

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

**RSA No.986 of 1990
Date of Decision-02.05.2016**

Dev Raj ... Appellant

Versus

Harbans Lal ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Gupta, Advocate
for the appellant.

None for the respondent.

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant is in second appeal in a suit for dissolution of Firm M/s Harbans Lal Dev Raj for rendition of accounts and for recovery of amount due and for direction to the defendant to hand over possession of the wooden khokhas and space underneath as shown in the plaint.

[2]. Plaintiff filed this suit for dissolution of firm and to recover the amount with a direction to defendant to hand over the possession of the wooden khokhas. Plaintiff pleaded that shop in the name and style of M/s Harbans Lal Dev Raj is being run by the plaintiff and the defendant in the khokha. As per the terms of partnership deed, an amount of Rs.1500/- was contributed by the

defendant and Rs.500/- by the plaintiff. The profits and losses were to be shared by the parties in the ratio accordingly. The accounts were to be maintained after every three months and thereafter, profits and losses were to be divided and apportioned.

[3]. Plaintiff alleged that the land as well as the premises belonged to him and in case of any dispute, the defendant was to take away his articles and was not to give the property to any third person. The possession over the property was to be given to the plaintiff. Even in the event of taking loan by the defendant, he was solely responsible for repayment of the same. Plaintiff further alleged that the defendant did not give the accounts for the last one year. The plaintiff was not inclined to keep the business joint and intended to dissolve the partnership. With this background, the suit came to be filed.

[4]. Defendant contested the suit on all counts, thereby taking the plea that space underneath the Khokha belonged to the Municipal Committee, Moga and the defendant had placed the wooden Khokha on the side with the permission of the Municipal committee, Moga about 20 years ago. Defendant has been paying the tehbazari to the Municipal Committee and also got electric connection installed in the Khokha in his name. The defendant claimed himself to be in possession of the khokha and the plaintiff has no concern with the khokha. In 1967, plaintiff filed a suit against the defendant as well as against the Municipal

Committee and the same was dismissed. The question of partnership did not arise.

[5]. After necessary pleadings, parties went to trial on the following issues:-

“1. Whether the parties entered into any partnership if so, on what terms? OPP

2. Whether the plaintiff is the owner of the wooden stall and the space underneath, if so, to what effect? OPP

3. Relief.”

[6]. Both the parties led evidence. Trial Court dismissed the suit with costs vide judgment dated 21.07.1987. Plaintiff went in appeal before the Lower Appellate Court. Lower Appellate Court partly accepted the appeal to the extent of granting declaration for dissolution of the firm but suit with regard to hand over the possession of khokha and space underneath was dismissed vide judgment and decree dated 11.01.1990.

[7]. Learned counsel for the appellant has formulated following substantial questions of law:-

“1. Whether the decision of the lower Appellate Court is against the clause No.4 of the partnership deed Ex.P-1 or not?

2. Whether the appellant/plaintiff is legally entitled to the possession of the wooden khokha and the space underneath or not?

3. Whether the courts below have misread and misconstrued the evidence led on record especially the partnership deed Ex.P-1 or not?"

[8]. I have heard learned counsel for the appellant and have gone through the record with his able assistance.

[9]. Learned counsel for the appellant vehemently contended that once dissolution of the partnership firm was accepted by the lower Appellate court then the possession of khokha and land underneath was also required to be ordered in favour of the plaintiff-appellant. Learned counsel submitted that the trial Court as well as the Lower Appellate Court have erred in not appreciating the evidence on record in right perspective. From the evidence, existence of partnership between the parties was established and the same was executed by the parties when the plaintiff filed an earlier suit against the defendant and in pursuance of compromise partnership deed was executed. Plaintiff was not willing to continue with the partnership firm and he intended to get it dissolved.

