subsequent suit is bad being



barred under Order II Rule 2 CPC. The plaintiff having failed to conclude whole claim in the first suit and there being no liberty to file subsequent suit, the suit deserves to be dismissed.

9 Unsuccessful plaintiff preferred appeal.

10 The findings recorded by the Trial Court stand reversed by the Lower Appellate Court holding that there was no plea raised qua suit filed by the plaintiff being bad under Order II Rule 2 CPC. No issue having been claimed regarding the suit being barred under Order II Rule 2 CPC, the findings recorded by the Trial Court cannot be sustained and need to be reversed.

11 Lower Appellate Court, however, noticed that after execution of agreement to sell propounded by way of present suit i.e. agreement to sell dated 10.10.2000, another agreement to sell dated 12.10.2000 was executed by plaintiff in favour of defendant No.1 pertaining to another piece of land measuring 8 K for a total sale consideration of Rs.3,25,000/-. Under the said agreement also plaintiff is claimed to have paid Rs.3,00,000/- and the parties are claimed to have agreed to get the sale deed executed on 10.10.2003 i.e. after three years. The Court found that instead of getting the instant transaction completed by paying the balance amount of Rs.61,879/-, the plaintiff opted to pay another amount of Rs.3,00,000/- for another agreement to sell which is highly unnatural conduct. The plaintiff and defendant No.1 being close relatives, the defense raised by defendant regarding the agreement to sell being loan transaction looks more probable. The Lower Appellate Court accordingly decreed the suit filed by the plaintiff for alternate relief and



granted him decree for recovery of Rs.3,00,000/- along with interest @ 9% per annum from the date of execution of agreement to sell dated 10.10.2000 till the date of actual realization.

12 Counsel for the appellant-plaintiff has assailed the judgment passed by the Lower Appellate Court. He contends that defendant No.1-Shingara Singh appeared as DW1. From his testimony it is amply clear that he admitted execution of agreement to sell. He also explained the reason for fixing date for sale deed after three years. He admitted that the date of execution of the sale deed was fixed keeping in view the fact that he wanted to marry his daughters off before selling the land. He admitted of having received the earnest money of Rs.3,00,000/-. In these circumstances the Lower Appellate Court erred in denying main relief of specific performance to the appellant-plaintiff.

13 *Per contra* learned counsel for respondent No.4 submits that the conduct of the parties has been rightly appreciated by the Lower Appellate Court. It is a case wherein the document procured as a security in a loan transaction has been misused to manufacture agreement to sell. Defendant No.1 was in dire need of money. Plaintiff and defendant No.1 being closely related to each other defendant No.1 trusted plaintiff and agreed to sign blank papers in lieu of money borrowed by defendant No.1. He further submits that it has come on record that the plaintiff earlier filed suit for permanent injunction which was withdrawn without seeking liberty to file suit for specific performance. The Court of the First Instance rightly dismissed the



suit filed by the plaintiff being barred under Order II Rule 2 CPC. He thus submits that the suit needs to be dismissed.

14 I have heard learned counsel for the parties and have gone through the records of the case.

15 Counsel for the plaintiff-appellant is right in contending that Shingara Singh while appearing as DW1 admitted execution of the agreement to sell. He also admitted that it was on his asking that the date of execution of the sale deed was kept three years beyond the date of agreement to sell. He admitted that his daughter as well as son-in-law had full knowledge about the dispute between him and plaintiff. In view thereof, this Court finds that the Lower Appellate Court has rightly held that the execution of agreement to sell by defendant No.1 in favour of plaintiff stands proved. However, the counsel for the appellant has not been able to point out how the plaintiff could maintain the present suit having earlier filed a suit for permanent injunction on 16.07.2003 and withdrawn without seeking permission to pursue the present plaint. Plaint of the earlier suit has been tendered in evidence by the plaintiff himself as Ex.P-13. The statement suffered at the time of withdrawing the said suit dated 28.04.2004 is Ex.P-8. The precise pleadings raised in the earlier suit filed seeking decree of permanent injunction Ex.P-13 which read as under :-

2. That the defendant executed an agreement to sell his land measuring 9Ks-13Ms in favour of the plaintiff on 10.10.2000 situated in the Revenue estate of village Talwandi Tehsil District Kapurthala and received Rs.3 lacs as earnest money and the date was fixed for



executing the sale deed on 10.10.2003, the photo copy of the agreement is attached herewith.

