

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****211****RSA-106-2015(O&M)****Date of decision: 10.07.2025****Pawan Kumar & Another****...Appellant(s)****Vs.****Amar Singh & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ajay Ghangas, Advocate  
for the appellants.

Mr. Sunil Chadha, Senior Advocate with  
Ms. Taanvi Dhull, Advocate  
for respondent the respondents.

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**NIDHI GUPTA, J.**

Present Second Appeal has been filed by the defendants No.1 and 2 against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff/respondent No.1 herein, for possession by way of specific performance of Agreement to Sell dated 11.02.2004; **and** consequential relief of permanent injunction, has been decreed by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that the defendants No.1 and 2 were the owners in possession of the suit land measuring 5 kanal 4 marla being half share of total land measuring 10 kanal 8 marla as described in the plaint. It was the case of the plaintiff that vide



Agreement to Sell dated 11.02.2004, the defendants No.1 and 2 had agreed to sell the suit land to the plaintiff at the rate of Rs.29,35,000/- per acre. Agreement was scribed at the instance of defendants No.1 and 2. After admitting the same to be correct, the defendants had affixed their signatures and thumb impression in the presence of witnesses. The said defendants no. 1 and 2 had received a sum of Rs.9,07,742/- as earnest money from the plaintiff, and possession was delivered to the plaintiff at the time of execution of Agreement to Sell. Date of execution of Sale Deed was fixed to be 15.06.2005. Defendant No.3 had also signed the Agreement as witness. It was stipulated in the Agreement that in case defendants No.1 and 2 failed to execute the Sale Deed on the stipulated date, the plaintiff would have the right to get the Sale Deed executed through Court and in the alternative would also be entitled to get double the amount of earnest money. It was further stipulated that in case plaintiff fails to perform his part of the contract, earnest money would stand forfeited.

2.1. It was further stated in the plaint that the defendants No.1 and 2 had expressed their inability to execute the Sale Deed on the target date of 15.06.2005. Accordingly, on 14.06.2005, Majeed/additional Agreement dated 14.06.2005 was executed and date of registration of Sale Deed was extended from 15.06.2005 to 31.12.2005. On the said date, the defendants No.1 and 2 received a further sum of Rs.3,20,000/-. Thus, the total earnest amount of Rs.12,27,742/- stood paid to the defendants No.1



and 2. Thereafter, the plaintiff had approached the defendants No.1 and 2 for execution and registration of Sale Deed on 26.12.2005 but the defendants had showed their inability to execute the Sale Deed. Hence, date for registration of Sale Deed was again extended to 31.03.2006. In this regard, a writing dated 26.12.2005 was executed by defendants No.1 and 2 on the back of Additional Agreement. It was further averred that plaintiff was always ready and willing to perform his part of the contract. He had ready amount available for payment of balance sale consideration as well as expenses of stamp and registration of Sale Deed. However, the defendants No.1 and 2 had become dishonest and had been negotiating the suit land in favour of some other person. As such, the plaintiff was constrained to file a suit for permanent injunction against the defendants No.1 and 2. During the pendency of the said suit the plaintiff had also appeared in the office of Sub-Registrar on the mutually agreed upon target date of 31.03.2006 for registration of Sale Deed. The plaintiff had appeared before the Sub-Registrar on 31.03.2006 along with balance sale consideration and other expenses. However, defendants No.1 and 2 failed to appear. The plaintiff had got his presence marked and had approached the defendants to get the Sale Deed executed. However, they refused to admit the claim of the plaintiff. Even the possession of the suit land which was delivered to the plaintiff at the time of execution of Agreement dated 11.02.2004 was forcibly taken away by the defendants on 22.04.2006. Hence, plaintiff filed the present suit for



possession by way of specific performance of Agreement with consequential relief of permanent injunction on dated 18.09.2006.

2.2. Upon notice, defendants No.1 and 2 appeared and filed written statement contesting the suit on various grounds including raising the preliminary objection of maintainability. It was stated that suit was barred under Order 2 Rule 2 CPC as the plaintiff had already instituted suit for permanent injunction on the basis of Agreement to Sell. It was further stated that Agreement in question was void and illegal as there was a recital therein that possession had been delivered to the plaintiff. Therefore, the Agreement required compulsory registration. It was further pleaded that the defendants had received no earnest money, nor did they know the scribe of the agreement. It was also stated that the defendants had already sold their land to one Parmod Kumar, who had obtained signatures and thumb impressions of the defendants No.1 and 2 on various blank papers for correction of khasra girdawari for getting the mutation sanctioned in his favour. It was stated that the plaintiff's daughter was married to the son of Ashok Kumar, who was the real brother of Parmod Kumar and being close relatives, Parmod Kumar in connivance with the plaintiff, had forged and fabricated the present Agreement to Sell. Therefore, this Agreement was a result of fraud. Accordingly, dismissal of the suit was prayed for.

