



**RSA-2149-2018 (O&M)**

**107-2**

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

**RSA-2149-2018 (O&M)**

**Reserved on : 09.07.2025**

**Pronounced on : 01.10.2025**

Jagmohan Bhargo

....Appellant

Versus

Ajit Singh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

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**Present:-** Mr. Divanshu Jain, Advocate  
for the appellant.

Mr. Atul Jain, Advocate  
for respondent No.1.

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**PANKAJ JAIN, J.**

1. Defendant No.4 is in second appeal aggrieved of judgment and decree passed by the Lower Appellate Court decreeing the suit filed by plaintiff reversing the findings recorded by the Trial Court.

2. Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 12.10.2000 with an alternate prayer for grant of recovery of Rs.6 lakhs along with consequential relief of permanent injunction restraining the defendants from alienating the suit property. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as defendant No.4, respondent

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No.1 as plaintiff and respondents No.2 to 4 as defendants No.1 to 3, respectively.

3. As per the plaintiff, defendant No.1 agreed to sell 8 kanals of land as described in the headnote of the plaint in his favour vide written agreement dated 12.10.2000 for a valuable consideration of Rs.3,25,000/-. Rs.3,00,000/- was paid as earnest money on the date of agreement. Parties agreed to get the sale deed executed on or before 10.10.2003. Plaintiff claims that in order to safeguard his interest *qua* suit land, he filed civil suit against defendant No.1 seeking decree of permanent injunction restraining him from alienating the suit property on 27.06.2003. Defendant No.1 appeared and placed on record sale deed dated 04.07.2003 executed by him in favour of defendant No.2. The same is illegal, null & void and has no effect on the rights of plaintiff. He claims that from 10.10.2003 till 12.10.2003, the office of the Sub-Registrar was closed on account of holidays. Plaintiff appeared before the office of the Sub Registrar, Kapurthala on 13.10.2003 along with balance sale consideration and expenses. Defendant No.1 failed to turn up for execution of sale deed. Defendants No.2 and 3 had further sold the property in favour of defendant No.4. The same is illegal and has no effect on the rights of plaintiff. Plaintiff claims that he always remained ready and willing to perform his part. The present suit was instituted on 18.12.2003.

4. Suit was contested by defendants No.1 and 2. Preliminary objections was raised with respect to maintainability of the same. Defendant

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No.1 pleaded that he never executed agreement to sell in favour of plaintiff nor ever received earnest money as claimed. Plaintiff and defendant No.1 are close relatives. Defendant No.1 being in dire need of enough money confided in plaintiff regarding his needs. Plaintiff agreed to advance loan of Rs.1 lakh subject to execution of document as security. Defendant No.1 was made to affix his thumb impressions on a document. In spite of obtaining thumb impressions the amount promised to be paid by plaintiff was never paid to defendant No.1. Upon protest raised by him, plaintiff told him that documents stand destroyed. It is only after the plaintiff filed the present suit, the defendant No.1 came to know that the same has been misused for creation of agreement to sell in question.

5. Defendants No.3 and 4 opted not to appear despite service.

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

- (1) *Whether the plaintiff is entitled to the relief of possession through specific performance of Agreement to Sell dated 12.10.2000? OPP*
- (2) *Whether the plaintiff is entitled, in alternative, to recover any money from the defendants, if yes, then what amount and at which rate of interest? OPP*
- (3) *Whether the plaintiff is entitled to the relief of permanent injunction, he has prayed for? OPP*
- (4) *Whether the suit is not maintainable in the present form? OPD*
- (5) *Whether the plaintiff has got no cause of action or locus-standi to file the present suit? OPD*
- (6) *Whether the suit has been filed within the limitation period? OPP*

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(7) *Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD*

(8) *Relief.*

7. The Court of First Instance while answering issue Nos.1, 2, 3 & 6 observed that despite the plaintiff paid an amount of Rs.3,00,000/- at the time of execution of agreement to sell out of the total sale consideration of Rs.3,25,000/-, yet the date for execution of sale deed was fixed three years thereafter. The conduct of the parties is quite unnatural. Plaintiff in his testimony claimed that he withdrew a sum of Rs.3,00,000/- from his bank account in Punjab National Bank, wherein it stands proved on record that on 26.09.2000, the plaintiff had balance of Rs.19,693/- only and that he has not withdrawn any amount during the period 26.09.2000 till 17.10.2000. The Trial Court accordingly concluded that since the intention of the parties was never to transfer the property, the plaintiff is entitled only to an alternate relief of recovery of Rs.3,00,000/- along with interest @ 9% per annum simple interest w.e.f. 13.10.2003 till the date of its realization.

