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

RSA No.2274 of 2012 (O&M)
Date of decision:01.05.2018

M/s M.S. Enterprises ... Appellant

Vs.

Dilbagh Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Gagandeep Singh Virk, Advocate
for the appellant.

Mr. Harinder Sharma, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for possession has been dismissed by directing the defendant-respondent to hand over the actual peaceful vacant possession of portion of plot measuring 136', 7'x160" adjoining M/s Hindustan Steel Yard of Industrial Plot No.5, Sector 5 Industrial Faridabad marked with letters ABCF shown in red colour in the enclosed sketch plan to the plaintiff.

The plaintiff instituted a suit on the premise that plaintiff and defendant were carrying on business in partnership under the name and style of M/s M.S.Enterprises at Faridabad vide partnership deed dated 26.09.1975 and during the existence of partnership deed, an application was submitted to the Haryana Urban Development Authority, Faridabad for allotment of an Industrial Plot. On their said application, HUDA allotted an industrial plot measuring 4685 square yards bearing no.5 situated at Sector 5, Industrial Area Faridabad which was marked with letters ABCDEF. The defendant as per dissolution deed dated 20.12.1982 retired from the said partnership firm with certain condition that he will continue to pay the balance installments and also costs of construction amounting to Rs.40,000/- but having failed to adhere to the aforementioned terms and conditions of dissolution deed, suit aforementioned was filed.

Defendant contested the suit by raising a plea of non-maintainability of suit as per the provisions of Section 69 of Partnership Act. On merit, it was submitted that dissolution deed, much less retirement were not denied but it was clarified that plot no.5, Sector 5 was equally divided between the parties as per Clause 2 of Dissolution Deed and the remaining installments were to be paid by the plaintiff and the defendant in one half share each. Since plaintiff failed to collect it from the defendant, defendant himself deposited the yearly installment of his one half share with HUDA against valid receipts. The plea of forfeiture and exclusive ownership was emphatically denied.

Since the parties were at variance, the trial Court framed as many as 7 issues including the issue of Relief. The plaintiff examined three witnesses and brought on record Ex.P1 to Ex.P23, whereas, the defendant brought on record Ex.D1 to Ex.D7.

The trial Court on the basis of oral and documentary evidence dismissed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Kanwaljit Singh, learned Senior counsel assisted by Mr. Gagandeep Singh Virk, Advocate for the appellant submits that the Court below accepted the terms and conditions of the dissolution deed dated 20.12.1982, Ex.D1 but did not grant the relief, for, defendant failed to make the payment in installments. It was plaintiff, who had made request to the defendant either to make payment on his own or to give to him but having not adhered to, relief of possession was sought. As regards costs of construction incurred, i.e., a sum of Rs.40,000/-, the Court below gave liberty to institute a separate suit, though in the suit, a specific prayer with regard to any other relief embrace all the reliefs then grant the relief as per the provisions of Order 7 Rule 7 CPC, therefore, there is abdication and perversity in the findings rendered by the Courts below.

Per contra, Mr. Harinder Sharma, learned counsel for the respondent-defendant submits that even claim for Rs.40,000/- had become time barred, for, dissolution deed was of 20.12.1982, whereas suit was filed on 20.07.1994. The plaintiff has miserably failed to prove on record the payment of installments, whereas, documentary evidence, Ex.D2 to Ex.D5, brought on record by the defendant proved that defendant had deposited his share directly to HUDA, vide receipts Ex.D2 to Ex.D5. On the other hand, plaintiff had only placed on record receipts Ex.P4 to Ex.P16 to show that he had deposited the balance amount. The receipts pertained prior to the execution of Dissolution Deed and not post and thus, urges this Court for dismissal of the appeal as there is no illegality and perversity in the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Kanwaljit Singh, for, defendant had been able to prove the payment of receipt of his share and therefore, Clause 2 of Dissolution Deed, had been complied with,. In such circumstances, there was no right in the ownership on behalf of the defendant giving 100% right in the property claiming possession on the basis of title and ownership, therefore, the findings of the Courts below cannot be tinkered with.

For claiming a sum of ₹40,000/-, conceded position on record is that suit was filed in the year 1994 and limitation to recover the said amount had elapsed. All these factor weighed in the mind of the Courts below, thus, there is no illegality and perversity in the findings rendered by the Courts below which are based upon appreciation of oral and documentary evidence.

The appeal is accompanied by an application seeking 746 days delay in filing the appeal which is supported by an affidavit. The application is bereft of reasoning as each and every day of delay has to be explained.

Resultantly, the appeal is dismissed on merits as well as being barred by law of limitation.

(AMIT RAWAL)
JUDGE

May 01, 2018
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No