IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1527 of 2016 (O&M)
Date of decision : 19.03.2018

Piare Lal (deceased) through his LRs

...Appellants

Versus

Sunita

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for the appellant.

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ANIL KSHETARPAL, J.

The defendant-appellant is in the Regular Second Appeal against the judgments passed by both the Courts below.

Learned trial Court had partly decreed the suit filed by the plaintiff for permanent injunction. Two appeals were preferred before the First Appellate Court. Appeal filed by the plaintiff has been allowed, whereas appeal filed by the defendant has been dismissed. In this appeal, decree passed by the First Appellate Court accepting the prayer for partition of the property has been challenged.

The plaintiff had filed a suit for separate possession of the property by way of partition and also prayed for decree for permanent injunction. It is admitted fact that the property was purchased vide sale deed dated 13.03.1980 in the name of a partnership firm in which the plaintiff and defendant were owners to the extent of 50-50. It is further not in dispute that the aforesaid firm has been dissolved. It is the case of the plaintiff that the parties are in a separate possession of their portions, however, there is no partition by metes and bounds.

The defendant contested the suit and pleaded that some property of the Union of India has been included. The defendant further pleaded that the property was mortgaged with the bank and proceedings for recovery of money were initiated and daughter-in-law of the defendant discharged the liability, hence, she has a charge over the property.

Learned trial Court after appreciating the evidence, available on the file held that the property was originally owned by the partnership firm which has been dissolved long back. The trial Court, however, declined to grant a decree for separate possession on the ground that unless and until the accounts are rendered and settled, the plaintiff has no right to claim half share by way of partition.

Learned First Appellate Court while hearing two appeals, one filed by the plaintiff and second filed by the defendant, re-appreciated the evidence and found that since the firm has been dissolved long back, the property owned by the erstwhile firm has fallen to the share of the partners i.e. plaintiff and defendant, and, therefore, the plaintiff is entitled to seek separate possession of the property by way of partition.

Learned Senior Counsel for the appellant has submitted that as per Section 48 of the Partnership Act, 1932 which deals with the mode of settlement of the accounts, it is necessary before seeking partition that partners should render the account. He has submitted that as per Clause (iv) of Sub-Section (b) of Section 48 of the Partnership Act, 1932, only the residue, if any, can be divided amongst the partners.

Section 48 of the Partnership Act, 1932 is extracted as under:-

> *"**48. Mode of settlement of accounts between partners.**— In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—*
>
> *(a) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;*
>
> *(b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—*
>
> > *(i) in paying the debts of the firm to third parties;*
> >
> > *(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;*
> >
> > *(iii) in paying to each partner rateably what is due to him on account of capital; and*
> >
> > *(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."*

As per the finding of the learned First Appellate Court, the firm was dissolved long back. The plaintiff had pleaded in para 2 of the plaint in this regard, which was not denied, rather, it was admitted to be correct. The case of the defendant-appellant is that the property was mortgaged and the dues of the bank were paid by the daughter-in-law of defendant-appellant and she has a first charge on the property. In this regard, it may be noticed that no counter claim has been filed claiming any dues on that account from the plaintiff. The daughter-in-law of the defendant-appellant who is alleged to have been paid the payment has also not lodged any separate claim against the plaintiff. The firm was dissolved long back before filing of the suit. Had there been any dispute with regard to the rendition of the account, the suit was maintainable only within a period of limitation prescribed under the Limitation Act, 1963, failing which the rendition of the accounts would become barred by time.

Although, in the present case, the date of resolution of the firm has not come on record, however, from the pleadings of the parties, it is apparent that the firm was dissolved long back. Immovable property admittedly at one point of time belonged to the dissolved partnership firm. Once the partnership firm cease to exist, the immovable property would be owned by the partners jointly. Once the property is joint, a co-owner is entitled to seek the partition of the property. It may be significant to mention here that although some evidence has been produced showing the deposit of the amount with the bank, however, it is not proved as to who has deposited the amount.

The argument of the learned counsel that without rendition of the accounts, the suit property cannot be ordered to be partitioned, cannot be accepted. Had there been any dispute with regard to the rendition of the accounts, the defendant would have filed the suit immediately. Now after a passage of long time when the firm was dissolved, the partition of the property cannot be withheld only on the ground that the defendant is claiming some amount without filing any counter claim or bringing on record any evidence to prove that some amount is payable to the daughter-in-law. Daughter-in-law of the defendant-appellant would be at liberty to claim the amount, if any, subject to the provisions of Limitation Act, 1963.

In view of the aforesaid discussions, this Court does not find any good ground to interfere with the findings of the learned First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

19.03.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**