2.3 On the basis of the pleadings of the parties, following issues were framed: -



*“1. Whether plaintiff is entitled to a decree for possession by way of specific performance of agreement to sell dated 11.2.2004?*

*OPP*

*2. Whether the plaintiff was ready and willing and is still ready and willing to perform his part of contract? OPP*

*3. Whether the suit is not maintainable? OPD*

*4. Relief.”*

2.4 On the basis of oral and documentary evidence adduced by the parties, issues No.1 and 2 were decided by the Id. trial Court in favour of the plaintiff; issue No.3 was decided against the defendants; and vide judgment and decree dated 15.03.2012, the learned Additional Civil Judge (Senior Division), Kurukshetra had decreed the suit of the plaintiff with costs.

2.5. The appeal filed by the defendants No.1 and 2 was dismissed by the learned Additional District Judge, Kurukshetra vide judgment and decree dated 30.07.2014. Hence, present second appeal by the defendants No.1 and 2.

3.1.1. It is inter alia submitted by learned counsel for the appellants/defendants No.1 and 2, that it is admitted fact on record that prior to filing of the present suit for possession, the plaintiff had previously filed a Civil Suit for permanent injunction Ex.D1 (appended as Annexure A-4 with the present appeal), on the same cause of action. Learned counsel submits that a perusal of the previous plaint (Annexure A4) shows that the said suit pertains to the same suit land and the same Agreement to Sell. It is contended that therefore, the cause of action in both the suits was identical.



Thus, the instant suit was barred under Order 2 Rule 2 CPC. However, both the Courts below have overlooked this fact. It is argued that once the plaintiff has asserted in the previous suit for injunction that the defendants have refused to execute the Sale Deed as per the Agreement to Sell, the cause of action for filing the suit for specific performance of the Agreement to Sell has arisen on that date. Since the plaintiff-respondent only chose to file a suit for injunction, the subsequent/present suit for specific performance of the same Agreement to Sell is barred under Order 2 Rule 2 CPC.

3.1.2. Still further, the plaintiff had withdrawn the previous suit on 16.09.2006 (Annexure A6 and Ex.D2) without liberty to file afresh on same cause of action. Therefore, present suit of the plaintiff was barred by res judicata. However, even this aspect has not been properly appreciated by the learned Courts below.

3.1.3. Moreover, the Court below is in error in not discussing landmark judgment of the Hon'ble Supreme Court on Order 2 Rule 2 CPC, titled as **"M/s. Virgo Industries (Eng.) P. Ltd. Vs. M/s Venturetech Solutions P. Ltd. (SC) : Law Finder Doc Id # 391485**, even after noticing the same as having been cited by the counsel for the appellants. It is submitted that accordingly, the suit of the plaintiff was barred under res judicata. Learned counsel refers to the relevant extract of the above said judgment wherein the Hon'ble Supreme Court in similar facts and circumstances, held as follows:-



*“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.*

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

3.1.4. Learned counsel for appellant reiterates that the present suit was barred under Order 2 Rule 2 of Code of Civil Procedure because earlier in this case suit for permanent injunction was filed on 19.01.2006 and cause of action at least had arisen on the said date. Thereafter in terms of the above said judgment in **M/s Virgo Industries (Eng.) P. Ltd. Supra** the present suit was barred under Order 2 Rule 2 of Code of Civil Procedure.

3.2. Ld. Counsel further submits that the judgment passed by the Ld. First Appellate Court is a result of misreading of written statement filed by the appellants in the earlier suit for injunction (Annexure A-5). The appellants had clearly denied execution of the Agreement to Sell, but the Ld.



First Appellate Court mis-read the same while recording the finding in Para 13 of the judgment dated 30.7.2014. It is reiterated that once defendant has refused the Agreement to Sell, therefore, respondent should have sought relief of specific performance in the first instance.

3.3. It is thirdly contended by Learned counsel that since it is alleged that possession was delivered at the time of entering into Agreement to Sell and half amount is alleged to have been paid by the plaintiff to the defendants, it was therefore mandatorily required as per law that the Agreement to Sell be registered. However, the same is not registered therefore, the Sale Deed was not executable.

3.4. It is submitted that there is an alternative prayer for payment of double the amount of earnest money upon failure of registration of Sale Deed. Learned counsel in this regard refers to another judgment of the Hon'ble Supreme Court in **"Vurimi Pullarao Vs. Vemari Vyankata Radharani (SC) : Law Finder Doc ID # 1676723**, wherein in similar circumstances, where the suit was held to be barred by res judicata, the Hon'ble Supreme Court had held that the ends of justice would be served if earnest money be refunded to the plaintiff therein.

3.5. Learned counsel lastly submits that it has been alleged by the plaintiff that defendants had taken forcible possession of the suit property from the plaintiffs. However, the plaintiff in his examination-in-chief (at page 289 of the LCR) has nowhere stated even a word in his evidence



regarding forcible taking of possession of the suit premises from the plaintiff. All he has stated is that on the date of execution of Agreement to Sell, possession of the suit land was handed over to the plaintiff. It is submitted that on the present date, the defendants No.1 and 2 are in possession of the suit land. It is accordingly prayed that the present appeal be allowed, and the impugned judgments and decrees of the learned Courts below be set aside.

4.1. Learned Senior Counsel appearing on behalf of the plaintiff/respondent No.1 vehemently controverts the submissions made on behalf of the appellants and submits that the present suit is not barred under Order 2 Rule 2 CPC. It is submitted that cause of action at the time of filing of the first suit for permanent injunction was totally at variance with the cause of action at the time of filing the present suit for possession. Learned Senior counsel points out that the previous suit was filed on dated 19.01.2006 which is prior to the target date of 31.03.2006. It is submitted that the said suit was filed on the veritable apprehension that the defendants were negotiating to alienate the suit land in favour of some other persons to defeat the legal right of the plaintiff who had already paid hefty amount of Rs.12,27,742/- as earnest money. In fact, the defendants had threatened to alienate the suit land and to take forcible possession from the plaintiff despite the fact that wheat crop sown by the plaintiff was standing at the spot. It is submitted that it was in this background that plaintiff was constrained to file the previous



suit (Ex.D1) seeking a decree for permanent injunction restraining the defendants from alienating the suit land.

4.1.2. Learned Senior Counsel elaborates to submit that on the other hand in the present suit, the prayer was for possession by way of specific performance of agreement in view of the fact that even after passing of target date of 31.03.2006, defendants had failed to execute Sale Deed in favour of the plaintiff. Moreover, in the interregnum, possession of the suit land had been forcibly taken by the defendants on 22.04.2006. It is submitted that in these circumstances, it can by no stretch of imagination be said that the cause of action available to the plaintiff in both situations was identical. In support, learned Senior Counsel relies upon judgment of the Hon'ble Supreme Court in **Rathnavathi Vs. Kavita Ganashamdas (SC) Law Finder Doc ID # 629705**. It is contended that therefore, the provision of Order 2 Rule 2 CPC would not be applicable in the present case as the two causes of action were distinctly different from each other.

4.2. Learned Senior Counsel further submits that moreover, the plaintiff has proved the Agreement to Sell on record. Signatures of the appellants on the Agreement to Sell have been proven by Handwriting Expert and therefore, the Agreement to Sell in question stands proved on record beyond doubt. Even further, the plaintiff had proved his readiness and willingness to perform the Agreement. It is proved that plaintiff was present in the office of Sub-Registrar on target date of 31.03.2006.



4.3. As regards the argument of learned counsel for the appellants that the Agreement to Sell required registration, learned Senior counsel relies upon judgment of this Court in **Mood Chand Mundhra v. Indu Bala (P&H) Law Finder Doc ID # 266719**.

4.4. As regards possession of the suit property, it is submitted that the facts pleaded in the present plaint are very clear. It has been the consistent stand of the plaintiff that at the time of execution of Agreement to Sell on 11.02.2004, possession was delivered to the plaintiff; which was subsequently forcibly taken on 22.04.2006, which led to the filing of the previous suit. In support of the argument that the plaintiff in his testimony has not mentioned anywhere that forcible possession was taken by the defendants, learned Senior Counsel submits that nothing turns on this. It is accordingly, prayed that the present appeal be dismissed.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail. Upon giving my thoughtful consideration to the rival submissions made on behalf of the parties, I find myself in agreement with the submissions made by learned Senior Counsel representing the respondent/plaintiff.

7. Although at first, the submissions made by learned counsel for the appellants/defendants No.1 and 2 appeared to be very appealing, however, upon a deeper consideration of the facts and the legal



position shows the arguments to be tenuous. To properly appreciate as to whether the present suit of the plaintiff was barred under Order 2 Rule 2 CPC, a brief recapitulation of the facts would be helpful:

**11.02.2004:** On 11.02.2004, the present Agreement to Sell (**Ex.P1**) was executed between the parties for sale of 5 kanal 4 marlas of land @ Rs. 29,35,000- per acre, for total sale consideration of Rs.19,07,750/- upon payment of earnest money of Rs.9,07,742/-. As per the said Agreement (**Ex.P1** - appended herein as Annexure A1), possession of the suit land was delivered to the plaintiff and target date for execution of Sale Deed was fixed for **15.06.2005**.

