IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1347-2015 (O & M)
Date of Decision: 29.01.2016

Joginder Pal and another

... Appellant(s)

Versus

Pushpinder Kumar

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the local papers may be allowed to see the judgment ?.
2) To be referred to the Reporters or not ?.
3) Whether the judgment should be reported in the Digest ?

Present: Mr. Sudeep Mahajan, Advocate, for the appellants.

Mr. L.S.Maan, Advocate, for the respondent.

Paramjeet Singh Dhaliwal, J.

This regular second appeal by the defendants against the judgment and decree dated 06.05.2013 passed by learned Civil Judge (Jr. Divn.), Hoshiarpur whereby suit for declaration with consequential relief of permanent injunction filed by the respondent-plaintiff has been partly decreed and against the judgment and decree dated 09.03.2015 passed by learned Additional District Judge, Hoshiarpur whereby appeal preferred by the defendants has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed a suit for declaration with consequential relief of permanent injunction with the averments that as per partnership deed dated 01.04.1992, plaintiff, defendant No.1 and their mother Shakuntla Devi constituted a firm under the name and style of M/s Chhaju Mal Baij Nath, Garhdiwala, District Hoshiarpur, to the extent of 1/3rd share each. Said partnership was at will and constituted on 01.04.1992. No person was to be admitted as new partner without the consent of active partners and on the death of one partner, the firm was not to be dissolved and business was to be continued. Smt. Shakuntala Devi, one of the partners of above firm, expired on 06.12.02 and after her death the firm is deemed to be continued by plaintiff and defendant No.1 and profit and loss of above firm were to be divided equally. The plaintiff served a notice dated 31.05.2005 which was replied by the defendants, but they did not disclose the alleged dissolution deed dated 25.12.2002. The plaintiff also filed a civil suit for dissolution of above firm and for rendition of accounts, but again defendants did not disclose the dissolution deed dated 25.12.002. Rather, defendant No.1 moved an application under Section 8 read with Section 5 of the Arbitration and Conciliation Act and Order 7 Rule 11 CPC. Even in that application, defendant No.1 did not disclose the factum of alleged dissolution deed. On 17.02.2006, the plaintiff moved an application to the Chairman and Managing Director of Punjab National Bank that defendant No.1 is drawing more amount than the sanctioned limit. In reply to the said application, the bank authority disclosed that defendant No.1 has declared himself as sole proprietor of the firm and after inspecting the record of bank, the plaintiff came to know that defendant No.1 has produced a dissolution deed dated 25.12.002. There was no dissolution deed written between the parties and plaintiff never signed any such dissolution deed. The said dissolution deed has been fabricated in connivance with the witnesses. The son of plaintiff namely Pardeep Kumar died in the year 2002 and due to shock of death of his son, the plaintiff remained absent from the business of above firm. He got his treatment from 2000 to 2004 from Pasrija Hospital, Jalandhar and during this period, the plaintiff was in depression and mentally upset and was unable to understand anything due to shock of sudden demise of his son. The defendant has fabricated entries in account books and other record and started claiming himself to be sole proprietor of the said firm. In fact the accounts between the parties have never been settled and the said firm is still in existence. The plaintiff was rendering service as an accountant in the said firm and has been purchasing Karyana goods and his salary was being adjusted towards the price of goods purchased by him. The said firm has got agencies like Hindustan Liver Ltd. and agencies from other companies. There was another firm namely Kapila

Trading Company in which capital account was standing in the name of father of plaintiff and defendant No.1. Defendant No.1 by taking advantage of the circumstances, changed the name of Kapila Trading Company to K.P.Company and also showed himself to be a sole proprietor of the new firm in order to cause loss to the plaintiff. The defendant had transferred various agencies from M/s Chhaju Mal Baij Nath firm to new firm of which he has no right at all, which were in the name of firm M/s Chhaju Mal Baij Nath. This all has been done by defendant No.1 with an intention to cause wrongful loss to the plaintiff and wrongful gain to him for which criminal proceedings are to be separately initiated. When the plaintiff when came to know about the fraud committed by defendant No.1 regarding forged dissolution deed, he moved an application to Income Tax authority for getting a copy of resolution deed and partnership deed, but the said letter was not replied to by Income Tax authority despite receiving the same. The plaintiff came to know about the above dissolution deed in the month of June, 2006. This dissolution deed has been kept as a guarded secret in order to play fraud upon the plaintiff. The alleged dissolution deed does not affect the rights of plaintiff in the firm in any manner and does not confer any right upon the defendants. The plaintiff requested defendants to admit his claim, but to no avail. Hence, suit was filed.

Upon notice, the defendants resisted the suit and filed written statement taking various preliminary objections. On merits, it was pleaded that Shakuntla Devi, Joginder Pal and defendant No.1 were the partners of the firm constituted on 01.04.1992 but the said firm is not in existence as it has been dissolved by the deed dated 25.12.2002. The accounts were settled between plaintiff and defendant No.1 after the death of Shakuntla Devi, mother of the parties and thereafter the plaintiff started his own business of Karyana under the name and style of Narain Karyana Store. The said business was started by the plaintiff about a month prior to the death of Shakuntla Devi. The plaintiff opened the shop in the premises, which is owned by the plaintiff, defendant and their third brother namely Kailash Chander. This was the reason that the plaintiff never wanted to do business in partnership with the defendants. The plaintiff refused to remain the partner of above firm after the death of their mother namely Shakuntla Devi. On the death of Shakuntla, the plaintiff was entitled to Rs.3,80,770/- as per books of account. The plaintiff kept on purchasing and receiving goods from defendant-firm on credit basis. The ledger account shows that the plaintiff was to pay Rs.5,32,813.77 as on 28.05.2005 to the defendant-firm. Thus, the plaintiff was to pay Rs.1,52,043.76 to firm at that time. In a suit filed by the plaintiff, application of defendant under Section 8 read with Section 5 of the Arbitration and Conciliation Act was allowed. The revision filed by plaintiff before the Hon'ble Court was also dismissed. The plaintiff signed the above mentioned deed in presence of the defendant, witnesses and respectable with his free will and no fraud has been committed upon the plaintiff. The plaintiff was incharge of accounts of the firm when above firm was joint between the parties and he used to write the accounts of the above firm in language known as *Landaas*. It is the plaintiff who had been manipulating the accounts and not the defendant. When the plaintiff left the business and refused to be the partner of defendant firm, he took all account books with him. The firm M/s Chhaju Ram Baij Nath was having number of agencies. The agency of Hindustan Lever Ltd. has been cancelled and at present there is no distributor of this company in Garhdiwala. The company Hindustan Lever Ltd. discontinued the agencies at small place like Garhdiwala. The firm M/s Kapila Trading Company is in existence since 1998 and the defendant is sole proprietor of the said firm. M/s Chhaju Mal Baij Nath had the C.C. Limit from Punjab National Bank, Garhdiwala and was also under debt in year 2002, when the dissolution took place. At that time, the C.C. Limit was consumed to the extent of more than Rs.10 lacs. Other averments in the plaint were denied and dismissal of suit was prayed for.

Replication was filed. On the basis of pleadings of the parties, the Court of first instance framed following issues:

> *"1. Whether plaintiff is entitled to declaration as prayed for?OPP*
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> *2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
>
> *3. Whether the suit is not maintainable?OPD*
>
> *4. Whether the plaintiff is estopped from filing the present suit by his acts and conduct?OPD*
>
> *5. Whether the suit is barred by limitation?OPD*
>
> *6. Relief."*

After appreciating the evidence, the Court of first instance partly decreed the suit stating that the parties will be entitled to claim right under the original partnership deed dated 01.04.1992. As per clause 13 of the above deed, it was agreed between the parties that all the differences and disputes relating to partnership or its dissolution or arising out of this deed shall be resolved by arbitrator under Arbitration Act, 1940 or any other Act or law prevailing in its place at that time and the decision of the arbitrator shall be final and binding on all the partners. Feeling aggrieved, the defendant preferred appeal and the plaintiff also filed cross-objections which have been dismissed by the lower Appellate Court by impugned judgment and decree. Hence, this regular second appeal.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants submitted that following substantial questions of law, formulated in para 15 of the grounds of appeal, arise for consideration by this Court:

