

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.147 of 2012

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Umesh Chaudhary S/O Late Ram Khelawan Choudhary R/O Meerjapur
Bandar, (Vishnupur), P.S. Town Begusarai, District - Begusarai

.... Petitioner.

Versus

1. M/S Sai Developers, At Haraka, Near Gyan Bharti School, N.H. 31, P.S. & District - Begusarai
2. Sanjeev Kumar Son Of Late Ram Udgar Singh R/O Village - Rahatpur, P.S. Ballia, District - Begusarai
3. Krishna Kumar Son Of Late Chandra Bhushan Singh R/O Village + P.S. Badalpur, P.S. Motihari, District - Begusarai
4. Hemant Kumar Ray S/O Ambika Ray R/O Village - Rajaura, P.S. Muffasil, District - Begusarai.
5. Akhilesh Kumar son of Late Chandra Bhushan Singh, R/o Village+Post-Badalpur, P.S.-Motihari, District- Begusarai.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

20 08-01-2016

Heard Mr. J.S.Arora, the learned counsel appearing
for the petitioner and Mr. Bhupendra Narayan Sinha, the learned
counsel appearing for the opposite parties.

By the order under assail in this revision application,
the learned court below has turned down the prayer made by the
defendant-petitioner in his petition dated 27.01.2010 praying to
decide the issue of the bar of the suit under Section 69 of the
Indian Partnership Act as preliminary issue and has directed that
this issue would be decided at the stage of final adjudication of
the suit.



From the plaint of T.S.No.78/2008 (Annexure-4) it transpires that the relief claimed in the said suit was for passing a decree of specific performance of contract against the defendant directing the defendant to execute the sale deed after receiving the remaining consideration amount with regard to Schedule-B land and in the alternative the prayer was made for passing a money decree of Rs. 21,60,000/- alongwith 18% interest per annum against the defendant. It further transpires that the said suit was filed by altogether five plaintiffs out of whom the plaintiff no.1 had been said to be a partnership firm and the plaintiff nos.2 to 5 had been said to be the partners of the said partnership firm. In paragraph-1 of the plaint the plaintiffs had also averred that the suit was filed by the plaintiffs in their personal capacity as well as representative capacity.

The defendant-petitioner filed his written statement (Annexure-4/A) contesting the grant of relief as prayed by the plaintiffs. In paragraph-3 of the written statement the defendant had pleaded that the suit was hit by Section 69 of the Indian Partnership Act.

During the pendency of the suit the defendant-petitioner filed a petition dated 27.01.2010 (Annexure-1), purporting to be under Section 69 of the Indian Partnership Act,



raising the plea that the suit was hit by Section 69 of the Partnership Act and as the said bar was going to the root of case and capable of being decided without evidence, the prayer was made to decide the issue of bar of the suit as preliminary issue. The plaintiffs filed rejoinder to the said petition stating that the plaintiff-firm was a registered firm and pointing out that the said fact was already stated in the plaint. It was also asseverated that the trial of the suit had already commenced and one witness on behalf of the plaintiff had already been examined and as such it would not be proper to adjudicate the issue of maintainability as separate issue at this stage.

After hearing the parties the learned court below has disposed of the petition dated 27.01.2010 filed by the defendant-petitioner holding that as the plaintiff has already filed the original copy of registration of the firm and therefore the plea of defendant relating to the bar of the suit under Section 69 of the Indian Partnership Act is not sustainable and has, however, further also directed that the issue of bar of the suit as raised would be decided at the stage of final adjudication of the suit as it is mixed question of law and fact.

Questioning the legal acceptability of the impugned order, Mr. Arora, the learned counsel for the petitioner has

submitted that the learned court below has failed to appreciate the nature and import of the provision of Section 69 of the Indian Partnership Act which besides requiring the plaintiff-firm to be registered further also requires that the names of the partners of the firm must have been entered in the Register of Firms as partners of the firm. Elaborating his submissions, it has been canvassed that the petitioner is not now disputing the registration of the plaintiff-firm in view of the filing of the original copy of registration by the plaintiffs but the plaintiffs have failed to bring any material on record to show that the plaintiffs no.2 to 5 are the partners of the said firm whose names have been entered in the Register of Firms as partners. It has been propounded that the mandate of Section 69(2) of the Indian Partnership Act is not only that the firm should be duly registered but in addition thereto the further requirement is that if the partners have joined the suit as plaintiffs, their names as partners must also appear in the Register of Firms. It has also been propounded that though the prayer of the defendant-petitioner in the petition dated 27.01.2010 was for trial of the issue of bar of the suit as preliminary issue but the same would not preclude the learned court below from exercising its jurisdiction under Order 7 Rule 11 C.P.C. for rejecting the plaint which jurisdiction is available to the court at

any stage of the suit. The reliance in support of the aforesaid proposition has been placed on the decision by the apex court in the case of *M/s Shreeram Finance Corporation Vs. Yasin Khan, AIR 1989 SC 1769*.