**14.06.2005 (Ex.P2):** At the instance of the appellant, Additional Agreement/Majeed was executed between the parties as defendant sought extension of time for registration of Sale Deed. Thus, vide **Ex.P2**, target date was extended to **31.12.2005**; and a further sum of Rs.3,20,000/- was received by the appellants; thus, leaving balance of Rs. 6,80,008/- to be paid towards total sale consideration.

**26.12.2005 (Ex.P3):** Another writing dated 26.12.2005 (**Ex.P3**) was executed and the target date was extended to **31.03.2006**.

**19.1.2006 (Ex.D1):** However, in the interregnum, it was the apprehension of the plaintiff that the defendants had become dishonest and were negotiating to alienate the suit land in favour of some other persons and were going to take possible possession of the suit land to defeat the legal right of the



plaintiff. As such, the plaintiff had filed suit for permanent injunction dated 19.01.2006 (**Ex.D1**) seeking a decree of permanent injunction restraining the defendants from alienating the suit land to any person except the plaintiff and also from interfering in any manner in the peaceful cultivating possession of the plaintiff over the suit land.

**31.3.2006 (Ex.P4):** In compliance/conformity with the writing dated 26.12.2005 (Ex.P3), the plaintiff had duly put in appearance before the Sub-Registrar for registration of Sale Deed on dated 31.03.2006. This fact is proved from the affidavit dated 31.03.2006 (**Ex.P4**).

**22.04.2006:** During pendency of the aforesaid suit dated 19.01.2006, appellants took over forcible possession of the suit land from the plaintiff.

**16.09.2006 (Ex.D2):** Thereafter, vide order dated 16.09.2006 (**Ex.D2**) passed by the learned Additional Civil Judge, Senior Division, Kurukshetra the plaintiff had withdrawn the previous suit for permanent injunction.

**18.09.2006:** Immediately thereafter, the plaintiff filed the present suit for position by seeking specific performance of the aforesaid agreement to sell dated 11.02.2004, Majeed Agreement dated 14.06.2005, and writing dated 26.12.2005.

**15.03.2012:** Learned trial court i.e. the court of learned Additional Civil Judge (Senior Division), Kurukshetra decreed the suit of the plaintiff and directed the appellants/defendants to execute the registered sale deed qua the suit land in favour of the plaintiff within two months on payment of balance sale



consideration and further directing the defendants to hand over the symbolic possession of the suit property to the plaintiff.

**09.05.2012:** The plaintiff, accordingly, deposited the balance sale consideration of Rs. 6,80,010/- with the learned Executing Court.

**30.07.2014:** The appeal filed by the defendants against the above-mentioned Judgment and Decree dated 15.03.2012, was dismissed by the court of learned Additional District Judge, Kurukshetra. Hence, present 2nd Appeal by the defendants.

8. Before this Court, the appellants/defendants no.1 and 2 have primarily raised the following three contentions, the first being:

8.1. That the present suit filed by the plaintiff was barred by Order II Rule 2 of the CPC. In this regard, argument raised by the defendants is that at the time of filing the earlier suit dated 19.01.2006 (Annexure A-4), plaintiff ought to have sought the relief of specific performance of the agreement to sell dated 11.02.2004 as well; and since he failed to do so, his present suit is barred by the principle of res-judicata. In this regard, defendants have placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **M/s Virgo Industries supra** and while withdrawing the earlier suit (Annexure A-4), no permission was sought to file the fresh suit.

8.2. However, I find this above contention of the defendants to be misconceived. A brief reading of the previous suit for permanent



injunction (Ex.D1) shows that in Para 9 of the said suit, the cause of action is averred as follows: -

*“9. That the cause of action has arisen in favour of the plaintiff and against the defendants firstly on 11.02.2004 when the defendants agreed to sell the suit land in favour of plaintiff and executed the agreement and then from time to time when the defendants extended the dates for the registration and execution of the sale deed and finally yesterday, when the defendants flatly refused to admit the claim of the plaintiff and have rather threatened to alienate the suit land to some strangers and to take forcible possession of the suit land from the plaintiff, hence the cause of action is continuous one.”*

8.3. Whereas in the present suit for possession by way of specific performance of Agreement, cause of action is stated to be as follows in Para 11 of the present suit: -

*“11. That the cause of action has arisen in favour of the plaintiff and against the defendants firstly on 11.2.2004 when the defendants agreed to sell the suit land in favour of plaintiff and executed the agreement and then from time to time when the defendants extended the dates for the registration and execution of the sale deed and the cause of action also accrued on 31.3.2006, when the plaintiff remained present in the office of Sub Registrar Ladwa, alongwith balance sale consideration and expenses required for stamps and registration and throughout waited for the defendants, but they did not come present to execute the sale deed in favour of the plaintiff and the plaintiff got his presence marked by getting an affidavit attested on 31.3.2006 from Executive Magistrate Ladwa and further on*



