IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGRH

RSA No. 1993 of 2010(O&M)

Date of decision: 7.12.2015

Rachhpal Chand Singla

......Appellant

versus

Ashwani Kumar

.......Respondent

Coram: **Hon'ble Mr. Justice Amit Rawal**

Present: Mr. Tribhawan Singla, Advocate for the appellant.

Mr.Gaurav Chopra, Advocate for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.(Oral)

The appellant-plaintiff is in regular second appeal against the judgment and decree of the lower Appellate Court whereby suit for recovery of ₹1,07,479/- has been dismissed by the lower Appellate Court.

Mr.Tribhuwan Singla, learned counsel appearing on behalf of the appellant-plaintiff submits that suit for recovery was filed on the premise that appellant-plaintiff had 40% share in firm M/s Singla Electric Store whereas defendant Ashwani kumar had 10% share, Shakuntala Devi had 10% share and Rameshwar Dass had 40% share. The plaintiff and defendant had purchased one plot No.GS-072 in Grain Market Barnala alongwith two other people in an auction held on 25.7.1989 and allotment letter dated 21.8.1989 was issued from New Mandi Townships, Punjab Chandigarh. The plaintiff and defendant had got ½ share each in the above-said plot purchased for a total sale consideration of ₹3,71,000/- out of which 25% as earnest money i.e. ₹92,750/- was deposited, thus his share comes to the tune of ₹46375/- and the remaining amount of ₹1,53,735/- was deposited during the continuation of the said partnership firm. The partnership earlier was dissolved on 31.3.1995 and new partnership deed between the plaintiff and Rameshwar Dass was executed on 1.4.1995 and thereafter, on retirement of Rameshwar Dass, plaintiff became the sole proprietor of the said firm w.e.f 16.3.1998. Plaintiff had taken over all the liabilities and assets which was verbally agreed on 31.3.1995 between continuing partners and retiring partners that in case the outstanding money is paid within one year and then no interest would be charged, otherwise interest @ 18% p.a. after expiry of one year would be charged. He further submits that defendant had acknowledged the factum of payment in the agreement dated 31.3.1995 but failed to pay the said amount after repeated demands of the plaintiff. The trial Court decreed the suit, however, lower Appellate Court without assigning any reason much less, dismissed the suit on the ground that claim of plaintiff is barred by limitation as the transaction was pertaining to the year 1994 and suit was filed on 31.3.1998.

Learned counsel appearing on behalf of the respondent submits that there is no illegality or perversity in the impugned judgment passed by the lower Appellate Court which has been rightly dismissed not only on the ground of limitation but also for want of rendition of account. He further submits that once it is an admitted case that all liabilities and assets were taken over by the plaintiff/appellant and terms and conditions of partnership stood finalised, thus suit for recovery was not maintainable.

I have heard learned counsel for the parties and appraised the paper book.

It is a categoric/admitted case of the plaintiff that firm stood dissolved on 31.3.1995 and once firm is dissolved with the understanding of the partners, all the liabilities of the firm would devolve upon continuing partners. The plaintiff has placed on record another partnership dated 1.4.1995 executed between him and Rameshwar Dass. There is no written undertaking allegedly executed by the respondent-defendant to return the amount alleged to have been claimed by the appellant-plaintiff for purchase of the plot referred to above. Even otherwise also, the contribution was made in the year 1989 whereas suit has been filed in the year 1998. If the said transaction is taken to be personal, then also the suit is barred by law of limitation as it is filed beyond the period of three years. The appellant-plaintiff could not have agreed for dissolution and unless his contribution had not been paid by the continuing partner/defendant. Even the balance sheet for earlier year and for financial year 1994-95 shows only signatures of the plaintiff and not that of the defendant, which clinches the issue that defendant never acknowledged the liability allegedly raised in the suit.

I do not find any illegality or perversity with the findings of the learned lower Appellate Court. Therefore, judgment and decree of the lower Appellate Court is upheld and accordingly, the Regular Second

Appeal stands dismissed.

(AMIT RAWAL)
JUDGE

7.12.2015
Meenu