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Tarsem Singh Vs. Sibu Ram

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Court : Punjab and Haryana

Decided On : Jul-09-1997

Reported in : (1998)118PLR574

Judge : V.K. Jhanji, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 2, Rule 2

Appeal No. : Regular Second Appeal No. 2543 of 1996

Appellant : Tarsem Singh

Respondent : Sibu Ram

Advocate for Def. : S.S. Teji and; N.B.S. Gujral, Advs.

Advocate for Pet/Ap. : Harbhajan Singh, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Jhanji, J.

1. This is plaintiff's second appeal directed against the judgment and decree of the District Judge, Kapurthala, whereby suit of the plaintiff for possession by way of specific performance of agreement to sell dated 28th September, 1988 has been dismissed. Trial Court had decreed the suit.

2. It has been contended by the counsel for the appellant that the learned District Judge is not justified in dismissing the suit solely on the ground that the suit is barred under Order Rule 2, Code of Civil Procedure. In support of his argument, counsel has referred to judgment of this Court in Smt. Bhagwan Kaur v. Harinder Pal Singh, (1992-1)101 P.L.R 643. He has contended that the cause of action in the earlier suit differs from the present suit which is for specific performance of agreement to sell and therefore, the suit ought to have been decreed.

3. After hearing the counsel for the parties and on going through the judgment in Bhagwan Kaur's case (supra), cited by counsel for the appellant, I am of the view that the appeal has no merit and is to be dismissed. It is true that some of the observations in the judgment cited by the counsel go in favour of the appellant, but in view of the decision of the Apex Court in Sidramappa v. Rajashetty and Ors., A.I.R. 1970 S.C. 1059, reliance on which has been placed by the first appellate Court, I am of the view that judgment in Bhagwan Kaur's case is of no help to the appellant. Under the agreement to sell, Ex. P1, the sale-deed was to be got executed and registered on or before 28th May, 1989. Appellant after the expiry of the date fixed in the agreement for execution of the sale-deed, instead of filing a suit for specific performance instituted a suit for injunction on 31st January, 1990. In the said suit, he sought injunction for restraining the defendant from selling the property to any other person except him. The said suit was dismissed as withdrawn.. The present suit for specific performance is specifically barred as Order 2, Rule 2, Code of Civil Procedure, clearly provides that 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. It further provides that 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 reliefs so omitted. Admittedly, on the date when the suit for injunction was filed, a right had accrued to the appellant to sue for specific performance of the contract on the ground that the defendant has failed to execute the sale-deed on or before the date fixed in the agreement. Plaintiff not only omitted to sue for specific performance. of the contract, but also did not seek any leave of this Court to sue for such relief onwards. Foundation of the previous suit was the agreement

to sell and the foundation in the present is also the same agreement. In Sidramappa's case (supra), the Apex Court in context of Order 2 Rule 2, Code of Civil Procedure, has held, 'that the requirement of Order 2 Rule 2, is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect of a cause of action. 'Cause of action' means the 'cause of action for which the suit was brought'. Cause of action is a cause of action which gives occasion for and forms the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings'

4. In view of the aforesaid binding precedent, no case is made out for interference in the judgment of the first appellate Court. Consequently, this appeal shall stand dismissed. No costs.

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