

APPLICATION NO.8211 OF 2015
IN C.S.NO.290 OF 2013

PUSHPA SATHYANARAYANA, J.

This application is taken out by the applicant / second defendant to reject the plaint in the above suit.

2. The plaintiff and the second defendant are brothers and partners in the first defendant's firm. The suit has been filed by the plaintiff for recovery of money. According to the applicant, the present suit is a counterblast suit filed by the applicant in C.S.No.248 of 2013.

3. There are already litigations between the parties. The applicant had filed C.S.No.330 of 2010 against the first respondent/plaintiff for a declaration that the settlement deed dated 31.07.2009 executed by the mother in favour of the defendant is null and void and for cancellation of the same.

4. There was also another suit in C.S.No.401 of 2010 filed by the applicant as plaintiff against the first respondent herein, for a declaration that the settlement deed dated 16.10.2009 is invalid and not binding on the plaintiff therein and for partition of "A" Schedule property.

5. The applicant herein also had filed C.S.No.248 of 2013 against the partnership firm and the first respondent / plaintiff for a declaration that the partnership firm stands dissolved and that the partnership firm should be wound up under Sections 46 and 48 of the Partnership Act; for a direction to the defendants render true and faithful account of the Partnership Firm; for appointment of Receiver for winding up of the Partnership Firm; for appointment of a Commissioner for taking accounts of the Partnership Firm and for injunction restraining the second defendant from dealing with the properties of the Partnership Firm.

6. The present suit is one filed by the defendant in the above suits against the Partnership Firm and the second defendant for the relief of recovery of money with interest. The plaint in the said suit is now sought to be rejected on the ground that the same is not maintainable, as the recovery is a partnership debt. Without a prayer for accounts and finalisation thereof, the plaintiff herein cannot make any claim. The further contention of the applicant is that without praying for the accounts of the Partnership Firm, the suit cannot be maintained. The debt, according to the applicant, being a Partnership debt, there is no cause of action for filing the suit. The plaint is sought to be rejected on the ground that it is a counterblast of the suits filed by the applicant herein.

7. The application was resisted by the learned counsel for the first respondent / plaintiff contending that the second defendant was liable to pay the amount, as per Clause 7 of the deed of partnership. The second defendant had filed a suit in C.S.No.330 of 2010 against the respondent to declare that the two settlement deeds executed by the mother in his favour, as null and void. The mother was also a Partner in the first defendant's firm. Hence, according to the respondent, the suit is maintainable and the same cannot be rejected.

8. The question that has to be decided is whether the application has to be allowed.

9. From the perusal of the records, it can be seen that Application No.5873 of 2015 has been filed by the very same applicant under Order XIV Rule 2 of the Code of Civil Procedure, to determine the issue of maintainability of the suit as preliminary issue and pass such other orders, as this Court may deem fit.

10. The said application was disposed of on 17.11.2015, after hearing both the parties. Additional issues with respect to the maintainability of the suit was framed. The objection with respect to the maintainability of the

suit before the accounts are finalised and dissolution of the firm is completed as well as when the suit for general accounts was also framed as one of the additional issues. While disposing the said application, after framing additional issues, this Court had directed the parties to go for trial and complete the evidence expeditiously.

11. Without disclosing the same, the present application has been filed for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. Rejection of plaint was sought for by the applicant on the ground that the suit is not maintainable under Order VII Rule 11(d) and the same has to be rejected.

12. In support of the contention, the learned counsel for the applicant also placed his reliance on a judgment of the Bombay High Court in ***STATE OF BOMBAY VS. CHHAGANLAL GANGARAM LAVAR [Second Appeal No.651 of 1952 dated 15.07.1954]***. It was also further submitted that so long as the view of the Privy Council is not differed by the Supreme Court of India, the same is binding on the High Court and what is binding is not merely the point actually decided, but an opinion expressed by the Privy Council.

13. The applicant having failed in his attempt to take up the issue of maintainability, as a preliminary issue, has filed the present application, under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure.

14. As stated earlier, the second defendant has already filed three suits and C.S.No.248 of 2013 was filed for a comprehensive relief of declaration that the Partnership deed is dissolved and for accounts etc. The said suit was filed on 18.03.2013, whereas the present suit was filed on 27.03.2013. The objection of the applicant with respect to the maintainability of the suit will be subject to the result of C.S.No.248 of 2013 and the plaintiff in the present suit has claimed recovery of money from the second defendant. As the suit for general accounts has already been levied by the second defendant himself, there is no impediment in this suit for being tried along with other pending suits. Hence, there is no merit in the case of the applicant and accordingly, the present application is dismissed. No costs.

26 / 07 / 2016

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