(i) *Whether when it is undisputed that clause No.13 of the original partnership deed dated 01.04.1992, contained an arbitration clause, for resolving all differences and disputes relating to partnership or its dissolution or arising out of this deed, by way of arbitration, should the question of the dissolution deed of 25.12.2002 being a forged document or a valid document, also not be referred to the arbitrator and not asked to be decided by the civil court?*

(ii) *Whether in view of the judgment of this Hon'ble Court dated 10.08.2010, the question of whether the dissolution deed dated 25.12.2002 is a forged document or a valid document, not required to be decided only by the arbitrator and could not have been decided by the civil court?*

(iii) *Whether under Section 8 of the Arbitration and Conciliation Act, the dispute of dissolution of the firm ought not to have been decided by the arbitrator?*

Both the courts below have concurrently held that the dissolution deed dated 25.12.2002 has been clearly proved to be a forged and fabricated document and is a result of fraud committed by defendant No.1 with the plaintiff. The plaintiff examined Mr. Arvind Sood, handwriting and finger print expert, who stated that the alleged signatures of Pushpinder Kumar on the dissolution deed are not the signatures of Pushpinder Kumar in the handwriting of Pushpinder Kumar and it is a product of forgery. Moreover, in his reply (Mark-D) to the legal notice, defendant No.1 had not disclosed about the alleged dissolution deed dated 25.12.2002 which was clearly within the knowledge of Joginder Pal as alleged by him, but on the contrary, by filing the reply, he claimed that on the death of one partner Shakuntla Devi, who was mother of the parties being third partner to the partnership deed dated 01.04.1992, partnership automatically came to an end and accounts were settled between the parties and the constitution of firm was rightly changed w.e.f. 07.12.2002 and there was no need for dissolution deed. In the earlier suit filed by the petitioner for dissolution of firm and rendition of accounts, defendant No.1 had not disclosed any execution of dissolution deed executed between the parties dated 25.12.2002 despite knowledge as asserted by him. Defendant No.1 also failed to produce on record the original alleged dissolution deed dated 25.12.2002 till today and as per law, the dissolution deed was very much required to be brought on record before the trial Court at the time of filing written statement. Both the courts below have rightly disbelieved the version of defendant No.1 that the alleged dissolution deed was lost in the Court Complex and DDR No.17-A dated 09.08.2012 was recorded in Police Station Hoshiarpur. There was no occasion for the police to enter the number of DDR by twisting the serial numbers in the DDR register against the serialwise numbers and there was no need to add any alphabet to serial number as done in this entry No.17-A.

Both the courts below have also concurrently held that Joginder Pal also failed to comply with clauses 3 and 10 of the Partnership deed dated 01.04.1992 without any reason. Defendant No.1 also failed to explain as to why he had allowed the plaintiff to purchase the goods from firm in question on credit basis to the tune of Rs.5,32,813/-. Defendant No.1 also failed to explain as to why did he not demand or recover the debt amount from the plaintiff with regard to the cash credit limit. Both the courts below have concurrently held that the dissolution deed dated 25.12.2002, as alleged by defendant No.1, has never been executed between the parties and admittedly partnership deed dt. 01.04.1992 was not dissolved on 25.12.2002. Both the courts below have rightly held that the partnership deed dated 01.04.1992 was only dissolved by the plaintiff by issuing legal notice dated 31.05.2005 to defendant No.1 because as per the provision of Section 43 of the Indian Partnership Act, 1932 when the partnership is at will, the same may be dissolved by any partner by giving notice in writing to other partners of his intention to dissolve the firm and the firm is to be dissolved from the date mentioned in the notice as the date of dissolution. As such, defendant No.1 has been rightly restrained from denying the existence of admitted partnership deed dated 01.04.1992 to 31.05.2005 and the defendants have no right or interest on the basis of dissolution deed dated 25.12.2002. It is pertinent to mention here that the application moved by defendant No.1 under Sections 5 and 8 of the Arbitration and Conciliation Act was dismissed by the trial Court vide order dated 25.07.2012 and the said order was challenged in this Court by filing CR-4590 of 2012 which was dismissed by this Court vide order dated 07.08.2012. As such, defendant No.1 cannot again challenge the order dated 25.07.2012 in appeal.

Learned counsel for the appellant has failed to show that findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

29.01.2016 **(Paramjeet Singh Dhaliwal)**
parveen kumar **Judge**