IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4412-2012 (O&M)
Date of Decision: May 15, 2019.

Subhash Chand and another

...Appellants

Versus

Rama Nand and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Surinder Singh Duhan, Advocate
for the applicants-appellants.

Mr. Mukesh Kumar Verma, Advocate
for the respondent No.2.

Mr.Muneesh Malhotra, Advocate for
Mr. S.K. Bokolia, Advocate
for respondent No. 4.

Mr. Vikrant Attri, Advocate for
Mr. Dhiraj Chawla, Advocate
for respondent No. 5 and 6.

Mr. Rajesh K. Kataria, Advocate
for respondent No.7.

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JAISHREE THAKUR, J. (Oral)

CM-12282-C-2012

There is an inordinate delay of 495 days in filing this appeal but as this Court has dealt with this case on merits, the delay of 495 days in filing the appeal is hereby condoned .

Main case

1. The instant regular second appeal has been filed by the appellants seeking to challenge the impugned judgment dated 21.01.2011 passed by Additional District Judge, Gurgaon and the judgment dated 18.08.2010 passed by the Civil Judge (Junior Division), Gurgaon.

2. Briefly, the facts of the case are that the appellants filed a suit on 01.09.1972 for possession by way of partition of the suit property i.e. Plot No.20, Industrial Estate Udyog Vihar, Gurgaon, allotted to M/s Rama Industries (appellant No.2). The partners of M/s Rama Industries were Sh. Ganga Sahai holding 28 shares, Rama Nand, Madan Lal, Smt. Gindori Devi and Subhash Chand Sharma (appellant no1) holding 18 shares each vide partnership dated 18.07.1968. Respondent No.1 and 2 and deceased Ganga Sahai and Gindori Devi were other partners in the said firm. It was submitted that partnership firm was never dissolved and respondent No.1 had forged a dissolution deed dated 31.12.1992, on which basis he got the suit plot transferred in the name of respondent No.3 in collusion with respondent No.5 and 6. Thus it was averred that the conveyance deed bearing No. 4005 dated 13.08.1993 is illegal, null and void. It was next maintained that subsequently respondent No.1 sold the suit plot in favour of respondent No.4 vide sale deed No. 16258 dated 14.11.2005. It was also pleaded that the above said deed was also illegal, null and void. The appellants came to know about illegal acts of respondents/defendants No. 2 to 5 through letter dated 24.03.2005 of respondents/defendant Nos.5 and 6 and made protest through legal notices dated 31.03.2005, 09.05.2005, 15.12.2005 and representation dated 30.11.2005. The appellants also

challenged misdeeds of respondents/defendants No.1 to 5 through CWP No.743 of 2006 and appellants were relegated to avail remedy before civil court vide order dated 19.01.2006. The appellant being co-sharer in the suit plot as such requested the respondents to get the same partitioned, which request was refused by the respondents. Hence they came up with the filing of the suit before the Civil Judge, Junior Division, Gurgaon.

3. Upon notice, respondents appeared and respondent No.1 and 3 and 4 through an application filed under Order 7 Rule 11 CPC sought for rejection of plaint on the ground that the suit is not maintainable as the partnership firm i.e. appellant No.2 on whose behalf appellant No.1 has filed the suit as its partner was not registered as such the suit was hit by Section 69 of the Partnership Act. It is was also pleaded by respondent No.2 that the firm was dissolved vide dissolution deed dated 31.3.1992. The respondent-defendant No.4 filed separate written statement by taking preliminary objections of estoppel. He pleaded that he had purchased the suit property for a consideration of ₹4 crore after inquiries and inspection of record with HSIDC. It was also pleaded that M/s Rama Industries was dissolved with dissolution deed dated 31.03.1992 by its partners. The plot was given to Ganga Sahai and Smt. Gindori Devi in lieu of their shares in M/s Rama Industries. Both Subhash Chand Sharma (appellant-plaintiff) and Madan Lal (Defendant- Respondent no 2) were the continuing partner of M/s Rama Industries whereas, Rama Nand (Defendant–respondent no 1) got firm M/s Rama Udyog registered on 02.07.1993 along with his mother Smt. Gindori Devi as a partner. Rama Nand applied to HSIDC for issuing sale deed in favour of Rama Udyog which was executed on 13.08.1993 qua

Plot No 20 in favour of M/s Rama Udyog through Rama Nand and Gindori Devi as partners. Appellant-plaintiff No.1 also gave affidavit dated 17.11.1993 admitting dissolution of M/s Rama Industries as well as creation of M/s Rama Udyog. Counsels maintained that appellant had no locus standi to file the suit.

4. The lower Court held that a perusal of the Section 69 clearly reveals that the law mandates that no suit between the partners or between partnership firm and any third party in which any right arising out of contract or right conferred by the Act is sought to be enforced shall be entertained, if the partnership firm is not registered and the person filing the suit is not shown as partner in the register. The Civil Judge (Jr. Divn) Gurgaon vide order dated 18.08.2010 held that the provisions of Section 69 (3)(a) of the Partnership Act does not apply and the suit is not maintainable and consequently the plaint was rejected.

5. The appellant challenged the order dated 18.08.2010 by filing an appeal. It was also pleaded on behalf of the appellants that the trial Court failed to appreciate that Section 69(3) (a) of the Indian Partnership Act 1932 provides that the provisions of sub-Section(1) and (2) shall apply also to a claim of set off or other proceedings to enforce a right arising from a contract but shall not effect (i) the enforcement of any right to sue for the dissolution of a firm (ii) of the Partnership Act is exception to the condition contained in Section 69(1) and (2).

6. After perusing the records and hearing arguments from both sides and appreciating the evidence led by the parties, the Appellate Court held the impugned order to be sustainable and dismissed the appeal filed by

the appellants. Hence, giving rise to the filing of the present regular second appeal.

7. I have heard learned counsel for the parties and perused all the documents available on the record.

8. The entire thrust of the arguments is that no dissolution deed was ever executed between the parties and the alleged dissolution deed dated 31.3.1992 is a forged document. It is also argued that the appellant would be entitled to ask of partition of the plot described as Plot No 20 situated at Industrial Estate Udhyog Vihar HSIDC Gurgaon (allotted to M/s Rama Industries vide letter dated 1.9.1972) being a co-sharer in the property of the partnership firm. It is further argued that Section 69 (3)(a) is an exception to Section 69 which permits the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm. Section 69 of the Partnership Act reads:

> *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.*

(3) The provisions of sub-Sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This Section shall not apply,—

(a) to firms or to partners in firms which have no place of business in [the territories to which this Act extends], or whose places of business in [the said territories], are situated in areas to which, by notification under [Section 56], this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

9. A perusal of the aforesaid provision would show that Section 69(2) of the Act bars a suit to enforce the right arising from a contract 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 firm as its partners. The appellant is seeking possession by way of partition of property described as Plot No 20 situated at Industrial Estate Udhyog Vihar, HSIDC,

Gurgaon which has been purchased by the respondent no 4 namely- Mona Design Pvt. Ltd., vide a sale deed dated 14.11.2005. It is the contention of learned counsel for the appellant (para 10 of the plaint) that the dissolution did not take place. If the pleading is to be accepted at face value that there is no dissolution, then the proviso to Section 69 (3)(a) which is an exception to the general rule of Section 69, would not be applicable. Section 69(3)(a) allows for a partner of an unregistered firm to sue for dissolution, sue for rendition of account and also to realize the property of a dissolved firm. The suit has neither been filed for rendition of account nor dissolution of the partnership firm but it is for suit for partition by way of possession, which is not maintainable. It is also to be noted that the appellant no1 did not plead anywhere that he was suing for recovery of property of a dissolved firm. If the appellant were to accept that the dissolution has been affected even than in any case suit for partition would not be maintainable as the property was given to Sh. Ganga Sahai and Smt Gindori Devi in lieu of shares in the unregistered firm namely M/s Rama Industries. Even if a plea is taken that the dissolution was fraudulent, still a *simplicitor* suit for partition would not be maintainable being an unregistered firm.

10. The judgment rendered in ***Loonkaran Sethia v. Ivan E. John, AIR 1977 SC 336*** would be applicable to the instant case where it has been held:

> *"21. A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an*

unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of section 69 of the Partnership Act. In the instant case, Seth Suganchand had to admit in unmistakable terms that the firm 'Sethiya and Co.' was not registered under the Indian Partnership Act. It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethiya and Co, which was an unregistered firm that being so, the suit was undoubtedly a suit for the benefit and in the interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstandings of a dissolved firm. Thus the suit was clearly hit by section 69 of the Partnership Act and was not maintainable."

11. The judgment relied upon by learned counsel for the appellant is distinguishable and not applicable to the facts of the present case. In the case of ***New Bharat Chemical Industry Vs Om Prakash 1997 (3) PLR 357***, the question before the court was whether the firm was registered or an unregistered firm and while holding the firm to be an unregistered one, the suit was dismissed. In ***Kanwaljit Singh vs. Jarnail Singh 2007(2) RCR (Civil) 79,*** this High Court dealt with a case where the plaintiff filed a suit for possession of a shop. In the partnership deed it was agreed between the

parties that in case of dissolution the tenancy right and right to occupy were to rest with plaintiff No 2. On dissolution of the firm, the defendant failed to hand over possession which led to the suit being filed. A plea was taken therein that the suit would not be maintainable as the partnership firm was not registered. Both the courts allowed the suit which led to the filing of the Regular Second Appeal by the defendant, which appeal came to be dismissed. This High Court while interpreting Section 69(3)(a) held that :

> *"17. In the present case, the suit is for mandatory injunction claiming possession from defendant as partner of the firm. The possession of the firm may be that of a licensee but one of the partners is competent to enforce a clause in the partnership deed to claim possession as property of the dissolved firm. Such suit falls in the exception of clause 3(a) of Section 69 of the Act."*

A careful reading of the said judgment would reflect that there was a partnership deed which stipulated that in case the firm was dissolved the property would come to rest with the plaintiff -respondent no2. It is in this background that the suit was filed and section 69(3) (a) was invoked. In the instant case, the appellant is seeking partition while stating that there is no dissolution. He has also taken an additional plea that the dissolution is fraudulent and was not acted upon. Therefore the judgment rendered in ***Kanwaljit Singh (supra)*** would clearly not be applicable.

12. Therefore finding no merit, the instant appeal is dismissed.

(JAISHREE THAKUR)
JUDGE

May 15, 2019
seema

Whether speaking/reasoned Yes
Whether reportable Yes/No