IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.740 of 2007 (O&M)
Date of Decision-09.05.2016

Om Parkash Malik and others ... Appellants

Versus

Virinder Kumar Malik ... Respondent

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

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate with
Mr. Mayank Aggarwal, Advocate
for the appellants.

Mr. Puneet Bali, Sr. Advocate with
Mr. Ranjit Saini, Advocate for the respondent.

***

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the judgment and decree dated 06.02.2007 passed by Additional District Judge, Chandigarh whereby judgment and decree dated 03.10.2002 passed by Civil Judge (Junior Division), Chandigarh was upheld and the appeal of the present appellants was dismissed.

[2]. Plaintiff-respondent filed a suit for rendition of accounts by defendant No.1 of defendants No.2 and 3 and for permanent injunction restraining defendant No.1 not to effect any

change in the firms of defendants No.2 and 3, not to change the record of defendants No.2 and 3 without the consent of the plaintiff, not to dispossess the plaintiff from defendant No.2 and not to interfere in the working of service station of defendant No.2. Mandatory injunction was also sought to give accounts of every day sales in the Court till the decision of the suit.

[3]. Plaintiff alleged that he along with defendant No.1 were born at Abhor District Ferozepur, where all the ancestral properties of the family were situated. Father of the plaintiff and defendant No.1 were doing the business at Abhor and other places. Business was carried out in the name and style of M/s R.L. Devi Dayal Lachmi Narain in which Ram Labhaya , Lachmi Narain and Devi Dayal were the partners in equal shares. The business was mainly of petroleum products. The firm expanded its business in Chandigarh in the year 1958 under the name and style of M/s R.L. Devi Dayal Lachmi Narain. Defendant No.1 was taken as a partner in the firm as he was elder to the plaintiff and was staying with the father. Defendant No.1 had no source of income of his own, nor he made any investment in the said business.

[4]. Plaintiff further alleged that the firm M/s Happy Service Station was started in the year 1968, which was part of M/s R.L. Devi Dayal Lachmi Narain i.e during the lifetime of father of the plaintiff. Defendant No.1 was only adult and elder

member in the family as the plaintiff was a student. Therefore defendant No.1 was made representative on behalf of the share of the plaintiff and defendant No.1, who also looked after the business of defendant No.2 which was a part and parcel of business of defendant No.3. Both the firms were therefore formed with the income of the family business of the father. Father of the plaintiff had full faith in defendant No.1 that he being elder to the plaintiff will look after the interest of plaintiff.

[5]. Plaintiff was studying in Pilani and he returned after his studies in the year 1969. Plaintiff started working with defendants No.2 and 3 as a partner. However, all the accounts of the firms were maintained by defendant No.1 as a partner and being elder brother of the plaintiff. In the year 1974, the firm M/s R.L. Devi Dayal Lachmi Narain was dissolved and entire business at Abhor, Malout and Chandigarh was divided amongst the parties. Ram Labhaya was given one agency and a petrol pump which was later on named as M/s A.K. Sales/ defendant No.3 and Happy Service Station/defendant No.2 at Chandigarh. Plaintiff joined the business in the year 1974.

[6]. In the year 1976, plaintiff started living in the family house No.3022, Sector-28-D, Chandigarh and is still living in the said house in his own right. The house in question was purchased out of the income of the partnership firms. Father of the plaintiff died in the year 1986. Defendant No.1 kept on

looking after the expenses of the plaintiff and had been paying Rs.15,000/- per month, out of the income of the firms towards day to day expenses of the plaintiff. Plaintiff kept on working at defendants No.2 and 3. Since the total investment had been done by the father, therefore, father had desired that both brothers should continue to do joint business and live together.

[7]. After the death of the father, M/s A.K. Sales, M/s Happy Service Centre, M/s Punjab Tools Engineers and M/s Shivam Electronics, Delhi were running. It was decided by defendant No.1, other relatives and family members to divide the shares and properties of the plaintiff and defendant No.1 in the family business in order to avoid any future controversy. An agreement/family settlement was executed by the plaintiff and defendant No.1 in the presence of family members and witnesses.

[8]. Agreement dated 25.05.1983 was executed by the plaintiff and defendant No.1 and it was agreed that the parties have 50% shares as partner. It was agreed that business of M/s A.K. Sales will be converted into a partnership consisting of plaintiff and defendant No.1 having 50% shares each and defendant No.1 was required to get the consent of Hindustan Petroleum to get constituted partnership and regular deed of partnership was to be executed thereafter. The consent and execution of formal partnership was left to defendant No.1 for

follow up action. Till the approval of Hindustan Petroleum, plaintiff and defendant No.1 were to act and function as a partner to the tune of 50% shares in the concern.

[9]. M/s Happy Service Station/defendant No.2 was also to be converted into partnership with the plaintiff to the tune of 50% shares in each to the plaintiff and defendant No.1. Till the approval of Hindustan Petroleum, plaintiff and defendant No.1 were agreed to function as partners of 50% shares each in the concern.