*22.4.2006, when the defendants in collusion with each other took forcible possession of the suit land from the plaintiff inspite of stay order and finally when the defendants flatly refused to admit the claim of the plaintiff and have rather threatened to alienate the suit land to some strangers, hence the cause of action is continuous one.”*

8.4. A bare reading of the above makes it crystal clear that cause of action to the plaintiff in both the suits was distinctly different. It has been clearly explained by learned Senior Counsel for the plaintiff that the first suit was filed by the plaintiff on the apprehension of illegal alienation of the suit property by the defendants No.1 and 2 to strangers despite having executed the Agreement to Sell and after receiving earnest money amount of Rs.12,27,742/-. Furthermore, the previous suit was filed on 19.01.2006, which was prior to the target date of 31.03.2006 for registration of Sale Deed. As such, cause of action for seeking specific performance of the Agreement in question had not arisen to the plaintiff on 19.1.2006/the date of filing the previous suit. Even the prayer in both the suits evidences different causes of action and is as per the relief sought at that time. As such, it cannot be said that the suit of the plaintiff was barred by res judicata. At the risk of repetition, it is reiterated that when the plaintiff filed his first suit dated 19.01.2006, the cause of action to file the present suit had not even occurred as, the target date was 31.03.2006. Still further, the relief sought in both the suits were absolutely different. The earlier suit was a suit simplicitor for grant



of permanent injunction whereas the present suit is for specific performance of the agreement to sell.

8.5. Furthermore, Judgment rendered by the Hon'ble Supreme Court in the case of **Virgo Industries** (supra) has been watered down in the subsequent Judgment rendered by the Hon'ble Supreme Court in the case of **Rathnavathi supra**, relevant part of which is as under:-

*"28. This Court has consistently followed the aforesaid enunciation of law in later years and reference to only one of such recent decisions in **Virgo Industries (Eng.) P. Ltd. v. Venturetech Solutions P. Ltd., 2012(4) RCR (Civil) 372: 2012(4) Recent Apex Judgments (R.A.J.) 473 : (2013) 1 SCC 625**, would suffice, wherein this Court reiterated the principle of law in following words:*

*"The cardinal requirement for application of the provisions contained in Order 2 Rules 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, ie, 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) RCR (Civil) 811 : 2012(3) Recent Apex Judgments (R.A.J.) 600 : 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 Laws 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 the 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 on 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."*

*29. In the instant case when we apply the aforementioned principle, we find that bar contained in Order 2, Rule 2 is not attracted because of the distinction in the cause of action for filing the two suits. So far as the suit for permanent injunction is concerned, it was based on a threat given to the plaintiff by the defendants to dispossess her from the suit house on 2.1.2000 and 9.1.2000. This would be clear from reading Para 17 of the plaint. So far as cause of action to file suit for specific performance of agreement is concerned, the same was based on non performance of agreement dated 15.2.1989 by defendant No. 2 in plaintiff's favour despite giving legal notice dated 6.3.2000 to defendant No. 2 to perform her part.*

*30. In our considered opinion, both the suits were, therefore, founded on different causes of action and hence could be filed simultaneously. Indeed even the ingredients to file the suit for permanent injunction are different than that of the suit for specific performance of agreement*



31. *In case of former, plaintiff is required to make out the existence of prima facie case, balance of convenience and irreparable loss likely to be suffered by the plaintiff on facts with reference to the suit property as provided in Section 38 of the Specific Relief Act, 1963 (in short "the Act") read with Order 39 Rule 1 and 2 of CPC. Whereas, in case of the later, plaintiff is required to plead and prove her continuous readiness and willingness to perform her part of agreement and to further prove that defendant failed to perform her part of the agreement as contained in Section 16 of The Act.*

32. *One of the basic requirements for successfully invoking the plea of Order 2, Rule 2 of CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based.*

33. *As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order 2, Rule 2 of CPC to successfully non suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.*

34. *Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order 2, Rule 2 could be allowed to be raised by the defendants and how it was sustainable on such facts."*

8.6. Reference is also made to judgment of this Court in **Anil Kumar V. Gulab Singh (P&H) Law Finder Doc ID # 1691337**, wherein it is held that:-



