

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-2750-2024 (O&M)****Date of Decision : 10.09.2025**

Savitri Devi

... Petitioner

Versus

Daulat Ram and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gulshan Nandwani, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging the order dated 10.04.2024 (Annexure P-4) whereby the application filed by the defendant No.6-petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been dismissed.

2. Briefly stated the facts relevant to the present *lis* are that plaintiff-respondent Nos.1 to 7 herein filed a suit for declaration and permanent injunction. In the said suit an application was filed by the defendant No.6-petitioner herein under Order VII Rule 11 CPC for rejection of the plaint on the ground that the same was barred under Order II Rule 2 CPC. Reply was filed to the said application. Vide the impugned order the said application has been dismissed. Aggrieved by the same, present revision petition has been filed.

3. Learned counsel for the defendant No.6-petitioner would contend that the suit was clearly barred by Order II Rule 2 CPC as earlier a

case had been filed being Civil Suit No.54652-2013 titled 'Savitri Devi vs. Dault Ram etc.' which was dismissed. Further, the appeal was partly allowed and that the defendants had been declared owner of the land on the basis of the sale deed dated 02.07.2009 hence the application under Order VII Rule 11 CPC ought to have been allowed.

4. Heard.

5. In the present case the application under Order VII Rule 11 CPC has been filed on the ground that the suit is barred by Order II Rule 2 CPC.

6. It is trite that at the stage of deciding the application under Order VII Rule 11 CPC only the contents of the plaint are to be seen. From a meaningful reading of the plaint, the facts as stated in the application under Order VII Rule 11 CPC are not made out.

7. 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.”

8. Further, Hon’ble Supreme Court in case of **Cuddalore Powergen Corporation Ltd. Vs. M/s Chemplast Cuddalore Vinyls Limited & Anr.** [AIR 2025 SC 849 = 2025 SCC OnLine SC 82] 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.”*

9. The question whether a suit is barred by the provisions of Order II Rule 2 CPC is to be established by leading cogent evidence and cannot be presumed merely on the basis of inferential reasoning as has been held by the Hon’ble Supreme Court in the case of **Cuddalore Powergen Corporation Ltd.** (supra). Unless the petitioner pleads the bar under Order II Rule 2 CPC in his written statement and an issue in this regard is framed and adjudicated upon, it is not possible without any evidence to conclude that the suit is barred under Order II Rule 2 CPC. There is also no provision for rejection of the plaint under Order II Rule 2 CPC. Order VII Rule 11 CPC deals with rejection of the plaint on the grounds enumerated therein and Order II Rule 2 CPC is not one of the grounds.

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

10.09.2025
jk

(ALKA SARIN)
JUDGE

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