[10]. Similarly, M/s Punjab Tools Engineers and Shivam Electronics were to be divided 50% each to the plaintiff and defendant No.1 including movable and immovable properties therein. It was further agreed between the parties that plaintiff and defendant No.1 will share the profit and loss of all the concern w.e.f 01.06.1983 in the ratio of 50% and accounts were to be squared up by 31.03.1984. All the expenses and investments were to be considered as 50% of both the parties. The follow up action was to be done by defendant No.1. Plaintiff started working full time and did not take any other avocation and devoted his full time in the business. Defendant No.1 did not object working of the plaintiff with the concern and kept on paying the small amount every month to the plaintiff on the assurance that he has already applied to M/s Hindustan Petroleum for consent for execution of regular partnership.

Defendant No.1 was to do follow up action of the agreement and plaintiff was asked to keep working with the concern as full time partner. Defendant No.1 being elder brother was considered by the plaintiff as father like figure throughout and he thought he will do everything as per agreement.

[11]. In the year 1985, defendant No.1, proposed execution of one more family settlement bringing out some changes in the previous agreement. Therefore, agreement was executed on 16.04.1985. Defendant No.1 admitted the business being partnership between both the parties to the tune of 50% shares each in the concern. It was again agreed that business of defendant No.2 will be converted into partnership of 50% shares and again 50% partnership was accepted by defendant No.1.

[12]. Pursuant to both the agreements, defendant No.1 sought the consent of Hindustan Petroleum for formal execution of partnership vide letter dated 25.07.1986. Plaintiff did not insist on early execution of partnership deed as he was working as a partner in the business. The total accounts of the business were being kept with defendant No.1, except Service Station of defendant No.2. Plaintiff was being paid only expenses of household and was not permitted to have control over the accounts books with all ulterior motive. Even the said nominal amount was stopped. Whatever small amount plaintiff got from the Service Station of defendant No.2 was not sufficient to run

household. Plaintiff claimed at least 30,000/- from defendant No.1, out of the income from business towards household expenses.

[13]. Defendant No.1 with all mala fide fraudulently and against the family settlement inducted his sons defendants No.4 and 5 as partners in the firms/defendants No.2 and 3 during pendency of the suit. Defendant No.1 was bound by the family settlement and induction of defendants No.4 and 5 during pendency of suit was not binding upon the plaintiff. Plaintiff did not accept defendants No.4 and 5 as partners of defendants No.2 and 3. The action of defendant No.1 was malicious and fraudulent. When defendant No.1 was served not to induct or change the constitution of the firms during the pendency of the suit, therefore, action of defendant No.1 to induct defendants No.4 and 5 was mala fide and was the result of ill will. Plaintiff did not admit defendants No.4 and 5 to be partners and the action of defendant No.1 was contrary to the agreements. Plaintiff become suspicious when defendant No.1 started constructing the plot at Panchkula, which was agreed to be given to the plaintiff. Defendant No.1 also executed agreement to sell in order to create encumbrance on the plot. The plaintiff had to file a suit for specific performance which is pending in the Court in which status quo was granted. Defendant No.1 filed written statement and denied even family partition/agreements which he had voluntarily executed in the presence of the plaintiff,

witnesses and relatives. At some point of time, defendant No.1 admitted the execution of these documents in the reply and finally denied having signed the original documents.

[14]. In view of the stand taken by defendant No.1, plaintiff apprehended about the bona fide of defendant No.1 in not showing the books of accounts as he was maintaining double sets of accounts book. Defendant No.1 was delaying the execution of formal partnership deed of the joint firms. Defendant No.1 avoided accounts of defendants No.2 and 3 and did not show full accounts. He only showed nominal profits from the business. From the joint business of the parties, defendant No.1 has purchased assets and properties in the form of three cars, scooters, residential place in Panchkula, construction over which lacs of rupees were spent. His sons were studying in USA and he was visiting European countries along with family members frequently. Defendant No.1 was not having any other source of income and he had acquired and spent the amount on aforesaid aspect. All these assets have been made from the income of defendants No.2 and 3. Plaintiff was not aware about actual income from both the firms as accounts were being kept by defendant No.1 only.

[15]. With this background the suit came to be filed by the plaintiff requiring the defendant No.1 to render the statement of accounts of defendants No.2 and 3, to produce all the records

regarding purchase and sales of assets, liability, market credit and debit of both the firms, to produce passport of all the family members, bank accounts of all the family members, all the fixed deposits, immovable properties of defendant No.1, salary paid to family members of defendant No.1 from the accounts of defendants No.2 and 3, amount paid to plaintiff from the record of defendants No.2 and 3, balance-sheet of defendants No.2 and 3, income tax returns of defendants No.2 and 3, income tax returns of family members of defendant No.1, details of cars owned by defendant No.1 and his family members, details of immovable properties owned by defendant No.1 and details of other source of income of defendant No.1 other than defendants No.2 and 3. At last direction was also sought to execute partnership deed and to do compliance pursuant to family partition in the running of business of defendants No.2 and 3.