*“Civil Procedure Code, 1908, Order 2, Rule 2 - Bar to suit - Suit filed by plaintiff for specific performance of agreement - Earlier suit filed by plaintiff for permanent injunction restraining defendant vendor from executing registered sale deed in favour of subsequent buyer - On date of filing suit for permanent injunction target date for sale deed had not arrived - Plaintiff cannot be non-suited on ground that plaintiff has considered it proper to file suit for specific performance of contract after expiry of target date - Bar can be invoked only on establishing that first suit was with respect to same cause of action and plaintiff has relinquished any portion of his claim - Plaintiff in fact had no cause of action to seek specific performance when he filed first suit - Judgement of First Appellate Court set aside.*

*9. Learned counsel for the appellants has submitted that previous suit was filed only for grant of decree for permanent injunction as defendants no.1 and 2 were threatening to alienate the suit property. He submitted that on the date the suit for permanent injunction was filed, cause of action for filing the suit for specific performance of the agreement to sell had not even arose because the target date agreed to, between the parties for execution and registration of the sale deed, was 10.7.2005. He further submitted that pleadings of the previous suit for grant of decree for permanent injunction filed by the plaintiffs has not been produced and in absence thereof, bar to the maintainability of subsequent suit under Order 2, Rule 2 CPC could not be examined. He further relied upon a judgment passed by Constitution Bench of the Hon'ble Supreme Court in the case of **Gurbux Singh v. Bhooralal AIR 1961 Supreme Court 1810(1)**.*



*16. Still further this aspect can be examined from another angle. Undisputedly, on the day, first suit for grant of decree for permanent injunction was filed, the target date agreed to between the parties as per the agreement, for execution and registration of the sale deed had not arrived. If the plaintiff has considered it appropriate to file a suit for possession by way of specific performance of the agreement to sell after expiry of the target date i.e 10.7.2005 should the plaintiffs be non-suited only on this ground?*

*17. In the considered view of this Court answer to the aforesaid question has to be in negative. Bar to the maintainability of the subsequent suit on technical objection can only be invoked by the Court once the Court arrives at a conclusion that the plaintiffs in the previous suit had relinquished any part of their claim or had intentionally omitted to sue for the part of the claim. In absence of such finding, it would not be appropriate for the Court to dismiss a meritorious suit.*

*18. It is apparent from the phraseology used in Order 2, Rule 2 CPC that bar can be invoked by a defendant only on establishing that first suit was with respect to same cause of action and the plaintiff either relinquished any portion of his claim or omitted to sue for that part of the claim. As noticed in this case, the plaintiffs, in fact, did not had cause of action to file a suit for specific performance of the agreement to sell on the date, first suit for grant of decree of injunction was filed.”*

9. The second contention on behalf of the defendants is that the defendants never executed the agreement to sell dated 11.02.2004 with the plaintiff. Although, the third contention of the defendants runs in



complete contrast to their second contention but the due execution of the agreement to sell dated 11.02.2004 (Exhibit P-1) as well as of the Majeed Agreement dated 14.06.2005 (Exhibit P-2) and also of the writing dated 26.12.2005 (Exhibit P-1) has been duly proved on record from the examination of both the witnesses namely Krishan Lal (PW-5) and Parmod Kumar (PW-6) to all the said three documents. Still further, signatures of the defendants over the said three documents have been duly proved on record by the Handwriting Expert namely Yashpal Chand Jain (PW-7). The defendants miserably failed to contradict/rebut the said report of the Handwriting Expert examined by the plaintiff. In fact, not only was no evidence to the contrary led by the appellants but even they did not conduct any cross-examination of the said Expert. It was further the contention of the defendants that their signatures had been taken by Pramod Kumar under false pretext. However, even the said contention was proved to be utterly false. Relevant findings in this regard shall be referred to shortly hereinafter. Still further, the plaintiff also examined the stamp vendors namely Mai Chand (PW-1) and Rakesh Kumar (PW-2), who sold the stamp papers to the appellants/defendants over which the aforesaid agreement to sell dated 11.02.2004 (Exhibit P-1) and Majeed Agreement dated 14.06.2005 (Exhibit P/2) came to be executed. Thus, the Agreement stood duly proven on record.



9.1. In this circumstance, reference is made to judgment of this Court in **Jeet Singh v. Bahadur Singh (P&H) Law Finder Doc ID # 201865**, wherein it is held that: -