3. That now the plaintiff came to know that the defendant making efforts to execute the sale deed of the suit land mentioned in the head note of the plaint to some other persons which is illegally and wrong.

4. That on 25.06.2003 the defendant threatened the plaintiff that he will execute the sale deed of the suit land mentioned in the head note of the plaint to some other persons if the defendant succeeds to do so then the plaintiff will suffer irreparable loss and injury which cannot be compensated in shape of money.

5. That the plaintiff along with the respectables of the village went to the defendant and requested the defendant that he should not execute sale deed of the suit land to any other person except the plaintiff. The plaintiff is ready to get to execute the sale deed of the suit land but the defendant flatly refused to do so.

6. That the cause of action arose to the plaintiff on 10.10.2000 when the defendant executed the agreement to sell the land mentioned in the head note of the plaint and then on 25-6-2003 when the defendant flatly refused to the plaintiff.”

16 From the pleadings raised in the plaint filed in the earlier suit it is evident that the cause of action pleaded by the plaintiff was refusal by defendant No.1 to perform his part of agreement to sell dated 10.10.2000. Meaning thereby at the time the plaintiff filed earlier suit he was in the knowledge of refusal by defendant No.1 to honour agreement to sell executed by defendant in his favour. The precise issue regarding maintainability of suit seeking decree of specific performance in the light of withdrawal of the earlier suit in similar circumstances was dealt by Supreme Court in the case of *Virgo*



Industries (Eng.) (P) Ltd., v. Venturetech Solutions (P) Ltd., (2013) 1 SCC

625 to lay down the following ratio :-

“8. The necessary discussions that will have to follow may be initiated by extracting the provisions of Order 2 Rule 2 of the CPC:

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.*

Explanation-*For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

9. Order 2 Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order 2 Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order 2 Rule 2 of Civil Procedure Code makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order 2 Rule 2 (2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished.



Such leave of the Court is contemplated by Order 2 Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order 2 Rule 2 (2) and (3) of the Civil Procedure Code that the aforesaid two sub-rules of Order 2 Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit provided that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

*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 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 :*

"6. 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.

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."

12. In the instant case though leave to sue for the relief of specific performance at a later stage was claimed by the plaintiff in C.S. Nos. 831 and 833 of 2005, admittedly, no such leave was granted by the Court. The question, therefore, that the Court will have to address, in the present case, is whether the cause of action for the first and second set of suits is one and the same. Depending on such answer as the Court may offer the rights of the parties will follow.

13. A reading of the complaints filed in C.S. Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27.7.2005 the plaintiff received a letter dated 1.8.2005 from the defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the plaintiff to the defendant by cheques were also returned. According to the plaintiff it was surprised by the aforesaid stand of the defendant who had earlier represented that it had clear and marketable title to the property. In paragraph 5 of the complaint, it is stated that the encumbrance certificate dated 22.8.2005 made available to the plaintiff did not inspire confidence of the plaintiff as the same contained an entry dated 1.10.2004. The plaintiff, therefore, seriously doubted the claim made by the defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the complaint it was averred by the plaintiff that the defendant is "finding an excuse to cancel the sale agreement and sell the property to some other third party." In the aforesaid paragraph of the complaint, it was further stated that "in this background,



the plaintiff submits that the defendant is attempting to frustrate the agreement entered into between the parties."

14. The averments made by the plaintiff in C.S. Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when C.S. Nos. 831 and 833 of 2005 were instituted, namely, 28.8.2005 and 9.9.2005, the plaintiff itself had claimed that facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27.7.2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance alongwith the relief of permanent injunction that formed the subject matter of above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in C.S. Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court.

