IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2420 of 2014 (O&M)
Date of Decision: July 14, 2015

Ram Kishan Gupta

...Appellant

Versus

Astuni Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.O.P.Goyal, Senior Advocate with
Mr.Randeep Singh, Advocate
for the appellant.

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INDERJIT SINGH, J.

Appellant-plaintiff Ram Kishan Gupta has filed this regular second appeal against respondents-defendants Smt.Astuni, Indian Oil Corporation Limited and Sh.Satish Kumar Yadav, challenging the impugned judgment and decree dated 14.10.2011 passed by learned Civil Judge (Junior Division) Faridabad, vide which the suit filed by the plaintiff-appellant for rendition of accounts and for mandatory injunction was dismissed and also the judgment and decree dated 03.01.2014 passed by learned Addl. District Judge, Faridabad, vide which the appeal filed by the appellant was dismissed.

The brief facts of the case are that plaintiff Ram Kishan Gupta filed a suit against defendants Smt.Astuni, Indian Oil Corporation Limited and Sh.Satish Kumar Yadav, for rendition of

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accounts and for mandatory injunction, directing defendant No.1 to put the material purchased from defendant No.2 in the firm and sell these items in the name of partnership firm and submit the sale proceeds in the bank account of firm M/s A.Chalia & Company and further defendant No.2 be also directed to send their products in the name of M/s A.Chalia & Company by recognizing the partnership deed of defendant No.1 and 2. Mainly the case of the plaintiff is that prior to 21.12.1999, defendant No.1 was the sole agent of defendant No.2, who was dealing in petroleum products including the kerosene oil. On 21.12.1999, plaintiff entered into partnership with defendant No.1. It is stated that in the month of January 2000, defendant No.1 had taken a sum of ₹1 lac orally from the plaintiff and they opened a joint account in the name of M/s A.Chalia & Company i.e. partnership firm. Defendant No.1 received the kerosene oil and other petroleum products from defendant No.2 several times, but she sold these products in the market without laying these things in the firm, for which defendant No.1 has no right, title or interest to do so. When defendant No.1 became the partner of the firm, then all the material received from defendant No.2 by defendant No.1 should have been treated as assets of the firm. It is also the case of the plaintiff that plaintiff is managing affairs of the partnership firm.

Upon notice, defendant No.2 mainly took the plea that M/s A.Chalia Oil Co. is SKO/LDO dealership of the defendants and was commissioned in 1979 with Smt.Astuni Devi as sole proprietor. The dealership agreement between the IOC and Astuni Devi was signed

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on 20.02.1975. In the year 1984, on the request of Smt.Astuni Devi, Capt. Lal Singh was inducted. Again, Smt.Astuni Devi and Capt. Lal Singh requested for reconstitution with induction of Sh.Satsih Kumar and withdrawl of Capt. Lal Singh and this approval was approved and dealership agreement was signed between Astuni Devi and Satish Kumar on 17.08.2000. It is further stated that the partnership deed signed between Astuni Devi and Ram Kishan, if any, is totally illegal. It is denied that defendant No.1 alone in the individual capacity received the kerosene oil and other products from defendant No.2 several times or that she sold these products in the market without laying these things in the firm. It is also submitted that Astuni Devi and Satish Kumar are the partners in the dealership firm under the name and style of M/s A.S.Chalia Oil Company and having full right to purchase products from IOC and distribute in the public under the guidance of DFSC Faridabad. It is further stated that plaintiff has nothing to do with the said firm.

Defendant No.3 stated that no such partnership firm has come in their notice. Defendant No.3 contested the case of the plaintiff. Defendant's No.1 case is that she entered into an agreement with the plaintiff vide partnership deed dated 21.12.1999 and all the accounts of the firm were to be maintained by the plaintiff because the answering defendant is illiterate and she did not have any knowledge. Since the creation of the partnership, the plaintiff is managing the affairs of the partnership firm. She further submitted that she never took the loan of ₹1 lac from the plaintiff. It is also stated that earlier

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Capt. Lal Singh was the partner and after the retirement of Capt. Lal Singh, defendant No.1 became sole proprietor but Capt. Lal Singh, in connivance with Satish Kumar Yadav, got signed some papers by playing fraud and misrepresentation. Satish Yadav claimed himself to be an attorney for running the affairs of the said firm.

After framing issues, on the basis of the evidence led by the parties, learned Civil Judge (Junior Division) Faridabad, dismissed the suit of the plaintiff vide judgment and decree dated 14.10.2011. Aggrieved from the above-said judgment and decree, plaintiff filed appeal before learned District Judge, Faridabad and learned Addl. District Judge, Faridabad, vide judgment and decree dated 03.01.2014, dismissed the appeal.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-plaintiff.

At the time of arguments, learned counsel for the appellant argued that defendant No.1 is purchasing material from defendant No.2 and selling it to the various persons without accounting the same to the firm. He next argued that the findings of the Courts below are incorrect and not as per law.

After hearing learned counsel for the appellant and after going through the record, I find that it is admitted fact, as pleaded in the plaint also by the plaintiff, that plaintiff is managing the affairs of the partnership firm. The plaintiff himself is maintaining the accounts and managing the affairs, therefore, suit for rendition of accounts is not maintainable. Defendant No.1 is an illiterate lady and is not

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maintaining the record, nor she is managing the business of the partnership firm. Therefore, there is no question to pass preliminary decree asking defendant No.1 to produce/render the accounts. The findings of the Courts below are correct and as per law on this issue.

Secondly, I find that the plaintiff is alleging partnership with defendant No.1 and the case of the plaintiff is that defendant No.1 is not giving accounts of the transactions to the partnership firm. But neither the suit has been filed by the partnership firm nor the partnership firm is made a party in the present suit. Therefore, the suit without impleading the partnership firm, is also bad for non-joinder of necessary party. Further, I find that as per the evidence on record, there is nothing as to on which dates which material has been purchased by defendant No.1 from defendant No.2 and sold to whom. There are no such particulars in the plaint nor in the evidence. This fact is also admitted by learned counsel for the appellant at the time of arguments.

As this case has been filed by the plaintiff asking for relief of mandatory injunction, therefore, plaintiff is to lead cogent evidence on record to prove his case. The plaintiff is to stand on his legs and he cannot take the benefit of weakness of the case of defendant No.1.

Therefore, I find that the concurrent findings given by Courts below are correct and as per evidence. There is nothing on the record that any evidence has been misread by the Courts below nor anything is pointed out as to how the findings given by the Courts below are perverse.

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In view of the above discussion, I find that the judgments and decrees passed by both the Courts below are correct, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 14, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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