IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.3045 of 2016 (O&M)
Date of Decision: May 21, 2018

Anil Kumar Singhal

...Appellant

Versus

Surender Kumar Singhal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Shailendra Jain, Senior Advocate with
Mr.Satyendra Chauhan, Advocate,
for the appellant.

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AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the dismissal of the suit seeking declaration, joint possession and permanent injunction of the suit property by laying challenge to the decree dated 24.5.2008 rendered in Civil Suit No.753 of 2007 titled as "M/s S.B. Associates Versus Amit Singhal" with consequential relief of permanent injunction restraining the defendants not to interfere in the interest, title and possession and create third party rights.

As per the pleadings of the parties to the lis, appellant-plaintiff instituted the suit on the premise that in the year 1988, a partnership firm was constituted in the name and style of M/s S.B. Associates consisting of four partners, namely, Janki Dass Singhal (father of plaintiff and defendant Nos.1 & 4), Kuldeep Singhal (defendant No.4), Surender Kumar Singhal (defendant No.1) and Anil Kumar Singhal (plaintiff). It was an unregistered firm constituted with the prime object of diversification of business activities of the partners, who were partners in another firm, namely, M/s Mercury Rubber Mills. In a public auction held at the instance of this Court in Company Petition No.29 of 1982, the firm M/s S.B. Associates purchased property measuring 38 kanals 13 marlas, situated in the revenue estate of Village Bahalgarh, Tehsil and District Sonepat. The bid amount was paid by Janki Das Singhal, which was confirmed by the Court on 3.11.1988. Similarly, again a public auction was held of contiguous land to the aforementioned land, for, as per the order passed in Company Petition No.24 of 1992, land measuring 13 kanals 14 marlas was put to auction, wherein the firm was declared highest bidder. The 1/4th auction money, i.e., ₹1,21,750/- was paid by the plaintiff on behalf of M/s S.B. Associates by banker cheque No.135023 favouring Senior Sub Judge, Sonipat. The possession of the property was with State Bank of India as a tenant. Since Janki Dass Singhal contributed a sum of ₹16,50,000/- on behalf of the firm at the time of first purchase, he was held entitled to earn the rental income. He expired on 26.7.2008. Thereafter, firm M/s S.B.Associates was reconstituted on the same date having plaintiff, defendant No.1 and defendant No.4 as the surviving partners.

On 12.3.2009, the plaintiff visited the office of Tehsildar, Sonipat to enquire about the status of the property he intended to purchase, but came to know about the decree dated 24.5.2008 under challenge, wherein the suit was instituted on 7.12.2007 by defendant No.1 on behalf of firm against Amit Singhal-defendant No.2. The suit was for possession by way of partition, which was allegedly a bogus claim. The defendants came out with the story that the firm was registered on 17.6.2004, which was clearly an act of fraud played upon Janki Das Singhal.

The suit aforementioned was contested by defendant No.1 by taking all possible objections, i.e., for, the Court did not have the jurisdiction to sit over the compromise dated 24.5.2008. It was denied that the firm constituted on 17.9.1988 ever had the plaintiff, defendant No.4 or their father as partners. In fact, the firm was a partnership of defendant Nos.1 and 2, which was registered vide registration No.SNP-22. It was the defendant No.1 whose bid for the auction property was adjudged as highest on 17.9.1988 and renamed the newly constituted partnership firm as S.B. Associates. The firm was also subsequently registered. Thus, there was no occasion for extending any threat for alienation.

Since both the parties were at variance, the trial Court framed the following issues:-

> *1. Whether the suit property belongs to M/s SB Associates having partners namely Dr.Anil Kumar (plaintiff), Surender Kumar Singhal (defendant no.1) and Kuldeep Singhal (defendant no.4) OPP.*
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> *2. Whether decree dated 24.5.2008 passed in suit No.753/07 is liable to be set aside? OPP*
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> *3. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for on the grounds mentioned in the plaint? OPP*
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> *4. Whether the plaintiff has got no cause of action to file the present suit? OPD*
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> *5. Whether the suit is barred by limitation? OPD*
>
> *6. Whether the civil court has got no jurisdiction to try and entertain the present suit? OPD*
>
> *7. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
>
> *8. Relief."*

The appellant-plaintiff examined four witnesses and brought on record documents Ex.P1 to Ex.P3, Ex.PW4/A, Ex.PW4/B etc., whereas the defendants examined DW-1 Surender Kumar Singhal and brought on record documents Ex.D1 to Ex.D15.

