

(2022-4)208 PLR 720
PUNJAB AND HARYANA HIGH COURT
Before: Mrs. Justice Manjari Nehru Kaul.
PAWAN KUMAR – Petitioner,
Versus
JASWANT SINGH and others – Respondents.
CR-2982-2022

Civil Procedure Code, 1908 (V of 1908) Order 2 Rule 2, Order 7 Rule 11 - It applies only to the suits instituted by the plaintiff and it does not bar any defendant to file a subsequent suit even if he had failed to file his counter claim - Court is just required to restrict its enquiry to the averments made in the plaint of the suit and any reference to the earlier plaint cannot be delved upon while adjudicating upon an application under Order 7 Rule 11 of the Code. [Para 7]

Mr. Mohan Singla, for the petitioner.

Manjari Nehru Kaul , J. (Oral) - (16th September, 2022) - The instant revision petition has been filed to impugn the order dated 27.05.2022 (Annexure P-7) vide which the Trial Court dismissed the petitioner's application under Order 2 Rule 2 read with Order 7 Rule 11 and Section 151 of the Code of Civil Procedure, 1908 (for short, 'the Code').

2. Learned counsel appearing for the petitioner submits that the impugned order suffers from patent illegality and thus deserves to be set aside. He submits that the Trial Court failed to appreciate that the respondent had relinquished his right in the suit property in favour of the petitioner way back in the year 1989, in lieu of which he had been given another property vide family settlement dated 29.08.1989.

3. Learned counsel submits that ever since the aforementioned family settlement, the petitioner had been enjoying the possession of the suit property, however, out of the blue, the respondent resiled and challenged the family settlement in the suit in question. He further argued that respondent No.1-Jaswant Rai was a party in an earlier suit which was allowed by the Trial Court at Tohana vide judgment and decree dated 05.05.2015 qua which an appeal was pending before the Lower Appellate Court. However, respondent No.1-Jaswant Rai had neither filed any counter claim in the suit nor filed any cross-objections in the appeal before the Lower Appellate Court. Therefore, respondent No.1-Jaswant Rai was clearly barred from filing the suit in question in view of the provisions of Order 2 Rule 2 of the Code. He prayed that in the above circumstances, the plaint of respondent No.1 be rejected, being barred under law. He further submitted that respondent No.1 had earlier instituted a civil suit which was dismissed by the Trial Court on the ground of it being premature as the judgment and decree dated 05.05.2015 had not attained finality. Therefore, it was urged by the learned counsel that even the suit in question was liable to be dismissed on the same ground, as the Regular Second Appeal preferred before this Court against the judgment and decree dated 05.05.2015 was still pending adjudication.

Learned counsel vehemently urged that in the earlier suit as well, respondent No.1 could have sued for the relief prayed for in the instant suit, as the cause of action in both was the same, however, since he had failed to do so, he had relinquished his claim qua the suit property. He, thus, prayed that on this ground also the suit was liable to be dismissed being not maintainable.

4. I have heard learned counsel and perused the relevant material on record.

5. A perusal of the application, under Order 2 Rule 2 read with Order 7 Rule 11 and Section 151 of the Code, (Annexure P-5) moved by the petitioner reveals that he sought rejection of the plaint on the ground that respondent No.1 was impleaded as defendant in earlier civil suits titled as '*Kishori v. Ram Saran Dass*' and '*Parshotam Das v. Jagdish Rai*', wherein he never filed any counter claim qua the property. Therefore, it would be deemed that respondent No.1 had relinquished his claim qua the suit property and in the circumstances, he was now precluded from filing the instant suit and still further, the plaint was liable to be rejected being barred under Order 2 Rule 2 of the Code.

6. It would be relevant to reproduce Order 2 Rule 2 of the Code which reads as thus:

"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.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

7. A perusal of the aforesaid provisions make it amply clear that it applies only to the suits instituted by the plaintiff and it does not bar any defendant to file a subsequent suit even if he had failed to file his counter claim.

8. Even otherwise, the entire thrust of the submissions made by learned counsel for the petitioner is based upon the earlier suit wherein respondent No.1/plaintiff was a defendant. It needs to be observed that a Court is just required to restrict its enquiry to the averments made in the plaint of the suit and any reference to the earlier plaint cannot be delved upon while adjudicating upon an application under Order 7 Rule 11 of the Code.

9. Still further, the genuineness or otherwise of the family settlement would be a matter of trial which cannot be gone into and appreciated at this stage while deciding an application under Order 7 Rule 11 of the Code.

As a sequel to the above, this Court does not find any infirmity much less perversity in the impugned order. Accordingly, the instant revision petition is dismissed in limine.

R.M.S. – Petition dismissed.