

RSA Nos.1381 and 1382 of 1990 (O&M)

952

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 15.01.2019

1. RSA-1381-1990 (O&M)

M/s Sharma Textile and General Industries and others

... Appellants

Versus

Pehlad Singh and others

... Respondents

2. RSA-1382-1990 (O&M)

Parkash Chand (D) through LRs and another

... Appellants

Versus

Pehlad Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. S.R. Hooda, Advocate
for respondent No.1.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals bearing RSA No.1382 of 1990 titled as “Parkash Chand (D) through LRs and another V/s Pehlad Singh and another” arising out of the decision rendered in Civil Suit No.214 of 1983 seeking declaration and permanent injunction (hereinafter called 'first suit') and RSA No.1381 of 1990 titled as “M/s Sharma Textile and General Industries and others V/s Pehlad Singh

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and others” arising out of the Civil Suit No.104 of 1984 (hereinafter called 'second suit'), claiming dissolution of partnership and rendition of accounts.

In the first suit, the plaintiff-Pehlad Singh sought declaration and permanent injunction claiming to be owner in possession to the extent of 2/3rd share in the land comprising Killa No.30/12 and 1/3rd in the land comprising Killa No.30/19. It was alleged that Deep Chand, father of the plaintiffs and defendant Nos.1 & 2, sons of Deep Chand, was owner in possession of the property as described in para Nos.2(i), 2(ii) and 2(iii) of the plaint, i.e. agricultural land comprised in Khewat No.37, Khatoni No.73 min, Rect. And Killa No.30/19 (8-0) and half share in agricultural land comprised in Khewat No.38, Khatoni No.76, Rect. And Killa No.30/12 (8-0), situated in the revenue estate of Village Kundli, 1/6th share measuring 79 kanals 9 marlas comprised in Khewat No.318, Khatoni No.488, situated in the revenue estate of Village Nangal Kalan as well as immovable property consisting of residential house, situated in Village Nangal Kalan. He was in sound-disposing mind and executed a last Will dated 19.07.1882 bequeathing agricultural land situated in Village Kundli, Tehsil and District Sonipat, to plaintiff and defendant Nos.1 and 2 in equal shares and house property situated in Village Nangal Kalan, was bequeathed to the plaintiff, whereas the agricultural land situated in Village Nangal Kalan were bequeathed to his wife/defendant No.3 as well as house property, described, therein.

Defendant Nos.1 and 2/appellants opposed the suit while admitting that Deep Chand, their father, died on 18.08.1982, but asserted that the plaintiff was recorded owner to the extent of half share in Killa No.30/12 and Deep Chand was a partner in firm-M/s Sharma Textile and

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General Industries, along with defendant Nos.1 and 2. Vide dissolution deed dated 31.07.1982, Deep Chand had retired from the partnership and gave the land to the said firm, which was confirmed by a decree of civil court dated 18.08.1982. It was further clarified that the plaintiff was also a partner in the aforementioned firm along with Deep Chand and defendant Nos.1 and 2, but he retired vide dissolution deed dated 01.04.1981. The plaintiff transferred his share in the above land to M/s Sharma Textile and General Industries and in such circumstances, the firm became the owner in possession of both the killas, described in paragraph 2(i) of the plaint. The firm filed a civil suit for permanent injunction against Pehlad Singh-plaintiff and he was restrained from interfering into peaceful possession.

As regards the property described in para 2(ii) of the plaint, it was stated that Deep Chand had bequeathed his share to the plaintiff and defendant Nos.1 and 2 in equal shares, vide Will dated 12.10.1981 and in this regard, mutation of inheritance was, vide order dated 21.04.1983, sanctioned by the Assistant Collector Grade I, Sonipat. Viz-a-viz the property described in para 2(iii) of the plaint, the houses, in which, the plaintiff and defendant Nos.1 and 2 were residing, were given to them and 4th house, lying vacant, was given to defendant Nos.1 and 2. It was denied that Deep Chand was ever executed any unregistered Will dated 19.07.1982, which was disbelieved by the Assistant Collector Grade-I, Sonipat, whereas the Will of 1981 was registered.

The plaintiff filed replication and denied the factum of Deep Chand having retired from the partnership, vide Dissolution Deed dated 31.07.1982.

Since the parties were at variance the trial Court framed the

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following issues:-

1. *Whether the plaintiff is owner in possession of the said property mentioned in para 6 of the pliant as alleged?*
OPD
2. *Whether the plaintiff has no locus standi for the present suit?* *OPD*
3. *Whether the suit is not maintainable in the present form?*
OPD
4. *Relief.*

The plaintiff in support of the pleadings examined as many as seven witnesses and brought on record the various documents i.e. site plan of the house (Ex.P1 to Ex.P4), certified copy of the Will dated 19.07.1982 (Ex.P5), certified copy of jamabandi of the land situated at Village Nangal Kalan (Ex.P6), certified copy of the jamabandi of land situated at Village Kundli (Ex.P7 and Ex.P8), khasra girdawari (Ex.P9 to Ex.P12) and certified copy of statement by Ishwar Singh before the Assistant Collector 1st Grade (Ex.P13). Whereas the defendants examined eleven witnesses and brought on record the various documents i.e. certified copy of the Will dated 12.10.1981 (Ex.D1), Dissolution deed dated 01.04.1981 (Ex.D8/1), deed of dissolution dated 31.07.1982 (Ex.D8) and (Ex.DW10/A) and certified copy of the judgment and decree passed in Civil suit “M/s Sharma Textiles V/s Deep Chand (Ex.D9 and Ex.D10).

The trial Court decreed the suit and the appeal laid before the the lower Appellate Court also met with the same fate.

In the second suit, the plaintiff-Pahlad Singh claimed dissolution of partnership and rendition of accounts, claiming himself to be partner in the firm as well as propounded the Will dated 19.07.1982.

The defendant Nos.1 to 3 opposed the suit by alleging that

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Pahlad Singh was no longer partner of the firm as he had retired, vide dissolution deed dated 01.04.1981, which was signed by all partners and thereafter, the firm consisted of partners i.e. defendant Nos.2 and 3. The factum of retirement had been confirmed by the other partners, in nutshell, according to the defendants, the plaintiff had retired from the partnership, therefore, he had no right to file the suit.

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

1. *Whether the firm has been dissolved? OPP*
2. *If issue No.1 is not proved, whether the defendants No.2 and 5 are accounting partners. OPP*
3. *Whether the defendant Nos.2 and 3 are liable to render the account? OPP*
4. *Whether the plaintiff has got no locus standi to file the present suit? OPD*
5. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
6. *Whether the suit is liable to be stayed u/s 10 C.P.C.? OPD*
7. *Whether the suit is not maintainable in the present form? OPD*
8. *Relief.*

The plaintiff in support of the aforementioned averments, examined three witnesses and brought on record certified copy of the site plan of the suit property as Ex.P1. On the other hand, the defendants examined three witnesses and tendered in evidence the various documents (Ex.D1 to Ex.D15).

The trial Court dismissed the suit, but the lower Appellate Court has reversed the findings.

It is, in these circumstances, two appeals, at the instance of the

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defendants, have been filed in this Court.

Mr. Amit Jain, learned counsel appearing on behalf of the appellants-defendants submitted that there was no dispute with regard to the half share of the plaintiff in Killa No.30/12, but as regard the Killa No.30/19, Deep Chand was exclusive owner and he transferred the land in favour of partnership firm and in lieu of liabilities of the firm, executed dissolution deed dated 31.07.1982. Clause (iv) of the dissolution deed, decided that the land comprised in this khasra number would be transferred to the partnership firm in. The other half share in Killa No.30/12 was also transferred in favour of the partnership. The aforementioned transfers in favour of the partnership was upheld, vide judgment and decree dated 18.08.1982 rendered in Civil Suit titled as “M/s Sharma Textile V/s Deep Chand and therefore, the plaintiff could not have claimed any right in killa No.30/19. Even Killa No.30/12 was transferred by the plaintiff in favour of the partnership firm, which was reflected in the dissolution deed dated 01.04.1981, thus, the plaintiff was not divested by any ownership. Deep Chand had executed last Will dated 12.10.1981 (Ex.D1), which was scribed by deed writer DW-4, Nanak Chand and proved through the attesting witnesses DW1 and DW5. The alleged suspicious circumstances pointed out by the plaintiff are neither here nor there as the Will was registered. The factum of the Will dated 12.10.1981 was also reflected in the Will dated 19.07.1982 (Ex.P5) propounded by the plaintiff. The plaintiff miserably failed to bring any evidence as to how and under what circumstances, he had not appended the signatures on the dissolution deed , in other words, had not controverted or proved to be of some other person. In such circumstances, the contents of the dissolution deed would be sacrosanct for

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adjudication of the *lis*. Lal Chand, the witness of the dissolution deed, had proved the dissolution deed and despite extensive cross-examination, nothing contrary has surfaced. It is not necessary that the other witness, Ram Krishan, was required to be examined. The dissolution deed signed by Deep Chand had been proved through the statement of K.C. Bansal (Ex.D15), which specifically stated that the dissolution deed was executed by Deep Chand, in his presence. The transfer of shares in the partnership firm does not require any registration, thus, finding of fact and law, in such circumstances, cannot be held to be valid. In support of his contentions, reliance was laid to the *ratio decidendi* culled out by Hon'ble the Supreme Court in "Commissioner of Income Tax West Bengal, Calcutta V/s Juggilal Kamlatpat" 1967 AIR (SC) 401 and "Addanki Narayanappa and another V/s Bhaskara Krishnappa (Dead) and thereafter his heirs and others" 1966 AIR (SC) 1300.

There was no challenge laid to the decree of 18.08.1982. The simpliciter suit for declaration claiming the share in the land without possession, was not maintainable. The lower Appellate Court while dismissing the appeal has set aside the finding of the trial Court in part with regard to the execution of dissolution deed dated 01.04.1981 and 31.07.1982 by the plaintiff and Deep Chand and also upheld the finding that Deep Chand has executed the Will dated 12.10.1981. There is no dispute to the house which is in possession of plaintiff i.e. property described in para Nos.2(ii) and (iii) of the plaint.

An application bearing CM No.5039-C of 2008, has been filed for placing on record the documents i.e. Form A and C (Annexures A4 & A5) issued by the Registrar of Firms (Haryana) Chandigarh, to reflect that

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the plaintiff-Pahlad had retired from the partnership firm w.e.f. 31.03.1981 and Deep Chand on 31.07.1982, whereas Ishwar Singh on 27.11.1993. No reply to the aforementioned application has been filed. The documents have been issued by the Competent Authority and therefore, being public documents, are admissible in evidence as it would help the Court for adjudication of the lis.

Mr. Amit Jain, further submits that the entire controversy revolves around Killa No.30/12 and 30/19, in other words, he submitted that viz-a-viz killa No.30/12, the plaintiff was in ownership to the extent of half share and Deed Chand, other house, whereas Killa No.30/19 was in exclusive ownership of Deep Chand. In such circumstances, the following substantial question of law arises for determination:-

- 1. Whether in view of the recitals of dissolution deed of Pahlad as well as Deep Chand, can the plaintiff-Pahlad stake the claim by way of declaration with regard to the half share in Killa No.30/12 and 1/3rd share in Killa No.30/19.*
- 2. Whether the decree dated 18.08.1982 rendered in Civil Suit 169 of 1982, conferred the ownership in favour of the firm to the extent of half share in respect of Killa No.30/12 and full ownership in Killa No.30/19, can be set aside, in the absence of any challenge in the first suit.*

Per contra, Mr. S.R. Hooda, learned counsel appearing on behalf of respondent No.1/plaintiff supported the judgments and decrees, under challenge as the defendants miserably failed to prove the dissolution of deed. In view of relinquishment of a right of ownership qua half share in Killa No.30/12, measuring 4 kanals, in the absence of registration, the

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plaintiff could not have been divested upon the right and title. The second Will of 1982 was subsequently registered acknowledging the factum of execution of the previous Will dated 12.10.1981. He also acknowledged that the dispute is only confined to Killa No.30/12 and 30/19, in other words, he submitted that the judgment and decree of the trial Court conferring 2/3rd share in 30/12 and 1/3rd share in 30/19, is perfectly legal and justified as the defendants failed to prove that Pahlad Singh had signed the dissolution deed. The statement of witnesses, as noticed by the trial Court, was rightly disbelieved being contradictory. The alleged legal notices did not prove that Pahlad Singh/plaintiff had retired from the partnership firm and therefore, could not stake the claim. The recitals in the dissolution deed would not divest upon the ownership and right, thus, prayed for dismissal of the present regular second appeals.

I have heard learned counsel for the parties and appraised the paper book as well as the records of the Courts below.

Both the parties are *ad idem* that the dispute is only confined to Killa No.30/12 and 30/19.

Killa No.30/12 was measuring 8 kanals and half of which, was owned by Deep Chand and other by Pahlad Singh, whereas 30/19 measuring 8 kanals was in exclusive ownership of Deed Chand.

Before giving my findings as to whether, the plaintiff remained a partner of the firm or otherwise, it would be apt to reproduce the dissolution deed dated 01.04.1981, which reads thus:-

"Deed of Dissolution of Partnership

1. *That the party of the fourth part has retired is deemed to have retired from the partnership w.e.f. 31.3.1981, leaving*

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its property, machines, assets, Credits, goodwill, benefit and liabilities to the continuing partners i.e. the 1st, 2nd and 3rd parties, who will carry on the fir's business w.e.f. 1.4.81 to the exclusion of the outgoing party of the fourth part.

- 2. That the continuing partners have/will be deemed to have exclusive use of the goodwill and right to carry on the business of this partnership and with full and irrevocable authority to collect all the outstanding assets of the partnership and to ask for, demand, sue for, recover and received all assets and outstanding debts, compromise and dispute or differences but shall at all times hereafter indemnify the retiring partner against all claims, action and proceedings in respect of the said business other than any liability raised by him on his own, for himself and not the firm recorded in the firms books or any acts of misfeasance or malfeasance.*
- 3. That in consideration of the entire past liability of the firm being taken over by the continuing partners and the covenant as to indemnify as aforesaid the retiring partner agrees/is deemed to have agreed and declares that he has no longer any right, title or interest in the said partnership business or in the profits and benefits therefrom.*
- 4. The outgoing partner confirms and is always deemed to have agreed that he neither had nor has any interest in the agricultural land measuring about 4 kanals bearing Kila No.30/12, Khewat No.5, Khata No.23 in Villae Kundli, District Sonipat, acquired by the firm in his name which in fact was the property of the firm of which the party No.1, 2 and 3 are the continuing partners, who will be at liberty to get it mutated in their or the firm's name comprising of them.*
- 5. That the retiring partner does release and is deemed to have released the continuing partners from all accounts of the partnership business and his claim for the contributed sums, if any.*

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6. That all the Govt. or Semi-Govt. Or financial institution's liabilities pertaining to the dissolved partnership are agreed to be borne and shall be borne by the continuing partners. Likewise, all the other liabilities, if any, of the dissolved partnership upon the date of dissolution, shall also be borne by the continuing partners and the outgoing partner is released and is deemed to have been released from all the liabilities whatever by the continuing partners or any loss which the outgoing partner may suffer in this behalf.”

The lower Appellate Court, in second suit, while reversing the judgment and decree of the trial Court, which had dismissed the suit for rendition of the account, emphatically relied upon the statement of the witnesses in the earlier round of litigation as well as in the present suit, but remained oblivious of the fact that the plaintiff miserably failed to prove on record the circumstances regarding his signatures on the dissolution deed. The whole pith and substance of the second suit, on the premise that the plaintiff-Pahlad was a working partner of the firm.

The additional evidence sought to be placed on record as Annexures A-4 and A-5 issued by the competent authority reveals that plaintiff-Pahlad had retired from the partnership firm w.e.f. 31.03.1981 and Deep Chand on 31.07.1982, whereas Ishwar Singh on 27.11.1993. No reply has been filed to the said application. Accordingly, I deem it appropriate to allow the application bearing CM-5039-C of 2008 as the documents are essential and necessary for the adjudication of the *lis*.

In view of such additional evidence, the entire foundation of the second suit was based upon the falsehood. The lower Appellate Court has gone in the arena of surmises and conjectures by giving a reasoning on

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supposition, which is not in consonance with the Order 41 Rule 31 of CPC as it is obligatory to frame the point of determination and assigned valid and cogent reasons while reversing the judgment and decree of the trial Court. The whole focus was as if it was a criminal trial and not a civil. Heavy onus laid upon the plaintiff, which he miserably failed to discharge by belying his signatures on the dissolution deed. If at all, the plaintiff was so sure, he never retired from the partnership firm, he could have disproved the signatures by taking the aid of the Handwriting Expert. On the contrary, the witness of the dissolution deed, namely, Lal Chand, had been coherent and consistent. One line here and there in the cross-examination, cannot be a ground for rejecting the documents as the witness over a period of time would not memorize exactly what transpired on the date of witness of the event.

The plaintiff miserably failed to lay any challenge to the decree dated 18.08.1982, whereby Deep Chand had agreed to give his half share in Killa No.30/12 and full share in Killa No.30/19, to the firm. This was in tandem with the clauses of the dissolution deed. In such circumstances, the decree qua Killa No.30/12 and 30/19, would prevail.

I refrain myself to comment upon the transfer of the other property in favour of the parties as both the counsel did not address the arguments, in other words, there is no controversy. The lower Appellate Court was called upon to adjudicate regarding the execution of the Will of 1981 & 1982 and the finding of fact reveals that both the Wills have actually been executed by Deep Chand. It is a settled law that the whenever a partner having ownership of some property puts into hotchpotch of the firm by way of a recital, the said act does not require registration. This

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finding of mine is supported by the *ratio decidendi* culled out by Hon'ble the Supreme Court in **Commissioner of Income Tax West Bengal, Calcutta's case** (supra) and **Addanki Narayanappa's case** (supra). For the sake of brevity, the relevant paras of the judgments read as under:-

*"Para 12 of **Commissioner of Income Tax West Bengal, Calcutta's case** (supra)*

*12. In the alternative, we think that, even if it had been accepted that this deed of relinquishment required registration, that would not lead to the conclusion that the partnership seeking registration was not valid and had not come into existence in law. The deed of relinquishment could, at best, be held to be invalid in so far as it affected the immovable properties included in the assets of the firm; but to the extent that it purported to transfer movable assets of the firm, the document would remain valid. The deed could clearly be divided into two separate parts, one relating to immovable properties, and the other to movable assets; and the part of the deed dealing with movable assets could not be held invalid for want of registration. A deed of relinquishment is in the nature of a deed of gift, where the various properties dealt with are always separable, and the invalidity of the deed of gift in respect of one item cannot affect its validity in respect of another. This view was expressed by the Madras High Court in **Perumal Ammal v. Perumal Naicker & Anr.** I.L.R 44 Madras 196. A deed of relinquishment, or a deed of gift, differs from a deed of partition in which it is not possible to hold that the partition is valid in respect of some properties and not in respect of others, because rights of persons being partitioned are adjusted with reference to the properties subject to partition as a whole. In the case before us, therefore, the deed of relinquishment was valid at least in respect of movable properties, and the partnership seeking registration, thus, became owner of all the movable assets of the partnership in*

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addition to having contributed a sum of ₹50,0001- as capital investment in it. The Kamla Town Trust and Jhabbarmal Saraf constituted the partnership under a deed of partnership, which was properly executed, and in these circumstances, the partnership that came into existence was clearly valid in law. There is, therefore, no force in this appeal and it is dismissed with costs.

Para 5 of the Addanki Narayanappa's case (supra)

5. It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by Section 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners.

There are not many decisions of the High Courts on the point. in the few that there are the preponderating view is in support of the position which we have stated. In Joharmal v. Tejrani Jagrup, (1893) ILR 17 235, which was decided by Jardine and Telang JJ., the latter took the view that though a partner's share does not include any specific part of any specific item of partnership property, still where the partnership is entitled to immovable property, such share does include an interest in immovable property and, therefore, every instrument operating to create or transfer a right to such share requires to be registered under the Registration Act. In coming to this conclusion he mainly purported to rely upon an observation contained in the fifth edition of Lindley on Partnership at p. 347. This observation is not to be found in the present edition of Lindley's Partnership nor in the 9th or 10th editions which were brought to our notice. The 5th edition, however, is not available. The learned Judge after quoting an earlier statement which is that the "doctrine merely amounts to this that on the death of a partner his share in the partnership property is to be treated as money, not as land" says: "This obviously would not affect matters either during the lifetime of a partner-Lindley, L.J.", says in so many words that it has no practical operation till his' death (p. 348)- or as against parties strangers to the partnership,' e.g., the firm's debtors." While it is true that the position so far as third persons are concerned would be different it may be pointed out that in Forbes v. Steven, (1870) 10 Eq 178, James, V.C., has, as quoted by the learned Judge, said: "It has long been the settled law of this Court that real estate bought or acquired by a partnership for partnership purposes (in the absence of some controlling agreement or direction to the contrary), is, as between the partners and as between the real and personal representatives of a partner deceased personal property, and devolves and is distributable and applicable as personal estate and as legal assets." Telang,

J., seems to have overlooked, and we say so with great respect, the words “as between the partners” which precede the words “and as between the real and personal representative of the partner deceased” and to have confined his attention solely to the latter. We have not found in any of the editions of Lindley’s Partnership an adverse criticism of the view of the Vice-Chancellor But, on the contrary, as already stated, the view expressed is in full accord with these observations. Jardine, J., has discussed the English authorities at length and after referring to the documents upon which reliance was placed on behalf of the defendant stated his opinion thus:

“To lay down that the three letters in question, which deal generally with the assets, movable and immovable, without specifying any particular mortgage or other interest in real property require registration, would, incline to think, in the present state of the authorities, go too far. It may be argued that such letters are not ‘instruments of gift of immovable property but rather disposals of a share in a partnership of which the business is money lending, and the mortgage securities merely incidental thereto.’”

The view of Telang, J., was not accepted by the Madras High Court. in Chitturi Venkataratnam v. Siram Subba Rao, ILR 49 Madras 738. The learned Judges there discussed all the English decisions as also the decisions in Sudarsanam Maistri v. Narasimhulu Maistri (1902) IILR 25 Madras 149 and Gopala Chetty v. Vijayaraghavachariar, ILR 45 Madras 378; 1922-1 AC 488, and the opinion of Jardine, J., in Joharmal case, (1893) ILR 17 Bombay 235 held that, an unregistered deed of release by a partner of his share in the partnership business is admissible in evidence, even where the partnership owns immovable property. The learned Judges pointed out that though a partner may be a co-owner in the partnership property he has no rights to ask for a share in the property but

only that the partnership business should be wound up including, therein the sale of immovable property and to ask for his share in the resulting assets. This decisions was not accepted as laying down the correct law by a Division Bench of the same High Court in Samuvier v. Ramasubbier, ILR 55 Madras 72. The learned Judges there relied upon the decision in Ashworth v. Munn, (1880) 15 Ch D 363, in addition to the opinion of Telang, J., and also referred to the decision Gray v. Smith, (1889) 43 Ch. D 208, in coming to a conclusion contrary to the one in the earlier case. It may be pointed out that the learned Judges have made no reference to the decision of the Privy Council in Gopala Chetty case, though that was: one of the decision relied upon by Phillips, J., in the earlier case. In so far as Ashworth case, (1880) 15 Ch D 363 is concerned that was a case which turned on the provisions of the Mortmain Acts and is not quite pertinent for the decision on the point which was before them and which is now before us. In (1889) 43 Ch. D. 208, Kekewich, J., held that an agreement by one of the partners to retire and to assign his share in the partnership assets including, immovable property, is an agreement to assign an interest in land, and falls within the Statute of Frauds. The view of Kekewich, J., seems to have received the approval of Cotton, L.J., one of the Judges of the Court of Appeal, though no argument was raised before it challenging its correctness. It may, however, be observed that even according to Kekewich, J., the authorities (1800) 5 Ves 308 and (1846) 5 Hare 369 on appeal (1847) 2 Ph 266, establish that one may have an agreement of partnership by parol, notwithstanding that the partnership is to deal with land. He, however, went on to observe:

“But it does not seem to me to follow that an agreement for the dissolution of such a partnership need not be expressed in writing, or rather than there need not be a memorandum of the agreement for dissolution when one

of the terms of the agreement, either expressly or by necessary implication, is that the party sought to be charged must part with and assign to others an interest in land. That seems to me to give rise to entirely different considerations. In the one case you prove the partnership by parol; you prove the object, the terms of the partnership, and so on. But in the other case it is one of the essential terms of the agreement that the party to be charged shall convey an interest in land, and that seems therefore to bring it necessarily within the 4th section of the Statute of Frauds”.

In the case before us also in Samuvier case the document cannot be said to convey any immovable property by a partner to another expressly or by necessary implication. If we may recall, the document executed by the Addanki partners in favour of the Bhaskara partners records the fact that the partnership business has come to an end and that the latter have given up their share in “the machine etc., and in the business” and that they have “made over same to you alone completely by way of adjustment”. There is no express reference to any immovable property herein. No doubt, the document does recite the fact that the Bhaskara family has given to the Addanki family certain property. This however, is merely a recital of a fact which had taken place, earlier. To cases of this type the observations of Kekewich, J., which we have quoted do not apply. The view taken in Samuvier case seemed to commend itself to Varadachariar, J., in Thirumalappa v. Ramappa, AIR 1938 Madras 133, but he was reversed in Ramappa v. Thirumalappa, AIR 1939 Madras 884.

The plaintiff-Pahlad instituted a civil suit No.874 of 1982 for injunction seeking restraint order against the firm and its partners from dispossessing of the property of the firm alleging himself to be partner. In

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the aforementioned suit, vide Ex.D-26, the following issues were framed:-

- "1. Whether the plaintiff is still a partner of the firm as alleged? OPP*
- 2. Whether the plaintiff is entitled for the relief claimed for? OPP*
- 3. Whether the plaintiff has got no locus standi to file the suit? OPD (objected to).*
- 4. Whether the suit is not maintainable in the present form as alleged? OPD*
- 5. Whether the defendants are entitled to special cost as alleged? OPD*
- 6. Relief."*

However, the suit, aforementioned, was withdrawn on 13.06.1986 by suffering a statement. No such permission was granted by the Court below. In such circumstances, the plaintiff had abandoned his claim in the share of property in view of the provisions of sub-Rule (4) of Rule 1 of Order 23 of the Code of Civil Procedure. For the sake of brevity, the same reads as under:-

"The provisions of sub-Rule (4) of Rule 1 of Order 23 of CPC

1. Withdrawal of suit or abandonment of part of claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."

It is not mandatory requirement of law that a lawyer would obtain the signatures of a client, while sending a legal notice. It is only on

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the basis of the fiduciary relationship and the obligation is discharged. The legal notices (Ex.D23) and the registered cover issued by Chaudhary Bhagat Singh, Advocate, Sonipat, reveals no manner of doubt that Pahlad-plaintiff concededly retired from the firm by acknowledging the dissolution deed dated 01.04.1981. Para 1 and 2 of the legal notice reads thus:-

- "1. That my above-said client was the partner of the above-said firm since 31.3.71 to 31.3.1981.*
- 2. That the deed of dissolution of partnership has been made on 1st day of April, 1981."*

Both the Courts below particularly, the lower Appellate Court being the last court of fact and law was enjoined upon an obligation to refer to the documents.

In view of what has been noticed above, I am of the view that the judgments and decrees of the Courts below in the first suit and judgment and decree of the lower Appellate Court in second suit, suffer from the grave illegality and perversity. The substantial questions of law, as noticed above, are answered in favour of the appellants-defendants and against the respondent No.1-plaintiff, in essence, the first suit is hereby dismissed, whereas the judgment and decree of the lower Appellate Court in second suit is set aside and that of the trial Court is restored.

Resultantly, both the appeals are allowed.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**