

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5513 of 2016 (O&M)
Date of Order: 15th December,2017

Neha Chawla and another

...Appellants

Versus

Virender Kumar Chawla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.D.Khan, Advocate,
for the appellants.

Mr. Ajay Jain, Advocate,
for respondents no.1 and 2.

Mr. Madan Mohan, Advocate,
for respondent no.3.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiffs filed a suit claiming a decree of declaration declaring the partnership deed dated 01.04.2010, executed by defendant nos.1 and 2 inter se as illegal, null and void. It is the case of the plaintiffs that husband of plaintiff no.1 Surender Chawla was partner in Chawla Enterprises, who has died on 24.03.2010 and defendants no.1 and 2 had constituted a new partnership deed without usurping the share of Surender Chawla.

On the other hand, it is the case of the defendants that Surender Chawla was having strained relationship with the plaintiffs and she was not living with Surender Chawla. It is further the case of the defendants that as

per Clause 13 of the partnership deed, on the death of one of the partner, the

partnership deed shall not be dissolved and remaining partners shall be entitled to all assets and liabilities of the firm.

Both the Courts below after appreciating Clause 13 of the partnership deed dismissed the suit, which is extracted as under:-

“13. That the firm will not be dissolved on the death of anyone of three existing partners. In case of death of any of the partners, the remaining partners of the firm will continue the same Partnership Firm Bussiness under the same name & style i.e M/s CHAWLA ENTERPRISES and such remaining partners shall be entitled to all assets & liabilities as well as goodwill of the firm from such date.”

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellants submits that after the death of Surender Chawla, plaintiffs are entitled to claim his share in the partnership firm being Class-I heir.

I have considered the submission of learned counsel for the appellants.

It is not disputed before me that Clause 13 of the partnership deed clearly provides that in the event of death of one of the partner, the partnership would continue and all assets of the partnership firm shall vest with the remaining partners. Partnership is a creation of contract between the parties. Once the partners with open eyes entered into that contract, the legal heirs of one of the partners cannot thereafter claim such clause to be

invalid.

It is really strange that plaintiffs have filed a suit for declaring the partnership deed dated 01.04.2010 executed by defendants no.1 and 2 interse to be null and void. The partnership deed was executed after the death of Surender Chawla. It is not disputed before me that plaintiff no.1 was having strained relations and divorce proceedings were pending. Surender Chawla who was suffering from cancer also entered into a memorandum of family settlement wherein it was recorded that pursuant to the oral family settlement having been arrived at, the parties have settled their dispute and all the disputes between the parties have been resolved. Later on the memorandum of family settlement was drawn up on 10.06.2009 signed by all the family members including Surender Chawla.

In view of the above, there is no scope for interference in the concurrent findings of fact arrived at by the Courts below.

The regular second appeal is dismissed.

15th December, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO