A INBASEGARAN AND ANOTHER

v.

S. NATARAJAN (DEAD) THR. LRS.

(Civil Appeal Nos. 4215-4216 of 2007 etc.)

B OCTOBER 29, 2014

[M.Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

Code of Civil Procedure, 1908:

C *O.2, r.2 – Bar to second suit – Plaintiff filing a suit for permanent injunction seeking to restrain defendants from interfering with his possession – Second suit filed by plaintiff for specific performance of contract for sale in respect of the same property – The two suits and the cause of action* D *mentioned therein would show that the causes of action and reliefs sought for are quite distinct and are not same – Therefore, provisions of O.2, r.2 will not apply.*

'Cause of action' – Explained.

E *Precedent:*

Ratio of a decision – Must be understood in the background of the facts of that case.

Appeal:

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First appeal – High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it – Matter remanded to High Court to decide the appeals by recording its finding on all points formulated by it.

G **Disposing of the appeals, the Court**

HELD: 1.1. The first suit was filed by the plaintiff-appellant for the grant of permanent injunction restraining

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the defendant, his agents and servants from interfering with the possession and enjoyment of the suit property by the plaintiff either by attempting to trespass into it or in any other manner whatsoever. Besides other facts, it was pleaded that in pursuance of the sale agreement the plaintiff took possession of the suit plot from the defendant and began construction. The suit was filed mainly on the cause of action which arose when the defendant attempted to forcibly occupy the suit property by driving away plaintiff's workers and that the defendant was arranging to forcibly and unlawfully take possession of the suit property. [para 16] [1213-C, D, G, H]

1.2. In the subsequent suit filed by the plaintiff, a decree for specific performance of the agreement for sale was claimed on the ground inter alia that the defendant in the earlier suit took a defence that the sale agreement was allegedly given up or dropped by the plaintiff. The cause of action, as pleaded by the plaintiff in the subsequent suit, arose when defendant-respondent disclosed the transfer made by Housing Board in his favour and finally when the defendant was exhibiting an intention of not performing his part of the sale agreement and in reply to the lawyer's notice the defendant made a false allegation and denied to execute the sale deed as per the agreement. [para 17] [1214-B-C]

1.3. Thus, a perusal of the pleadings in the two suits and the causes of action mentioned therein would show that the causes of action and reliefs sought for are quite distinct and are not same. [para 18] [1214-D]

Virgo Industries (Eng.) (P) Ltd. vs. Venturetech Solutions (P) Ltd. **2012 (7) SCR 933 = (2013) 1 SCC 625 – held inapplicable**

1.4. It is well settled that the ratio of any decision must

A **be understood in the background of the facts of that case. [para 30] [1224-H]**

Bharat Petroleum Corpn. Ltd. and Another vs. N.R. Vairamani and another **2004 (4) Suppl. SCR 923 = (2004) 8 SCC 579 – relied on.**

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1.5. Cause of action consists of a bundle of facts which will be necessary for the plaintiff to prove in order to get a relief from the Court. When the causes of action for the two suits are different and distinct and the C **evidences to support the relief in the two suits are also different then the provisions of O. 2, r.2 CPC will not apply. [para 19] [1214-E-F]**

Gurbux Singh vs. Bhooralal **1964 SCR 831 = AIR 1964** D **SC 1810 – followed.**

Kewal Singh vs. Lajwanti, **1980 (1) SCR 854 = (1980) 1 SCC 290;** *Deva Ram vs. Ishwar Chand,* **1995 (4) Suppl. SCR 369 = (1995) 6 SCC 733;** *Sidramappa vs. Rajashetty & Ors.* **1970 (3) SCR 319 =AIR (1970) SC 1059;** *State of M.P. v.* E *State of Maharashtra & Ors.* **1977 (2) SCR 555 = (1977) 2 SCC 288 – relied on.**

Mohd. Khalil Khan & Ors. vs. Mahbub Ali Mian & Ors. **AIR (36) 1949 Privy Council 78 – referred to.**

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2.1. The High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it. In the instant case, the High Court, although formulated various points for consideration and decision but has not considered other points in its right G **perspective. In view of the same, the matter needs to be remanded back to the High Court to consider and decide other points formulated by it. [para 34] [1226-C-D]**

2.2. The decision arrived at by the High Court against

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point no.4 holding that the suit was barred under O. 2, r. 2 of the CPC is set aside. The matter is remanded back to the High Court to decide the appeals by recording its finding on other points formulated by it. [para 35] [1126-E]

Lakshmi alias Bhagyalakshmi and another vs. E. Jayaram (dead) by Lr. **2013 (1) SCR 794 = (2013) 9 SCC 311 – cited.**

Case Law Reference:

(1964) 7 SCR 831	**followed**	**para 13**
1980 (1) SCR 854	**relied on**	**para 13**
2013 (1) SCR 794	**cited**	**Para 13**
2012 (7) SCR 933	**held inapplicable**	**Para 14**
AIR (36) 1949 Privy Council 78	**referred to**	**Para 20**
1995 (4) Suppl. SCR 369	**relied on**	**para 23**
1970 (3) SCR 319	**relied on**	**para 24**
1977 (2) SCR 555	**relied on**	**para 25**
2004 (4) Suppl. SCR 923	**relied on**	**para 31**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4215-4216 of 2007.

From the Judgment & Order dated 30.04.2004 of the High Court of Judicature at Madras in A.S. Nos. 666 of 2001.

WITH

C.A. Nos. 4217-4218 & 4219 of 2007.

K. Parasaran, R. Balasubramanian, Ambhoj Kumar Singh,

A Ashwarya Singh, Senthil Jagadeesan, Shruti Iyer Kanchana for the appearing parties.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. These appeals are directed against
B the common judgment and order dated 30.4.2004 passed by the High Court of Judicature at Madras in A.S. Nos.665 and 666 of 2001, whereby the appeals preferred by S. Natarajan were allowed. This matter pertains to a property bearing S.No.159/10 and 11, Plot No.436, Tallakulam Village, Madurai
C City, measuring 6980 sq.ft., which was allotted to one S. Natarajan on lease-cum-sale agreement by the Housing Board. S. Natarajan, original defendant in O.S. Nos.445/85 & 252/86 and plaintiff in O.S. No.3/86 alleged to have entered into a sale agreement with respect to the suit property with one
D Inbasegaran. Therefore, for the sake of convenience S. Natarajan and Inbasegaran are hereinafter respectively referred to as 'defendant' and 'plaintiff'.

2. The facts giving rise to the present appeals are that the
E plaintiff filed a suit being O.S. No.252 of 1986 for specific performance of the agreement for sale dated 19.1.1984 with respect to aforesaid suit schedule property. According to him, the said land was allotted to the defendant on lease-cum-sale agreement on 4.7.1975 by the Tamil Nadu Housing Board (in short, 'Housing Board'). Since the defendant had not
F constructed building on the said site for the purpose of getting sale deed as contemplated under the lease-cum-sale agreement, the Board did not execute the sale deed in favour of the defendant. Hence, he entered into a sale agreement on 19.1.1984 with the plaintiff. In the said agreement, he agreed
G to sell the suit house site to the plaintiff for a total consideration of Rs.3,84,220/- and received a sum of Rs.1,00,000/- as advance in cash towards part of the sale consideration. It is alleged that the defendant agreed that after a sale deed executed in his favour from the Housing Board he will execute

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and register the sale deed in favour of the plaintiff or his family members after receiving the balance sale consideration. Time for performance of the agreement was tentatively fixed as four months and the same was extended until the defendant got the sale deed executed from the Housing Board. The parties agreed that the plaintiff shall prepare a plan for construction of a building in the said property and the defendant will sign the building plan and get the plan approved and the plaintiff thereafter shall construct the building in the suit housing plot at his own expenses.

3. Pursuant to the sale agreement, the plaintiff took possession of the suit property and completed the construction. According to the plaintiff, the defendant had been representing to the plaintiff that he has not yet got the sale deed executed in his favour from the Housing Board but attempted to forcibly take possession of the building constructed on the suit property by the plaintiff. So the plaintiff filed a suit being O.S. No.445/1985 on 11.9.1985 for permanent injunction restraining the defendant herein from taking forcible possession of the building constructed in the suit property. Pending the aforesaid suit, few days after, the plaintiff on 25.4.1986 filed aforesaid suit for specific performance being O.S. No.252 of 1986.

4. The defendant pleaded in his written statement that the agreement dated 19.1.1984 is not a valid document and the plaintiff cannot maintain the suit as he had relinquished his right. It is also stated that the agreement was executed when the defendant was not the owner of the site and any sale by the defendant was prohibited as per the terms and conditions of the lease-cum-sale agreement entered into with the Housing Board and so the agreement in question is void, inoperative and opposed to law. The defendant also denied the payment of Rs.1,00,000/- in cash as advance as alleged by the plaintiff. Even with respect to the averment in the plaint that the plaintiff was permitted to put up construction in the suit site, the same is denied. The defendant also denied that the plaintiff put up

A construction at his own cost. The defendant further denied that the plaintiff was given possession of the suit property and claimed that he never handed over possession of the property to the plaintiff at any point of time. It is alleged that the plaintiff is not entitled to a decree for specific performance because B the agreement dated 19.1.1984 no longer subsists. It is further alleged that the subsequent suit being O.S. No.252/1986 for specific performance is barred under Order 2, Rule 2 of the Code of Civil Procedure because the plaintiff who instituted the earlier suit O.S. No.445/1985, should have included the relief C for specific performance and, in any event, could not have filed O.S. No.252/1986 without any leave of the Court.

5. The defendant also filed a suit being O.S. No.3/1986 seeking a decree for injunction restraining the purchaser (defendants therein) from interfering with his possession and D enjoyment of the suit property. The trial court tried all the three suits together and dismissed the suits filed by the plaintiff and defendant for injunction in O.S. Nos.445/1985 and 3/1986 and decreed the suit in O.S. No.252/1986 preferred by the plaintiff for specific performance with the direction to the defendant to E execute and register the sale document in favour of the plaintiff.

6. Aggrieved by the judgment and decree of the trial court, the defendant S. Natarajan preferred appeals before the High Court being A.S. Nos.665 and 666 of 2001.

F 7. High Court held that the causes of action in both the suits filed by the appellant are identical, arose from the same transaction and that is why the trial court also had a common trial and decided the case by a common judgment. The plaintiff has not come forward with the suit in O.S. 252/1986 on the G basis of the fact that the sale deed with respect to the suit property was obtained only on 18.2.1985 by the defendant from the Housing Board and the defendant failed to execute the sale deed in favour of the plaintiff pursuant to Ex.A1 agreement and so the prayer sought for in the said suit could have been sought

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for even in the Original Suit No.445/1985 as the pleading set out in the plaint in O.S. 252/1986 was available even on the date when O.S. No.445/1985 was filed. Since the plaintiff omitted to seek such a relief and did not obtain the leave of the Court to file the subsequent suit, it amounts to relinquishment of his rights which is sought for in O.S. 252/1986 and he cannot sustain the subsequent suit in O.S. 252/1986 for the relief sought for in that suit in view of Order 2, Rule 2 of the Code.

8. The High Court formulated as many as following six points for consideration to decide the appeals:

(1) Whether Ex.A1 is enforceable in law?

(2) Whether the suit in O.S. No.252/1986 is maintainable on the basis of Ex.A1 in view of variations made in Exs.B7 and B9?

(3) Whether the respondent/plaintiff was ready and willing to perform his part of the contact?

(4) Whether the suit in O.S. 252/1986 is maintainable in view of Order 2, Rule 2 of the Code of Civil Procedure?

(5) Whether the relief for the specific performance of the agreement suit in O.S. 252/1986 can be rejected on the ground that the respondent/plaintiff has not come to court with clean hands?

9. However, instead of deciding all the points, the High Court took up only Point no.4 and 5 and decided the appeal in following three paragraphs:

"13. Further, in the present case, the parties and the court felt that in view of common issue, the said suit was to be dealt with and so the trial court in a common judgment dated 28.7.2000 disposed of the same. The trial court though framed the issue, simply rejected that it is not

barred by Order 2, Rule 2 of the Code on assumption that there is a change of cause of action. So the said findings of the trial court cannot be sustained in law. So we can safely conclude that the suit in O.S. No. 252/1986 is barred under Order 2, Rule 2 of the Code and so it has to be rejected.

14. Even with respect to Point No.5, it has to be held that the respondent/plaintiff has come to court by filing O.S. 252/1986 with unclean hands. Though in the plaint filed in O.S. No.3/1986 which was filed on 5.9.1985, it is specifically stated that conditional sale deed dated 18.2.1985 was executed in favour of the appellant/defendant by the Tamil Nadu Housing Board. In O.S. No.252/1986 which was filed on 5.4.1986, the respondent/plaintiff has come forward with the false plea that the appellant/defendant had been representing to the plaintiff that he had not yet got the sale deed executed in his favour by the Tamil Nadu Housing Board, which is contrary to the averment made in the earlier suit. Learned counsel for the respondent/plaintiff also tried to submit that the respondent has no knowledge about the said document so as to enable him to file the suit for specific performance of the Agreement on that basis. The said plea is nothing but false in view of the specific averment made in the plaint in O.S. No.3/1986. The said plea that the sale deed is yet to be got by the appellant/defendant from the Tamil Nadu Housing Board is a material fact to enforce the right and got the sale deed by the respondent/plaintiff arose only after getting the sale deed by the appellant/defendant from the Tamil Nadu Housing Board as contemplated under Ex.A1. The respondent/plaintiff suppressed the said material fact. Hence, even on that ground the suit in O.S. 252/1986 has to be rejected holding that the respondent/plaintiff is not entitled to equitable relief of specific performance of the Agreement in view of the above said fact.

