

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 03, 2011

RFA No. 705/2003

Shri Bhagwan Singh Appellant.

Through: Mr. Rajinder Aggarwal, Advocate.

Vs.

Shri Amrik Singh Respondent.

Through: Mr. Vinod Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? yes
2. To be referred to Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

KAILASH GAMBHIR, J.

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1. By this appeal filed under section 96 of the Civil Procedure Code, 1908 the appellant seeks to challenge the judgment and decree dated 4.2.2003 passed by the learned

trial court whereby the suit filed by the appellant for dissolution of partnership and rendition of accounts was dismissed.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant has claimed to be a partner in a firm M/s. Sohi Goods (India) and as per the appellant the said partnership firm comprised of two partners i.e. the appellant himself and the respondent and the firm was carrying on the business of transport at premises No.75/3, Roshanara Road, Gulabi Bagh, Delhi. The appellant also submitted that no formal partnership deed was executed between the parties. It was also the case of the appellant that in the year 1976 the said firm got itself registered for allotment of a plot with the MCD and a sum of Rs. 5,500/- was deposited by the firm vide receipt No. 520012 dated 25.9.76. It was further claimed that the MCD in fact had allotted a plot bearing No. BG-335, Sanjay Gandhi Transport Nagar, Delhi vide allotment letter No. RPC/SGTN/313 dated 22.1.87 in the name of the said firm. It was claimed that the

appellant had filed a suit for declaration, permanent and mandatory injunction against the MCD after having learnt the fact that the respondent was playing a fraud upon the plaintiff/appellant to get the lease deed of the said plot executed in his favour by concealing the correct status of the said partnership firm. It was further claimed that the appellant had withdrawn the said suit after the MCD in its written statement took a stand that the said plot stands in the name of the partnership firm. It was further stated by the appellant that since the respondent had turned dishonest to usurp the share of the appellant in the said plot and hence the appellant approached the civil court to claim decree for dissolution of the partnership firm and for rendition of accounts. It was also the case of the appellant that the respondent had raised unauthorized construction over the said plot and he was trying to transfer and alienate the said plot without the consent and permission of the appellant.

3. On the other hand, the respondent in his written statement denied the existence of any such partnership to

carry on the said business of transport with the appellant, however, he had admitted the fact that in the year 1976 the said firm M/s. Sohi Goods (India) got itself registered for allotment of plot of land measuring 220 sq. meters with the MCD by depositing a sum of Rs. 5,500/- and in the said firm the appellant was shown as a partner of the firm. The respondent took a stand that the said registration for the allotment of the plot on 25.9.1976 was cancelled by the MCD and the said amount of Rs.5, 500/- was withdrawn by the appellant. The respondent further submitted that later on the said firm was again considered for allotment of the plot by the MCD and in terms of the demands raised by the MCD the firm had deposited the amount of Rs.93,500/- in various break ups. It was further claimed that the respondent was given possession of the said plot on 26.10.1988 and after getting the building plans sanctioned the respondent had raised the construction on the said plot. The respondent also submitted that he had been carrying on the business of the transport under the same name and style with his son

Harjeet Singh. In the replication the appellant reiterated the averments made by him in the plaint.

4. Based on the pleadings of the parties, learned trial court framed the following issues:

“1. Whether the suit is barred under the provisions of Section 41 of Specific Relief Act as alleged in para No.6 of W/S? OPD.

2. Whether the plaintiff has no cause of action and suit is liable to be dismissed as alleged in preliminary objections ? OPD.

3. Whether there was any partnership between the parties and plaintiff is entitled to dissolution thereof ? OPP.

4. In case issue no.3 is proved in affirmative to what extent the plaintiff is entitled to the suit property? OPP.”

In evidence the appellant produced himself in the witness box as PW2 and also the Shri Puran Chand Saini, head clerk from the MCD as PW1. The respondent on the other hand, besides producing his own evidence also produced two witnesses DW 1 Shri Prem Singh and DW2 Shri Balwant Singh to disprove any kind of partnership business with the appellant. Based on the pleadings of the parties and

the evidence led by both the parties the learned trial court came to the conclusion that the case set up by the appellant was meritless and consequently dismissed the suit filed by the appellant.

