

RSA-1099-1988 (O&M)

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

RSA-1099-1988 (O&M)

Date of decision : 27.03.2019

Sushil Singh and others

... Appellants

Versus

M/s Reeta & Associates and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Saini, Advocate
for the appellants.

Mr. Anish Setia, Advocate with
Mr. Surinder Singh, Advocate
for respondent Nos.5 to 7.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby instead of granting the decree of discretionary relief under Section 20 of the Specific Relief Act, 1963 (in short 'the 1963 Act), alternative relief of refund of earnest money, has been ordered, in essence, the suit has been decreed in part.

The plaintiffs sought the specific performance of agreement to sell dated 31.01.1981, alleged to have been executed by defendant No.2, regarding property belonging to the partnership firm. Partnership Firm was arrayed as defendant No.1. It was alleged that the defendants did not come forward to execute the sale deed, therefore, the suit aforementioned, was filed.

The defendant No.1 opposed the suit by saying that defendant No.2-Sushma Sharma had no authority or right to enter into alleged agreement to sell without consent of the partnership firm.

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The trial Court while accepting the contentions, decreed the suit in part. The appeal taken before the appellants-plaintiffs against partial decretal of the suit, has been dismissed.

Mr. Deepak Saini, learned counsel appearing on behalf of the appellants-plaintiffs submitted that at least, the Courts below should have decreed the suit qua the share of defendant No.2. Defendant No.2 ought not to have been taken permission as per the provisions of Section 19 of the Partnership Act, 1932.

Per contra, learned counsel appearing on behalf of the respondents-defendants submitted that the proposition of law with regard to the applicability of the provisions of Section 19 of the Partnership Act, is no longer *res integra* in view of the ratio decidendi culled out by this Court in **"Rajiv Kumar Gupta V/s Susham Singla and others" 2015 (47) RCR (Civil) 458**, thus, urges this Court for dismissal of the present second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following Substantial question of Law arises for determination:-

1. Whether defendant No.2, partner of the partnership firm-defendant No.1, can be entered into agreement to sell in respect of the property belonging to the partnership firm, in view of embargo under Section 19 of the Partnership Act, 1932.

The facts, as noticed above, are not in dispute.

It would be apt to reproduce the relevant para 24 of the judgment cited supra as well as Section 19 of the 1932 Act, which read as under:-

"Para 24 of the judgment cited supra

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Admittedly, in Clause 9 of the partnership deed, it is being provided that none of the partners shall, without the consent in writing of other partners, sell, mortgage or otherwise charge or alienate his/her share in the firm or any part thereof to any outsider, whereas, the terms and conditions of the agreement to sell do not contain any "authorisation" in favour of Rajiv Kumar Gupta, which would empower or enable him to sign/enter into agreement to sell on behalf of other partners. I am taking the clue from the argument raised by Mr. Chopra, Mr. Puneet Jindal and Mr. Avnish Mittal that the partners, during the currency of the dispute, had entered into another agreement to sell dated 13.2.2005. The said agreement to sell, on bare perusal, reveals that each and every page of the agreement to sell was signed by all the partners. In essence, there was no variation of the terms of the partnership deed. Clause 13 of the partnership deed prescribes for variation and alteration either, expressly or written or implied from the conduct. Rather, all the partners stuck to the provisions of Clause 9 of the partnership deed. It is settled law that a person, who is not the owner of the entire property, cannot enter into an agreement to sell, vis-a-vis their shares and it is the duty of the buyer to verify the title of the property as it is an old phrase "Buyer beware".

Section 19 in The Indian Partnership Act, 1932

19. Implied authority of partner as agent of the firm.—

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

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- (a) submit a dispute relating to the business of the firm to arbitration,*
- (b) open a banking account on behalf of the firm in his own name,*
- (c) compromise or relinquish any claim or portion of a claim by the firm,*
- (d) withdraw a suit or proceeding filed on behalf of the firm,*
- (e) admit any liability in a suit or proceeding against the firm,*
- (f) acquire immovable property on behalf of the firm,*
- (g) transfer immovable property belonging to the firm, or*
- (h) enter into partnership on behalf of the firm."*

The plaintiffs cannot enter into agreement to sell, in view of embargo of Section 19 of the Partnership Act and permission was also required from other partners.

Keeping in view the aforementioned facts, the judgments and decrees of the Courts below cannot be said to be suffering from illegality and perversity. The Substantial Question of Law, as framed above, is answered in favour of the respondents-defendants and against the appellants-plaintiffs. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

27.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**