15. In view of the findings given above with respect to point Nos.4 and 5, we are; not inclined to deal with the other points." A

10. By impugned order dated 30.4.2004, the High Court allowed the appeals preferred by the defendant based on Order 2 Rule 2 with a direction to the defendant to pay the cost of construction (Rs.8,00,000/-) to the plaintiff and on such deposit, the plaintiff would hand over the suit property with building to the defendant and after handing over the same, he can withdraw the aforesaid amount along with the money already deposited, if any. Hence, present cross appeals by both sides. The High Court further held that no other points need to considered and decided. B C

11. Mr. K. Parasaran, learned senior counsel appearing for the appellants-plaintiff, assailed the impugned judgment passed by the High Court as being erroneous in law as also in facts. Learned counsel firstly drew our attention to the agreement to sell dated 19.1.1984 and submitted that the defendant-respondent put a condition in the said agreement that the sale deed shall be executed by the defendant in favour of the plaintiff only after getting transfer of the lease hold plot in his favour by the Housing Board. However, pending transfer of the property by the Housing Board in favour of the defendant-respondent, the rowdy elements of the defendant threatened the appellant-plaintiff to dispossess him from the building constructed by the plaintiff. In order to restrain and prevent the defendant, the appellant filed a suit for injunction being O.S. No.445 of 1985 seeking the prohibitory order restraining the respondent from dispossession of the plaintiff. D E F

12. Simultaneously, before the trial court, the defendant-respondent also filed a suit being O.S. No.3/1986 (13/1985) making similar prayer for injunction against the appellant. In the written statement of the said suit, for the first time the defendant of the suit (appellant herein) disclosed in paragraph 4 that the sale deed was executed by the Housing Board in his favour G H

A and now the plaintiff of the suit (respondent herein) is the absolute owner of the property. Having come to know about the transfer of the property by the Housing Board in favour of the plaintiff, legal notices were given by the appellant to the respondent and a regular suit for specific performance was
B filed.

13. Mr. Parasaran submitted that from bare reading of the plaints in two suits, it would be apparently clear that cause of action of each of the two suits by the plaintiff was quite different and distinct and the same would not attract the provisions of
C Order 2, Rule 2 CPC. Mr. Parasaran further submitted that the trial court had categorically held that the provisions of Order 2, Rule 2 shall have no application in the facts and circumstances of the case. Mr. Parasaran then drew our attention to the agreement dated 19.1.1984 and the codicil sale agreement
D dated 31.4.1984 to show that the period of sale agreement between the plaintiff-appellant and the defendant-respondent was further extended in anticipation of the transfer of the property by the Housing Board in favour of the defendant. Lastly, it was contended that the provision of Order 2 Rule 2,
E CPC does not apply where the two suits are filed on different cause of action and the counsel relied upon the decision of this Court in the cases of *Gurbux Singh vs. Bhooralal,* (1964) 7 SCR 831; *Kewal Singh vs. Lajwanti,* (1980) 1 SCC 290 and in the case of *Lakshmi alias Bhagyalakshmi and another vs.*
F *E. Jayaram (dead) by Lr.*, (2013) 9 SCC 311.

14. Mr. R. Balasubramanian, learned senior counsel appearing for the respondent-defendant, firstly submitted that if the allegations made in the plaint filed by the plaintiff-appellant are read together it would be clear that the plaintiff had
G knowledge about the sale deed executed by the Housing Board in favour of the defendant. It was only because of that the plaintiff in the plaint categorically stated that he reserves his right to file a suit for specific performance. According to the learned counsel, the causes of action in both the suits filed by
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the plaintiff are identical, and therefore, the subsequent suit for specific performance is not maintainable being barred under Order 2 Rule 2 CPC. Learned counsel put heavy reliance on the decision of this Court in the case of *Virgo Industries (Eng.) (P) Ltd. vs. Venturetech Solutions (P) Ltd.*, (2013) 1 SCC 625.

15. We have heard learned counsel appearing for the parties, perused the pleading and findings recorded by the trial court as also by the first Appellate Court.

16. Admittedly, the first suit being O.S. No.445 of 1985 was filed by the plaintiff-appellant for the grant of permanent injunction restraining the defendant, his agents and servants from interfering with the possession and enjoyment of the suit property by the plaintiffs either by attempting to trespass into it or in any other manner whatsoever. Besides other facts, it was pleaded that in pursuance of the sale agreement the plaintiff took possession of the suit plot from the defendant and began construction of *Kalyana Mahal*. It was alleged by the plaintiff that the defendant with an ulterior malafide motive and intention of extracting more money was representing to the plaintiffs that he would execute the sale deed after getting the sale deed from the Housing Board and after completion of the construction of the building. With that ulterior motive, the defendant tried to forcibly take possession of the building constructed by the plaintiffs and threatened the plaintiffs' worker to remove them from the building. The plaintiffs then gave complaint to the police and in response, the police immediately rushed to the suit property and warned the rowdies not to enter into the building. The plaintiffs, therefore, pleaded that the defendant was again arranging to gather unruly elements and to forcibly and unlawfully take possession of the suit property from the plaintiffs. With that apprehension, the suit was filed mainly on the cause of action which arose when the defendant attempted to forcibly occupy the suit property by driving away plaintiffs' workers and that the defendant was arranging to forcibly and unlawfully take possession of the suit property. The defendant, in his written statement, denied each and every allegation and stated that

A building was constructed by him and in fact the plaintiffs attempted to forcibly take possession of the building.

17. In the subsequent suit filed by the plaintiff being O.S. No.252 of 1986, a decree for specific performance of the agreement was claimed on the ground inter alia that the B defendant in the earlier suit took a defence that the sale agreement was allegedly given up or dropped by the plaintiff. The cause of action, as pleaded by the plaintiff in the subsequent suit, arose when defendant-respondent disclosed the transfer made by Housing Board in his favour and finally C when the defendant was exhibiting an intention of not performing his part of the sale agreement and in reply to the lawyer's notice the defendant made a false allegation and denied to execute the sale deed as per the agreement.

18. A perusal of the pleadings in the two suits and the D cause of action mentioned therein would show that the cause of action and reliefs sought for are quite distinct and are not same.

19. Indisputably, cause of action consists of a bundle of E facts which will be necessary for the plaintiff to prove in order to get a relief from the Court. However, because the causes of action for the two suits are different and distinct and the evidences to support the relief in the two suits are also different then the provisions of Order 2 Rule 2 CPC will not apply.

F 20. The provision has been well discussed by the Privy Council in the case of *Mohd. Khalil Khan & Ors. vs. Mahbub Ali Mian & Ors.*, AIR (36) 1949 Privy Council 78, held as under:-

"61 The principles laid down in the cases thus far discussed may be thus summarised:- G

(1) The correct test in cases falling under Order 2, Rule 2, is "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit." Moonshee Buzloor Ruheem H v. Shumsunnissa Begum (1867-11) M.I.A. 551.

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. Read v. Brown (1889-22) Q.B.P. 128.. A

(3) If the evidence to support the two claims is different, then the causes of action are also different. Brunsden v. Humphrey (1884-14) Q.B.D. 141 . B

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. Brunsden v. Humphrey (1884-14) Q.B.D. 141. C

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers...to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Muss. D Chand kour v. Partab Singh (15 I.A. 156 : Cal.98 P.C.). This observation was made by Lort Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2, Rule 2), where plaintiff made various claims in the same suit." E

21. The Constitution Bench of this Court, considering the scope and applicability of Order 2 Rule 2 of the CPC, in the case of *Gurbux Singh vs. Bhooralal,* (supra) AIR 1964 SC 1810, held as under:

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"6. In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (*i*) 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 G 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 H

A 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
B no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed
C merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the
D cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action
E should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit
F being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable.

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It was his submission that from this passage we should
G infer that the parties had, by agreement, consented to make the pleadings in the earlier suit part of the record in the present suit. We are unable to agree with this interpretation of these observations. The statement of the learned Judge. "The two courts have, however, freely cited

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from the record of the earlier suit" is obviously inaccurate as the learned District Judge specifically pointed out that the pleadings in the earlier suit were not part of the record and on that very ground had rejected the plea of the bar under Order 2 Rule 2 of the Civil Procedure Code. Nor can we find any basis for the suggestion that the learned Judge had admitted these documents at the second appeal stage under Order 41 Rule 27 of the Civil Procedure Code by consent of parties. There is nothing on the record to suggest such an agreement or such an order, assuming that additional evidence could legitimately be admitted in a second appeal under Order 41 Rule 27 of the Civil Procedure Code. We can therefore proceed only on the basis that the pleadings in the earlier suit were not part of the record in the present suit."

22. In the case of of *Kewal Singh vs. Lajwanti* (supra), while considering the applicability of Order 2 Rule 2 CPC, this Court observed that:-

"5. So far as the first two contentions are concerned, we are of the opinion that they do not merit any serious consideration. Regarding the question of the applicability of Order 2 Rule 2 CPC the argument of the learned Counsel for the appellant is based on serious misconception of law. Order 2 Rule 2 CPC runs thus:

> "2(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.
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> (2) 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."

A perusal of Order 2 Rule 2 would clearly reveal that this

A provision applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing the cause of action or by omitting a part of it. The provision has, therefore, no application to cases where the plaintiff bases his suit on separate and B distinct causes of action and chooses to relinquish one or the other of them. In such cases, it is always open to the plaintiff to file a fresh suit on the basis of a distinct cause of action which he may have relinquished.

6. In the case of *Mohammad Khalil Khan* v. *Mahbub Ali* C *Mian,* AIR 1949 PC 78, the Privy Council observed as follows:

"That the right and its infringement, and not the ground or origin of the right and its infringement, constitute the cause of action, but the cause of action for the Oudh suit (8 of D 1928) so far as the Mahbub brothers are concerned was only a denial of title by them as that suit was mainly against Abadi Begam for possession of the Oudh property; whilst in the present suit the cause of action was wrongful possession by the Mahbub brothers of the Shahjahanpur E property, and that the two causes of action were thus different.

7. Applying the aforesaid principles laid down by the Privy Council we find that none of the conditions mentioned by F the Privy Council are applicable in this case. The plaintiff had first based her suit on three distinct causes of action but later confined the suit only to the first cause of action, namely, the one mentioned in Section 14-A(1) of the Act and gave up the cause of action relating to Section 14(1)(*e*) G and (*f*). Subsequently, by virtue of an amendment she relinquished the first cause of action arising out of Section 14-A(1) and sought to revive her cause of action based on Section 14(1)(*e*). At the time when the plaintiff relinquished the cause of action arising out of Section 14(1)(*e*) the defendant was not in the picture at all. H

Therefore, it was not open to the defendant to raise any objection to the amendment sought by the plaintiff. For these reasons, we are satisfied that the second amendment application was not barred by the principles of Order 2 Rule 2 CPC and the contention of the learned counsel for the appellant must fail." A B

23. In the case of *Deva Ram vs. Ishwar Chand,* (1995) 6 SCC 733, this Court, considering its various earlier decisions, observed as under:-

"14. What the rule, therefore, requires is the unity of all claims based on the same cause of action in one suit. It does not contemplate unity of distinct and separate causes of action. If, therefore, the subsequent suit is based on a different cause of action, the rule will not operate as a bar. (See *Arjun Lal Gupta* v. *Mriganka Mohan Sur*, (1974) 2 SCC 586; *State of M.P.* v. *State of Maharashtra*, (1977) 2 SCC 288; *Kewal Singh* v. *B. Lajwanti*, (1980) 1 SCC 290). C D

15. In *Sidramappa* v. *Rajashetty*, (1970) 1 SCC 186, it was laid down that if the cause of action on the basis of which the previous suit was brought, does not form the foundation of the subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter namely, the subsequent suit, will not be barred by the rule contained in Order 2 Rule 2, CPC." E F

24. In the case of *Sidramappa vs. Rajashetty & Ors.,* AIR (1970) SC 1059, this Court held:

"7. The High Court and the trial court proceeded on the erroneous basis that the former suit was a suit for a declaration of the plaintiff's title to the lands mentioned in Schedule I of the plaint. The requirement of Order II Rule 2, Code of Civil Procedure is that every suit should include the whole of the claim which the plaintiff is entitled to make G H

A in respect of a cause of action. "Cause of action" means the "cause of action for which the suit was brought". It cannot be said that the cause of action on which the present suit was brought is the same as that in the previous suit. Cause of action is a cause of action which
B 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. — see *Mohd. Hqfiz* v. *Mohd.*
C *Zakaria* AIR(1922) PC 23."