8. Unsuccessful plaintiff preferred appeal. The Lower Appellate Court reversed the findings recorded by the Trial Court and found that the plaintiff having successfully proved the execution of agreement to sell and having remained ready and willing to perform his part, the suit filed by plaintiff deserves to be decreed. Accepting the appeal, the Lower Appellate Court decreed the suit filed by plaintiff *qua* main relief of decree of specific performance. Respondents were directed to execute sale deed of the property

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in dispute in favour of appellant after receiving balance sale consideration of Rs.25,000/-.

9. Counsel for the appellant has drawn attention of this Court to the testimony of plaintiff Ajit Singh to contend that his statement with respect to source of Rs.3,00,000/-, claimed to have been paid to defendant No.1 in cash, stands falsified. Plaintiff claimed to have withdrawn the amount from his bank account. DW3 proved on record that on the given date, the plaintiff had no amount in his account and no amount was withdrawn. He submits that the relief of specific performance being equitable relief and the plaintiff having approached the Court with the false version, he is not entitled to the relief of specific performance.

10. *Per contra*, Mr. Atul Jain, counsel for respondent No.1 has drawn attention of this Court to the testimony of DW1 Shingara Singh, who admitted execution of agreement to sell and also admitted that date of execution of sale deed was fixed three years after the execution of agreement to sell only on his asking. He submits that the plaintiff having fully proved execution of agreement to sell and defendant No.1 having admitted the same, his right cannot be allowed to be defeated by defendant No.1 by transferring land in favour of his daughter and son-in-law, without consideration. He further submits that it is a perfect case wherein defendant No.1 turned dishonest after executing agreement to sell in favour of plaintiff and tried to defeat his rights by transferring land before the agreed date of execution of sale deed.

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11. I have heard counsel for the parties and have carefully gone through records of the case.

12. It has come on record that plaintiff prior to filing of the present suit seeking decree of specific performance filed suit for permanent injunction restraining defendant No.1 from transferring the land in question. The suit filed was based upon the same agreement to sell dated 12.10.2000, which is propounded in the present plaint. The plaint filed in the earlier suit tendered in evidence by the plaintiff himself as Ex.P6. Pleadings raised in the plaint read as under:-

*“1.That the defendant executed an agreement to sell his land measuring 8 kanals in favour of the plaintiff on dated 12.10.2000 situated in the Revenue estate of Village Kaul 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. The plaintiff was ready to get execute the sale deed of the suit land and is still ready to get execute the sale deed.*

*3. That now the plaintiff came to know that the defendant is 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 illegal 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 mentioned in the head note of the plaint to any other person except the plaintiff. The plaintiff is ready to get*

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*execute the sale deed of the suit land but the defendant flatly refused to the plaintiff.*

*6. That the cause of action arose to the plaintiff on that day i.e. 12.10.2000 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.”*

13. The plaintiffs suffered statement in the said suit. The suit was withdrawn vide order dated 28.04.2004. No opportunity was sought to pursue the suit for permanent injunction i.e. the present suit which was filed subsequent to the earlier suit.

14. 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 12.10.2000. 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.*

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**(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

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*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*

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*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 herein below:*

*"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.*

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*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*

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*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*

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*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 2, 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. Bholu Ram, (1894) ILR 16 Allahabad 165 and by the Bombay High Court in Krishnaji v. Raghunath, AIR 1954 Bombay 125.”*



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15. 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 not maintainable being barred by Order II Rule 2 CPC. The suit being barred could not have been decreed by the Lower Appellate Court. Plaintiff who approaches Court is under legal obligation to show that the suit is maintainable in law. 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 decreed the suit which is not maintainable.

16. Keeping in view the fact that defendant No.1 opted not to file appeal against the decree of recovery of Rs.3,00,000/- passed by the Trial Court, the decree passed by the Trial Court is ordered to be restored.

17. With the aforesaid observations, the appeal is *Allowed*.

18. Pending civil miscellaneous application, if any, shall also stand disposed off.

**October 01, 2025**  
*ashish*

**( PANKAJ JAIN )**  
**JUDGE**

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No