*15. Furthermore, according to the plaintiff, which fact is also stated in the plaints filed in C.S. Nos. 831 and 833, on the date when the aforesaid two suits were filed the relief of specific performance was premature inasmuch as the time for execution of the sale documents by the defendant in terms of the agreements dated 27.7.2005 had not elapsed. According to the plaintiff, it is only after the expiry of the aforesaid period of time and upon failure of the defendant to execute the sale deeds despite the legal notice dated 24.2.2006 that the cause of action to claim the relief of specific performance had accrued. The above stand of the plaintiff found favour with the High Court. We disagree. A suit claiming a relief to which the plaintiff may become entitled at a subsequent point of time, though may be termed as premature, yet, can not per se be dismissed to be presented on a future date. There is no universal rule to the above effect inasmuch as "the question of a suit being premature does not go to the root of the jurisdiction of the Court" as held by this Court in *Vithalbai (P) Ltd. v. Union Bank of India*, 2005(1) RCR (Rent) 357 : 2005(2) RCR (Civil) 124 : 2005(4) SCC 315.*



16. *In the aforesaid case this Court has taken the view that whether a premature suit is required to be entertained or not is a question of discretion and unless "there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event", the Court must weigh and balance the several competing factors that are required to be considered including the question as to whether any useful purpose would be served by dismissing the suit as premature as the same would entitle the plaintiff to file a fresh suit on a subsequent date. We may usefully add in this connection that there is no provision in the Specific Relief Act, 1963 requiring a plaintiff claiming the relief of specific performance to wait for expiry of the due date for performance of the agreement in a situation where the defendant may have made his intentions clear by his overt acts.*

17. *The learned Single Judge of the High Court had considered, and very rightly, to be bound to follow an earlier Division Bench order in the case of R. Vimalchand and M. Ratanchand v. Ramalingam, T. Srinivasalu & T. Venkatesaperumal (supra) holding that the provisions of Order 2 Rule 2 of the Civil Procedure Code would be applicable only when the first suit is disposed of. As in the present case the second set of suits were filed during the pendency of the earlier suits, it was held, on the ratio of the aforesaid decision of the Division Bench of the High Court, that the provisions of Order 2, Rule 2(3) will not be attracted. Judicial discipline required the learned Single Judge of the High Court to come to the aforesaid conclusion. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order 2 Rule 2 of the Civil Procedure Code as already discussed by us, namely, that Order 2 Rule 2 of the Civil Procedure Code seeks to avoid multiplicity of litigations on same cause of action. If that is the true object of the law, on which we do not entertain any doubt, the same would not stand fully subserved by holding that the provisions of Order 2 Rule 2 of the Civil Procedure Code will apply only if the first suit is disposed of and not in a situation where the second suit has been filed during the*



pendency of the first suit. Rather, Order 22, Rule 2 of the Civil Procedure Code will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in Murti v. Bhola Ram, (1894) ILR 16 Allahabad 165 and by the Bombay High Court in Krishnaji v. Raghunath, AIR 1954 Bombay 125.”

17 Applying the aforesaid ratio of law to the facts of the case in hand this Court finds that the subsequent suit filed by the plaintiff seeking decree of specific performance was rightly held to be not maintainable being barred by Order II Rule 2 CPC by the Trial Court. The suit being barred could not have been decreed. Needless to say the legal issue that goes to the root of the lis questioning the maintainability of the suit is not dependent upon the framing of issue. Non framing of issue is immaterial once the parties have led their respective evidence knowing well the case of rival. Plaintiff who approaches Court is under legal obligation to show that the suit is maintainable in law. Duty casted is de hors the defence raised by the defendant in the written statement. In the present case plaintiff himself brought on record the plaint filed in the earlier suit as well as the order passed withdrawing the same without seeking any liberty to pursue subsequent suit for specific performance. Plaintiff was entitled to sue for specific performance when he filed earlier suit for injunction. He however omitted to include the prayer for specific performance in the earlier plaint. There is an identity of cause of action in both the suits, thus Lower Appellate Court



erred in reversing the findings recorded by the Trial Court regarding maintainability of the plaint.

18 However, keeping in view the fact that the defendant has opted not to file appeal against the judgment and decree passed by the Lower Appellate Court, decree *qua* recovery of earnest money of Rs.3,00,000/- granted by the Lower Appellate Court is ordered to be maintained though for different reasons.

19 As a sequel of discussion held hereinabove, the present appeal is without merit and is hereby ordered to be dismissed.

01.10.2025

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No