*“6. The case of the defendant, on the other hand, was that his thumb impression had been obtained on blank paper and the agreement to sell in question was forged and fabricated document. Learned Additional District Judge in its judgment has observed that after perusal of the agreement to sell, in question, it was found that it had been executed on a stamp paper worth Rs. 300/, purchased by the defendant from Shiv Kumar Bansal for execution of agreement to sell in favour of the plaintiff. In these circumstances, learned Additional District Judge, has rightly observed that agreement to sell could not be said to be a forged and fabricated document as the stamp paper had been purchased by the defendant himself for execution of agreement to sell in favour of the plaintiff. Plaintiff has been successful in proving the execution of the agreement to sell by examining the attesting witness as well as the handwriting expert. Plaintiff had also proved on record his affidavit, Ex. P-2 whereby his presence has been marked by the Executive Magistrate on 19.6.2000. Although the sale deed was to be executed on or before 15.6.2000, from 15.6.2000 to 18.6.2000 there were holidays. The courts below had rightly inferred that the plaintiff was willing to perform his part of the agreement. Impugned judgments and decrees of the courts below do not call for any interference.”*

9.2. In the above judgment it has been held that due execution of the agreement to sell is proved from the fact that the same has



been executed on a stamp paper which had been purchased by none other than the vendor for execution of agreement to sell. Similar is the position in the present case. Therefore, the agreement in question was not a forged and fabricated document as alleged.

10. The record further irrevocably establishes that the plaintiff had also proved his readiness and willingness to perform the agreement. The plaintiff had examined Balbir Singh Reader from the office of Naib Tehsildar, Ladwa as PW-4, who proved on record the affidavit dated 31.03.2006 (Exhibit P-4) sworn by the plaintiff at the time of getting marked his presence on the target date i.e. 31.03.2006. In the said affidavit, plaintiff has categorically stated that he has come present in the office of Sub Registrar along with the balance sale consideration and the requisite amount for purchasing the stamp papers to execute the sale deed. In this manner, the plaintiff has duly proved on record not only due execution of the agreement to sell dated 11.02.2004, Majeed Agreement dated 14.06.2005 and also the writing dated 26.12.2005 but has also duly proved that he had always been ready and willing to perform the said three documents.

11. The third contention on behalf of the defendant is that since the agreement to sell dated 11.02.2004 (Exhibit P-1) records that the possession of the suit land had been delivered to the respondent/plaintiff, in the absence of the said agreement to sell having been registered, present suit seeking specific performance of the said agreement to sell was legally



not maintainable. In respect to the aforesaid third contention raised on behalf of appellants/defendants, reference may be made to the judgment rendered by this Court in the case of **Mood Chand Mundhra supra**, in which it has been held that the suit on the basis of an unregistered agreement for specific performance thereof is certainly maintainable, although such an agreement cannot be used as defence in terms of Section 53-A of the Transfer of Property Act. Relevant extract of the above said judgment reads as follows:

*“11. A bare perusal of the aforesaid provision makes it manifestly clear that such an unregistered agreement, vide which possession has been delivered, shall have no effect for the purpose of Section 53A of the Transfer of Property Act (in short the Transfer of Property Act). In other words, such an unregistered agreement cannot be used to take benefit of Section 53A of the Transfer of Property Act. However, Section 17 (1-A) of the Act does not make such an unregistered agreement completely null and void. This provision does not prohibit user of such an agreement for any purpose except for the purpose of Section 53A of the Transfer of Property Act. Consequently, suit on the basis of such an unregistered agreement for specific purpose thereof is certainly maintainable, although such an agreement cannot be used as defence in terms of Section 53A of the Transfer of Property Act. Judgment in the case of Gurbachan Singh (supra) is completely distinguishable on facts.”*



12. Furthermore, the following findings of the trial Court establish that the plaintiff had proved the Agreement in question in accordance with law. Relevant paras 12 and 13 are reproduced hereinbelow:-

*“12. The agreement to sell (Ex.P1) was executed on 11.2.2004. the target date for execution of the sale deed was fixed as 15.6.2005. The defendants approached the plaintiffs for extension of the date. Another agreement (Ex.P2) was written extending the date to 31.12.2005. The date was extended third time by way of a writing (Ex.P3). On all the above said documents, the signatures of the defendants are there. In written statement, the defendants took a plea that one Parmod Kumar had obtained their signatures on blank papers but at the time of leading evidence, the defendants changed their defence. A suggestion was put to witnesses Krishan Lal (PW5) and Parmod Kumar (PW6) that Pawan and Balwinder used to take jewellery from Ashok Kumar and that the agreement was got written by Ashok Kumar in lieu of jewellery purchased from him. The defendant Pawan Kumar (DW1) deposed that he used to purchase gold and silver ornaments on credit from one Ashok Kumar. In lieu of that amount, Ashok Kumar got the agreement to sell executed in favour of the plaintiff, who was his relatives and at the time of agreement he was compelled to deliver the possession to the plaintiff and that the plaintiff refused to get the agreement to sell registered. In the written statement, it was pleaded that possession of the suit property was with Sham Lal but while appearing as a witness, Pawan Kumar stated that Sham Lal had no concern with the suit property.*



