

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2019

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**CRP (PD) No.1597 of 2018 &
C.M.P.No.8666 of 2018**

1. K.K. Krishnamoorthy
2. K.Tamizhselvi

.. Petitioners

-vs-

M/s. K. Kalichettiyar and sons
represented by its Managing partners

1. K. Selvaraj
2. K.K. Venkatesan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order made in I.A.No383 of 2017 in O.S.No.150 of 2016 on the file of District Munsif Court, Perambalur dated 13.3.2018

For Petitioners : Mr. S. Sounthar

For Respondents : Mr. S.V.Jayaraman,
Senior counsel
for Mr.T.Seenivasan

ORDER

This Revision Petition is directed against the dismissal of rejection of plaint filed by the petitioner.

2. Heard Mr. S. Sounthar, learned counsel for the petitioner and Mr.S.V.Jayaraman, learned Senior counsel appearing for the

respondent.

3. According to the petitioner, he is one of the partners of the plaintiff firm, as having derived the right from his father. The respondent has suppressed the fact of his being a partner and filed a suit for an innocuous prayer of restraining the petitioner from interfering with the possession of the suit property as well as partnership business.

4. A minute reading of paragraph 2 of the plaint will reveal that the plaintiff made an averment that 'the petitioner has no right or interest in the partnership business and that he threatened to interfere with the partnership business' will speak a lot about the real intention behind filing a suit for injunction. It is not an ordinary suit for protecting the common law right, but it flows from the contract arising through the contract of partnership. Hence it is hit by Section 69(2) of the Partnership Act. Therefore, the plaint shall be rejected.

5. Learned Senior Counsel appearing for the respondent would rely on the following judgments of this Court reported in (i) **2009(5) CTC 332 (S.B.Steel Industries, represented by its**

Partner Mr.Rattanlal Tantia and three others Vs. India Re-Rolling Mills, A Partnership firm, represented by its Partner Mr.Vinod Kumar Fateh Puria), wherein, it is held as follows;

'46. **In M/s.Haldiram Bhujjawala and another v. M/s.Anand Kumar Deepak Kumar and another**, AIR 2000 SC 1287 the Hon'ble Supreme Court reiterated the position that a suit by an unregistered firm is not barred under Section 69(2) of the Partnership Act if a statutory right or a common law right is being enforced.'

(ii) In **2017 (3) CTC 449 (SB Steel Industries, represented by its Partner Rattanlal Tantia and two others Vs. SB Steel Industries, represented by its Partner Vinod Kumar, Fatehpuria)**, wherein in para 26, it is held as follows;

26. **Therefore, this Court is of the view that** since the matter is already decided by this Court in Civil Revision P.D.No.1570 of 2010, after elaborate arguments, canvassing the similar argument will not be helpful to the Appellants case. Further it is to be noted that the bar contained under Section 69(2) of the Partnership Act will apply only when the suit is filed by the Partnership/Firm or any person on behalf of the Partnership/Firm to enforce the right arising from a Contract or conferred by the Partnership Act. Unless the Firm was registered or the name of the person said to be a

Partner in the Firm is shown in the Registrar of Firms then the bar contained in Section 69(2) will automatically apply and the Suit is not maintainable. Whereas in this case the Suit has been filed after the expiry of the Lease period and also for recovery of the land, which was encroached by the Defendants. Therefore, the suit is not based on any Contract since the Lease itself is terminated by efflux of time and the Notice to quit also issued by the plaintiff under Ex.A.3 dated 23.09.1998, thereafter again on 10.4.2000 under Ex.A.4. Therefore, the contention of the Appellants that the Suit is not maintainable in view of the bar contained in Section 69(2) cannot be sustained legally.

and contend that the above judgments go to show that when a common law remedy is enforced, it is not hit by Section 69(2) of Partnership Act. According to him, the present suit is concerned, the petitioner/defendant is a third party and he has no connection with business, as such he is a stranger. Therefore when he attempts to interfere with the business, the common law remedy is sought to be enforced, so the suit is maintainable.

6. On perusal of the plaint, even though the prayer specifically seeks injunction restraining the defendant from interfering with the plaintiff's partnership business, further averments that the defendant has no right, title or interest or possession of the suit property gives an inference that it is not only for common law remedy, but something more behind it. Further averment that the petitioner threatened to dispossess the plaintiff's partners out of the suit property and attempt to interfere with the partnership firm business though raises certain doubts, as contended by the learned counsel for the petitioner, the cause of action does not flow from the contract of partnership and the remedy sought for is only a common law remedy. This Court cannot, without specific averments in the plaint that the petitioner/defendant is a partner, interfere with the findings of the trial Court. The petitioner is entitled to establish that he is a partner and that the plaint is cleverly drafted camouflaging the real dispute.

7. In view of the judgments cited supra and since the prayer does not fall within the ambit of bar specified under Section 69(2) of Partnership Act, the plaint cannot be rejected in limine. Hence this Court is not inclined to interfere with the order passed by the trial Court. It is open to the petitioner to raise all these objections

before the trial Court. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected C.M.P.No.8666 of 2018 is closed. No costs.

8.7.2019

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Index:Yes/No
Internet:Yes/No
Speaking order/non-speaking order

To

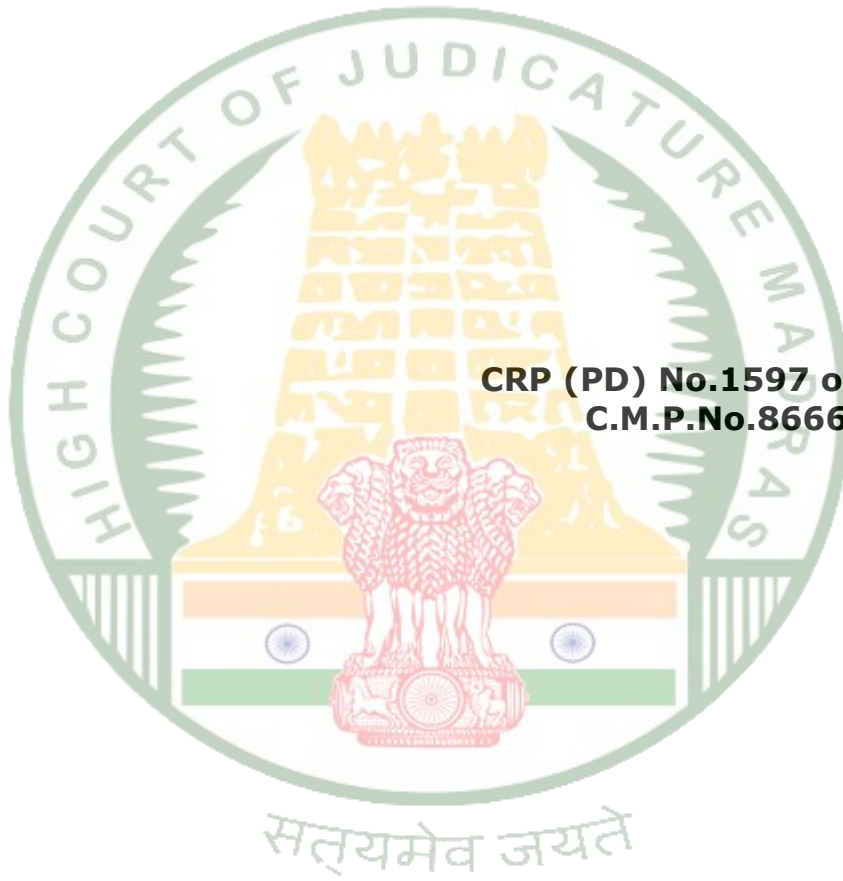
The IV Addl. District Judge, Erode District at Bhavani



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M.GOVINDARAJ, J.

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