

extent of law elucidated in *Aslam Babalal Desai v. State of Maharashtra* (5), was overruled.

(2) In view of the judgment of the Apex Court in *Sanjay Dutt's* case, since in this case challan is filed on July 20, 1995 before this bail petition could be decided, the petitioner cannot claim that he is released on bail under Section 167(2) Cr.P.C. His that right is not enforceable now. Even otherwise, the petitioner's counsel could not satisfy this Court as to how under Section 37 of the NDPS Act he is entitled to bail. Accordingly, the petition is hereby dismissed.

---

J.S.T.

Before Hon'ble Jawahar Lal Gupta, J.

GURJIT SINGH,—Appellant.

*versus*

BANT SINGH,—Respondent.

R.S.A. No. 2041 of 1995.

6th September, 1995.

*Code of Civil Procedure 1908—Forms 47 & 48, 1st Schedule—Plaint filed for specific performance not in conformity with Forms 47 & 48 of First Schedule of the Code—Suit cannot be dismissed on such ground as long as plaintiff avers that he was ready and willing to perform his part of the contract.*

*Held, that Forms 47 and 48 in the 1st Schedule to the Code of Civil Procedure indicate the broad outline of a suit for specific performance. However, it is not necessary that the forms have to be literally reproduced. A verbatim repetition is not the mandate of law. The forms do not contain a mathematical formula which may have to be repeated word for word. The court has to take into consideration the totality of circumstances. If on examination of the evidence, it is established that the party was ready and willing to perform its part of the contract, the suit cannot be dismissed merely because the statement of facts in the plaint is not a word for word reproduction of forms 47 and 48.*

(Para 7)

---

---

*Code of Civil Procedure 1908—Order 2 Rule 2—Suit for injunction filed without claiming specific performance—Subsequent suit for specific performance not barred by provision of order 2 rule 2(2) of the code as causes of action are different.*

*Held*, that the provision in Order 2 Rule 2 is based on the principle that a party should not be vexed twice for the same cause. It is directed against the splitting of claims and remedies. It, however, does not require that separate and distinct causes of action should be combined in one suit. Not only the commonality of parties but even that of the causes of action is an essential prerequisite for invoking the provisions of Order 2 Rule 2.

(Para 12)

*Further held*, that the cause of action for instituting a suit for specific performance had not accrued on April 7, 1988 when the respondent had filed a suit for an injunction to restrain the appellant from alienating the land in dispute to any one else. The cause of action for initiating the present proceedings had arisen after June 15, 1988 when there was failure to execute the sale deed. Since the causes of action were different, the provisions of Order 2 Rule 2 are not attracted. Still further, a bare perusal of the provision shows that a plaintiff must omit or intentionally relinquish a portion of his claim before he can be debarred from suing in respect thereof.

(Para 13)

R. K. Chibbar, Sr. Advocate with Anand Chhibar, Advocate, for the *Petitioner*.

Viney Mittal, Sr. Advocate with Raman Walia, Advocate and Arvind Bansal, Advocate, for the *Respondent*.

#### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) The suit of the plaintiff-respondent for specific performance of the agreement dated October 20, 1987 regarding the sale of 24 kanals of land, was decreed by the trial court. The defendant's appeal was rejected by the learned Additional District Judge. The defendant has, thus, approached this Court through the present second appeal.

(2) Mr. Rajinder Chhibar, learned counsel for the appellant has made a two-fold submission. Firstly, the learned counsel has contended that the plaint filed by the respondent being not in conformity with Forms 47 and 48 of the first Schedule to the Code of Civil Procedure, the suit could not have been decreed. Secondly,

it has been averred that the suit for specific performance of the agreement was barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure. The appellant's claim has been controverted by Mr. Viney Mittal, learned counsel for the plaintiff-respondent. A few facts may be briefly noticed.

(3) The appellant had agreed to sell 24 Kanals of land to the respondent at rate of Rs. 31,000 per acre. The parties executed a written agreement on October 20, 1987. The appellant was paid an amount of Rs. 20,000 by way of advance. According to the terms of the agreement, the sale deed had to be executed by June 15, 1988. On April 7, 1988, the respondent filed a suit for an injunction restraining the appellant from alienating the land to any one else. On June 15, 1988 which was the date stipulated for the execution of the sale deed, the respondent appeared before the Sub Registrar with an application indicating that the appellant was not interested in executing the sale deed as the price of land had arisen. He in his application before the Sub Registrar stated that he was present with the amount of sale consideration and the other expenses required for registration of the sale deed. He had further stated that he has been and is still ready and willing to perform his part of the contract. On the next day viz. June 16, 1988, the respondent sent a notice to the appellant reiterating the above-noted position. In this notice, it was specifically mentioned that the respondent had waited for the appellant at the Tehsil Complex, Mansa on June 15, 1988 from 8.00 A.M. to 5.30 P.M. It was also stated that he was "ready with cash etc". The fact that the appellant had not reached the office of the Sub Registrar was also mentioned in the notice. Through this notice, the respondent had given another opportunity to the appellant for complying with the terms of the agreement dated October 20, 1987. When nothing was done, he instituted the suit for specific performance on September 9, 1988. Simultaneously, the suit for the issue of an injunction which had been filed on April 7, 1988 was withdrawn.

(4) This is the sequence of events.

(5) The two questions which arise for consideration are—

- (i) Is it mandatory for a person to literally reproduce forms 47 and 48 of the 1st Schedule to the Code of Civil Procedure before a suit for specific performance can be decreed ?
- (ii) Was the suit of the plaintiff-respondent barred by the provisions of Order 2 Rule 2(2) of the Code of Civil Procedure ?

---

Re : (i)

(6) The pleadings of the parties and the documents on record have been examined. In the plaint, the terms of the agreement have been clearly delineated. It has also been stated by the respondent that he had requested the appellant to execute the sale deed but he had been putting off the matter. It has been further asserted that the respondent was ready with cash and was willing to perform his part of the contract. Detailed facts indicating that the plaintiff-respondent was ready and willing to perform his part of the contract have been clearly stated. In spite of this, it has been asserted by the learned counsel for the appellant that the plaint did not conform to the requirements of forms 47 and 48. Consequently, the suit of the plaintiff-respondent could not have been decreed. Mr. Chhibbar has placed reliance on the decision of their Lordships of the Supreme Court in *Ouseph Varghese v. Joseph Aley and others* (1).

(7) Forms 47 and 48 in the 1st Schedule to the Code of Civil Procedure indicate the broad outline of a suit for specific performance. However, it is not necessary that the forms have to be literally reproduced. A verbatim repetition is not the mandate of law. The forms do not contain a mathematical formula which may have to be repeated word for word. The Court has to take into consideration the totality of circumstances. If on examination of the evidence, it is established that the party was ready and willing to perform its part of the contract, the suit cannot be dismissed merely because the statement of facts in the plaint is not a word for word reproduction of forms 47 and 48. The facts and circumstances of the case have to be examined. If the plaintiff has averred that he was ready and willing to perform his part of the contract and the facts and circumstances as brought out of the record during the course of evidence, lead to that inference, the suit cannot be dismissed on the ground that the plaint does not conform to forms 47 and 48.

(8) What is the position in the present case ? The terms of the agreement have been broadly stated. It has been categorically averred that the plaintiff was ready and willing to perform his part of the contract. Necessary facts in support of this plea have been clearly mentioned. It, thus, cannot be said that the finding recorded by the courts below, is perverse or that there was an error of law which may require interference in second appeal.

---

(1) 1969 (2) S.C.C. 539.

(9) Mr. Chhibbar has placed strong reliance on the decision in *Ouseph Varghese's* case (supra). This was a case of an oral agreement. It was found that the "oral testimony adduced in support of the agreement is a highly interested one". It was also held that the plaintiff had "failed to prove the agreement pleaded in the plaint". Further, their Lordships found that "the plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant". In the background of these facts, their Lordships observed that "a suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code. In a suit, for specific performance, it is incumbent on the plaintiff not only to set out the agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement". Their Lordships found that neither in the plaint nor at any subsequent stage of the suit, the plaintiff had taken those pleas. Accordingly, his claim was held to be not maintainable.

(10) Such is not the position in the present case. Here, there is a written agreement. The terms of the agreement have been clearly mentioned in the plaint. The respondent had also pleaded that he had approached the appellant to perform the agreement, but he had failed to do so. It was also stated that the plaintiff has been and is still ready and willing to specifically perform his part of the agreement. Still further, the evidence on record clearly supports the pleas raised in the plaint. That being so, the case of the respondent fully conforms to the rule enunciated in *Varghese's* case (supra).

Re : (ii)

(11) Mr. Chhibbar submitted that the respondent having instituted a suit for the issue of an injunction without claiming the relief of specific performance, the second suit was barred by the provisions of Order 2 Rule 2(2) of the Code of Civil Procedure.

(12) The provision in Order 2 Rule 2 is based on the principle that a party should not be vexed twice for the same cause. It is directed against the splitting of claims and remedies. It, however,

does not require that separate and distinct causes of action should be combined in one suit. Not only the commonality of parties but even that of the causes of action is an essential pre-requisite for invoking the provisions of Order 2 Rule 2.

(13) In the present case, the cause of action for instituting a suit for specific performance had not accrued on April 7, 1988 when the respondent had filed a suit for an injunction to restrain the appellant from alienating the land in dispute to any one else. The cause of action for initiating the present proceedings had arisen after June 15, 1988 when there was failure to execute the sale deed. Since the causes of action were different, the provisions of Order 2 Rule 2 are not attracted. Still further, a bare perusal of the provision shows that a plaintiff must omit or intentionally relinquish a portion of his claim before he can be debarred from suing in respect thereof. In the present case, there was no omission on the part of the respondent to sue in respect of the claim for specific performance of the agreement. There is no waiver of the rights under the contract. Consequently, the plea raised by the learned counsel, cannot be sustained.

(14) Mr. Chhibar also referred to the decision in *Ishar Dass v. Kanwar Bhan and others* (2). It was based on different facts. It is of no relevance.

(15) In view of the above, there is no merit in this appeal. It is, consequently, dismissed *in limine*.

---

*J.S.T.*

*Before Hon'ble Ashok Bhan and P. K. Jain, JJ.*

**BHARAT SINGH,—Petitioner.**

*versus*

**DALIP SINGH & OTHERS,—Respondents.**

C.W.P. No. 9671 of 1995.

6th October, 1995.

*Constitution of India, 1950—Arts. 226/227—Haryana Panchayati Raj Act, 1994—Ss. 176, 183—Haryana Panchayati Raj Election Rules,*