

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****CR-5868-2024 (O&M)
Reserved on : 02.04.2025
Pronounced on : 08.04.2025**

Nisha Sharma

....Petitioner

VERSUS

Bimaljeet Kaur @ Jasvir Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paras Jagga, Advocate for the petitioner.

ALKA SARIN, J.

1. Present revision petition has been filed challenging the order dated 17.08.2024 (Annexure P-1) whereby the application filed by the petitioner for dismissal of the suit under Order II Rule 2 of the Code of Civil Procedure, 1908 has been dismissed.
2. The brief facts relevant to the present *lis* are that plaintiff (respondent No.1 herein) filed a suit seeking inter-alia a declaration to the effect that she is owner to the extent of half share in the property i.e. measuring 07 Marlas comprised in Khata No.98/122, Khasra No.5/12 as per Jamabandi for the year 1999-2000, situated in village Bhattian, Hadbast No.328, Tehsil Khanna, District Ludhiana as well as for permanent injunction. It was claimed that Meehan Singh, father of the plaintiff (respondent No.1 herein) and the defendant No.1 (respondent No.3 herein), was owner in possession of the suit property. Bhajan Kaur was the mother of the plaintiff (respondent No.1 herein) and the defendant No.1 (respondent No.3 herein). It was further the case set up that Meehan Singh died intestate

leaving behind the plaintiff (respondent No.1 herein), defendant No.1 (respondent No.3 herein) and Bhajan Kaur as Class-I heirs and they were entitled to 1/3rd share each in the suit property and now after the death of Bhajan Kaur, the plaintiff (respondent No.1 herein) as well as the defendant No.1 (respondent No.3 herein) were entitled to half share each. During the pendency of the suit, an application was filed by the petitioner under Order II Rule 2 CPC for rejection of the plaint. Reply was filed to the said application. Vide the impugned order dated 17.08.2024, the said application has been dismissed. Aggrieved by the same, the present revision petition has been filed.

3. Learned counsel for the petitioner would contend that the present suit is clearly barred by the provisions of Order II Rule 2 CPC in view of the suits earlier instituted i.e. Civil Suit No.3 of 2016 and Civil Suit No.106 of 2020 and that the limitation to challenge the sale deed dated 20.02.2004 has already expired.

4. Heard.

5. Order II Rule 2 CPC reads as under :

“2. Suit to include the whole claim. - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs. - 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."

6. Hon'ble Supreme Court in case of **Alka Gupta vs. Narinder Kumar Gupta** [2010 (10) SCC 141] held as under :

9. *This Court in Gurbux Singh v. Bhoora Lal, AIR 1964 Supreme Court 1810 held :*

"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 latter suit is based there would be no scope for the application of the bar."

Unless the defendant pleads the bar under Order 2 Rule 2 of the Code and an issue is framed focusing the parties on that bar to the suit, obviously the court can not examine or reject a suit on that ground. The pleadings in the earlier suit should be exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action. In this case, the respondent did not contend that the suit was barred by Order 2 Rule 2 of the Code. No issue was framed as to whether the suit was barred by Order 2 Rule 2 of the Code. But the High Court (both the trial bench and appellate bench) have erroneously assumed that a plea of res judicata would include a plea of bar under Order 2 Rule 2 of the Code. Res judicata relates to the plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas Order 2 Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. The dismissal of the suit by the High Court under Order 2 Rule 2 of the Code, in the absence of any plea by the defendant and in the absence of an issue in that behalf, is unsustainable."

7. Further, Hon'ble Supreme vide judgment dated 15.01.2025 passed in **Civil Appeal Nos.372-373 of 2025** titled **Cuddalore Powergen Corporation Ltd. Vs. M/s Chemplast Cuddalore Vinyls Limited & Anr.** [2025 INSC 73] has enumerated the general principles underlying Order II Rule 2 CPC as under :

“47. On a conspectus of the aforesaid discussion, what follows is that:

- i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.*
- ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.*
- iii. Several definitions have been given to the phrase “cause of action” and it can safely be said to mean – “every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court”. Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the*

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

- iv. *Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.*
- v. *The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the*

Court, omitted to sue for the relief for which the second suit had been filed.

- vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.*
- vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.”*

8. In the present case, the petitioner could not establish that the suit in question is in respect of the same cause of action as that on which the previous suits were based. Even from the plaints of the earlier suits, learned counsel could not point out any identity in the causes of action between the earlier suits and the instant suit. Since the bar under Order II Rule 2 CPC is a technical one, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning as has been held by the Hon’ble Supreme Court in case of **Cuddalore Powergen Corporation Ltd.** (supra).

9. Unless the petitioner pleads the bar under Order II Rule 2 CPC in the written statement and an issue in this regard is framed and adjudicated upon, at this stage, it is not possible without any evidence to conclude that the suit is barred under Order II rule 2 CPC.

10. There is no provision for rejection of the plaint under Order II Rule 2 CPC. Rather, Order VII Rule 11 CPC deals with the rejection of the plaint on the grounds enumerated therein. Present application has not been

filed under Order VII Rule 11 CPC for rejection of the plaint or any of the grounds mentioned therein.

11. Even if the present application is to be treated as an application under Order VII Rule 11 CPC ignoring the nomenclature, at the time of rejection of the plaint under Order VII Rule 11 CPC only the contents of the plaint are to be seen. Learned counsel for the petitioner was repeatedly asked to show from that from a meaningful reading of the plaint that the suit is barred in any manner on the grounds as enumerated in Order VII Rule 11 CPC. Learned counsel for the petitioner was unable to point out from the plaint as to how the suit is barred.

12. In view of the above, the present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

13. It is made clear any observation made herein shall not be treated as an expression of opinion of the Court on the merits of the case.

08.04.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO