

Judgment Reserved on:10.04.2017

Judgment Pronounced on :19.04.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISH KUMAR

Appeal Suit No.245 of 2011

and

M.P.No.1 of 2011 and C.M.No.6262 of 2017

1.M/s.SB Steel Industries, rep.by
its partner Mr.Rattanlal Tantia

2.Mr.Rattanlal Tantia

3.Sganthi Tantia

4.Sachin Tantia

..Appellants/Dependants

Versus

M/s.India Re-rolling Mills,

a partnership firm,

rep.by its partner

Mr.Vinod Kumar Fatehpuria

..Respondent/Plaintiff

Appeal suit filed under Order 41 Rule (1) read with Section 96 of Civil Procedure Code against the Judgment and decree dated 09.02.2011 passed in O.S.No.243 of 2004 by the learned Additional District Judge, Fast Track Court-1, Coimbatore.

For Appellants : Mr.V.Raghavachari

For Respondent : Mr.N.Sridhar

JUDGMENT

Aggrieved over the decree and judgment of the learned trial Court decreeing the suit for Rs.5.60 lakhs with future damages of Rs.28,000/- per month in respect of A schedule properties and also damages of Rs.20,000/- per month in respect of B schedule properties till the delivery of possession, the present appeal came to be filed by the defendants. For the sake of convenience the parties are arrayed as per their own ranking before the trial Court.

2. Brief facts of the plaintiff's case is as follows:- The plaintiff is the partnership firm and they are the absolute

owner of the suit A schedule property measuring 1.1 Acre of land together with office building, labour quarters, shops, electrical installations etc. on the two items of machinery connected with re-rolling mills was leased out to the defendants by a registered lease dated 13.12.1980. The Rent originally fixed was Rs.9,000/- for a period of five years. Subsequently, the lease period was extended till 1994. The lease period is now over. The monthly rent lastly paid was Rs.28,000/-. After the efflux of time as the defendants failed to deliver the vacant possession, the plaintiff issued a legal notice dated 23.09.1998 to the defendants calling upon them to deliver the vacant possession of the suit properties. Subsequent to the above notice the defendants paid a sum of Rs.56,000/- representing the rent for the months of September and October 1998 which was received by the plaintiff without prejudice to their contention. Thereafter, no amount was paid by the defendants. The balance rent payable by the defendants from 1.11.1998 upto 1.7.2000 for 20 months which works out to Rs.5,60,000/-. The said amount was claimed by way of damages for use and occupation of A schedule property in view of the termination of the tenancy. After termination of the lease in respect of A schedule properties, B schedule properties which is adjacent to the A schedule properties was unlawfully and stealthily, encroached by the defendants. Immediately on coming to know of the encroachment the plaintiff issued a legal notice dated 10.04.2000 calling upon the defendants to pay damages of Rs.12,06,000/- for use and occupation of B schedule properties and also for delivery of possession of B schedule properties. The defendants issued a reply with false allegations. They also set up a new plea of oral agreement to purchase the suit properties and they claim that they have paid advance of Rs.25.00 lakhs. Further the defendants also pleaded that there was an arrangement between them and one of the partners of the plaintiff by name Mahindra Kumar Gupta in respect of sale of his share in the partnership firm. The arrangement pleaded by the defendants is false and untenable in law. The defendants always chronic defaulters in payment of rent and at no point of time they were regular in payment of rent. The defendants also issued two cheques dated 12.9.1995 and 23.9.1995 and they were dishonoured. Hence the suit.

3.The case of the defendants is as follows:- The suit itself is not maintainable under Section 69 of the Partnership Act, 1932, as the name of the person who has signed the plaint as a partner in the firm has not been found in the Registrar of Firms as a partner. It is the admitted case of the first defendants that he was a tenant in the A schedule premises in an extent of 1.01 acre with the buildings from 31.12.1980 as per the lease agreement entered in to between him and the plaintiff for a period of five years on the monthly rental of Rs.9,000/-. During

the year 1984 he wanted to dump more materials he took B schedule property on lease and the lease amount was fixed as Rs.14,000/- per month from the year 1984. The entry to the premises was changed to the Eastern side from Mettupalayam road. The rent was periodically increased to Rs.21,000/- and then Rs.28,000/- for the entire 2.02 acres with the buildings and machineries. The allegation that the defendants was encroached upon the B schedule property is denied. In fact the defendants was in possession of the B schedule property as lessee. The allegation that the defendants is liable to pay damages for use and occupation of the B schedule property is denied. It is the further contention of the defendants that one of the partners of the plaintiff's firm Mahendra Kumar Gupta has executed a power of attorney in respect of his share of 7% holdings in the plaintiff firm in the land and buildings comprised of 2.02 acres and machineries which have been leased out to the first defendants, in favour of the 5th defendants and he has also paid appropriate value to Mahendra Kumar Gupta. Similarly, another partner Padam Kumar Gupta also executed a power of attorney in respect of his 7% shareholdings in favour of third defendants's son. Aggrieved over the above transaction Vinod Kumar Fatehpuria one of the partners has caused a notice with an ultimate aim to harass and trouble the first defendants. The defendants 2 to 4 are close relatives. It is further contention of the defendants as early as in August 1998 there was an oral agreement for sale in respect of the suit properties to the defendants and accordingly, they have also paid a sum of Rs.2.5 lakhs as a part payment and agreed to pay the balance amount in due course. This defendants is awaiting the completion of the sale as per the oral agreement for sale as mentioned above. Hence, prayed for dismissal of the suit.

4. On the basis of the above pleadings, the learned trial Court has framed the following issues:-

1. Whether the plaintiff is entitled to recovery of possession of the suit A schedule and B schedule properties?

2. Whether the plaintiff is entitled to recovery of Rs.5.60 lakhs and also damages of Rs.28,000/- per month from the defendants?

3. Whether the plaintiff is entitled to Rs.20,000/- per month as damages for use and occupation of B schedule properties?

4. Whether the suit is maintainable by Vinod Kumar Fatehpuria?

5. On the side of the plaintiff one witness was examined as

P.W.1 and 16 documents were marked as Exs.A1 to A16. On the side of the defendants one witness was examined as D.W.1 and one document was marked as Ex.B1. Two Court Witnesses were examined as C.W.1 and C.W.2 and two Court Documents were marked as Ex.C1 and C2.

6.On the basis of the oral and documentary evidence and materials, the learned trial Judge has decreed the suit for recovery of Rs.5.60 lakhs and also Rs.28,000/- per month towards future damages for use and occupation of A schedule properties from the date of suit till the date of handing over possession and also awarded damages of Rs.20,000/- per month from the date of suit till the date of handing over possession and also granted decree for recovery of possession of the properties. As against the said decree and judgment, the present appeal came to be filed by the defendants.

7. In the appeal, an application under Order 41 Rule 27 of C.P.C., is also filed by the appellants in C.M.P.No.6262 of 2017 to receive additional documents. In the above application it is the case of the petitioners/appellants that some of the partners of the plaintiff's firm have executed assignment deeds in favour of the appellants. Seven partners of the plaintiff's firm have sold their respective shares in the partnership to the appellants. These documents have been filed to show that the appellants are in continuous possession of the partnership firm and they are not liable to be evicted from the premises.

8.The learned counsel for the appellants has made his arguments in two folds. The first fold of his arguments is that the suit filed by Vinod Kumar Fatehpuria is not maintainable as his name is not found in the Registrar of Firms. Though he claims to be the partner on the basis of the reconstituted partnership deed, necessary entries have not been made as required under Section 63 of the Partnership Act. Only during the course of trial Income Tax Returns were filed to show that he was a partner of the partnership firm. It is further contention of the learned counsel that one may be a partner for the purpose of filing Income Tax Return alone. Whereas, to maintain the suit compliance of Section 69 of the Partnership Act is mandatory. Ex.A9 is the certified copy of Registration certificate issued by the Registrar of Firms. Wherein also there is no explanation with regard to the non-production of the original. Hence, it is the main contention of the learned counsel that the suit itself is not maintainable due to non-compliance of mandatory provisions of Section 69 of the Partnership Act.

9.It is further contention of the learned counsel for the

appellants that even assuming that the suit is maintainable under the common law remedy, the appellant has obtained assignment in respect of certain shares in the partnership firm. Once he become an assignee as per Section 29 of the Partnership Act, he is entitled to claim share in the profits of the partnership firm business, his position would be as that of a co-sharer. Therefore, he cannot be evicted from the suit property. Though the right to property comes after the dissolution of the partnership firm, right to claim profits continue immediately after the assignment was made. The other partners have not disputed the assignment. Therefore, it is the contention of the learned counsel for the appellants that the suit itself is not maintainable for recovery of possession.

10. The learned counsel for the appellants also seeks reception original assignment deeds as additional evidence on the ground that these documents have been filed to show that the appellants are in continuous possession of the partnership firm and they are not liable to be evicted from the premises.

11. The learned counsel appearing for the respondent disputing the arguments would contend that the case falls outside the purview of Section 69 of the Partnership Act. The appellants/defendants were originally inducted as lessees in the year 1980 for a period of five years and the lease agreement came to end by efflux of time. Therefore, the question of enforcing the right under the contract to maintain the suit under Section 69 of the Partnership Act does not arise at all. The suit has been filed for recovery of possession in a common law remedy, it is purely under the common law remedy. Therefore, the contention of the learned counsel for the appellants that in view of the bar contained under Section 69(2) of the Indian Partnership Act the present suit for eviction of the person is not maintainable. It is further contention of the learned counsel for the Respondent that even in the written statement the defendants admitted that the plaintiff is a partnership firm. Though the partnership was registered much prior to the year 1980 the person who filed the present suit became a partner by reconstitution deed and his name is also found in the income tax returns. At any event the defendants have not disputed the fact that Vinod Kumar Fatehpuria is also a partner of the firm. Hence, it is the contention of the learned counsel for the Respondent that the argument advanced by the learned counsel for the appellants cannot be countenanced for the simple reason that the appellants have already filed an Application during the trial stage to reject the plaint on the ground that the suit is not maintainable under Section 69(2) of the Partnership Act and the same has been dismissed and in the Civil Revision Petition filed before this Court, this Court has also held that since no

right whatsoever arise from the contract and it is only comes under common law remedy Section 69(2) of the Partnership Act is not a bar for maintainability of the present suit for eviction. It is further contention of the learned counsel for the Respondent that even after the above order, against the dismissal of a similar application filed by the plaintiff came before this Court by way of Civil Revision Petition, it was also dismissed. Therefore, the appellant cannot canvass such contention now.

12. It is further contention of the learned counsel for the Respondent that the so called assignments now projected during the arguments have not even pleaded in the entire written statement. The alleged assignment deeds have been created during the pendency of the suit. Based on the said assignment deeds the appellant in fact manoeuvre to include his name in the Registrar Firms, which has been subsequently set aside by the Registrar and the same is also confirmed by this Court. Against which writ appeal is also pending. Therefore, the conduct of the appellants would clearly indicate that they only wanted to squat on the properties of the plaintiff's partnership firm. Hence submitted that there is no dispute with regard to the lease in respect of the A schedule property, whereas to prove that they also taken on lease B schedule property, absolutely no evidence whatsoever on regard. It is further contention of the learned counsel for the Respondent that even assuming that assignment is true, the same will not give any right to the appellants as per Section 29 of the Partnership Act. Hence, it is the contention the the learned counsel that the judgment and decree of the learned trial Court is well balanced and it does not require any interference.

13. It is further contention of the learned counsel for the Respondent that receiving additional documents at the appellate stage without any pleading in fact will defeat the very purpose of the Act itself and encourage the litigation before the appellate Courts. Hence, prayed for dismissal of the appeal as well as application to received additional documents.

14. In support of his arguments, the learned counsel for the Respondent relied upon the following Judgments:-

1. Sri Meenakshi Mills Ltd., Madura v. C.Swaminatha Mudaliar [AIR (31) 1944 Madras 443]
2. Santiranjan Das Gupta v. Messrs. Dasuram Murzamull [AIR 1973 SC 48]
3. Delhi Development Authority v. Kochhar Construction Work [(1998) 8 SCC 559]
4. Associated Hotels of India Ltd. v. S.B.Sardar Ranjit

Singh [1968 SCC 933]

5. Dattonpant Gopalvarao Devakate v. Vithalrao Marutirao
[AIR 1975 SC 1111]

6. Biswanath Agarwalla v. Sabitri Bera [(2009) 15 SCC 693]

7. K.M.S.K.Rabindranath v. S.Bakym Pillai [AIR 1988
Madras 358]

15. In the light of the above submissions, now the points that arise for consideration are:-

1. Whether the appellants are entitled to adduce additional evidence in the appeal?

2. Whether the suit filed by one of the partners for recovery of the suit property from the lessee by sufferance is not maintainable?

4. Whether the suit B schedule property is also subject to the lease?

6. Whether the other partners of the plaintiff firm also necessary parties to the suit?

8. To what relief?

16. The point-1:- Though the appeal is of the year 2011, the appellants have filed this application only in the year 2017 that itself clearly show that due diligence has not been exercised by the appellants. Further this document is in no way helpful to decide the issue, since the issue involved in this suit is only with regard to the recovery of possession. As already discussed if any assignment is in favour of the petitioners/assignees they will have right only to share in the profits after dissolution of the firm. Now they cannot take advantage of the same to resist the delivery of possession which was sought after the expiry of efflux of time lease.

17. Under Order 41 Rule 27 the additional documents can be received as evidence in the appellate stage. Sub-clause (1) (a) of Order 41 Rule 27 will not arise at all in this case since those documents have never been produced before the Court and refused by the Court. Similarly sub-clause (1) (aa) of Order 41 Rule 27 also does not apply to the facts of the case since the documents were very much available at the relevant time i.e., during trial. Whereas the documents sought to be filed were very much available at the relevant time. But the petitioners/appellants have not pleaded to show that they have exercised due diligence to file these documents during the trial. Similarly, it is not the case of the petitioners the above documents were not within their knowledge at the relevant time. Hence without satisfying the two conditions set out in the

sub-section (1) of Order 41 Rule 27 the appellants have simply filed the assignment deeds. It is further to be noted that the assignment deeds will not in any way advance the case of the appellants. The assignment deeds said to have been executed in favour of the appellants in the year 2004 and 2006. Therefore, even if the above documents are received in evidence the same will not be helpful to advance the case of the appellants. Furthermore, the above documents will not be useful for any purpose in deciding the lis between the parties. Nothing prevented the appellants to file this document even during the trial.

18. In this regard the judgment reported in Union of India v. Ibrahim Uddin [2012 (8) SCC 148] the Hon'ble Supreme Court in para 36, 37, 38 and 40 have extensively dealt with the rights of the parties to adduce additional evidence. Hence, this Court is of the view that the reception of the additional documents cannot be allowed at this stage. For the sake of filing the additional documents there must be some relevance attached to the documents to decide the case. This point is answered accordingly.

19. Points 2 to 5:-On a careful perusal of the entire pleadings and the relief sought by the plaintiff and the defence taken by the defendants it could be seen that a simple suit has been filed for recovery of possession of the suit A schedule properties which was originally leased out to the defendants on behalf of the partnership firm namely the plaintiff herein and also for recovery of possession of the suit B schedule properties which is adjacent land stated to be found encroached by the defendants who are lessees. The main defence taken by the defendants in the entire written statement is in two folds. The first fold of arguments is that the suit is not maintainable in view of the bar contained under Section 69(2) of the Indian Partnership Act. The second fold of arguments is that B schedule property was also subject matter of the lease besides some of the partners executed power of attorney in respect of their shares namely 14% of shares to the defendants besides they had also agreed orally to sell the properties. Except this there is no other evidence to fortify the defence as raised in their entire written statement. Whereas, for the first time, the arguments advanced by the appellants' counsel before this Court is with regard to the subsequent assignments deeds which have not even pleaded in the written statement.

20. Be that as it may, the first fold of the argument advanced by the learned counsel for the appellants is that the suit itself is not maintainable in view of the bar contained under Section 69(2) of the Indian Partnership Act. In this

regard it is to be noted that during trial itself the defendants have filed an application in I.A.No.874 of 2001 to reject the plaint on the ground that the suit is not maintainable in view of Sub-Sections (1) and (2) of Section 69 of the Indian Partnership Act. The above application was dismissed by the trial Court on 29.10.2007. Against which Civil Revision Petition was filed before this Court in C.R.P.(PD) 1529 of 2008. When carefully perused the above order, this Court after elaborate discussion, on the contents in issue after considering various authorities cited by both sides, dismissed the said Civil Revision Petition on 02.09.2009. In para 52 of the order it has been held as follows:-

"52. The bar contemplated under Sec.69(2) of the Act will come into picture only when the suit is filed to enforce a right arising from a contract against a third party. In the present case, the suit has been filed for recovery of possession of A and B schedule properties and to pay damages for use and occupation. If that being so, as rightly pointed out by the learned Senior counsel for the respondent, the suit is to enforce a statutory right available to the plaintiff under the provisions of the Transfer of Property Act and the suit is not the one to enforce a right arising from a contract entered into between the parties. The decisions relied on by the learned Senior counsel for the respondent would make it very clear that Sec.69(2) being penal in nature should be strictly construed and if strictly construed, Sec.69(2) will get attracted only when the suit is filed to enforce a right arising from a contract and not to a suit filed to enforce any common law right. If the suit is for enforcing a common law right, then, even an unregistered firm can do so and in that event, Section 69(2) will not get attracted. In the present case, it is no doubt as stated that the suit is only for recovery of possession and therefore, it is not a suit to enforce the terms of the contract entered into between the plaintiffs and defendants. Then, such a suit could be filed even by an unregistered firm. Admittedly, the plaintiff is a registered firm. When such a suit could be filed even by an unregistered firm, there is no substance in the contention of the revision petitioners that the suit is to be rejected as the said Thiru.Vinod Kumar Fateh Puria is not a partner of the firm and his name is also not found place in the

register of firms."

21. This Court after a thread bare analysis of the various situations has clearly held that the suit cannot be rejected under Section 69(2) of the Act since it is filed under a Common Law remedy. The above Civil Revision Petition has reached the finality. It is further to be noted that when the matter went for trial and during the examination of P.W.1 again similar application was filed in I.A.No.589 of 2009 which was also dismissed by the trial Court on 07.01.2010 and the Civil Revision Petition P.D.No.1570 of 2010 came to be filed in view of the fact that earlier application filed for rejection of plaint by the defendants the person who filed the suit has taken a stand that he is only power agent. Since he has taken a contrary stand in the counter to the Interlocutory Application which gave rise to filing of similar application which also ended in this Court in Civil Revision P.D.No.1570 of 2010. This Court vide order dated 8.12.2010 has considered the rival submissions and finally gave liberty to the person filed the suit to elect at the time of trial to take a particular stand as to whether he is partner of the firm or power agent of the partner of the firm. Accordingly the above Civil Revision Petition has been disposed of.

22. Thereafter, trial was proceeded and the person filed the suit elected the contention that he is the partner of the registered firm. It is not the case of the defendants that Vinod Kumar Fatehpuria is not a partner at all. In the written statement itself he has admitted that the said Vinod Kumar Fatehpuria is the partner of the firm. Similarly Ex.A9 is the certified copy of reconstituted partnership deed also prove that the plaintiff/P.W.1 is one of the partners of the plaintiff firm. This reconstitution deed was executed in the year 1992 and Ex.A10 to Ex.A14 are the Income Tax Assessment Orders from the Assessment Years 1979-1980 to 1985-1986 and 2000-2001. Ex.A10 also proves the fact that in the order of assessment for the assessment year 1979-80, the plaintiff became a partner of the firm. Similarly, Ex.A12, A13 and A14 also show that Vinod Kumar Fatehpuria was the partner of the firm. Ex.A15 series has been filed to show that the appellant being the tenant due to some arrangements also got their name included in the partnership in Form II, on the basis of the some assignments executed in his favour by some of the partners. But these facts are not at all pleaded in the entire written statement. Subsequently these entries also cancelled by the Registrar of Firms which also not disputed by both sides. As against which writ petition was also filed in W.P.No.29565 of 2011 and this Court by order dated 27.3.2012 passed a detailed order confirming the order of the Registrar to remove the names of the appellants. Of course these facts are not germane to decide the

issue in this suit, however, these facts would show the conduct of the appellants who were originally inducted as lessee of the partnership properties and subsequently got their name included as partners of the firm cannot be ignored altogether. The conduct of the appellants making such entries to claim right over the properties of the firm is a clear indication that only in order to avoid the eviction from the suit properties the appellants have gone to the extent of creating records.

