IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2449-2013(O&M)
Date of decision:-23.4.2019

Shamsher Singh and another

...Appellants

Versus

Sohan Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vikas Bahl, Sr. Advocate with
Ms.Priyanka Kansal, Advocate
for the appellants.

Mr.Parminder Singh, Advocate
for the respondents.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Bachni Devi widow of Sh.Hukam Singh (since dead) through her legal representatives had brought a suit against S/Sh.Shamsher Singh, Mahabir Singh and Jyoti Prashad craving for grant of a decree for dissolution of partnership between the parties, with respect to M/s Prince Radio and TV Centre, Karnal as well as M/s Prince

Electronics asking for rendition of accounts found to be due against the defendants to be paid to the plaintiffs, in addition to that praying for issuance of direction to defendants to put the plaintiff in possession of the shop in dispute.

As per the case of the plaintiff Sh.Hukam Chand, husband of Smt.Bachni Devi plaintiff had come in possession of the shop No.C-926 outside Banso Gate, Karnal, as a tenant under Smt.Jaisi Bai wife of Sh.Har Bhagwan on a monthly rent, which stood increased to Rs.10/- per month as per orders of the Court; that the shop in question was purchased by S/Sh.Ramji Dass and Om Parkash from Smt.Jaisi Bai; that the shop fell to share of Sh.Om Parkash in a family settlement; that Sh.Hukam Chand was carrying on the business of Halwai (Sweets maker) in the shop but since that business was not proving to be profitable, he joined the defendants as a partner and a business was started in the shop under the name and style of M/s Prince Radios and TV Centre w.e.f. 22.3.1990; that as per the terms agreed upon between the partners, the shop was meant for sale and repair of all types of TV sets and radios and if the partners desired to start any other business or to change the name and style of the firm that could be done with the consent of all partners; that the accounts of the firm were maintained in accordance with the trading practice; that the accounts of the firm were to be maintained with the bank to be suggested by any of the partners; that account of the firm would be gone into at the end of each financial year on 31st March for finding out the profit and loss of the firm, which were to be transferred to the capital account of partners; that 10% of loss/ profit was to be suffered/received by Sh.Hukam Chand whereas 30% of loss/profit was to be suffered/received by defendants No.1 to 3 each; that as agreed upon, if a partner intended to retire or get the firm dissolved, he could do so; that the firm could raise an amount as initially decided by the partners and all the partners were liable for all the acts of the firm; that the expenses were to be paid firstly out of the profit and in case of any deficiency, the same was to be borne by the partners in accordance with their shares in the profit of the firm; that in case of dissolution of the firm, the dispute was to be settled by mutual consent and possession of the shop was to be handed over to Sh.Hukam Chand, the husband of the plaintiff; that the business of the firm was carried out only for one year till the death of Sh.Hukam Chand on 3.5.1991; that thereafter plaintiff Smt.Bachni Devi was joined as a partner in the firm and a fresh partnership deed was executed on 4.6.1991, vide which it was agreed by the defendants that plaintiff would become entitled to all the assets and liabilities of the firm as already decided including profit and loss of the business. However, after some time, the defendants excluded the plaintiff from the affairs of the firm and denied her right as a partner in all respects; thereafter the name of the firm had been changed as M/s Prince

Electronics without the consent of the plaintiff; that when the plaintiff inquired into the matter, the defendants did not give any response to her; that the plaintiff asked the defendants several times to dissolve the firm, render the account and hand over the possession of the shop to her but in vain, giving rise to a cause of action to the plaintiff to file the suit in question.

On notice, the defendants appeared and filed written statement raising various legal objections challenging maintainability of the suit, further contending that no cause of action had arisen to the plaintiff to bring the suit. The defendants accused the plaintiff of suppression of true facts and challenged jurisdiction of the Court to entertain and try the suit. According to the defendants, the husband of the plaintiff namely Sh.Hukam Chand alleged himself to be the owner of the shop, however, in fact it was not so; that he had received Rs.50,000/- from defendant No.1 in advance with the condition, that rent of the shop would be Rs.1,000/- per month for two years and thereafter it would be Rs.500/- per month, that after death of Sh.Hukam Chand, the plaintiff started taking rent upto 26.4.1994, however, when the defendants came to know that plaintiff was not the owner of the shop and in fact Sh.Om Parkash was owner of the shop in question, they stopped paying rent to her and rather gave an amount of Rs.18,000/- as rent to Sh.Om Parkash from April 1994 to 31.3.1999; thereafter the shop was purchased by defendant