[10]. It is further contended that defendant could not rebut the arguments of the appellant before the Courts below to the extent of proving that no partnership existed at the relevant time. The existence of partnership deed was established before the lower Appellate Court. Against part acceptance of the appeal before the lower Appellate Court, no cross appeal was filed by the defendant. In view of aforesaid, existence of partnership deed

has been proved. Even otherwise, execution of partnership deed has to be considered in the light of testimonies of Surinder Kumar (PW-1), Document Writer and Ram Kumar, attesting witness of the same. The testimony of Surinder Kumar (PW1) showed that he had worked with Gangu Ram Musafir, Document Writer at Moga and identified his signature. He has seen the document dated 15.04.1968, which was scribed by Gangu Ram Musafir. Gangu Ram Musafir had died and there was entry of that writing in the register of Gangu Ram Musafir at serial No.501 dated 15.04.1968. Ram Kumar (PW2) was the attesting witness of the compromise. According to his statement, he was witness to partnership deed Ex.P1, where parties to the same attested the document after admitting its contents to be correct. Plaintiff while appearing as PW-4 reiterated the stand taken in the plaint and deposed that he had entered into partnership with the defendant on 01.04.1968. The partnership deed was executed between the parties on 15.04.1968. Both the parties signed the same. Ram Kumar was the attesting witness. It was scribed by Gangu Ram Musafir, Deed Writer.

[11]. Defendant did not lead any evidence to the contrary to show that partnership deed was never executed. The defendant while appearing as DW-4 admitted his signatures at different places. Defendant did not deny, rather admitted his signature. In this way, execution of partnership deed stood proved by way of evidence of scribe, an attesting witness and above all, admission

of the defendant to the extent of admitting his signature. No appeal was filed by the defendant against the part decretal of suit in appeal by the lower Appellate Court. With regard to issue of handing over the possession of the khokha and land underneath, there is no material on record to show that khokha and land underneath were subject matter of partnership assets which were to be apportioned between the parties. Plaintiff did not lead any evidence to show that he was owner of the wooden stall and space underneath. Even the perusal of Ex.P1 did not suggest such a feature. Once the plaintiff was not proved to be owner of the khokha and land underneath, such a relief cannot be given to the plaintiff.

[12]. On the other hand, defendant while appearing as DW-4 has deposed that he is the owner of the wooden stall and had placed this khokha on the site in the year 1964 with the consent of the Municipal Committee, Moga. He kept on paying the rent to the Municipal committee. Ex.D4 and Ex.D5 have been exhibited as receipts, showing payment of tehbazari to the Municipal Committee. The electricity connection was installed in the khokha which further strengthened the case of the defendant. The khokha was also registered in the record of Inspector under Shop Act.

[13]. Plaintiff has admitted in his statement that the khokha is lying in the property of Municipal Committee and also admitted

that khokha was built by the defendant, but he had paid the price thereof. No evidence of any payment has been adduced on record. For want of evidence, the factum of payment advanced by the plaintiff to the defendant cannot be appreciated.

[14]. The substantial questions of law as formulated revolve around existence of khokha and ownership thereof. Perusal of Ex.P1 does not show that the khokha and land underneath were subject matter of partnership deed and this fact has been conceded by learned counsel for the appellant during the course of arguments. Once the khokha was installed with the permission of the Municipal committee in the year 1964 and the defendant paid the rent thereof to the Municipal Committee and got it well equipped with electricity connection and got it registered under the Shop Act in favour of the defendant, the question of khokha being subject matter of partnership deed does not arise. Above all, plaintiff also admitted that khokha was installed by the defendant, but he paid the price thereof to the defendant. Installation of khokha by the defendant remained an admitted fact. No documentary evidence was led by the plaintiff to show that the price of the khokha was paid by him to the defendant at any point of time. In view of aforesaid, questions No.2 and 3 cannot be appreciated inasmuch as that the possession of khokha and the land underneath cannot be delivered to the plaintiff as the same were never the subject matter of partnership concern. Khokha was independently installed by the defendant

and he kept on making payment of rent to the Municipal Committee. The judgment and decree of the lower Appellate Court cannot be faulted with as there was no misreading of evidence by the lower Appellate Court.

[15]. In the light of aforesaid facts, the decretal of the suit to the extent of dissolving the partnership firm was justified, but possession of the khokha and the land cannot be delivered to the plaintiff. The judgment and decree passed by the lower Appellate Court is found to be legally sustainable as the same is based on correct appreciation of material on record. Resultantly, this appeal is dismissed being totally devoid of merits.

(RAJ MOHAN SINGH)
JUDGE

02.05.2016
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