23. Be that as it may, as discussed above, the question with regard to the maintainability of the suit in view of the bar contained in Section 69 (2) is already decided by this Court in the Civil Revision. Therefore, the same cannot be re-agitated by the parties.

24. In *Erach Boman Khavar v. Tukaram Shridhar Bhat* [AIR 2014 SC 544], it has been held as follows:-

"34. From the aforesaid authorities it is clear as crystal that to attract the doctrine of res judicata it must be manifest that there has been conscious adjudication of an issue. A plea of res judicata cannot be taken aid of unless there is an expression of an opinion on the merits. It is well settled in law that principle of res judicata is applicable between the two stages of the same litigation but the question or issue involved must have been decided at earlier stage of the same litigation. In the case at hand, as the order dated 23.2.2006 would show that a statement was made by the counsel for the third respondent that in the event of the petitioner's making an application for amendment of the plaint in the pending suit on the basis of the averments made in the summons issued, he would not oppose the same. The learned Company Judge recorded the same and opined that it is not necessary to grant the present Judge's Summons. Thereafter, the learned Company Judge has observed "liberty to applicant to apply, if necessary". The Division Bench, after relying on the decision in *Kewal Chand Mimani's* case, has opined that grant of liberty is adopted by the court to obliterate any confusion or any difficulty being experienced in the matter but the said grant of liberty does not confer any right on the party to agitate the matter further nor does it confer any jurisdiction on the court to further probe the correctness of the decision arrived at. To appreciate the correctness of the said conclusion

it is imperative to appreciate the verdict in Kewal Chand Mimani (supra). In the said case, an appeal was preferred against an order passed by the learned single Judge in the writ petition. The appeal was heard from time to time and the hearing was concluded but before the judgment could be pronounced, one of the Judges hearing the appeal was transferred as a consequence of which the judgment could not be pronounced. At that stage, the respondents 7 to 10, after expiry of about 9 years, filed an application for being transposed as appellants to conduct the pending appeal and the Division Bench allowed the application for transposition, however, stating that the said transposition was without prejudice to the rights of the complainant to contest the appeal as appellant. Subsequently, the appeal was reheard by a reconstituted Division Bench of the High Court and the judgment was reserved by the Bench. During the pendency of the pronouncement of the judgment the appellant therein moved this Court under Article 136 against the order of transposition and this Court had passed an order to the following effect: -

"The order against which the SLP has been filed is an order on transposition as appellants. The order itself indicates that the petitioners are at liberty to raise all the objections. We see that even including the transposition and their right to contest in the capacity as appellants also is left open.

The petitioners are at liberty to have the matter adjudicated."

25. In M.Nagabhushana v. State of Karnataka [AIR 2011 SC 1113], it has been held as follows:-

"Civil P.C. (5 of 1908) S.11-Doctrine of res judicata - Is not technical doctrine but a fundamental principle which sustains rule of law in ensuring finality in litigation - Its principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties."

26. Therefore, this Court is of the view that since the

matter is already decided by this Court in Civil Revision P.D.No.1570 of 2010, after elaborate arguments, canvassing the similar argument will not be helpful to the appellants case. Further it is to be noted that the bar contained under Section 69(2) of the Partnership Act will apply only when the suit is filed by the partnership firm or any person on behalf of the partnership firm to enforce the right arising from a contract or conferred by the Partnership Act. Unless the firm was registered or the the name of the person said to be a partner in the firm is shown in the Registrar of Firms then the bar contained in Section 69 (2) will automatically apply and the suit is not maintainable. Whereas in this case the suit has been filed after the expiry of the lease period and also for recovery of the land which was encroached by the defendants. Therefore, the suit is not based on any contract since the lease itself is terminated by efflux of time and the notice to quit also issued by the plaintiff under Ex.A3 dated 23.09.1998, thereafter again on 10.04.2000 under Ex.A4. Therefore, the contention of the appellants that the suit is not maintainable in view of the bar contained in Section 69 (2) cannot be sustained legally.

27. In this regard, it is useful to refer the Judgment of the Hon'ble Supreme Court in M/s. Raptakos Brett and Co. Ltd. V. Ganesh Property [AIR 1998 SC 3085], wherein, it has been held as follows:-

"On the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession. In the present suit by erstwhile landlord against the erstwhile tenant the claim for possession by itself has nothing to do with the contract of tenancy which had already come to an end more than a year back. For such claim there is no question of the source of right to possession being its erstwhile contract which is dead and gone. It cannot necessarily be the foundation of the cause of action unless the plaint itself refers to such a cause of action arising out of the terms and conditions of the erstwhile contract which according to the plaint are still subsisting on the date of the suit. Thus, it Cannot be generalised that in every case when on

the expiry of period of lease the landlord seeks to recover possession from the erstwhile tenant such a suit must necessarily be said to be one for enforcement of right arising from the contract of tenancy with third party ex-tenant." "That the plaint as framed by the plaintiff respondent is based on a composite cause of Action consisting of two parts. One part refers to the breach of the covenant on the part of the defendants when it failed to deliver vacant possession to the plaintiff lessor on the expiry of the lease after 15th March, 1985 and thereafter all through out and thus it was guilty of breach of covenants 14 and 17 of the lease. The second part of the cause of Action, however, is based on the statutory obligation of the defendants lessee when it failed to comply with its statutory obligation under Section 108 (q) read with Section 111(a) of the Property Act. So far as this second part of the cause of Action is concerned it cannot certainly be said that it is arising out of the erstwhile contract. When the plaint in addition made a reference to right of the plaintiff to get: possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee following from the provisions of Section 108(q) read with Section 111 (a) of the Property Act which in turn also sought to enforce the corresponding statutory Obligation of the defendants under the very same statutory provisions. So far as this part of the cause of Action is concerned it stands completely outside the sweep of Section 69 sub- section (2) of the Partnership Act. The net result to this discussion is that the present suit Can be said to be partly barred by Section 69- sub- section (2) so far as it sought to enforce the obligation of the defendants under Clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in paragraph 2 of the plaint. But it was partly not barred by Section 69 sub -section (-2) in so far as the plaintiff based a part of its cause of Action also on the law of the land, namely, Transfer of Property Act where under the plaintiff had sought to enforce its statutory right under Section 108(q) read with Section 111 (a) of the Property Act. Enforcement of the right had nothing to do with

the earlier contract which had stood determined by efflux of time."

28. In *M/s Haldiram Bhujawala v. M/s. Anand Kumar Deepak Kumar* [AIR 2000 SC 1287], it had been held as follows:-

"Partnership Act (9 of 1932) S.69(2) Suit by unregistered firm - When barred - Suit for perpetual injunction to restrain defendants from passing defendants's goods as those of plaintiffs by using plaintiff's trade mark and for damages - Not barred by S.69 (2).

A suit by unregistered firm is not barred by S.69 (2) if a statutory right or a common law rights is being enforced. A suit for perpetual injunction to restrain the defendants not to pass-off the defendants's goods as those of plaintiffs by using the plaintiffs' trade mark and for damages is an action at common law and is not those of plaintiffs by using the plaintiffs' trade mark and for damages is an action at common law and is not barred by S.69(2). Likewise, if the relief of permanent injunction or damages are being claimed on the basis of a registered trade mark and its infringement, the suit is to be treated as one based on a statutory right under the Trade Marks Act and is not barred by S.69(2)."

"The contract by the unregistered firm referred to in S.69(2) must not only be one entered into by the firm with the third party-defendants but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff's firm with such third party-defendants. Thus, the legislature when it used the words "arising out of a contract" in S.69(2), it is referring to a contract entered into in course of business transactions by the unregistered plaintiff firm with its customers-defendants and the idea is to protect those in commerce who deal with such a partnership firm in business. Such third parties who deal with the partners ought to be enabled to know what the names of the parties of the firm are before they deal with them in business."

29. In *M/s. Hotel Satkar v. Krishnanath Nanu Chavdikar* [AIR 2015 Bombay 167] it has been held as follows:-

"Partnership Act (9 of 1932), S.69(2)- Suit by unregistered firm - Bar to - Applicability - Suit for possession - On ground that defendants are

trespassers - defendants were permitted to run business in suit premises - Breach of terms of agreement between plaintiff and defendants hence termination of licence in favour of defendants - Cause of action was under general law - After termination of licence possession of licensee becomes that of trespasser - Suit not hit by provision of S.69 (2)."

29. On a careful analysis of the above judgments, it is very clear that the lease is expired by efflux of time, suit for recovery of possession can be very well maintainable by the firm or even if it is an unregistered firm. Since the right is not arising from any of the contract and the lease itself is terminated by efflux of time, therefore the contention of the appellants with regard to the maintainability of the suit in view of the bar contained under Section 69(2) is not legally sustainable.

30. Another fold of defence taken by the defendants in the written statement is that lease amount of Rs.28,000/- per month lastly paid by them and the above pleadings of the defendants in fact clearly in the form of admission of the claim of the plaintiff that the last rent paid by the defendants was Rs.28,000/- for the A schedule property. Though the contention of the defendants that B schedule property also was taken on lease, absolutely there is no evidence whatsoever available on record to prove the said contention. Ex.A1 is the registered lease deed clearly shows that originally lease deed was executed in the year 1980 inducting the defendants as lessees and the lease was for a period of five years. At the time of original lease the lease amount was fixed as Rs.9,000/- per month for A schedule property which is the subject matter of the lease in the original lease deed. Ex.A2 said to be the xerox copy of another lease deed wherein also A schedule property alone was said to be leased out and the lease was extended from 1990 to 1994. Ex.A3 is the legal notice dated 23.09.1998 issued by the plaintiff calling upon the defendants to deliver the vacant possession and quit the lease with effect from 31.03.1999. This notice was issued under Section 106 of the Transfer of Property Act and subsequently under Ex.A4 dated 10.04.2000 the plaintiff has issued another notice reiterating the stand taken by him in Ex.A3. The defendants in the reply issued on 09.05.2000 to the notice issued under Ex.A4, has categorically admitted that rent was increased to Rs.28,000/- and he was also in possession of the entire property namely A and B schedule properties and the rent amount of Rs.28,000/- represent to both the properties. Though it is contended that only in the year 1984 he took B schedule property for lease absolutely there is no evidence

whatsoever forthcoming from the defendants. Therefore, without any evidence to prove the alleged lease in respect of B schedule property the contention of the defendants cannot be countenanced. Once they have entered into a lease in respect of A schedule property and inducted as lessees they cannot contend that they became lessee of B schedule property also without any evidence to prove the above fact. When the defendants asserts that they also became lessees in respect of B schedule property it should be established by them. Therefore, merely on oral submissions such contention cannot be countenanced.

31. Now, it is the contention before this Court that since the appellants obtained certain assignment deeds from some of the partners in respect of certain shares they are entitled to continue in possession of the suit property. It is to be noted that the entire pleadings in the written statement it is not even pleaded in respect of the so called assignments. Whereas they projected the case as if some of the partners have executed power of attorney in his favour after receiving the consideration. The so called power of attorney has not seen the light of the day. Furthermore, rights based on alleged assignment deeds also not been pleaded. Even assuming to be true that assignments were made by some of the partners in respect of certain shares, such assignments will not give any right to the appellant to continue in the suit properties. Except the right to receive share of profits in respect of the transferring partners as agreed to by the partners, the assignee will not have any better right to squat on the property.

32. In this regard, it is relevant to extract Section 29 of the Partnership Act, the same reads as follows:-

"29. Rights of transferee or a partner's interest.-

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is

entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

33. A careful reading of the above Section makes it very clear that even any transfer made by one of the partners in respect of his interest in the firm, the transferee cannot interfere in the conduct of the business and even he cannot demand accounts during the continuance of that firm. At the most he is only entitled to receive share of profits of his transferring share in the partnership firm and he is bound to accept the accounts of profits agreed to by the partners. Therefore, except to receive any profits agreed to by the partners he will not get any right to claim title or interest either in the property or assets of the partnership firm. Only when the firm is dissolved, his rights if any to the share of the assets will accrue as per sub-section (2) of the Section 29. Therefore, the appellant all along prolonged the issue to squat on the property without paying any rent to the firm now cannot take advantage of the alleged assignment.

34. In this regard the judgement reported in Addanki Narayanappa v. Bhaskara Krishnappa [1996 SC 1300], it has been held as follows:-

"From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in cl. (a) and sub-cl. (i), (ii) and (iii) of cl. (b) of s. 48.

The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net, partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by s. 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners."

35. Similarly, in the judgment reported in Rajnikant Hasmukhlal Golwala v. Natraj Theatre, Navsari [AIR 2000 Gujarat 80] , it has been held as follows:-

"20. After hearing the learned Advocates and upon perusal of the relevant documents, it appears that the following legal issues have arisen in this appeal from order. The first and the foremost issue is with regard to the right of an assignee or a transferee of a partner's interest. If an assignee or a transferee of a partner's interest has no right to do the business or to participate in the management of business, defendants No. 12, who is an assignee of the right and interest of defendants Nos. 1 to 11 shall not have any right to enter Natraj Theatre for the purpose of doing the business of the

firm. If defendants No. 12 has no right to do the business as an assignee of some of the partners of the firm, defendants No. 13, who is an agent of defendants No. 12, cannot have any right to do the business on behalf of defendants No. 12. Section 29 of the Act is the relevant section which deals with the rights of a transferee of a partner's interest. It reads as under :

"29. Rights of transferee of a partner's interest. -- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partners ceases to be a partner, the transferee is entitled against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

On a bare perusal of the said section it is crystal clear that a transferee of a partner's interest in the firm cannot have a right to interfere in the conduct of the business but he can have a limited right to receive the share of profits of the transferring partners during the continuance of the firm. Thus, Section 29 makes it abundantly clear that the rights of the transferee are on distinctly lower plane than those of his transferor. The transferee is not entitled to participate in the business but he has to content himself by receiving the share of profits which might be calculated on the basis of accounts agreed upon by the existing partners, which he is bound to accept. Looking to the provisions of Section 29 of the Act, he cannot even question the correctness of the amount offered to him. Even if the other partners of the firm are managing the business in a hopelessly

bad manner, the transferee cannot do anything. He cannot even move for dissolution if the properties of the firm are being wasted or the business is running into losses. Up to the time of dissolution of the firm, his right is limited right to get profits which the transferor partner is entitled to. The transferee would get some right in the assets of the firm only in the event of dissolution of the firm and in that event he becomes entitled as against the remaining partners to receive the share of partnership property to which his transferor was entitled to and only in that event he is entitled to ask for an account - but that too from the date of the dissolution. It is pertinent to note here that such a right to get share in the properties of the firm or to have an account will commence only from the date on which the firm is dissolved. Admittedly, in the instant case, the firm has not been dissolved yet. Thus, looking to the provisions of Section 29 of the Act, the transferee cannot acquire any interest in the partnership property till the firm is dissolved and as stated hereinabove, he cannot have any right to interfere in the management of the business.

