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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 7-2-2019

Judgment delivered on 28-02-2019

First Appeal No. 146 of 2005

- Dulichand Agrawal s/o. Late Mannalal Agrawal, aged about 34 years, Partnership firm, Dulichand Agrawal through M/s Ganesh Rice Mill, Bilha, Tahsil Bilha and Dist. Bilaspur, CG.

---- Appellant/plaintiff

Versus

1. Ramchandra Prasad aged about 37 years son of not known through M/s. Ramchandra Prasad, Galla Vyapari, r/o. Ramanujganj, Ramanujganj,.Dist. Surguja (CG).
2. Tarachand Kamal Kumar Proprietary Firm, Proprietor shri Tarachand Agrawal, r/o. Near Hardeo Lal Mandir, Gole Bazar, Bilaspur (CG)..

---- Respondents/defendants

For appellant	:	Ms. Sharmila Singhai and Mr. Sanjay Agrawal, Advocates.
For respondents	:	None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 1-4-2005 passed by 3rd Additional District Judge, Bilaspur, District Bilaspur in Civil Suit No. 3-B/2004 wherein the said court rejected the

plaint under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908.

2. As per version of the appellant, he is a partner in the partnership firm Dulichand Agrawal carrying business under the partnership in the name and style of “Ganesh Rice Mill” at Bilha. Names of the partners constituting the partnership firm were incorporated by way of amendment in the plaint on 24-7-2001. It is further case of the appellant that he entered into contract with respondent No.1 namely Ramchandra Prasad on 12-1-1993 through respondent No.2 for sale of broken rice for Rs.44,201/-. Rs.28,204/- was balance and he filed a suit before the trial Court for recovery of the said amount, but plaint was rejected on the ground that same is barred by provisions of Section 69(1)(2) of the Indian Partnership Act, 1932 (for short, “the Act, 1932”) and under Order 30, Rule 1 sub clause (i) and (ii) of CPC 1908. The trial Court failed to distinguish between the firm and firm's business. Firm's name need not be registered and it is only firm required to be registered under the Act, therefore, finding of the trial court is not liable to be sustained. Reliance has been placed in the matter of **M/s. Mohatta Brothers vs. The Bharat Suryaodaya Mills Co. Ltd.**, reported in AIR 1976 SC 1703.

3. I have heard learned counsel for the appellant and perused the record of the trial court in which judgment /decree is passed.

4. From the record, it is clear that suit was filed by the appellant as partner of the firm Dulichand Agrawal through M/s. Ganesh Rice Mill, Bilha. No registration of the firm is produced before the trial Court. Unless firm is registered, the suit cannot be filed as per Section 69 (1) (2) of the Act, 1932. Section 69(1)(2) of the Act may be read as under:

> “69. Effect of non-registration.—(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
> (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm”

5. In the present case, firm is not registered as no document of registration of firm is produced before the trial Court. Unless firm is registered, filing of suit itself is legally barred. Again restriction on filing of the suit of the firm that two or more persons may sue

or be sued as per Order 30 Rule 1 sub clause (I) & (ii) of the CPC which may be read as under.

> “**Suing of partners in name of firm**.-(1) Any two or more persons claiming or being liable as partners and carrying on business in, [India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the person who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.
>
> (2)Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons”.

6. In the present case, one person has filed the suit before the trial court who is not competent to file the suit as per Order 30 Rule 1 sub clause (I) & (ii) of the CPC, therefore, filing of suit by one person who is claiming to be a partner of the firm itself is barred by law and filing itself is not permissible. The trial Court is

right in holding that as the suit is barred by law, the plaint is liable to be rejected under Order 7 Rule 11(D) of the CPC 1908.

7. Looking to the entire material placed on record, this court is of the opinion that the case law cited on behalf of the appellant is distinguishable from facts of the present case and does not help to the appellant. After re-assessing the entire evidence this court has no reason to substitute contrary finding.

8. As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellant as under:

(i) The appeal is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleader's fee, if certified, be calculated as per Schedule or as per certificate whichever is less.

(iv) A decree be drawn up accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju