

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA NO. 1144 OF 2014 (O&M)
DECIDED ON : 23.04.2015**

Salamte

...Appellant

versus

M/s Bharat Engineering Works and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Abhijeet P. S. Chaudhary, Advocate,
for the appellant.

K. C. PURI, J. (ORAL)

This is an appeal directed by the plaintiff/appellant against the judgment and decree dated 21.09.2013 passed by Shri B. B. S. Teji, Additional District Judge, Sangrur, vide which the appeal preferred by the plaintiff/appellant against the judgment and decree dated 12.08.2010 passed by Ms. Pushpa Rani, Civil Judge (Junior Division), Maler Kotla, was dismissed.

Briefly stated, the case of plaintiff is that the parties to the suit were carrying on the business of manufacturing and supply alloys, brass and gun metal etc. under the name and style of M/s Bharat Engineering Works at Maler Kotla and a regular partnership deed was executed between them on 13.04.1982.

The plaintiff is a house hold lady and is a sleeping partner in the

partnership concern, whereas defendants No.2 to 4 are the active partners. The defendants committed various breaches of agreements of partnership and have fabricated false documents. They have removed the account books from its ordinary place of business and the same was not available for inspection. The defendants have alienated the substantial part of the machinery without the consent of plaintiff and there is possibility of elimination of the partnership business and as such, necessary suit for dissolution of partnership deed and injunction has been filed.

Upon put to notice, defendants No.1, 3 and 4 admitted that plaintiff and defendants No.2 to 4 started the business of manufacturing and supplying the alloys etc under the name and style of M/s Bharat Engineering Works and a partnership deed dated 13.04.1982 was executed in this regard. It is further pleaded that with the consent of all the partners of the firm, some terms of the partnership deed were changed and new partnership deed was executed on 01.04.1992. The plaintiff voluntarily desired to resign from the partnership business and consequently on 31.03.1995, the account books were closed with the consent of all the partners and final settlement was prepared and dissolution deed was executed on 01.04.1995. Then one Kesari Dass retired in the year 1999. The plaintiff remained partner till 1995 and retired voluntarily and she has no right, title or interest in the business and the suit has been filed with mala fide intention.

Replication was filed denying the contents of the written statement and reiterating the averments made in the plaint.

From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is entitled for the rendition of accounts as prayed for ? OPP
- 2) Whether the plaintiff is entitled for the permanent injunction as prayed for ? OPP
- 3) Whether the plaintiff was retired from the partnership firm on 01.04.1995 ? OPD
- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the plaintiff has not come to the court with clean hands ? OPD
- 6) Whether the present suit is not within limitation? OPD
- 7) Whether this court has no jurisdiction to try and decide the present suit ? OPD
- 8) Relief.

The plaintiff herself appeared as PW-1 and closed the evidence, whereas the defendants examined as many as six witnesses and closed the evidence.

The learned trial court, returned the findings on all the issues against the plaintiff except Issues No. 4, 5 and 7 and in favour of the defendants. Consequently, the suit of plaintiff was dismissed with costs.

Feeling dissatisfied with the above said judgment and decree dated 12.08.2010 passed by Civil Judge (Junior Division), Maler Kotla, the plaintiff preferred first appeal. The said appeal was dismissed vide judgment and decree dated 21.09.2013 passed by Shri B. B. S. Teji, Additional District Judge, Sangrur.

Still feeling aggrieved with the judgment and decree dated 12.08.2010 passed by Civil Judge (Junior Division), Maler Kotla and judgment and decree dated 21.09.2013 passed by Additional District Judge, Sangrur, the plaintiff/appellant has preferred the instant regular second appeal.

The appellant in para no,. 14 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present appeal :-

- 1) Whether the judgments and decrees dated 12.08.2010 and 21.09.2013 passed by learned trial court and lower appellate court are based on misreading, misinterpretation and misconstruction of the oral as well as documentary evidence and against the material available on record amounting to perversity and giving rise to a substantial question of law ?

- 2) whether the appellant is entitled for the rendition of accounts of the firm in which she was the partner to the extent of 25% share ?

I have heard learned counsel for the appellant and have gone through the records of the case carefully.

It is *inter se* dispute between the family. The case of plaintiff/appellant is that she is illiterate and she never executed any retirement deed, whereas the case of defendants is that the plaintiff retired from the firm on 31.03.1995. There is concurrent finding of fact recorded by both the courts below that the plaintiff has retired from the firm. The said finding of fact cannot be said to be perverse. There is nothing on record to show that the judgments of both the courts below are the result of misreading and misinterpreting the evidence on record and as such, it cannot be said that the judgments of both the courts below are perverse.

Learned counsel for the appellant could not point out as to which documentary and material evidence has been ignored by both the courts below. The dissolution deed stands duly proved and thereafter, another partner namely Kesari Dass retired from the partnership deed in the year 1999 and thereafter new partnership deed came into existence. The plaintiff has failed to prove that after the year 1995, she remained partner in the firm.

In view of the above discussion, I have no hesitation in holding that no question of law much less substantial question of law has arisen in the instant appeal.

So far as the finding of fact recorded by both the courts below regarding dissolution of firm is concerned, that cannot be agitated in view of Section 100 of CPC. More so, when there is nothing on record that the said finding is against the record of misreading and misinterpreting the evidence on file.

Consequently, the appeal is without any merit and the same stands dismissed.

APRIL 23, 2015

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(K. C. PURI)**JUDGE**