

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

**RSA No.3935 of 2017(O&M)
Date of Order: 31.08.2017**

Vikas Jindal

...Appellant

Versus

Dharampal Gupta and others

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

**Present: Mr. Vinod S. Bhardwaj, Advocate,
for the appellant.**

ANIL KSHETARPAL, J.

Plaintiff no.1 is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration that the plaintiff is owner in possession to the extent of 75/200 share in the rice mill M/s Shree Ganesh Rice and General Mills, situated at village Gajju Khera, Tehsil Rajpura, District Patiala, along with all machinery fixtures, building, land etc.

Plaintiff had pleaded that earlier a rice mill, namely, M/s Satguru Rice and general Mills Pvt. Ltd. was operating from the premises in dispute. The aforesaid firm had taken a loan from the Punjab National Bank and on failure to re-pay the said loan, the bank took over the possession and put it up for sale by public auction. Auction of the said rice mill was held on 31.08.2004. In the aforesaid public auction, defendants no.1 and 3 participated jointly. Plaintiff no.1 also participated in the said auction. Even defendant no.2 also participated in the auction separately. It was further asserted that the plaintiff, defendants no.1 and 2 joined hands and formed a

cartel and allowed Sunil Kumar Gupta i.e. defendant no.2 and Anil Kumar Garg, defendant no.3 to gave their final bid, which was accepted. Plaintiff claims that thereafter plaintiffs no.1, 2 and the defendants formed a partnership firm in the name of M/s Shree Ganesh Rice and General Mills, vide partnership deed dated 17.09.2004. It was further pleaded by the plaintiff that out of auction money, father of plaintiff no.1 had deposited a sum of Rs.10 lacs (Rs. 5 lacs each on 07.09.2004 and 25.09.2004). It was decided that plaintiff No.1 would have 25% share, plaintiff no.2-12.5% share, defendant no.1-25% share, defendant no.2-25% share and defendant no.3 12.5% share in the partnership.

Defendants filed reply and contested the suit. It was pleaded that the plaintiff has not come to the Court with clean hands. It was pleaded that the property was purchased by defendants no.1 and 3 in open auction. The sale certificate has been issued in the name of defendants no.1 and 3.

Learned trial Court after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff. It may be noticed that during the pendency of the suit, plaintiff no.2 withdrew suit on his behalf vide order dated 11.10.2007.

First appeal preferred by the plaintiff was also dismissed by the learned first appellate Court after re-appreciating the evidence available on the file.

Learned counsel for the appellant has submitted that the father of plaintiff no.1 had paid Rs.10,00,000/- towards in auction amount and such contribution by father of the the plaintiff has been ignored by the Courts. He has further submitted that it was for the defendants to explain why this amount of Rs,.10,00,000/- from the father of the plaintiff was accepted

towards the sale consideration. Therefore, the Court ought to have returned a finding that the plaintiff was co-owner being partner in the partnership firm. Learned counsel for the appellant has further submitted that partnership deed dated 17.09.2004 is proved on the file. It has been illegally dissolved by the defendants.

I have considered the submissions of learned counsel for the appellant and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has produced before me a copy of the partnership deed dated 17.09.2004. The aforesaid partnership deed is only for the purpose of working of Shree Ganesh Rice and General Mills. The aforesaid partnership deed does not make a reference to the immovable property purchased by defendants no.1 and 3. It is not established from the reading of the partnership deed that defendants no. 1 to 3 had brought in/infused, the immovable property into the fold of the partnership firm as their contribution. It is specifically recorded in the partnership deed that the capital shall be contributed by the partners as is required from time to time and investment made by the partners shall carry interest @ 12% per annum. It is not in dispute that the aforesaid partnership deed was dissolved vide letter dated 08.11.2004 as the plaintiff failed to infuse capital in the partnership firm as agreed. It is clearly mentioned in the notice dated 08.11.2004 that both the plaintiffs had failed to honour their commitment and therefore, they were called up to deposit their capital amount with the firm, failing which their name would be deleted from the partnership business.

It is not in dispute that the sale certificate issued by the bank is in

the name of defendants no.1 and 3. Plaintiff has failed to prove any evidence on the record that the property in dispute became a property of the firm.

The second submission of learned counsel that the amount of Rs.10,00,000/- was paid stands belied by the statement of PW7 Varinder Sood. It is established that the security amount submitted by Vikas Jindal in the shape of pay order/ demand draft at the start of bidding process was duly received by the plaintiff after the bidding was over. Further plaintiff has not produced Shri Sarpal Jindal, his father. Shri Satpal Jindal was the best person who would have thrown light as how and in what manner and for what purpose Rs. 10,00,000/- was deposited. But in the present case Shri Satpal Jindal has not been examined. Therefore, the Courts were justified in drawing adverse inference against the plaintiff. It is well settled that plaintiff has to stand on its own legs, however, he has failed to bring on record evidence to prove his case.

In view of the discussion made above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 31, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: YES/NO
: YES/NO