

(1998) 09 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 674 of 1998

Ranjit Singh

APPELLANT

Vs

Gurnam Singh and Another

RESPONDENT

Date of Decision: Sept. 22, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 8, 115

Citation: (1998) 120 PLR 749

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: Sunil Chadha, for the Appellant; Sumeet Mahajan, for the Respondent

Final Decision: Allowed

Judgement

V.S. Aggarwal, J.

Ranjit Singh petitioner has filed the present revision petition directed against the order passed by the Civil Judge (Junior Division), Ludhiana, dated 15.11.1997. By virtue of the impugned order, learned trial Court had dismissed the application filed by the petitioner.

2. The relevant facts are that the respondent-plaintiff Gurnam Singh had filed a civil suit for declaration that he is the owner in possession of the house in the site plan and for permanent injunction restraining the petitioner and another from dispossessing or interfering in the possession of the respondent-plaintiff. The petitioner had filed an application that the previous suit filed by respondent-plaintiff Gurnam Singh had been dismissed under Order 9, Rule 8 of the CPC (for short "the Code") and, therefore, the second suit on the same cause of action is barred, learned trial Court dismissed the application holding that after instituting the suit, respondent-plaintiff had amended the plaint and added paragraph 7A by virtue of which he has challenged the sale deed in favour of petitioner and, therefore, cause of action was stated to be different. The trial Court held that under Order 9, Rule 8

of the Code the suit was not barred. Aggrieved by the same, present revision petition has been filed.

3. To appreciate the question in controversy, it becomes necessary to see the nature of the suit earlier filed and the present suit. In this regard, there was no dispute at the bar.

4. Admittedly, respondent-plaintiff had earlier filed a civil suit for declaration and injunction and therein following relief was prayed.

"It is, therefore, prayed that a decree for declaration to the effect that the plaintiff is owner in possession of the house bearing Municipal No. B-XXII-731/1 shown red in the plan attached and bounded as under :-

East : Street, West : Arjun Singh, North : Street, South : Harbhajan Singh, situated in Mohalla Chet Nagar, Millerganj, Ludhiana; and permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff and dispossessing him forcibly and illegally and further from alienating the same by way of sale, mortgage, gift, lease or in any other manner whatsoever the property fully detailed above be passed in favour of the plaintiff and against the defendant with costs. Any other relief, additional or alternative to which the plaintiff is found entitled to, in the circumstances of the case, may also be granted in favour of the plaintiff.

5. The said suit was contested and came up for hearing on 10.5.1990, whereupon when none was present on behalf of the present respondent, the same was dismissed under Order 9 Rule 8 of the Code. The learned Sub Judge passed the following order :-

"Present : None for the parties. Counsel for the defendant.

It is already 12.55 p.m. Hence, the suit is dismissed in default of appearance of the plaintiff under Order 9, Rule 8 C.P.C. File be consigned to the record room. Announced. Sd/- S.J.I.C. 10/5/90".

6. In the year 1994, respondent-plaintiff instituted a fresh suit for declaration and injunction against Surjit Singh respondent No. 2. The property was the same and he claimed similar relief which reads as under:-

"It is, therefore, prayed that the suit of the plaintiff for a declaration that the plaintiff is the owner in possession of House No. B. XXII-731/I (old) B. XXII-3461 (New) shown red in the site plan attached and bounded as follows:-

North:- House of Arjun Singh, South : Road, East : Street and West : Street situated in Chet Singh Nagar, Ludhiana;

And for a permanent injunction restraining the defendant, his servants, agents or assignee from dispossessing or interfering in the peaceful possession of the plaintiff

over the said house or alienating the same, may kindly be decreed with costs against the defendant.

Any other or alternative relief to which the plaintiff be found entitled to, be also awarded to the plaintiff".

7. Respondent No. 2 submitted before the Court that second suit was not maintainable and that he has already sold the property to the petitioner. Respondent-plaintiff submitted an application and amended the plaint. He added a new paragraph 7A in the plaint and following relief was claimed:-

"It is, therefore, prayed that the suit of the plaintiff for a declaration that the plaintiff is the owner in possession of House No. B XXII-731/1 (Old) B. XXII-3461, (New) shown red in the site plan attached and bounded as follows:-

North:- House of Arjun Singh, South : Road, East : Street and West : Street situated in Chet Singh Nagar, Ludhiana;

And for a permanent injunction restraining the defendant, his servants, agents or assignee from dispossessing or interfering in the peaceful possession of the plaintiff over the said house or alienating the same, may kindly be decreed with costs against the defendant.

Any other or alternative relief to which the plaintiff be found entitled to, be also awarded to the plaintiff".

8. It is on the strength of these facts that it has been urged and vehemently argued by the petitioner's counsel that the second suit based on the same facts is barred and is not maintainable. Reference obviously is being made to Order 9 Rule 9 of the Code which is being reproduced below for the sake of facility.

