IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2188 of 2004 and
other connected appeals
Date of Order:15.01.2018

Nirmala Devi and others

..Appellants

Versus

Nazir Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Santosh Sharma, Advocate,
for the appellants.

Mr. G.S.Bal, Sr. Advocate, with
Mr. A.D.S.Bal, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J.

C.M.No.*1859-C-2006 in RSA No.2188 of 2004*
C.M.No.*1654-C-2009 in RSA No.2257 of 2004*
C.M.No.*2264-C-2009 in RSA No.2259 of 2004*
C.M.No.*2474-C-2007 in RSA No.2552 of 2004*

Prayer in these applications is for permission to produce in additional evidence a copy of application dated 21.03.2006 submitted to the market committee, a copy of partnership deed dated 16.10.1993, executed between Ram Nath and Ashok Kumar and a copy of Form-A, a licence granted to the firm in the year 1994.

Learned counsel for the respondent has submitted that subsequently Ashok Kumar joined Ram Nath and a partnership deed came into existence dated 16.10.1993.

On the other hand, learned counsel for the appellants has submitted that the application for additional evidence cannot be allowed as the case now sought to be projected by way of additional evidence is against the pleaded case of the plaintiff before the trial Court. It has been pointed out that before the trial court as well as before the first appellate court, it was not the case of the respondent-plaintiff that Ashok Kumar is infact a partner in the firm. Learned counsel has submitted that the additional evidence sought to be produced is beyond the pleaded case set up by the plaintiff.

This Court has considered the submissions. A careful reading of the plaint would shows that the plaintiff-respondent had filed a suit against the firm, Ram Nath and defendant no3 to 8 as legal heirs of deceased partner. It was not the case set up by the plaintiff that Ashok Kumar is liable as he is a partner in the firm-defendant no.1.

In view thereof, the application for additional evidence cannot be allowed.

Still further, it was for the plaintiff to collect the evidence and produced the same at an appropriate stage. At the stage of second appeal, plaintiff cannot be permitted to produce documents, execution whereof is being disputed by the appellant-defendants.

Hence, the applications are dismissed.

MAIN

By this judgment, Regular Second Appeal Nos.2188, 2552, 2257, 2258 and 2259 of 2004 shall stand disposed of as the common question of law which arise for determination is:-

> "Whether the legal heirs of a erstwhile partner, who has died before the loan was taken by the firm are liable to re-pay the amount".

All the appeals are between the same parties and counsel for the parties are also common and they admit that all the appeals be disposed of by common judgment.

Undisputed facts are that Shakti Traders Commission Agents was a partnership firm consisting of two partners, namely, Late sh. Faqir Chand and Ram Nath. Late Sh. Faqir Chand died on 12.10.1993. Thus, on the death of Faqir Chand, partnership firm stood dissolved as per Section 42 of the Partnership Act, 1932. It is not disputed before this Court that the partnership deed did not contain any contract to the contrary. Section 42 of the Partnership Act, 1932 is extracted as under:-

> **"42. DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES**.--Subject to contract between the partners a firm is dissolved--
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> (a) if constituted for a fixed term, by the expiry of that term;
> (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
> (c) by the death of a partner; and
> (d) by the adjudication of a partner as an insolvent"

A reading of Section 42 of the Partnership Act, 1932 would show that on the death of a partner, the firm would stand dissolved. Only exception is that if there is any contract to the contrary. It is not the case of any of the parties that there is a contract to the contrary in the present case. Hence, the partnership firm stood dissolved.

Even otherwise, out of two partners, one partner had died. Hence the partnership firm could not continue to exist with single person.

It is further not in dispute that in all these cases Ram Nath borrowed certain amount from the plaintiff. Both the Courts decreed the suit against all the defendants. Defendants no.3 to 8-appellants are in regular second appeal. Their case is that the liability incurred by Ram Nath after the death of Faqir Chand and consequent dissolution of the firm, amount so borrowed cannot be recovered from the legal heirs of partner who had since died particularly when the loan transaction is after the death of Faqir Chand, the deceased partner.

On the other hand, learned counsel for respondent no.1 has vehemently argued that Ashok Kumar is proved to have entered into a settlement in a recovery suit filed by defendant no.1-firm. Hence, Ashok Kumar was acting on behalf of the firm.

I have considered the submission of learned counsel for the plaintiff-respondent. However, this Court does not find any substance therein.

It is not in dispute that on the death of Faqir Chand, on 12.10.1993, partnership firm stood dissolved. Thereafter, Ram Nath, the other partner who no longer remained partner of the partnership firm could not bound the legal heirs of the erstwhile deceased partner with his transaction of taking loan.

Although, learned counsel for the respondent-plaintiff has referred to Section 45 of the Partnership Act, 1932, however, a careful reading of Section 45 would prove that partners should continue to be liable as such to the third parties for the acts done by any of them during the currency of the partnership deed. Section 45 of the Partnership Act does not deal with a situation when liability incurred is after the dissolution of the firm. Rather proviso to Section 45 of the Partnership Act supports the plea of the defendants-appellants. Section 45 of the Partnership Act, 1932 is extracted as under:-

> **"45. LIABILITY FOR ACTS OF PARTNERS DONE AFTER DISSOLUTION.**
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> (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution :
>
> Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.
>
> (2) Notices under sub-section (1) may be given by any partner. "

Proviso to Section 45 of the Partnership Act, 1932 provides that estate of a partner who dies, shall not be liable under this Section for the acts done after the date when a partner has died. This being the position, proviso to Section 45 of the Act, rather support the case of the defendants-appellants.

In view of the discussion made above, the judgments and decrees passed by the courts below are set aside only qua defendant nos.3 to 8-appellants. However, decree passed against defendants no.1 and 2 i.e. firm and Ram Nath shall remain intact.

All the appeals are allowed.

January 15, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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