[16]. Suit was contested by the defendants on all counts. Defendants pleaded that the agreements were never acted upon and the same were cancelled/revoked specifically by writing dated 19.01.1988. Defendants in addition to aforesaid cancellation/revocation of agreements pleaded that defendant No.1 was partner in M/s Punjab Tools Engineers. The whole of the firm has been disposed of by the plaintiff and he has received all the sale profits. Plaintiff has no concern with M/s A.K. Sales Private Limited. Defendant No.1 has no concern with M/s Shivam Electronics, Delhi. M/s A.K. Sales and M/s Happy

Service Station were sole proprietorship concern of defendant No.1. Defendant No.1 alleged that M/s A.K. Sales and M/s Happy Service Centre remained sole proprietor concerns of defendant No.1 upto 31.03.1993 and thereafter it became partnership concern of defendant No.1 and his sons. Plaintiff has no concern, right, title and interest in it. Defendant No.1 further alleged that Ram Labhaya had no concern with the firm M/s R.L. Devi Dayal Lachmi Narain, Chandigarh. The firm was consisting of Om Parkash, Sunil Kumar, Suresh Kumar and Chander Parkash. Business was started in the year 1974 and Ram Labhaya did not invest anything in the business as he was doing business in Abohar in the name and style of M/s R.L. Devi Dayal Lachmi Narain and later on he did business in the name and style of R.L. Malik and Co. as sole proprietorship concern. Defendant No.1 did not receive any financial help from his father. House and shop in Abohar were sold by father and sale proceeds were received by the plaintiff only.

Defendant No.1 further pleaded that he was partner in M/s Punjab Tools Engineers. Whole of the firm was disposed of by the plaintiff and the plaintiff had got the sale proceeds. Defendant No.1 has no concern with M/s Shivam Electronics, Delhi. M/s A.K. Sales and M/s Happy Service Centre were the sole proprietorship concerns of defendant No.1 in which plaintiff had no interest what so ever.

[17]. On the basis of pleadings of the parties, following issues were framed:-

> *"1. Whether the plaintiff is entitled to rendition of accounts by defendant No.1 in respect of defendants No.2 and 3? OPP*
>
> *2. Whether defendant No.1 is liable to be restrained from effecting any change in the constitution of defendants No.2 and 3 without the consent of the plaintiff? OPP*
>
> *3. Whether defendant No.1 is liable to be restrained from changing the records of defendants No.2 and 3 without the consent of the plaintiff?OPP*
>
> *4. Whether the defendant No.1 is liable to be restrained from dispossessing the plaintiff of the possession of defendant No.2? OPP*
>
> *5. Whether the defendants are liable to be directed to give account of every day sales in the court till the decision of the suit? OPP*
>
> *6. Whether the suit is not maintainable? OPD*
>
> *7. Whether the suit is bad for non-joinder of parties? OPD*
>
> *8. Whether the plaintiff has no right or interest in defendant No.2? If so, its effect? OPD*
>
> *9. Whether the suit is time barred? OPD*
>
> *10. Whether the family agreements in question were executed under pressure? If so, its effect? OPD*

11. Whether the alleged family arrangements dated 25.05.1983 and 16.04.1985 were never acted upon? OPD

12. Relief."

[18]. Parties led evidence. Trial Court decreed the suit of the plaintiff vide judgment and decree dated 03.10.2002 by holding that the plaintiff has not yet been officially declared as partner of defendants No.2 and 3 which would subsequently give him all the legal rights to act as a partner of defendants No.2 and 3. The suit was decreed with costs and defendant No.1 was directed to seek necessary permission from the Hindustan Petroleum or the appropriate authority and seek necessary change in the constitution of defendants No.2 and 3 by including the plaintiff as partner. Defendant No.1 was restrained from changing the records of defendants No.2 and 3 without the consent of the plaintiff or dispossessing the plaintiff from defendants No.2 and 3 and to give rendition of accounts in respect of defendants No.2 and 3 since its inception, after the plaintiff is formally inducted as partner of defendants No.2 and 3 on the basis of family agreements dated 25.05.1983 and 16.04.1985. Defendant No.1 was also directed to pursue the change of the constitution of defendants No.2 and 3 with the Hindustan Petroleum within two months.