Per contra, Mr. Sinha, the learned counsel appearing for the plaintiff- opposite parties has contested the interpretation of the provision of Section 69 (2) of the Indian Partnership Act as put forward on behalf of the petitioner and has submitted that the plaintiffs in such a suit are required only to establish the Registration of the Firm and there is no further requirement that the plaintiffs must also establish that their names have been entered in the Register of Firms as partners of the firm. It has been submitted that the plaintiffs in paragraph-1 of the plaint have categorically stated that the plaintiff no.1 is a registered partnership firm and the plaintiffs no.2 to 5 are the partners of the said partnership firm and the said fact has not been specifically denied by the defendant in his written statement or in the petition filed on 27.01.2010. It has been canvassed that in absence of the denial of the status of the plaintiff nos. 2 to 5 as partners of the firm, it would be overstretching the requirement of Section 69 (2) of the Indian Partnership Act to make it imperative for the plaintiffs after proving the registration of the firm, to also prove

that their names have been entered in the Register of Firms as partners. The learned counsel has squarely relied upon a bench decision of this Court in the case of *M/s J . Purshuttam Das &Co. Vs. M/s R.R. Brothers, 1973 Patna 300* in support of this proposition.

After considering the rival submissions on behalf of the parties, it is manifest that the petitioner has now not questioned the fact of registration of the plaintiff-firm but the assertion is that if in the suit, the partners of the firm (in the present case plaintiff nos. 2 to 5) have joined as plaintiffs then the requirement is also to establish that their names as partners have been entered in the Register of Firms. From paragraph-1 of the plaint (Annexure-4) it appears that the statement has been made that the plaintiff no.1 is a registered partnership firm and the plaintiff nos. 2 to 5 are partners of the said partnership firm. This statement has not been specifically denied by the defendant in his written statement and there is no challenge to the status of the plaintiff nos. 2 to 5 as partners of the said partnership firm. In the petition dated 27.01.2010 (Annexure-1) also there is no specific denial of the fact that the plaintiff nos. 2 to 5 have been the partners of the partnership firm. The submission on behalf of the petitioner, however, has been made that in all cases including the

case where the registered partnership firm has been joined in the suit by other persons as plaintiffs alongwith the said firm describing themselves in the plaint as partners of the said firm, the mandate of Section 69(2) of the Indian Partnership Act is still to establish the fact that their names have been entered in the Register of Firms as partners of the firm, in order to maintain the suit. The learned counsel for the petitioner has put emphasis that the two conditions as prescribed by Section 69 (2) of the Indian Partnership Act are cumulative conditions and must be fulfilled before such suit can proceed further.

The provision of Section 69(2) of the Indian Partnership Act and the two conditions of the said provision in particular came up for consideration before a bench of this Court in *M/s J . Purshuttam Das &Co.* (Supra) and it will be profitable here to take into notice the principles of law laid down by their lordships as follows:

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In my opinion, the requirements of sub-section (2) of Section 69 are that it must be established

firstly that the firm is a registered one, and secondly either where all the partners sue, they are in fact partners of the firm on the date of the institution of the suit irrespective of the fact that whether their names are shown in the Register of Firms or not, or where the suit is not by all, but only some of the partners, their names have been entered in that Register. In other words, where the suit is not in the name of the firm itself but in the name of the partners, it can be instituted either by all the partners irrespective of the fact whether their names are shown in the Register of Firms or not, or by such of the partners only of the firm whose names have been shown in the Register of Firms.....