No.1 from Sh.Om Parkash vide a registered sale deed No.90/1 dated 5.4.1999; that firm M/s Prince Radio & TV Centre was dissolved on 31.3.1999 and a letter was sent to Sales Tax Authorities. On merits, the defendants controverted the material assertions in the plaint repeating the stand taken in the preliminary objections further adding that at the end of every financial year, accounts were settled and payment was made to all the partners including the plaintiff by making entries in the *bahi* and after dissolution of the firm on 31.3.1999, an amount of Rs.6,022/- and rent of the shop, which the plaintiff and her husband had received wrongfully was due towards the plaintiff but she did not pay the same and rather she avoided signing the dissolution deed; that presently the defendant No.1 – Shamsher Singh is sole proprietor of the shop M/s Prince Electronics, which he had purchased from Sh.Om Parkash. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for mandatory injunction against the defendants to get the possession of the shop? OPP.
2. Whether the plaintiff is entitled for rendition of accounts in consequence of dissolution of partnership between the parties? OPD.

3. Whether the plaintiff is entitled for a decree for the recovery of the amount, which found be pay by him against the defendants? OPP.

   3A Whether the partnership between the parties was dissolved on 31.3.1999 and the accounts between the parties have been settled? OPD.

4. Whether the suit of the plaintiff is not maintainable? OPD.
5. Whether the plaintiff has not come to the Court with clean hands? OPD.
6. Whether the plaintiff has no cause of action to file and maintain the present suit? OPD.
7. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD.
8. Relief.

In order to prove their case, a legal representative of the plaintiff namely Sohan Lal got his statement recorded as PW1 and thereafter the evidence of the plaintiff was closed after tendering some documents.

On the other hand, the defendant No.1 - Shamsher Singh got his statement recorded as DW1 besides examining Sh.Ramdhan Babbar, Handwriting and Finger Print Expert as DW2 and Sh.Satish Kumar, DRK as DW3.

After hearing the learned counsel for the parties, the trial

Court decided issues No.1 to 3 in favour of the plaintiffs, issue No.3A against the defendants, issues No.4 to 7 against the defendants. Resultantly the suit was decreed with costs and partnership firm M/s Prince Radio and TV Centre was dissolved from the date of passing of the judgment and a preliminary decree for rendition of account was passed in favour of the plaintiff and the defendants were further directed to hand over the vacant possession of the shop to the plaintiff after settlement of the accounts.

Feeling aggrieved by the said judgment and decree, the defendants No.1 and 3 had filed an appeal in the Court of District Judge, Karnal, which was assigned to learned Additional District Judge, Karnal, who vide judgment dated 8.2.2013 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants No.1 and 3 had filed the present regular second appeal before this Court, notice of which was issued and the respondents-plaintiffs appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the said appeal.

As per the admitted case of the parties the shop in question had been in possession of Sh.Hukam Chand deceased, husband of plaintiff Smt.Bachni Devi. It is not in dispute that rent qua this shop was being paid by the defendants to Sh.Hukam Chand

and after his death, to his wife Smt.Bachni Devi – plaintiff. According to the case of the defendants subsequently it transpired that Sh.Hukam Chand was not owner of the shop and in fact the ownership of the shop vested in Sh.Om Parkash, as such they stopped paying rent to Smt.Bachni Devi and rather paid a sum of Rs.18,000/- to Sh.Om Parkash from April 1994 to 31.3.1999, thereafter the said shop was purchased by defendant No.1 from Sh.Om Parkash vide registered sale deed No.90/1 dated 5.4.1999.

The crucial thing to be seen is as to whether the defendants were justified in such conduct, the answer to the question cannot be in affirmative. Section 116 of the Indian Evidence Act deals with Estoppel of Tenant; and of Licensee of Person in Possession. It clearly provides that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given. Under the circumstances the defendants were estopped to question the title of Sh.Hukam Chand or the plaintiff to the shop in question. They could not possibly stop payment of rent to the plaintiff and begin giving rent to Sh.Om Parkash. As it transpires, no relationship of landlord and tenant had come into being between Sh.Om Parkash and the defendants. Therefore, it is to be taken that the defendants had been in possession of the shop as tenant earlier under Sh.Hukam Chand and after his death, his wife Smt.Bachni Devi and thereafter when she left this mortal world, her legal representatives.

The next thing to be seen is the effect of registered sale deed dated 5.4.1999 executed by Sh.Om Parkash in favour of defendant No.1. Even if it is taken to be so, then the result would be the defendant No.1 had acquired ownership rights in the shop in question but that did not nullify the tenancy rights of Sh.Hukam Chand. On dissolution of partnership, the possession of the shop was to be delivered to Smt.Bachni Devi, who had status of landlady qua the defendants and after her death to her legal representatives, who stepped into her shoes.

A perusal of the partnership deed Ex.P1 is very crucial. It goes to show that it came into being on 22nd day of March, 1990 and was entered into between S/Sh.Hukam Chand, Shamsher Singh, Mahabir Singh and Jyoti Parshad to constitute a firm under the name and style of M/s Prince Radios T.V. Centre, New Anaj Mandi, Karnal to run the business of sale and repairing of all kinds of radio and T.V. sets. As per Clause 15, after dissolution of the firm in any case the possession of the building will be handed over to the first partner Sh.Hukam Chand. There is absolutely no ambiguity in that regard.

Learned counsel for the appellants tried to build up an argument that since defendant No.1 had purchased the shop in question from owner Sh.Om Parkash, as such it is to be considered that on dissolution of the partnership firm the possession of the shop is to be delivered to the owner. However, I am not in agreement with learned counsel for the appellants on that point. Once it is specifically mentioned that on dissolution of firm, the possession was to be delivered to Sh.Hukam Chand, the purchase of shop by defendant No.1 – Shamsher Singh from Sh.Om Parkash cannot change the position with regard to delivery of possession on dissolution of firm and name of Sh.Hukam Chand cannot be substituted by the owner of the shop. Though the defendants had taken up a specific plea that the partnership stood dissolved on 31.3.1999 but they failed to substantiate those assertions by leading enough cogent and convincing evidence. They have failed to prove the settlement of accounts even. They could not establish alleged payment of Rs.50,000/- to Sh.Hukam Chand. The defendants had not examined any official from Sales Tax Office to show that on being informed by defendants, the sales tax number was cancelled by said office. An FIR had been lodged by defendants by moving application Ex.PX in the year 2001 in which the name of the shop was mentioned as M/s Prince Radio and TV Centre, which goes to show that such firm was in existence till 2001.

The Courts below have rightly concluded that the plaintiff had failed to establish any nexus between firm M/s Prince Radio and TV Centre and M/s Prince Electronics and to show that the latter had been created from the assets of the former, as such, the plaintiff was not entitled to the rendition of accounts or dissolution of partnership firm M/s Prince Electronics as the plaintiff had no concern therewith. Resultantly only firm M/s Prince Radio and TV Centre was ordered to be dissolved from the date of passing of judgment and a preliminary decree for rendition of account was passed in favour of the plaintiff further directing the defendants to hand over the vacant possession of the shop to the plaintiff after settlement of accounts.

Learned counsel for the appellants has referred to authorities ***Smt.Harjit Grewal and others Versus Dr.Vinod Kumar Batra and others, 2010(5) RCR(Civil)340, H. Siddiqui (D) by LRs Versus A. Ramalingam, 2011(2) RCR(Civil) 385, Kaushalya Devi Versus Bhola Nath and Anr., 1987 PLJ 366, Union of India Versus Ibrahim Uddin and another, 2012(3) Civ.CC 577, Yogesh Kumar Versus Inder Kumar, 2015(7) RCR(Civil)904, Gurdial Singh and others Versus Mam Chand and others, 2011(1) RCR(Civil) 690*** and ***Ram Niwas Versus Kalu Ram and another, 2012(4) RCR(Civil) 56*** but those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

No substantial question of law arises in the appeal.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Finding no merit in the present appeal, the same stands dismissed with costs.

23.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No