13. *After the execution of agreement to sell (Ex.P1), another agreement (Ex.P2) was executed thereby extending the date for execution of the sale deed. On both the occasions, the stamp was purchased by Pawan Kumar. Mai Chand (PW1), deposed that he was a stamp vendor since 1985. The stamp dated 11.2.2004 was issued by him. He had given the stamp to Pawan. He had made an entry regarding the same in his register at Sr.No.4001 dated 11.2.2004 and had obtained the signature of Pawan Kumar against the entry. Rakesh Kumar (PW2), the Stamp Vendor deposed that he had issued the stamp dated 14.6.2005 to Pawan Kumar. He had made an entry regarding this in his register at Sr.No.4342 and had obtained signature of Pawan against the entry. In Jeet Singh Versus Bahadur Singh 2010(1) PLR 103, the stamp paper had been purchased by the defendant himself for execution of agreement to sell in favour of the plaintiff. The court had observed that the agreement to sell could not be said to be forged and fabricated document.”*

13. As already noted above, the plaintiff had proved his readiness and willingness to execute the contract. Relevant findings of the trial Court in Para 15 of the judgment dated 15.03.2012, read as follows:-

*“15....On 31.3.2006 the plaintiff was present in the office of Sub Registrar along with the balance sale consideration and other expenses but the defendants did not turn up as per the terms of the contract. The plaintiff was always ready and willing to perform his part of the contract. In January 2006 when he came to know that defendants were trying to alienate the suit property, the plaintiff filed a suit for injunction. After that when defendants did not get the sale deed registered on the date fixed,*



*the plaintiff filed the present suit. Balbir Singh (PW4), Reader of Naib Tehsildar deposed that the affidavit Ex.P4 was the affidavit of the plaintiff which was attested by Rajvir Singh Surjewala, the Naib Tehsildar, Ladwa and the plaintiff had affixed his signature in his register as well...”*

14. Other relevant findings of the learned trial Court are in Para 16 and 17 of the impugned judgment dated 15.03.2012:-

*“16. The defendant furnished affidavit Ex.DW1/A. The defendant changed his stand regarding possession of the suit property. In the written statement, it was stated that the defendants never delivered possession of the suit property and that possession of the suit property was with Ramesh and Sham Lal but in the affidavit Ex.DW1/A it was stated that the defendants were forced to deliver the possession. The defendants crossed all limits in trying to perpetuate fraud. Sham Lal filed a suit (Ex.P7) on 1.2.2006 in respect of the suit property seeking injunction, in collusion with other defendants in order to render the agreement to sell infructuous. The written statement (Ex.P6) was filed by the defendants No.1 and 2 admitting the claim. When the plaintiff came to know about the suit, he filed an application under Order 1 Rule 10 CPC. After the plaintiff put in appearance, the defendants got the suit dismissed in default vide order dated 4.12.2009 (Ex.P8).*

*17. Before the defendants, the property was owned by Shiv Kumar as shown in jamabandi for the year 2000-01 (Ex.P9). The khasra girdawari (Ex.P11) shows the possession of Shiv Kumar. After that the property was entered in the names of all the four brothers including the defendants. The jamabandi for the year 2005-06 (Ex.P10) shows that the defendants were owners in*



*possession of the property. The khasra girdawari (Ex.P12) is also in favour of the defendants. The defendants took a stand that the property was in possession of Ramesh and Sham Lal in pursuance of the family partition in 1999 but mutation (Ex.P5) shows that they got the property by way of will. This document defies their stand. If the family settlement had taken place in the year 1999, the mutation would have been sanctioned on the basis of family settlement and not the will. Another document which exposes the falsehood of the defendants is sale deed (Ex.P13) which was executed in the year 2001 by Sham Sunder. This document has signature of Sham Sunder in English but in the court on 17.3.2008 Sham Lal had made a statement that he could not sign in English and he used to sign only in Hindi. The defendants also took a plea that Parmod Kumar obtained their signatures on blank papers. They had sold their land to Parmod Kumar. Their signatures were obtained by Parmod Kumar for correction of khasra girdawari of the land and for getting mutation sanctioned in their favour. (Ex.P14) is the mutation in favour of Pamod Kumar which shows that property to him was sold by way of sale deed dated 19.10.2001 and the mutation on the basis of sale deed was sanctioned oil 31.10.2001 whereas in the present case the agreement to sell was executed in the year 2005. When the mutation had already been sanctioned at the time of execution of agreement to sell, there is no question of obtaining signatures of defendants on blank papers by Pramod.”*

15. Ld. Counsel for the appellant is unable to dispute or controvert the above said factual and legal position. In view of the above, present appeal is **dismissed**.



16. Pending application(s) if any also stand(s) disposed of.

**10.07.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**