[19]. The appellants remained unsuccessful in the appeal before the Lower Appellate Court, which was dismissed on

06.02.2007. Hence, the present appeal came to be filed in this Court.

[20]. Following substantial questions of law have been framed in the grounds of appeal:-

> *"a) Whether the suit for specific performance in respect of an agreement to enter into a partnership deed after happening of some contingency or subject to some condition is maintainable.*
>
> *b) Whether the suit for mandatory or permanent injunction is maintainable for the execution of a partnership deed based upon an agreement/family arrangement?*
>
> *c) Whether the suit of the plaintiff was maintainable on account of the specific bar contained under Section 14(1)(c) read with Section 41(e) of the Specific Relief Act?*
>
> *d) Whether the decree of the court below in respect of rendition of account is totally illegal, arbitrary, vague and self contradictory and thus liable to be set aside as the suit for rendition could not have been decreed from the back date?*
>
> *e) Whether the respondent could have asked for specific performance of the part of the agreement by ignoring his own obligations?*
>
> *f) Whether this kind of suit is otherwise maintainable without pleading of readiness and willingness.*
>
> *g) Whether the suit was liable to be dismissed as otherwise also the agreement of 16.04.1985 is in*

supersession of the provisions of the agreement dated 25.05.1983?

h) Whether the finding of the courts below are totally wrong and illegal on the question of limitation because the agreement was of the year 1985 and the suit has been filed in the year 1993 and the reasoning given by the courts below is totally illegal, unsustainable and against the evidence on record on the question of limitation?

i) Whether the finding of the courts below in respect of a document Ex.DX is also totally illegal, unsustainable in the eyes of law once the respondent/plaintiff himself has admitted the signatures on the document and the onus to otherwise was heavily on the respondent/plaintiff?

j) Whether the suit was maintainable without impleading the other legal heirs of Ram Lubhaya once the plaintiff was alleging the various firms to be joint Hindu Family/ancestral properties?

k) Whether the findings of the learned courts below are totally illegal, perverse against the facts and evidence on record and law applicable thereto?"

[21]. I have heard arguments of learned counsel for both the parties and have perused the record with their able assistance.

[22]. According to the plaintiff, both the brothers have got the following business in Chandigarh and Delhi in proprietorship or partnership concerns. The salient features of agreements/family settlement are to the following effect:-

"1. M/s A.K. Sales, Hindustan, Petroleum Corporation Limited, Kerosene Oil Agency and retail outlet, Sector-37, Chandigarh a proprietorship concern with the sole proprietorship of Shri Om Parkash Malik. Happy Service Centre, Sector-17, Madhya Marg, Chandigarh as a licencee of Hindustan Petroleum Corporation of limited, a proprietorship concern under the sole proprietorship of Shri Om Parkash Malik.

2. M/s Shivam Electronics, 94, Nehru place, New Delhi a partnership concern in which Shri Virinder Kumar Malik has got 50% share and the remaining share is with Shri Bharat Bhushan son of Shri Lekh Raj Khetarpal.

3. M/s Punjab Tool Engineers, Mohali, a partnership concern in which Shri Virinder Kumar Malik has got 75% share whereas Shri Om Parkash Malik has got 25%. The land measuring 13 kanals approximately at C-118, and building thereon is also of 75% share belonging to Shri Virinder Kumar Malik and 25% to Shri Om Parkash Malik."

[23]. Both the brothers agreed and covenanted with each other that M/s A.K. Sales as proprietorship concern will be converted into partnership concern with each brother i.e. plaintiff and defendant No.1 having 50% share each. Since approval of Hindustan Petroleum Corporation was required for effecting a change in the constitution of the firm, therefore, approval was required to be obtained by defendant No.1 and thereafter partnership deed with 50% share of the plaintiff and 50% share of defendant No.1 was to be executed. M/s A.K. Sales was to

remain a partnership concern till necessary approval was obtained from Hindustan Petroleum Corporation but it was mutually agreed that defendant No.1 and the plaintiff will have 50% share each in this concern.

[24]. M/s Happy Service Centre as proprietorship concern will be converted into partnership concern with each brother having 50% share. Prior approval of Hindustan Petroleum Corporation was required for effecting a change in the constitution of the firms, therefore, defendant No.1 was assigned this task and thereafter, partnership deed with 50% share each in favour of both the brothers was to be executed. Although M/s Happy Service Centre was to remain proprietorship till necessary approval was made but it was mutual agreed between the parties i.e. plaintiff and defendant No.1 will be having 50% share each in the concern.

[25]. Plaintiff was to enter into partnership deed with other partners of M/s Shivam Electronics in which plaintiff and defendant No.1 will be equal share of 25% each to make themselves partners of 50% in M/s Shivam Electronics. In supersession of the earlier partnership deed relating to Punjab Tools Engineers, a fresh partnership deed was to be executed in which plaintiff and defendant No.1 were to have equal share of 50% each. Similarly land and building of C-118, Mohali was to be shared on the basis of 50% each. From 01.06.1983, it was

decided that the plaintiff and defendant No.1 were to share profits, losses and liabilities in the above concern on the basis of their defined shares as 50% each. Both the brothers were to square up their accounts in the aforesaid business concerns.