5. Assailing the findings of the learned trial court Mr. Rajinder Aggarwal, learned counsel for the appellant submitted that the appellant had sufficiently proved on record that the said plot with the MCD was booked by the partnership firm comprising of the appellant and the respondent and there was no denial of the same from the side of the respondent and therefore this admission on the part of the respondent was sufficient enough to prove the partnership of the appellant with the respondent in the said firm. Counsel further submitted that even the subsequent allotment which was made by the MCD in the year 1978 was not in favour of the respondent in his individual capacity but the same was in the name of the partnership firm and therefore also the appellant could not have been denied his share in the said plot. Counsel also submitted that any

payment made by the respondent towards the demands raised by the MCD was on behalf of the partnership firm and therefore the respondent could not have derived the benefit of the said plot in his individual capacity. Counsel also submitted that the learned trial court also did not appreciate the fact that the appellant was not in possession of any documentary evidence or books of accounts through which he could prove the business of transport being carried on under the partnership of the appellant with the respondent as every such document was in the possession and dominion of the respondent and due to that fact the appellant sought rendition of accounts from the respondent. The appellant further submitted that through two witnesses i.e. DW1 and DW2 the respondent tried to negative the existence of the partnership firm and such unreliable evidence should not have been given any weightage by the learned trial court. Counsel for the appellant also submitted that the said partnership firm was got registered by the respondent in much later time i.e. 1994 by taking his own son Mr. Harjeet Singh as a partner and this fact would also show that prior

to that the appellant alone was a partner in the said firm with the respondent. Counsel also submitted that Harjeet Singh was a minor at the time of allotment of the plot in the name of the firm in the year 1987. Counsel for the appellant also submitted that the plea of Benami was not available to the respondent as the appellant claimed his right being a partner in the said partnership firm and which right he had never relinquished. In support of his arguments counsel has placed reliance on the judgment of the Apex Court in *Gangadhar Madhavrao Bidwai Vs. Hanmantrao Vyankatrao Mungale JT 1995 (1) SC 118* and the judgment of the Bombay High court in *Shankar Bandu Vs. Shankar Babaji & Ors., AIR 1956 Bom 165*.

6. Mr. Vinod Sharma, learned counsel for the respondent on the other hand supports the judgment and decree passed by the learned trial court. He submits that the appellant could not, either with the help of any oral or documentary evidence; prove to substantiate the fact that he was ever a partner in the said firm. Counsel also submitted

that the mere fact that the appellant was taken as a partner for the limited purpose of seeking allotment of plot in the name of the said partnership firm would not establish that the appellant became a partner in the transport business being carried on by the respondent under the same firm name and style. The contention of the counsel for the respondent is that the said limited purpose came to an end once the appellant had withdrawn the said amount of Rs.5,500/- which was deposited by him as a security towards the allotment of the plot. Counsel also submitted that the entire money towards the allotment price of the plot was paid by the respondent although under the same firm name and the respondent alone had obtained the possession of the said plot and got the building plan sanctioned from the MCD. The counsel further submitted that the construction on the said plot was raised by the respondent with his own funds and carried on with the business of transport under the name and style of the same firm from the same premises without any objection or interference from the side of the appellant. Counsel submitted that all these circumstances were taken

into consideration by the learned trial court to dismiss the false suit filed by the appellant. Counsel thus submitted that the learned trial court has passed a reasoned judgment which needs to be upheld by this court.

7. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the pleas advanced by both the counsel for the parties.

8. 'Partnership' as defined under Section 4 of the Partnership Act, 1932 is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. There is no requirement of law that the partnership can be only formed through a written document. An oral partnership is as legal as a written partnership but even for oral partnership there must be an agreement between the parties as to how and in what manner and based on what terms and conditions they will run their oral partnership. Section 4 and 6 of the Partnership Act, 1932 lay down the method to determine the existence

of a partnership. It would be relevant to reproduce the said process as in The Partnership Act, 1932 as under:

"4. DEFINITION OF "PARTNERSHIP", "PARTNER", "FIRM" AND "FIRM-NAME".

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

6. MODE OF DETERMINING EXISTENCE OF PARTNERSHIP.

In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation I : The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation II : The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment -

(a) by a lender of money to persons engaged or about to engage in any business

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner, as annuity, or

(d) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business."

9. As would be seen from the aforesaid two provisions, to determine whether a person is a partner in a particular firm or not regard shall be had to the real relation between the parties. In a case of an oral partnership, it can be determined by the conduct of the parties and by various surrounding circumstances which can clearly throw enough light on the true nature of the relationship between the parties. The profit sharing and share of losses is an important incidence of any partnership concern. Any isolated act by itself would not give rise to the presumption that there is a partnership between the two persons or group of persons unless the partnership between the persons is entered into for carrying out any isolated transaction itself. Here it would be relevant to refer to the judgment of the Apex Court in the case of ***Santiranjan Das Gupta vs. Messers Dasuram Murzamull (1973) 3 SCC 463*** where it was held that :

"7. In our opinion, the evidence to which our attention was drawn by Shri Nag is wholly inadequate for coming to the conclusion that the plaintiff-appellant and that defendant firm had entered into a

contract of partnership as suggested on behalf of the plaintiff. It is inconceivable that the parties should have entered into an oral agreement of partnership without retaining any record of its terms and conditions. This is not the normal course of business. It is equally inconceivable that the partnership business should have maintained no accounts of its own, which would be open to inspection by both parties even though kept secret from the rest of the world. Absence of such accounts is conceded by the appellant before us. Maintenance of separate accounts by the plaintiff and the defendant firm as suggested by the appellant is no substitute for the maintenance of the accounts of the partnership business as such, accessible to both parties and, indeed, keeping only separate accounts by the parties would tend to negative rather than support the plea of partnership. Some of the other features which go against the appellant's plea are: (1) no account of the partnership was opened with any bank and mere oral information with respect to the newly created partnership was sent to the bank and (2) no written intimation was conveyed to the Deputy Director of Procurement with respect to the newly created partnership, only oral information having been sent to him. These circumstances further render the story of the partnership more doubtful."

(emphasis supplied)

Therefore, it is evident from above that the appellant could have produced the books of account, some information or proof about some bank account opened in the name of the partnership firm or any record regarding terms and conditions of partnership agreed to between the parties. But in the case in hand, the appellant has miserably failed to place on record any material, what to speak of sufficient material, to prove on record that there ever existed any oral

partnership between the appellant and the respondent to carry on the transport business under the name and style of M/s. Sohi Goods (India). The appellant did not disclose as to when the partnership business had commenced, what was the investment made by him, how much profit and losses he had shared or distributed, why and when the disputes in the partnership firm between two partners arose. The appellant also failed to produce any witness from the trade of transport to prove his partnership with the respondent, although the appellant has claimed his partnership with the respondent right from the year 1975 till the year 1997, when he had filed the said suit for dissolution and rendition of accounts. The appellant also has not given any reasons, much less any justifiable reasons, to explain his total inaction when in front of him the respondent took possession of the said plot in question, raised the construction thereon, got the building plan sanctioned and even started running the business therefrom by taking his own son as a partner in the firm. It would be useful to refer to the following para from the impugned judgment which would clearly show that the

appellant failed to produce on record any evidence to prove his being a partner with the respondent in the said partnership firm:

"11. Admittedly, there was no deed of partnership, written between the parties; nevertheless there could be oral partnership between the two or more persons. The question for consideration is whether there was really any partnership for running the business of M/s Sohi Goods (India) between the parties. In the absence of any written document between the parties, the court has to draw an inference of the partnership only on the basis of business conducted by the parties and the conduct of the parties. Since the plaintiff was pleading partnership in respect of the firm M/s Sohi Goods (India), which was denied by the defendant, the onus was heavy on the plaintiff to have proved by leading some evidence that the business was being carried by M/s Sohi Goods (India) as a partnership firm of the plaintiff and the defendant. Unfortunately not an iota of evidence has been produced by the plaintiff, which could suggest that the parties were carrying on the business in the name of the said firm under any partnership. On the other hand the evidence produced by the parties, run counter to the same. As stated by me herein-above the plaintiff has not stated either in the plaint or even in his examination-in-chief as to when the actual partnership came into being. Of course, it was stated by the plaintiff as PW2 that the firm carried on the business of transport since 1975. Again the plaintiff is totally silent as to how much money was invested by each of the partner: whether any share of profit or for that matter any loss was ever given to the plaintiff and upto which date the plaintiff was actively involved in the affairs of the partnership. The plaintiff had not stated a word in the plaint that he was not being permitted to work as a partner or to do partnership business, but a contradictory stand was taken by the plaintiff during the course of his statement, recorded as PW2. In the last paragraph of his examination-in-chief, recorded on 24.4.99, the plaintiff stated that the firm was not working now and therefore, the same may be dissolved by an order of the court. The plaintiff, however, had not given the date as to since when the firm was not working. When he

was cross-examined on 8.9.99 he stated that the firm Sohi Goods (India) was still functioning with S. Amrik Singh and Bhagwan Singh (the parties herein) as partners of the said firm. During his further cross-examination, recorded on 11.9.2000, the plaintiff stated that he had wrongly stated in his earlier statement that M/s Sohi Goods (India) was not working. He then added that he had contributed funds towards working capital of the firm and had paid approximately R. 20,000/- in the year 1975. He stated that this amount had been given in cash but no writing was ever executed with regards to this payment. The plaintiff was unable to give any authentic source of said sum of Rs. 20,000/- which was definitely a handsome amount in the year, 1975. The plaintiff stated that the said amount was lying in his house and had been collected by him from his brothers and sisters. He went to the extent of stating that he had told his advocate that he had contributed a sum of Rs.20,000/- towards working capital of the firm M/s Sohi Goods (India). The plaintiff again made a somersault by stating that he did not know if his advocate had written about the said contribution in the firm, in the plaint or not."

10. It is a settled legal position that the plaintiff has to stand on his own legs to prove his case and he cannot draw his strength from the weaknesses in the case set up by the defendant or in the evidence adduced by him. It was for the appellant to adduce some positive evidence to establish his oral partnership with the respondent and having failed to do so this court does not find any reason to upset the findings arrived at by the learned trial court. The evidence led by the appellant was wholly inadequate to come to the conclusion

that the appellant had entered into a contract of partnership with the respondent to carry on the transport business under the name and style of M/s Sohi Goods (India). The appellant cannot succeed to seek dissolution of the said firm and rendition of accounts merely on account of the fact that in the application form submitted by the firm to seek allotment of the plot, the name of the appellant was mentioned as a partner. The appellant has not denied the fact that the amount of Rs. 5,500/- which was deposited in the name of the firm was taken back by the appellant and thereafter no contribution was made by the appellant towards the allotment price of the said plot and therefore with the said isolated act of the appellant being mentioned as a partner in the application form would not result into believing that there existed a partnership firm of the appellant and the respondent which could entitle the appellant to seek dissolution of the said firm and rendition of accounts. The judgment cited by the counsel for the appellant in the case of *Gangadhar Madhavrao (supra)* would not be of any help to the case of the appellant as there the question for

consideration was whether a recital relating to the partnership property in the deed of dissolution of partnership was inadmissible in evidence for want of registration whereas it is not such a case as the existence of partnership here is itself in dispute. The other judgment of the Bombay High Court in the case of *Shankar Bandu (supra)* cited by the counsel for the appellant relates to the plea of benami and would not be applicable to the facts of the case at hand as the said plea of benami would only come into play once the factum of partnership was established by the appellant.

11. In the light of the above discussion, this court does not find any merit in the present appeal and the same is hereby dismissed.

March 03, 2011
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KAILASH GAMBHIR, J