

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.501 of 1991

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Ramashray Singh, son of Ram Swarath Singh alias Ram Swaroop Singh, resident of village-Dumari-Shahpur, P.S. Sheosagar, District-Rohtas

.... Plaintiff-Appellant.

Versus

1. State of Bihar through the Collector, Bhojpur at Arrah.
2. Executive Engineer, P.H.E.D. Division, Arrah.
3. Superintending Engineer, P.H.E.D., Patna.
4. Chief Engineer, P.H.E.D., Patna.

.....Defendant 1st party.

5. Most. Bhagwani Kuer, wife of Late Ram Charitar Pandit.
6. Ajay Pandit, son of Late Ram Charitar Pandit.
7. Muna, minor son of Late Ram Charitar Pandit.

Under the guardianship of his mother, Most. Bhagwani Kuer.

All residents of village-Kumeharar, Naya Tola, P.S. Sultanganj, District-Patna.

.....Defendant IIInd Set.

.... Respondents.

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Appearance:

For the Appellant : M/s. Prabhat Kumar Dipak and Abhishek, Advocates.

For the Respondent : None.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 17-08-2015:

This is plaintiff's appeal against the Judgment and Decree dated 13.03.1991 passed in Title Suit No.63 of 1985/10 of 1989, whereunder the court of Sub Judge-VI, Arrah, dismissed the suit of the plaintiff on contest as filed against the defendants-respondents.

2. In brief the case is that the plaintiff-appellant filed the aforesaid Title Suit for realization of Rs.1,16,100/- against the defendants-respondent nos.1 to 4 with contention that he and Ram Charitar Pandit, son of Laxman Pandit, resident of Kumhrar Naya Tola-P.S. Sultanganj, District-Patna, were close friends. The

financial position of Ram Charitar Pandit was not good, therefore, he was not in a position to do the work of heavy investment. Therefore, Ram Charitar Pandit agreed with the plaintiff to do work in the P.H.E.D. Bihar on contract basis by forming a partnership named and styled of "M/s. Ram Charitar Pandit" with the agreement that the plaintiff will spent the amount depositing the security money etc. under the contract and Ram Charitar Pandit will be working partner, who will be entitled only for 20% of the net profit. Accordingly, the deed of partnership was prepared on 05.10.1983 and same was registered. According to partnership deed, the works at five places were to be done. The plaintiff deposited the security money in the P.H.E.D. amounting to Rs.24,100/- for work of five places as detailed in Schedule-I of the plaint. The plaintiff also completed the work in the P.H.E.D. of which the agreement was in the name of Ram Charitar Pandit because Ram Charitar Pandit was of the working partner of the firm. The huge amount of the plaintiff is still due against the department of defendant nos.1 to 4 for several works done by the plaintiff as detailed in Schedule-II of the plaint to which the plaintiff is entitled. In spite of repeated demand, the defendant nos.2 to 4 did not pay the said amount. Later on, the health of Ram Charitrar Pandit was not good, due to that reason the contract work was not going well, then Ram Charitar Pandit asked the plaintiff to do all the work on his



behalf and also authorized him to receive money and materials from the department and he also sworn affidavit in this regard. Thereafter, the plaintiff started the work of the P.H.E.D. by receiving the materials from the P.H.E.D. and P.H.E.D. also started giving the cheque of the work done by the plaintiff. As such, P.H.E.D. accepted the plaintiff as Contractor. Ram Charitar Pandit died on 07.01.1984 leaving behind him his legal heirs defendant nos.5 to 7. Later on, the defendant nos.2 to 4, the officials of the P.H.E.D., all of sudden, stopped to supply the materials for contract work, due to that reason the plaintiff had to pay the wages to thirty labourers for two months amounting to Rs.61,500/- without taking the work as detailed in schedule-III of the plaint. In spite of repeated demand, the defendant nos.2 to 4, the officials of the P.H.E.D., did not pay the due amount Rs.1,16,100/- to the plaintiff.

3. The defendant nos. 1 to 4 and 5 to 6 filed separate written statements. The defendant nos.1 to 4 filed the written statement raising several defence with the contention that there was no agreement in between Ram Charitar Pandit and the plaintiff and Ram Chairtar Pandit in his life time did not give any information about the partnership of the plaintiff with him to the department and all the works were allotted to Ram Charitar Pandit and he deposited the security money in the department in his personal capacity. Ram



Charitar Pandit also took the money to the PHED regarding the work done by him assigned by the P.H.E.D. Ram Charitar Pandit did not inform about his affidavit regarding his ill health and to perform the work assigned to him by the plaintiff. As such, the plaintiff is not entitled to receive the money if any due in respect of the work assigned to Ram Charitar Pandit in his personal capacity. If on the authority of Ram Charitar Pandit if any money was paid to the plaintiff it does not create right on the plaintiff to receive the money for the work done by Ram Charitar Pandit in personal capacity.

Defendant nos.5 and 6, wife and son of Ram Charitar Pandit, in their written statement raised several defence with the contention that it is wrong to say that the financial position of Ram Charitar Pandit was not good rather he had some landed property even in the town of Patna and had also sufficient amount in Bank in his name in New Bank of India, Gandhi Maidan Branch. The plaintiff, who was the close friend of Ram Charitar Pandit, was not partner rather he used to help in work of Ram Charitar Pandit and Ram Charitar Pandit used to pay him remuneration. If taking the undue advantage of friendship, any affidavit of partnership by the plaintiff with Ram Charitar Pandit has been created then the documents are forged and fabricated and got no existence in law.

4. On the pleadings of the parties, the learned trial court

framed altogether following four issues:

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff valid cause of action?
- (iii) Is the plaintiff entitled for the decree as claimed?
- (iv) To what relief or reliefs if any plaintiff is entitled?

5. In course of trial, the plaintiff has examined altogether four witnesses including himself as P.W.1 and got exhibited several documents. On the other hand, defendant did not examine any witness nor produced any document.

6. The learned trial court on hearing the parties and the materials available on the record dismissed the aforesaid Title Suit by the impugned Judgment and Decree.

7. Learned counsel for the plaintiff-appellant submits that Ext.7 is the agreement of work of 1982-83 of the P.H.E.D. and Ext.6/g, letter addressed to the plaintiff by the defendant-respondent nos.1 and 2 clearly indicates that the plaintiff was doing the work of the firm M/s. Ram Charitar Pandit but the learned trial court illegally not considered the same and dismissed the suit of the plaintiff.

8. Now, the question for consideration is that whether the firm M/s Ram Charitar Pandit was engaged in P.H.E.D., Government of Bihar, to do the work on contract and plaintiff being the partner of the said firm is entitled to receive the money as due of

the firm in the P.H.E.D.

9. P.W.2, Kapildeo Narayan, Advocate's Clerk, is formal witness. He has proved the notice as sent under Section 80 of the Code of Civil Procedure to the Collector, Bhojpur, Arrah on behalf of the plaintiff by Juglal Roy, Advocate, Civil Courts, Arrah, copy of the plaint of Title Suit No.63 of 1985 filed on behalf of the plaintiff-appellant and also vakalatnama filed by Jaglal Roy and Aniruddh Prasad, Advocates on behalf of the plaintiff as Exts.3, 4 and 5 respectively. P.W.3, Sheo Kumar Singh, is also Advocate's Clerk. He has proved the typed copy of letter dated 23.05.1984 sent by the Executive Engineer, Public Health Division, Arrah, to the plaintiff-appellant through contractor, a typed copy of the letter dated 29.06.1984 sent by the plaintiff-contractor, to the Executive Engineer, Public Health Division, Arrah and a typed copy of the letter dated 25.11.1983 sent by the Executive Engineer, Public Health Division, Arrah to the Contractor, Sri Ram Charitar Pandit, Kumhrar, Nayatola, Patna, respectively as Exts.6/g, 6/H and 6/I. Similarly, P.W.4, Tarkeshwar Prasad, who is also Advocate's Clerk, has proved the two handwritten letters dated 10.12.1983 of the plaintiff-appellant, Ramashray Singh, sent to the Sub Divisional Officer, Public Health Sub Divison, Arrah, on behalf of the proprietor Ram Charitar Pandit as Exts.6 and 6/J and also the acknowledgement in respect of