[26]. Similarly the amended family settlement dated 16.04.1985 dealt with following properties:-

> *"A. Happy Service Centre, Sector-17, Madhya Marg, Chandigarh as Licencee of Hindustan Petroleum Corporation Limited, a proprietorship concern under the sole proprietorship of Shri Om Parkash Malik.*
>
> *B. M/S. Punjab Tool Engineers, Mohali, a partnership concern in which Shri Virinder Kumar Malik has got 75% share whereas Shri Om Parkash Malik has got 25 % share. The land measuring 13 kanals approximately at C-118 and the building thereon is also of 75% share belonging to Shri Virinder Kumar Malik and 25% share to Shri Om Parkash Malik. "*

Vide the aforesaid agreement, it was agreed and covenanted with each other that M/s Happy Service Station as proprietorship concern will be converted into partnership concern with each brother i.e. plaintiff and defendant No.1 having 50% share each. Since prior approval of Hindustan Petroleum was required for effecting a change in the constitution of the firms, therefore, defendant No.1 was assigned the task of obtaining such approval and thereafter, partnership deed to the extent of 50% share of the plaintiff and defendant No.1 was to be executed. Although M/s Happy Service Station was to remain proprietorship concern till approval by the Hindustan Petroleum Corporation but it was mutually agreed that the plaintiff and defendant No.1 will be having 50% share in the concern.

[27]. In supersession of earlier partnership deed relating to Punjab Tools Engineers, a fresh partnership deed was to be executed between the plaintiff and defendant No.1 in equal shares of 50% each. Similarly the land and building of C-118 mutually was to be shared on the basis of 50% share each.

[28]. From 01.06.1983, both the brothers were to share profits, losses and liabilities of aforesaid concern on the basis of their 50% share each in both the concerns. The deed was reduced into writing on 16.04.1985, although it was mutually agreed that the aforesaid arrangement would come into effect from 01.04.1985 and in fact it was acted upon by both the parties from 01.04.1985.

[29]. Before considering substantial questions of law as projected by the learned counsel for the appellants, it would be necessary to note the ambit in which appeal was argued before the lower appellate Court. Initially, the stand of the appellants was that the family agreements dated 25.05.1983 and 16.04.1985 were got executed by defendant No.1 under the pressure of the family members and relatives and the same were acted upon between the parties. These agreements were incapable of being enforced being determinable in nature. Even

these agreements were cancelled by letter of cancellation dated 19.01.1988 Ex.Dx by the plaintiff himself, whereby he relinquished his entire share, if any, in the business.

[30]. Before Lower Appellate Court, execution of agreements Ex.PW3/A dated 16.04.1985 and Ex. PW3/B dated 25.05.1983 were admitted and their execution was duly admitted. Thereafter, lower Appellate Court proceeded to decide whether these family arrangements were legally executable? and whether writing of cancellation Ex.Dx was genuine or not? The Courts below have commented upon these agreements with reference to evidence that the due execution of agreements was proved as defendant No.1 had himself taken steps to act upon these family settlements. Besides, admitting due execution of aforesaid agreements, defendant No.1 himself took steps to act upon family arrangements. Ex.PW3/C was executed between the parties, wherein both the parties admitted to be partners in defendants No.2 and 3 as per family arrangements. Defendant No.1 himself agreed to sell plot No.17, Sector-6, Panchkula in the name of respondent-plaintiff and sale proceeds were adjusted in the investment of the partnership business. Documents Ex.PW8/A to PW8/R further strengthened the plea of agreements having acted upon between the parties. Ex.DW4/1 i.e. letter dated 25.07.1986 was issued by the appellant himself to the Senior Regional Manager, Hindustan Petroleum Corporation Limited informing that he wanted to join the plaintiff

as partner in defendant No.2 for smooth functioning of the outlet and permission be granted. Ex.DW4/2 was sent as reminder by the appellant to the Hindustan Petroleum Corporation Limited regarding change in the constitution of the firm and it was mentioned in the letter that as per arrangement of the year 1983 and 1985, both the brothers are working as partners in the business concern.

[31]. On the strength of admission of the appellant regarding execution of agreements between the parties, the lower Appellate Court decided the issue of writing Ex.DX to hold that the same was the result of fabrication. The Court gave numerous instances to hold the document as a fabricated document and the fault was attributed to the appellant himself.

[32]. Learned counsel for the appellants submitted with vehemence that the suit itself was not maintainable in view of the contingent relief clause. The agreements being determinable in nature could not be assailed in the suit and the contract if any, cannot be enforced and no injunction can be granted.

[33]. Before embarking upon the contentions of the learned counsel for the appellants, it would be necessary to track down bona fide of the parties in approaching the Court. The execution of agreements was not an issue before the Courts below. Defendant No.1 admitted the execution of agreements, though pleaded that the same were the result of force and compulsion

by the relatives and family members. No names of those persons have come forth on record, nor, any instances of undue influence have been pleaded with reference to any evidence. On that front, it has to be taken that execution of both the agreements stood proved before the Courts below. Even otherwise, the appellant has embarked upon writing of cancellation Ex.DX dated 19.01.1988 to a greater extent.