Therefore, where the suit is by the firm itself or by all the partners of the firm, it is not necessary to establish that names of all the partners of the firm have been shown in the Register of Firms. Only when only some of the partners of the firm institute a suit on behalf of the firm and an objection is taken by the defendants that they do not by

themselves alone constitute the firm on the date of institution of the suit, they can claim that the suit is maintainable on account of the fact that they alone have been shown in the Register of Firms as partners of the firm...” (Emphasis supplied)

Their lordships in the aforesaid decision have also approvingly noticed the decision in the case of ***M.A. Hussain Vs. M/s Panchamal Vasudev Ganapath Kamath & Brothers, AIR 1970 Mys 299*** as follows:

21. “...It is clear from this provision that there are two alternatives available in the second condition. The persons suing may establish either that they are partners on the date of suit or that they are persons whose names are shown in the register of firms as partners in the firm. As already observed, the second alternative, namely, the fact that the names of the persons suing have been shown in the Register of Firms as partners of the firm can be established either by producing relevant Register of Firms or a certified copy of the same and not by adducing oral evidence. But there is no legal bar to prove the first alternative, namely, that the



persons suing are partners of the firm by adducing evidence other than the Register of Firm or its certified copy. It appears that pointed attention of the court has not been invited to the first alternative of the second condition in above referred case decided by the Nagpur High Court. In my opinion, the persons suing must either in fact be partners on the date of suit or must be persons whose names are shown as on the date of suit in the Register of firms as partners of the firm. Even if the names of the partners suing have not yet been entered in the Register of Firms, they can still institute the suit by proving that they are in fact partners of the firm on the date of suit. That can only be proved by evidence other than the Register of Firms... ”

Applying the aforesaid dictum to the facts of the present case, it is apparent that the plaintiff nos. 2 to 5 have stated in the plaint that they are partners of the registered partnership firm (plaintiff no.1). The defendant in his written statement has not specifically challenged the said fact that the plaintiff nos. 2 to 5 are not the partners of the said partnership firm and there is



also no pleading that there are other partners of the said firm as well who have not joined as plaintiffs in the suit. As such once after establishing that the firm is a registered partnership firm, the suit can not be held to be barred by provisions of Section 69(2) of the Indian Partnership Act only because the plaintiffs have not produced the Register of Firms or a certified copy of the same to show that their names have been entered in the said Register as partners.

It would also be apt to take into notice at this stage that the petitioner by way of supplementary affidavit dated 05.10.2012 has brought on record the photo copy of the certificate showing the registration of the plaintiff firm and in his reply the opposite parties have brought on record the information (Annexure-A) obtained under Right to Information Act, 2005 regarding the names of the partners of the plaintiff-firm. From the perusal of the information (Annexure-A) it appears that the names of plaintiff nos. 2 to 5 have been mentioned as partners of the plaintiff –firm. The learned counsel for the petitioner while raising the objection to the relevancy of the information (Annexure-A) has submitted that there is no mention of the date when the names of the persons mentioned in the information (Annexure-A) has been entered as partners of the plaintiff-firm



and even otherwise also there is nothing in the said information (Annexure-A) to establish that the persons named therein were partners of the plaintiff-firm on the date of the institution of the suit. This Court is not impressed with this objection raised on behalf of the petitioner for the simple reason that at no point of time the defendant-petitioner has questioned the status of the plaintiff nos. 2 to 5 as partners of the plaintiff-firm even after accepting that the plaintiff -firm was a registered partnership firm and it is also not the case that plaintiff nos.2 to 5 were not the partners of the firm on the date of the institution of the suit. This aspect, however, has also been taken into notice by their lordships in ***J.Purshuttam Das (Supra)*** and it has been held that the said fact can be established, if disputed, even by evidence other than the Register of Firms.

The reliance by learned counsel for the petitioner on the decision by the apex court in ***M/s Shreeram Finance Corporation (Supra)*** is also misconceived in view of the clearly distinguishable facts of that case where the constitution of the partnership firm had undergone changes and it was found that the two partners shown as partners in the appellate firm in the relevant entries in the Register of Firms had already retired and one new partner had joined the said firm and no notice had been

given to the registering authority in support of those changes. It was in the backdrop of these facts that their lordships affirmed the dismissal of the suit as barred by provision of Section 69(2) of the Indian Partnership Act as on the date when the suit was filed, the plaintiffs were not shown as partners in the Register of the Firms. In any view of the matter such a finding is still to be arrived in the present suit after consideration of the evidence to be brought by the parties during the course of the hearing of the suit and the learned court below has rightly held that this issue would be decided at the stage of final adjudication of the suit.

For the aforesaid reasons and discussions, this Court finds that the learned court below has not committed any error of jurisdiction or illegality in passing the impugned order.

The revision application, is, accordingly, dismissed.

(V. Nath, J)

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