The trial Court, while noticing the aforementioned evidence, held that the plaintiff miserably failed to prove that Janki Das Singhal was the partner of the firm. No documentary evidence had been placed on record to establish that partnership firm was ever constituted in 1988 and, thus, dismissed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Shailendra Jain, learned Senior Counsel assisted by Mr.Satyendra Chauhan, representing the appellant-plaintiff submitted that both the Courts have committed illegality and perversity and had given a complete disregard to the settled proposition of law that the said compromise decree could not have been challenged in the independent suit and no case for declaring the said decree as nullity was made out in view of the clear bar laid down in Order 23 Rule 3A CPC as the appellant was not a party. The ground on which the Lower Appellate Court failed to appreciate is the documentary evidence on record which proved that the contribution of ₹16,00,000 lacs odd amount was made by Janki Das Singhal and payment of ₹3,65,250/- was also paid by one cheque, which was contributed by defendant Nos.1 and 4 and Janki Das Singhal equally. The payment of sale consideration of ₹4,87,000/- was also done in the same manner. In this regard, placed on record documents Ex.P1 to Ex.P3, Ex.PW4/A. Ex.P1 and Ex.P2 the certificates issued by the Chartered Accountant certifying the sale consideration of ₹4,87,000/-, which came from the account of M/s Mercury

Rubber Mills and debited in the capital accounts of the said partners in equal shares. Ex.PW4/A and Ex.PW4/B the bank statements, which proved the sale consideration of ₹4,87,000/- equally by the said partners. That was the clincher, whereby the plaintiff had discharged the onus that Janki Dass Singhal was a partner of the firm and was the owner of the property and, therefore, declaration as indicated above, was sought.

He further contended that the defendants created the partnership deed Ex.D1 on some old stamp papers to show that the same was executed in the year 1988, but on careful perusal of the aforementioned document, it revealed that the registration was done only on 17.6.2004 by joining of the partners Surender Singhal and Sonia Singhal on 17.9.1988, whereas Amit Singhal was inducted on 1.4.2005 and in order to prove the aforementioned fact, created another deed Ex.D3 dated 23.3.2005. Even owing to the purchase of the property in auction, mutation Ex.PX was effected regarding the purchase of the property in the name of M/s S.B. Associates.

The certificate Ex.P1 issued by Ashwani Singhal and Ex.P2 showed the contribution from the account of M/s Mercury Rubber Mills vide Pay Order Ex.P3, but the Courts below abdicated in declining to grant the relief as sought for.

Ex.DW1/12 is the certificate given by Janki Das Singhal of having contributed ₹20,00,000/- for acquisition of land and buildings thereon at Bahalgarh, Haryana by M/s S.B.Associates, a partnership concern of his son, Surrender Kumar Singal and daughter. For the reasons best known, the Courts below ignored the aforementioned documents, therefore, there is abdication and illegality and, thus, urged this Court for setting-aside the findings under challenge.

I have heard the learned Senior Counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant on the following grounds:-

a) Appellant-plaintiff has miserably failed to prove through any documentary evidence referred above that Janki Das Singhal was ever the partner of the firm;

b) As per form-A issued by Registrar of Firms, the firm was registered on 17.6.2004. Mutation is also in the name of M/s S.B.Associates, but there is no description of the partners;

c) During the course of hearing, Mr.Jain submitted that oral partition is also permissible. The draft and the certificate, Ex.P1 and Ex.P2, cannot come to the rescue of the plaintiff, for, except the statement of Chartered Accountant, no other record has been proved on record as to how and under what circumstances, the amount had been withdrawn from M/s Mercury Rubber Mills. If Janki Das Singhal was ever the partner of the firm, nothing prevented him to produce the bank record consisting of the partnership whether intimation was sent giving power to either of the partners for transaction of the business;

d) Mutation Ex.PR is in pursuance to the decree under challenge. The decree came to be passed in Civil Suit filed by M/s S.B.Associates against Amit Singhal, wherein it was alleged that the parties had compromised in respect of the suit property referred to therein and the aforementioned plaint was signed by S.K.Singhal being the partner of the firm;

e) Om Parkash Bhoriya, Branch Manager, who brought the record, stated that the account was opened by S.B.Associates on 23.5.2005 through S.K.Singhal and Sonia Singhal being partners of the firm and in lieu thereof, vide Ex.PR the mutation was effected;

e) There is no force in the submission of Mr.Jain to form an opinion that the deed of partnership dated 3.10.1988 consisting of Surender Kumar Singhal son of Janki Das Singhal and Sonia Singhal daughter of Surender Kumar Singhal was drafted on a stamp paper on back date, for, form-A showed that the firm was registered on 17.6.2004 with Surender Kumar Singhal and Sonia Singhal as the partners;

f) For all intents and purposes, the appellant-plaintiff miserably failed to discharge the onus in proving that Janki Das Singhal was ever partner of the firm;

g) Production of income tax return showing receipt of the rent of the premises would not clothe the status of ownership of Surender Kumar Singhal as it is self-serving information provided to the income tax department;

h) No allotment letter in pursuance to the auction proceedings had been produced on record showing the number and particulars of partners, thus, the Court had no occasion but to decline the relief.

For the reasons stated above, the findings of fact and law, much less the argument of learned counsel for the appellant do not warrant interference for bringing the case within the realm of perversity to form a different opinion than the one arrived at. No ground for interference is made out.

Resultantly, the appeal is dismissed.

May 21, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**