receiving of notice as sent under Section 80 of the Code of Civil Procedure to the Collector, Bhojpur, Arrah by Sri Jagalal Roy, Advocate, as Ext.8.

10. P.W.1, Ramashray Singh, who is plaintiff, has stated in his evidence that he and Ram Charitar Pandit formed the partnership firm and deed of partnership was executed for doing the work on contract in the P.H.E.D. He has further stated that Ram Charitar Pandit was doing the work of contractor since before. According to partnership deed, all the expanses including the deposit of security money for the contract work was to be deposited by the plaintiff and Ram Charitar Pandit was only the working partner and was entitled to receive only 20% of the net profit. This witness has proved the deed of partnership and identified his signature and signature of Ram Charitar Pandit saying that the deed of partnership was typed by Bal Krishna Prasad, Typist. He has further stated that work on contract was assigned by the P.H.E.D. at different places regarding which the agreement with the Government is filed. In addition to partnership deed, Ram Charitar Pandit had also sworn an affidavit, he has proved the affidavit of Ram Charitar Pandit as Ext.2 saying that the affidavit was typed by the typist, Damodar Prasad on which there is signature of Ram Charitar Pandit. This witness has further stated that later on P.H.E.D. stopped to supply of the materials,



due to that reason he suffered heavy loss due to payment of wages to the labourers and that the security money as deposited by him was not returned to him by the P.H.E.D. of which he is entitled. Ram Charitar Pandit died on 07.01.1984. Thereafter, his wife and son swore the affidavit. This witness has proved the affidavit of Most. Bhagwani Kuer and Ajay Pandit, who respectively are said to be wife and son of Ram Charitar Pandit as Ext.2/A and 2/B. The portion of the signature of the deponent on the affidavit of both Exts.2/A and 2/B are torn.

11. From the evidence of P.W.1, Ramashray Singh, it is clear that after forming the partnership firm by him and Ram Charitar Pandit, the work was assigned by the P.H.E.D. for five different places regarding which the agreement with the Government is filed. Ext.7 is the certified copy of Contract No.100 (F) year 1982-83 dated 22.02.1983 under the signature of Executive Engineer, Public Health Division, Arrah, regarding the assignment of the work for the fitting of pipelines for water supply in the district of Bhojpur, in which the name of the Contractor, Ram Charitar Pandit has been shown and not M/s. Ram Charitar Pandit. As such, this document clearly indicates that the work as allotted by the P.H.E.D. was in favour of Ram Charitar Pandit and not in favour of M/s. Ram Charitar Pandit. Ext.6/g is the typed copy of the letter of Executive Engineer, Public

Health Division, Arrah, addressed to the plaintiff-appellant through contractor regarding the aforesaid work. This letter is also not addressed to the plaintiff either as a contractor or as the partner of M/s. Ram Charitar Pandit. As such, from the evidence, as discussed above, the plaintiff has failed to prove his case that the work was allotted to M/s. Ram Charitar Pandit after forming the partnership firm by him and Ram Charitar Pandit.

The learned Sub Judge-VI, Arrah, has discussed the evidence available on the record in detail and has rightly come to the conclusion that the plaintiff has not proved his case of his right and title over the money as claimed by him against the defendants-respondents and has rightly dismissed the suit of the plaintiff.

12. I find no any infirmity with the impugned Judgment. Accordingly, this Appeal stands dismissed.

(Rajendra Kumar Mishra, J)

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