" 9. Decree against plaintiff by default bars fresh suit- (1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party".

9. From the aforesaid it is clear that once a suit has been dismissed under Order 9 Rule 8 of the Code, then the plaintiff is debarred from bringing a fresh suit in respect of the same cause of action. The provisions are mandatory in nature. The scope of Order 9 Rule 8 of the Code has been considered a number of times by the different Courts. There is little controversy. In the case of [Behari Lal Vs. Mangat Ram Kohli](#), when the plaintiff did not appear and the suit was dismissed under Order 9

Rule 8 of the Code, then it was held that the subsequent suit with respect to the same cause is barred and the Court in paragraph 5 of the judgment held as under :-

".....In the present case the earlier suit of the plaintiff was tried by a Civil Court on a plaint on which the Court-fee had been paid. The C.P.C. will apply in its entirety. It was dismissed under Order 9 Rule 8 because the plaintiff was not present on the date of hearing. Therefore, a fresh suit on the same cause of action was barred under Rule 9".

10. This Court in the case of Mst. Joginder Pal Kaur and Anr. v. Gurdial Singh and Ors. 1986 P.L.J. 182, was concerned with a case where a suit was filed for partition. It was held that even if earlier suit was dismissed, still once it is a continuous right a second suit could be filed. Supreme Court in the case of The Gaya Municipality v. Ram Prasad Bhatt and Anr., (1967)11 SCWR 823, held that if the cause of action in the second suit is the same as that on which the previous suit was based, the second suit is barred. A second suit on the same cause of action is not maintainable.

11. The leading case on the subject is the decision of the Supreme Court in the case of [Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others](#), . The scope of Order 9, Rule 8 and 9 has been considered. It was held that merely because the property had been transferred will not permit the party to claim that a new cause of action had arisen. The Supreme Court in paragraph 25 of the judgment held as under :-

".....We are not however impressed by the argument that the ban imposed by O.IX R.9 creates merely a personal bar or estoppel against the particular plaintiff suing on the same cause of action and leaves the matter at large for those claiming under him. Beyond the absence of O.IX, R.9 of the words referring to "to those claiming under the plaintiff there is nothing to warrant this argument. It has neither principle, nor logic to commend it. It is not easy to comprehend how A who had no right to bring a suit or rather who was debarred from bringing a suit for the recovery of property could effect a transfer of his right to that property and confer on the transferee a right which he was precluded by law from asserting." 12. Thereupon, following further findings were given in paragraph 29 and 30 of the judgment :-

"29. A cause of action is a bundle of facts on the basis of which relief is claimed. If in addition to the facts alleged in the first suit, further facts are alleged and relief sought on their basis also, and he explained the additional facts to be the allegations about possession and dispossession in October, 1934, then the position in law was that the entire complexion of the suit is changed with the result that the words of O.IX R.9 in respect of the same cause of action are not satisfied and the plaintiff is entitled to reagitate the entire cause of action in the second suit. In support of this submission, learned counsel invited our attention to certain observations in a few decisions to which we do not consider it necessary to refer as

we do not see any substance in the argument.

"30. We consider that the test adopted by the judicial Committee for determining the identity of the cause of action in two suits in AIR 1949 78 (Privy Council) is sound and expresses correctly the proper interpretation of the provision. In that case Sir Madhavan Nair, after an exhaustive discussion of the meaning of the expression "same cause of action", which occurs in a similar context in para (1) O.H R.2 of the CPC observed:

"In considering whether the cause of action in the subsequent suit is the same or not, as the cause of action in the previous suit, the test to be applied is are the cause of action in the two suits in substance- not technically-identical?

13. It is obvious from the precedents quoted above that if there is a continuous cause of action, then second suit would not be barred. Otherwise, with respect to the earlier cause of action a second suit is barred, if the earlier suit had been dismissed under Order 9, Rule 8 of the Code. Of course, it is not a decision on merit and will not operate as res-judicata but filing of suit will not be permissible.

14. In the present case in hand, earlier suit was for injunction also. Seeking of an injunction indeed, is a continuous cause. If similar threat comes subsequently, in that event subsequent suit will not be barred. To that extent, the order of the trial Court would be justified.

15. But with respect to the contention that respondent-plaintiff is entitled to declaration, indeed, second suit pertains to the same dispute and similar allegations. When such is the position order 9, Rule 9 of the Code would bar the second suit. The petitioner had stepped into the shoes of respondent No. 2. The respondent-plaintiff has no right to challenge the sale. The cause of action as in Suraj Bhan Thirani's case (supra) will not be made out merely because a new purchaser has come. Consequently, to that extent, second suit would be barred. It could only continue with respect to the injunction prayed for by respondent-plaintiff No. 1.

16. For these reasons, the revision petition is partly allowed. It is directed that the suit can only continue with respect to the injunction prayed by respondent No. 1 plaintiff.