[34]. In order to test the stand of the appellant, the document itself has to be seen. I have perused the document itself which is on record as Ex.DX available at page No. 469 of the record. The alleged cancellation as projected by the appellant pre-supposed execution of the agreements. Though the cancellation has been attributed to the plaintiff himself, but the original of this document was not before the trial Court. Trial Court also held this document to be fabricated document. This was an unilateral writing allegedly addressed by the plaintiff himself to the appellant by showing him as his brother in the opening. The wordings of the letter were in a typed version, whereas on the top and at the end, the incorporations were done by hand. It appears that top version of the letter and end version of the letter were torn and photocopies of the same were produced before the trial Court with handmade insertions, thereby showing 'brother' and "your faithfully" at the end. The original of the letter was produced before the lower Appellate Court. The head and tail of this document were found torn

intentionally and words ‘Chandigarh’ and ‘1988’ were added and thereafter, the matter was typed on the same, showing it to be a revocation of earlier agreements i.e PW3/A and PW3/B between the parties. The contents of the writing were so vague and incomplete that it cannot prick the conscience of the Court to admit it as cancellation of earlier documents. No explanation was given by the appellant as to why the original writing was not produced before the trial Court. It was an intentional effort to misguide the Court. The alleged plea taken by the appellant that he required the original writing Ex.DX for some other case was proved hollow as no particulars of said case were produced before the Courts below. Plaintiff asked for the production of the document in appeal and it was produced by the appellant without any objection. The words ‘Chandigarh’, ‘January’, ‘1988’ and ‘faithfully’ were not typed and other contents of the writing were in typed manner. The findings of the fact recorded on this document Ex.DX are based on appreciation of evidence and this Court cannot twist the fact to hold that the document Ex.DX was lawfully executed between the parties.

[35]. Both the Courts below have held that the document is a fraudulent document and was sought to be inserted just to misguide the Court that the agreements Ex.PW3/A and PW3/B were cancelled and were never acted upon. The evidence on record viz. Ex.PW4/1, Ex.PW4/2, Ex.PW8/A to PW8/R cumulatively suggested and proved that the agreements were

acted upon between the parties and procurement of Ex.DX was a fraudulent affair at the behest of the appellant.

[36]. It is a settled principle that the fraud vitiates all solemn acts and the party indulged in such fraud can be thrown at any stage of litigation. A party who has not come to the Court with clean hands, does not deserve any relief. A crude attempt was made by the appellant to introduce falsehood in the case, therefore, the appellant cannot be allowed to ask for any discretion at the hands of the Court.

[37]. Determinable contract derive their existence from the determination clause envisaged therein. There are essentially three types of determination clause viz. (i) termination for clause (breach or upon a contingent event), (ii) termination for convenience and (iii) termination upon expiry of the term. While a termination clause can be drafted in several ways, termination could occur without cause also at the option of either party and/or the contract may also prove for the right of a non-defaulting party to terminate the contract on the occurrence of certain specified events. The word “determinable” used in clause (C) to Sub Section (1) of Section 14 of the Specific Relief Act, 1963 means that thing can be put to an end. Determination is an event of putting a thing to an end, meaning thereby, all revocable deeds and voidable contracts may fall within determinable contracts and the principle on which specific performance of

such an agreement would not be granted. A contract for the non-performance for which compensation in money is an adequate relief cannot be specifically enforced.

[38]. Learned counsel for the appellants by relying upon ***Pravudayal Agarwala Vs. Ramkumar Agarwala, 1956 AIR (Calcutta) 41, Sunil Chopra Vs. Zamil New Delhi Infrastructure, 2010 (7) R.C.R (Civil) 1640, Arvindbhai Dahyabhai Patel and another Vs. Krishnakant J. Shah, 2007 AIR (Gujarat) 104 and Virender Pal*** Vs***. Parmod and another, 2012(4) PLR 170*** argued that the agreements in question even if presumed, were determinable in nature and therefore, the present suit was not maintainable.

[39]. Perusal of aforesaid case laws shows that the facts involved in the present case were altogether different. The agreements herein, are in respect of properties which were received and originated from the original business of the father and the plaintiff had antecedent interest in the property which was duly acknowledged by defendant No.1/appellant in the agreements in question. In furtherance of the execution of agreements, defendant No.1 himself proceeded to honour these documents and thereafter, fraudulent writing of cancellation was made. Therefore, these agreements were termed as non-determinable on any of the proposition highlighted by the appellant. The recital of these agreements depicted the

antecedent right of the plaintiff in the business concern and the same cannot be determined by any incorporation what to talk of allowing determinable nature of the contract. No material was produced by the appellant on record to show that the agreements were determinable in nature, rather the executions of these agreements were admitted by defendant No.1/appellant and fraudulent mode was adopted to project cancellation of these agreements by way of non-existing mode which was duly negated by the Courts below and this Court also endorses the findings recorded by the Courts below on calculated fraud played by the appellant.