21. The logic behind this section is very clear. A partnership is founded upon trust and confidence which the partners of the firm have in each other. One of the important elements of the partnership is the principle of agency. A person would never make another person his agent unless he has full faith in the person. Only for this reason, without consent of all the partners, an outsider cannot be admitted to partnership. The reason is very simple. The moment a person becomes a partner, in the course of business, he acts on behalf of the firm as well as on behalf of all the partners of the firm. If an assignee or a transferee of a partner's interest is given a right to do the business on behalf of the firm, he automatically becomes an agent of all the partners. If an assignee or a transferee of a partner's interest is given a right to do business on behalf of the firm, as stated hereinabove, he acts on behalf of the firm and thereby he acts on behalf of other partners as an agent of other partners. If such a thing is

permitted, a person or a principal would have an agent in whom he may not have any trust. Due to this reason, Section 29 prohibits a transferee of a partner's interest to do business on behalf of the firm."

36. In Reddy Veerraju v. Chittori Lakshminarasamma [AIR 1971 Andhra Pradesh 266], it has been held as follows:-

"Section 29(1) only permits transfer by a partner of his interest in the firm. But such a transfer will not entitle the transferee during the continuance of the firm, to interfere in the conduct of the business. A transferee is entitled only to receive the share of profits of the transferring partner, and he shall accept the account of profits agreed to by the partners. What is meant by a share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the partnership debts and liabilities have been paid and discharged."

37. From the above cited judgments it is very clear that assignee will not have any right over the property on the basis of the assignment deed and he cannot resist the suit for recovery of possession. It is to be noted that the suit was filed in the year 2000 for recovery of possession from the appellant who was inducted as lessee, successfully managed to be in possession of the property all these years without paying the rent. In the entire written statement the defendants have taken only two fold defence, which have also not been established. Now, in the appellate stage the defendants have taken a different stand that they have obtained certain assignments from some of the partners of the firm and canvassing the new case without any pleadings in that aspect. Therefore, if such trend is entertained by the Court and every subsequent documents is given weight before this Court there will not be any end to the litigations.

38. It is further to be noted that even though the alleged assignment deeds were projected before this Court, the competency to transfer by the said partners without the consent of other partners is also another issue. Though the partners of the firm have implied authority to conduct the business of the firm, such implied authority cannot be taken advantage by the some of the partner to dispose of the immovable property of the firm to the third party. Such a sale itself is questionable one, of course this is not germane for consideration in this case.

39. Further, in the reply notice the defendants pleaded that

he has paid 25 lakhs as advance. Whereas in the written statement he has stated that he has paid only 2.5 lakhs as advance. All these facts clearly show that the defendants have taken inconsistent defence only in order to non-suit the plaintiff from recovering the suit property. Except the general denial for the claim of the plaintiff for some of Rs.5.60 lakhs for use and occupation of the A schedule property upto 1.07.2000, there is no particulars whatsoever has been given in the written statement. When the fact pleaded in the plaint has not been specifically denied is also deemed admission. Similarly, the alleged lease of B schedule property is also not been established by the defendants. The plaintiff has claimed Rs.20,000/- per month from the defendants towards damages for use and occupation of the B schedule property. The Commissioner's Report Ex.C1 and C2 also clearly show that B schedule property is also in the possession of the defendants. When the defendants failed to establish the fact that they were inducted as lessee, in respect of B schedule property and their possession is nothing but illegal and only construed as trespasser. Therefore, the defendants is also liable to pay damages for use and occupation of the B schedule property to an extent of 1.1 Acre in the prime locality. Therefore, this Court is of the view that Rs.20,000/- per month damages claimed by the plaintiff is reasonable.

40.The learned counsel for the appellants placed reliance upon several decisions of the various High Courts and the Supreme Court in support of his contention that the suit is not maintainable in view of the bar contained under Section 69(2) of the Indian Partnership Act. Absolutely, there is no dispute with regard to the propositions laid down in the above judgments. The fact remains in this case is that Section 69 itself is not a bar since the suit is not filed on the basis of any right arising out of the contract and the suit is filed for common law remedy for recovery of possession after termination of the lease agreement by efflux of time. Therefore, the above judgments cited by the appellants' counsel will not be helpful to him in any way.

41.The learned counsel for the appellants also contended that on 12.06.2014 Mahindra Kumar Gupta has issued legal notice to the partners for dissolution of the partnership firm and also requested for the matter to be resolved through arbitration and subsequently one of the partners sent a legal notice expressing his desire to dissolve the partnership firm. Therefore, the appellants are entitled to share in the transferee assets. It is to be noted that such contention cannot be countenanced in this appeal since the suit itself is for recovery of possession. The appellants cannot squat on the properties to defeat the rights of the partnership firm itself. Accordingly, these points are answered.

42. In the result, the appeal is dismissed, the Judgment and Decree of the trial Court is confirmed. No costs. Consequently, M.P.No.1 of 2011 is closed.

43. C.M.P.No.6262 of 2017 filed by the appellants to receive the additional documents is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gr

To

1. The Additional District Judge,
Fast Track Court No.I,
Coimbatore.

2. The Section Officer, V.R.Section,
High Court, Madras.

+1cc to Mr.Raghavachari, Advocate, S.R.No.23500

+1cc to Mr.Bharath kumar, Advocate, S.R.No.23928

Appeal Suit No.245 of 2011

EV(CO)
RS(26/04/2017)

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