8. As seen earlier the cause of action on the basis of which the previous suit was brought does not form the foundation of the present suit. The cause of action mentioned in the earlier suit, assuming the same afforded a basis for a valid
D claim, did not enable the plaintiff to ask for any relief other than those he prayed for in that suit. In that suit he could not have claimed the relief which he seeks in this suit. Hence the trial court and the High Court were not right in holding that the plaintiff's suit is barred by Order II, Rule 2,
E Code of Civil Procedure."

25. In the case *State of M.P. v. State of Maharashtra & Ors.*, (1977) 2 SCC 288, at page 295 this Court observed as under: -

F "24. This Court in *State of Bihar* v. *Abdul Majid, AIR 1954) SC 245,* stated that a government servant could ask for arrears of salary. Counsel for Madhya Pradesh said that the decision of this Court in *Abdul Majid case* declared what the existing law has been, and, therefore, the plaintiff
G could not contend that it was not open to him to ask for arrears of salary in the 1949 suit. It is in that background that Madhya Pradesh contends that the plaintiff not having asked for relief under Order 2 Rule 2 of the Code of Civil Procedure would not be entitled to claim salary in the 1956 suit.
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25. The contention of Madhya Pradesh cannot be accepted. The plaintiff will be barred under Order 2 Rule 2 of the Code of Civil Procedure only when he omits to sue for or relinquishes the claim in a suit with knowledge that he has a right to sue for that relief. It will not be correct to say that while the decision of the Judicial Committee in *Lall case*[1] was holding the field the plaintiff could be said to know that he was yet entitled to make a claim for arrears of salary. On the contrary, it will be correct to say that he knew that he was not entitled to make such a claim. If at the date of the former suit the plaintiff is not aware of the right on which he insists in the latter suit the plaintiff cannot be said to be disentitled to the relief in the latter suit. The reason is that at the date of the former suit the plaintiff is not aware of the right on which he insists in the subsequent suit. A right which a litigant does not know that he possesses or a right which is not in existence at the time of the first suit can hardly be regarded as a "portion of his claim" within the meaning of Order 2 Rule 2 of the Code of Civil Procedure. See *Amant Bibi* v. *Imdad Husain, (1885) 15 Ind App 106 at pg.112 (PC)*. The crux of the matter is presence or lack of awareness of the right at the time of first suit.

27. The appellant Madhya Pradesh is, therefore, not right in contending that the plaintiff is barred by provisions contained in Order 2 Rule 2 of the Code of Civil Procedure from asking for arrears of salary in the 1956 suit. The plaintiff could not have asked for arrears of salary under the law as it then stood. The plaintiff did not know of or possess any such right. The plaintiff, therefore, cannot be said to have omitted to sue for any right."

26. In the light of the principles discussed and the law laid down by the Constitution Bench as also other decisions of this Court, we are of the firm view that if the two suits and the relief claimed therein are based on the same cause of action then only the subsequent suit will become barred under Order 2, Rule

A 2 of the CPC. However, when the precise cause of action upon which the previous suit for injunction was filed because of imminent threat from the side of the defendant of dispossession from the suit property then the subsequent suit for specific performance on the strength and on the basis of the sale
B agreement cannot be held to be the same cause of action. In the instant case, from the pleading of both the parties in the suits, particularly the cause of action as alleged by the plaintiff in the first suit for permanent injunction and the cause of action alleged in the suit for specific performance, it is clear that they
C are not the same and identical.

27. Besides the above, on reading of the plaint of the suit for injunction filed by the plaintiff, there is nothing to show that the plaintiff intentionally relinquished any portion of his claim for the reason that the suit was for only injunction because of the
D threat from the side of the defendant to dispossess him from the suit property. It was only after the defendant in his suit for injunction disclosed the transfer of the suit property by the Housing Board to the defendant and thereafter denial by the defendant in response to the legal notice by the plaintiff, the
E cause of action arose for filing the suit for specific performance.

