

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2018

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.No.4297 of 2017

and

WMP No.29842 of 2017

V.M.Thulasingham

...Petitioner

vs

1.Union of India,
Rep. by Secretary of Government,
Ministry of Petroleum,
New Delhi.

2.Territory Manager (Retail),
Chennai Territory Retail,
No.35, Vaidhyathan Street,
Tondiarpet, Chennai 600 081.

3.The General Manager,
Bharath Petroleum Corporation,
1, Ranganathan Gardens II Main Road,
Anna Nagar, Chennai 600 040.

4.T.Rajasekar

....Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration to declare that the petitioner is the sole proprietor of the business as dealer of 2nd and 3rd respondent and the fourth respondent cannot be treated as partner in the business of the petitioner in the absence of any partnership deed.

For petitioner : Dr.S.N.amarnath

For Respondents: Mr.A.Murugan for R1

CGC

Mr.V.Anantha Natarajan for R2 and R3

Mrs.T.Aananthi for R4

O R D E R

This writ petition is filed for a declaration to declare that the petitioner is the sole Proprietor of the business as Dealer of the second and third respondents and the fourth

respondent cannot be treated as Partner in the business of the petitioner in the absence of any Partnership Deed.

2.The case of the petitioner is as follows:

He got the retail outlet for the sale of petrol on 14.04.1973, as the Sole Proprietor under the name and style Sekar Enterprises. At the time of starting the bunk, the fourth respondent, who is none else than the son of the petitioner, was a minor. The fourth respondent is in no way connected with the business of the petitioner. There is no legal partnership deed executed between the parties. However, the fourth respondent, claiming to be the Partner of the said business, forcibly obtained a document from the petitioner as though he is retiring from the partnership firm. The petitioner is not ready and willing to leave the business to the fourth respondent, as he has not signed any document on his own will and pleasure. Therefore, the petitioner has to be declared as the sole proprietor of the said business and that the fourth respondent is not a partner of the same.

3.The fourth respondent filed a counter affidavit disputing the claim of the petitioner. The crux of the contention raised by the fourth respondent is as follows:

The petitioner has suppressed the material fact of filing a suit by him in O.S.No.59 of 1997 on the file of the District Munsif Court, Ponneri for permanent injunction against the fourth respondent herein and its dismissal and also the dismissal of the appeal in A.S.No.12 of 2008. The petitioner himself had accepted the license issued by the petroleum Corporation both in the name of the petitioner as well as the fourth respondent as early as in the year 1981 and therefore, he is not entitled to claim the present relief, as sought for in the writ petition. The petitioner has voluntarily executed a deed of retirement from the partnership and also written a letter to the respondent Corporation to that effect.

4.The respondents 2 and 3 filed a counter affidavit, wherein it is stated that the business viz., Sekar Enterprises was commenced on 15.04.1973 and the petitioner and the fourth respondent, father and son are partners in the said business. It is further stated therein that the dispute is between the father and the son, which is purely a personal in nature and beyond the scope of adjudication by the officials of the respondent Corporation. It is further stated that the petitioner herein (father) requested the Corporation to convert the partnership into proprietor concern and the same is beyond the scope of the policy of the Corporation.

5.Learned counsel appearing for the petitioner, after reiterating the averments made in the affidavit filed in support of the writ petition further submitted as follows:

The license was issued in the name of the petitioner as a sole Proprietor and the fourth respondent has obtained the document as though the petitioner is retiring from the partnership, under coercion and pressure, while the petitioner has not executed any such document on his own will and pleasure. There is no partnership deed executed between the parties and therefore, in the absence of any such document, there is no question of treating the business as the partnership and consequently the deed of retirement said to have been executed by the petitioner cannot be relied on.

6.In support of the above said contentions, the learned counsel for the petitioner relied on the following decisions:

- i) 2002 (1) CTC 659, V.R.Venkatachalam vs State of Tamil Nadu and
- ii) 2001(3) CTC 598,V.T.Ranganayaki Anni vs State of Tamilnadu.

7.Per contra, learned counsel appearing for the fourth respondent, after reiterating the contentions raised in the counter affidavit of the fourth respondent further submitted as follows:

The very prayer in the writ petition is not maintainable and liable to be dismissed on the sole ground of suppression of material facts. The license issued in the year 1981 was both in the name of the father and son and it was not questioned by the petitioner at any point of time. The petitioner has not disclosed the vital factor viz., filing of the suit in O.S.No.59 of 1997 for injunction and its dismissal. Since the petitioner has already retired from the partnership and informed the Corporation also about the same, the fourth respondent is entitled to run the business by having the license transferred in his name.

8.Heard both sides.

9.The petitioner is the father and the fourth respondent is the son. Unfortunately, they are fighting with each other in respect of running a petrol bunk. When the matter was originally taken up by this court for hearing earlier on 08.11.2017 along with the other writ petition filed by the fourth respondent herein in W.P.No.27380 of 2017, this Court, by considering their close relationship, as father and son, directed the parties to go for Mediation and settle all the issues amicably. Accordingly, though the matter was referred to the Mediation Centre of this Court, as stated supra, it appears that the parties have not chosen to utilize the opportunity given to them to settle all the issues. Consequently, the

Mediation failed and the matter is remitted back to this Court. It seems that they have lost their love and affection towards each other, as father and son, which they are not interested to restore even. Now, for them, it is the money that matters and nothing else. Therefore, this Court is left with no other option except to decide the matter on merits and in accordance with law.

10.The petitioner seeks for declaration to declare himself as the sole Proprietor of the subject matter business and that the fourth respondent is not the partner in the same. Needless to say that the very prayer, as sought for in this writ petition, is undoubtedly a pure and simple relief which could only fall within the scope and purview of a civil suit to be agitated before the competent Civil Court and certainly not a matter to be agitated and adjudicated upon before this Court in the writ jurisdiction, especially, when the parties are disputing the respective claim of the other parties. Normally under the above circumstances, I would have certainly directed the parties to go before the Civil Court and agitate the matter therein, but for a vital factor, which in my considered view, would show that even such course of action is not required in this case, as the core issue, which is being agitated before this Court, has been already considered, decided by the Civil Court which finding also reached its finality and thus binding on the parties viz., the petitioner and the fourth respondent.

11.I would narrate such vital factor as follows:

The petitioner herein as the plaintiff has filed the suit in O.S.No.59 of 1997 against the fourth respondent on the file of the District Munsif Court, Ponneri, seeking for permanent injunction restraining the fourth respondent from in any manner interfering with the Management, possession, enjoyment and selling of the petroleum products by the petitioner at the subject matter outlet, which according to the petitioner, exclusively belonged to him, as the sole Proprietor. The said suit, after contest, was dismissed on 27.07.2007, by passing an elaborate judgment and decree after considering various documentary evidences let in by both parties. Issue No.3 in the said suit was as to whether M/s.Sekar Enterprises is a partnership firm consisting of the plaintiff and the defendant as partners. The learned District Munsif, after discussing the facts and circumstances and the evidence let in therein, had given her finding at paragraph No.15 of the judgment, as follows:

"15. In the circumstances, this Court finds that business of Sekar Enterprises (though the name is changed from V.M.Samy and sons as Sekar Enterprises) is in fact an ancestral business so far as the defendant is concerned and from the admission

of the plaintiff it is seen that such business was carried on as partnership among the male members without any formal partnership agreement."

12. Thus, it is clear that the trial court had given a finding that the subject matter business is carried on as partnership among the male members without any formal partnership agreement. The said decision of the trial court was challenged by the petitioner in A.S.No.12 of 2008 on the file of the Sub Court, Ponneri. The Appellate Court dismissed the appeal by its judgment and decree dated 06.02.2009, by confirming the findings of the trial court in all aspects. Thereafter, the petitioner has not chosen to challenge the judgment passed by the Appellate Court and therefore, the findings rendered with regard to the nature of business has become final, conclusive and binding on parties. When that being the factual position, now, the present writ petition is filed by this writ petitioner, after nearly 8 years from the date of judgment and decree passed by the Appellate Court. However, the petitioner has conveniently omitted to mention in the affidavit, filed in support of the writ petition, anything about the filing of the said suit and its dismissal by the trial Court as well as by the Appellate Court. Therefore, it is evident that the petitioner has approached this Court with unclean hands by suppressing material and vital facts and filed the present writ petition, that too, in the nature of a relief to be sought in a civil suit. Hence on the ground of suppression of material facts alone, the writ petition is liable to be dismissed.

13. No doubt, the learned counsel for the petitioner sought to contend that the petitioner is the sole proprietor at all times and that there was not partnership at any point of time. Thus, he submitted that the retirement deed obtained from the petitioner was under pressure and coercion. I do not find any force in such submission especially, when the very claim of the petitioner as if he is the sole proprietor of the business, was already found to be a false by the Civil Court and in view of the fact that the very license issued as early as in the year 1981, stood in the name of both the petitioner as well as the fourth respondent. Therefore, it is evident that the business was being carried on as partnership under the name and style of M/s.Sekar Enterprises. The petitioner has not chosen to question the issuance of license in the names of the father and the son, at any point of time. On the other hand, the business was carried on only with such status. Only when a dispute has arisen between the father and the son, the filing of the suit and filing of the present writ petition before this Court by the father, that too, by suppressing the material facts have taken place. Even though the petitioner sought to contend that the

petitioner has not given any such document in favour of the fourth respondent expressing his willingness to retire from the partnership, nothing prevented him from questioning the said document before the competent Court in a manner known to law. Till this date, it is stated that no such suit is filed by the petitioner. Therefore, it is very clear that the father is fighting against the son not having any merits in law but only by standing on ego.

14. At the same time, it is to be stated that though the father herein is not entitled to succeed on legal grounds, certainly, the son herein cannot shirk his responsibilities from discharging his moral obligations towards his 80 years old father, as he, the one, who brought him to this world and also by realising the fact that the wealth, which exists today may disappear tomorrow, while the Godly given blood relationship does not not. I hope good sense will prevail upon the parties to restore peace and cordiality among them.

15. Learned Counsel appearing for the petitioner relied on the decision of this Court reported in 2002(1) CTC 659, V.R.Venkatachalam vs State of Tamilnadu, to show as to who can claim to be partners and what are their dues and liabilities. Likewise, he relied on the decision reported in 2001(3) CTC 598, V.T.Ranganayaki Anni vs State of Tamilnadu, to contend that in the absence of any partnership deed, nothing can be done based on such claim of partnership. I do not think that the learned counsel is justified in relying on both these decisions, especially, when the very petitioner suffered a decree in the above said suit confirmed in the appeal, where a clear cut finding was given by the Civil Court after going through all the facts, circumstances and evidence that there was a partnership between the petitioner and the fourth respondent and that the said partnership was carrying on the subject matter business.

16. Needless to say that a case law can be applied, only when the facts and circumstances of the case on hand are similar to the cited case. I do not find any such similarity of facts. Moreover the decisions relied on by the learned counsel can be pressed into service only when there is a doubt which still exists with regard to the existence of the partnership, having not decided by any competent Court of law. As already stated supra, the Civil Court has already gone into the said issue and given a clear cut finding. Therefore, the above said two decisions are not helping the petitioner in any manner.

17.Considering all these facts and circumstances, I find that the writ petition deserves no merit and accordingly, the same is dismissed as devoid of merits. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.Union of India,
Rep. by Secretary of Government,
Ministry of Petroleum,
New Delhi.
 - 2.Territory Manager (Retail),
Chennai Territory Retail,
No.35, Vaidhyathan Street,
Tondiarpet, Chennai 600 081.
 - 3.The General Manager,
Bharath Petroleum Corporation,
1, Ranganathan Gardens II Main Road,
Anna Nagar, Chennai 600 040
- + 1 cc to MRS. T. Amarnath, Advocate SR.5620
+ 1 cc to Mr. V. Anantha Natarajan, Advocate SR.5756

सत्यमेव जयते

W.P.No.4297 of 2017

(CS-IV)
EU (30/01/2018)

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