[40]. Learned counsel for the appellant vehemently submitted that first agreement and second agreement were independent agreements and no supersession of each other was possible and therefore a relief based on co-joint reading was totally misplaced. If first agreement was changed in second agreement, then resultant effect was not reconcilable. The recital of first agreement to the effect that M/s Happy Service Centre would go to Om Parkash and M/s A.K. Sales would go to Virinder Kumar Malik could not be reconciled in terms of second agreement as the agreements could not be implemented in parts. According to learned counsel, damages were the only remedy as these were determinable agreements. Learned counsel also argued that even, if, the suit is presumed to be filed by partner, seeking enforcement of partnership right, claiming

partnership in existence, then how the directions can be given to constitute partnership firm and then grant rendition. In such an eventuality, a contingent decree is to be passed and law of limitation would come into being. In order to avoid limitation, the plaintiff claimed himself to be partner. In all eventually, the firm has to be registered under Section 69 of the Partnership Act for the purpose of filing the suit. The evidence led on record is of sole proprietorship, even plaintiff himself while appearing as PW-8 admitted sole proprietorship. Om Parkash-Defendant No.1 never remained partner in Shivam Electronics. It was the partnership of Virender Kumar Malik and Bharat Bhushan. Defendant No.1 denied the suggestion that he received sale proceeds to the extent of 25% of Punjab Tools Engineers.

[41]. Learned counsel further submitted that the Courts below have given unnecessary findings of the house in Sector 28-D, Chandigarh which was not part of the litigation and this house was purchased by the wife of defendant No.1 in the year 1973 and no dispute was pending qua this house. As regards Ex.DX dated 19.01.1988, signature of the plaintiff was admitted by the plaintiff for the cancellation of agreements.

[42]. Learned counsel for the respondent vehemently opposed the submissions of the appellant and submitted that Section 14 (3) (c) of Specific Relief Act, 1963 is attracted only when there is a suit for specific performance and not in a suit for

declaration and for permanent injunction. By relying upon ***R.K. Apartments Pvt. Ltd. Vs. Smt. Aruna Bahree, 1998(4) R.C.R. (Civil) 663, Her Highness Maharani Shantidevi P. Gaikwad Vs. Savjibhai Haribhai Patel, 2001(1) R.C.R (Rent) 481, Amteshwar Anand Vs. Virender Mohan Singh and others, 2005(4) R.C.R. (Civil) 485*** and ***Harchand Singh (Dead) through LRs Vs. Amar Singh and others, 2005(2) R.C.R. (Civil) 31*** learned counsel argued that Section 14 (3) (c) of the Act is attracted only where the suit is for enforcement of a contract for the construction of any building or the execution of any work on land provided that the building or other work was shown in the terms of the contract in a precise manner in order to enable the Court to determine the exact nature of the building or work. Plaintiff should be having substantial interest in the performance of the contract and interest of such nature that compensation in terms of money for non-performance of the contract is not an adequate relief; and defendant has in pursuance of the contract obtained possession of the whole or any part of the land on which building is to be constructed or other work is to be executed.

[43]. Apparently such a situation is not attracted in the present case. Since there was no clause in the agreements which provide for unilateral termination of agreement, therefore, question of agreements being determinable in nature, cannot be appreciated by any stretch of imagination. Contract could be

unilaterally determined if a clause was inserted at the time of framing it. The agreements involved herein were the entitlements of the plaintiff based on antecedent claim in joint business of the parties. Such type of agreements cannot be determined in the manner as suggested by the appellant. Executions of these agreements were duly proved before the Courts below, even no such absolute power was given to one of the party to cancel the contract. Since no such cause was given to cancel the contract, therefore, authenticity of the contract remained intact.

[44]. The agreements in question were based on family arrangements, full effect has to be given to family arrangements and the Courts always lean in favour of family arrangements that bring harmony in the family and do justice to its various members and avoid any antecedent, future dispute which might ruin them all. Family arrangements as discussed in ***Amteshwar Anand Vs. Virender Mohan Singh and others (Supra)*** fully applies to the facts of the present case as the agreements were duly given effect. Defendant No.1 rather proceeded to act upon these agreements by sending numerous letters to the Authority-Hindustan Petroleum Corporation Limited for the implementation thereof. Courts should lean in favour of upholding the family arrangements instead of disturbing the same on technical or trivial issues, particularly when parties have mutually received benefits thereunder.