29. Mr. R. Balasubramanian, learned senior counsel appearing for the respondents put reliance on the decision of this Court in the case of Virgo Industries (Eng.) Private Limited (supra). After going through the decision given in the said case,
F we are of the view that the facts of that case were different from the facts of the instant case. In the case of Virgo Industries (supra) two sale agreements were executed by the defendant in favour of the plaintiff in respect of the two plots. In the suit filed by the plaintiff for injunction it was pleaded that the
G defendant is attempting to frustrate the agreement on the pretext that restriction to transfer of land may be issued by the Excise Department on account of pending revenue demand. Further, the defendant was trying to frustrate the agreement by alienating and transferring the suit property to third parties. On
H these facts, the Court observed :-

"5. While the matter was so situated the defendant in both the suits i.e. the present petitioner, moved the Madras High Court by filing two separate applications under Article 227 of the Constitution to strike off the plaints in OSs Nos. 202 and 203 of 2007 on the ground that the provisions contained in Order 2 Rule 2 of the Civil Procedure Code, 1908 (for short "CPC") is a bar to the maintainability of both the suits. Before the High Court the defendant had contended that the cause of action for both sets of suits was the same, namely, the refusal or reluctance of the defendant to execute the sale deeds in terms of the agreements dated 27-7-2005. Therefore, at the time of filing of the first set of suits i.e. CSs Nos. 831 and 833 of 2005, it was open for the plaintiff to claim the relief of specific performance. The plaintiff did not seek the said relief nor was leave granted by the Madras High Court. In such circumstances, according to the defendant-petitioner, the suits filed by the plaintiff for specific performance i.e. OSs Nos. 202 and 203 were barred under the provisions of Order 2 Rule 2(3) CPC.

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13. A reading of the plaints filed in CSs Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27-7-2005 the plaintiff received a letter dated 1-8-2005 from the defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the plaintiff to the defendant by cheques were also returned. According to the plaintiff it was surprised by the aforesaid stand of the defendant who had earlier represented that it had clear and marketable title to the property. In Para 5 of the plaint, it is stated that the encumbrance certificate dated 22-8-2005 made available to the plaintiff did not inspire confidence of the plaintiff as the same contained an entry dated 1-10-2004. The plaintiff,

A therefore, seriously doubted the claim made by the defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the plaint it was averred by the plaintiff that the defendant is "*finding an excuse to cancel the sale agreement and* B *sell the property to some other third party*". In the aforesaid paragraph of the plaint, it was further stated that "*in this background, the plaintiff submits that the defendant is attempting to frustrate the agreement entered into between the parties*".

C 14. The averments made by the plaintiff in CSs Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when CSs Nos. 831 and 833 of 2005 were instituted, namely, 28-8-2005 and 9-9-2005, the plaintiff itself had claimed that D facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27-7-2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance along with the relief of permanent injunction E that formed the subject-matter of the above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in CSs Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted F and no leave in this regard was obtained or granted by the Court."

29. In the instant case, as discussed above, suit for injunction was filed since there was threat given from the side of the defendant to dispossess him from the suit property. The G plaintiff did not allege that the defendant is threatening to alienate or transfer the property to a third party in order to frustrate the agreement.

30. It is well settled that the ratio of any decision must be understood in the background of the facts of that case. The H

following words of Lord Denning in the matter of applying precedence have been *locus classicus.* A

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." B C

31. In the case of *Bharat Petroleum Corpn. Ltd. and Another vs. N.R. Vairamani and another*, (2004) 8 SCC 579 at page 584, this Court observed :-

> "9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.* v. *Horton 1951 AC 737*-(AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D) D E F G
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> "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually H

A used by that most distinguished judge,..."

32. Having regard to the facts and evidence of the instant case, we are of the view that the issue decided in *Virgo Industries* (supra) is not applicable in this case.

B 33. Further, taking into consideration all these facts, we are of the considered opinion that the conclusion arrived at by the High Court that the suit is barred under Order 2 Rule 2 CPC cannot be sustained in law.

34. As noticed above, the High Court, although formulated C various points for consideration and decision, as quoted hereinabove, but has not considered other points in its right perspective. The High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it. In view of the same, the matter needs to be remanded back D to the High Court to consider and decide other points formulated by it.

35. For the aforesaid reason, Civil Appeal Nos.4215-4216 of 2007 are allowed in part and the decision arrived at by the High Court against point no.4 holding that the suit was barred E under Order 2 Rule 2 of the CPC is set aside. The matter is remanded back to the High Court to decide the appeals by recording its finding on other points formulated by it. Consequently, other connected appeals, filed by the defendant against the plaintiff, stand disposed of with a direction to F maintain status quo with regard to possession of the suit property till further orders of the High Court in this regard.

Rajendra Prasad Appeals disposed of.