[45]. Learned counsel for the respondent further submitted that the execution of agreements was an admitted fact between the parties. The effort to project cancellation was fraudulent gesture on the part of the appellant. The letter dated 25.07.1986 Ex.DW4/1 issued by the defendant himself to the Senior Regional Manager, Hindustan Petroleum Corporation Limited, Chandigarh showed that the agreements were admitted and were implemented also.

[46]. Learned counsel also highlighted agreement to sell dated 25.07.1986 executed between defendant No.1 and the plaintiff, showing them to be partner of M/s A.K. Sales and M/s Happy Service Centre. Vide this agreement to sell, it was recited that since plaintiff had no residential house and defendant No.1 was having House No.3022, Sector 28-D, Chandigarh in the name of his wife and others at Chandigarh, therefore, it was decided by the father of the parties that defendant No.1 would make agreement to sell Ex.PW3/C in the name of his brother/plaintiff of plot No.107, Section-6, Panchkula. The price of the plot was settled as Rs.2,25,000/-, out of which one lac was adjusted from investment of the partnership and remaining was to be paid at the time of transfer of the plot. Learned counsel highlighted that, based on such agreement to sell, a Civil Suit at Chandigarh was filed which was dismissed on 18.11.1992 on the issue of jurisdiction, thereafter, it was not filed at Panchkula. Learned counsel also highlighted that vide Ex.DW4/K,

partnership deed was executed between the parties on 01.11.1988 along with one Pritpal Singh Sachdeva. Defendant was to show that it was not an increase in the share, it remained as 25%. Plaintiff parted with 25% in favour of Pritpal Singh Sachdeva. There were pleadings regarding this partnership in the plaint. It was dissolved and proceeds were invested in Happy Service Centre. M/s Shivam Electronics was also running into losses. It was also liquidated with the help of DRT, where settlement was arrived at with the assistance of defendant No.1. Plaintiff himself paid the losses and in that manner liquidation took place.

[47]. During course of arguments, learned counsel for the respondent also highlighted that M/s A.K. Sales had also been surrendered by the sons of defendant No.1 as they had gone to U.S.A. It has been given to someone else and the plaintiff was not getting anything from the concern. Further, since partnership firm was executed by defendant No.1 with his sons in the year 1993, therefore, cause of action accrued to the plaintiff from 1993 onwards and plea of limitation cannot be pressed into action by the defendant. The maintainability of the suit cannot be questioned by the defendant as firstly the plaintiff has to be inducted as partner in the firm and therefore, the plea of non-maintainability of the suit cannot be entertained.

[48]. Learned counsel for the respondent also pointed out that on 19.05.2009, this Court considered following substantial questions of law for consideration:-

> *"1). Whether the suit as framed was barred under the provision of Section 14 read with Section 41 (1) (e) of the Specific Relief Act?*
>
> *2) Whether the agreement entered into between the parties could be admission of partnership between the parties?"*

Both these issues have been dealt with by this Court in preceding part of the judgment, therefore, no other questions can be entertained. Questions as framed in the grounds of appeal were considered at the time of admission of appeal and only aforesaid questions of law were found worth consideration.

[49]. The agreements in question were never assailed by the defendant in any form, nor other documents were sought to be cancelled. Plea of undue influence was not pressed into service during trial and in the appeal before the lower Appellate Court, therefore, the agreements were legally held to be not determinable. Family arrangements were accepted by both the parties. The conduct of the defendant in forging Ex.DX was such that even his case could have been thrown at the initial stage of litigation being fraudulent in nature. The original writing was produced only at appellate stage.

[50]. In view of settled position of law in ***S.P. Changalvaraya Naidu (dead) by LRs. Vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853***, ***Hamza Haji Vs. State of Kerala and another, 2006(7) SCC 416,*** ***A.V. Papayya Sastry and ors. Vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431*** and ***Balwant Rai Tayal Vs. M/s Subhash Oil Company, Hisar through Shri Raghunath Sahi, 2003(2) RCR (Rent) 148,*** a party who played fraud has no equities in law and can be thrown at any stage of litigation. The agreements being family arrangements were not determinable. There was no termination clause therein. Above all, these agreements were duly acted upon from 1985 onwards till 1993 and therefore, no plea of its enforceability or limitation could have been raised by the defendant. Since no time was fixed, therefore, the cause of action accrued to the plaintiff when his right had been threatened.

[51]. The filing of the suit for creation of partnership deed between defendant and his sons was a lawful connotation and the case of the plaintiff cannot be thrown on any whims of the defendant. Since the plaintiff is not a partner of the concern, therefore, plea based on Section 69 of the Partnership Act does not hold good. In the light of order dated 19.05.2009 and in the light of observations made hereinabove, the questions as formulated have been cumulatively answered in preceding paras.

[52]. So, in view of the aforesaid observations, I am of the considered view that no exception can be taken to the grounds as pleaded and argued by the learned counsel for the appellant. Consequently, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
09.05.2016 **JUDGE**
Prince