

RSA No.1794 of 2016 (O&M)
Date of Decision.09.01.2019

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

The appellant-plaintiff has not been successful in seeking injunction against the defendants, particularly, the department, for renewal of brick kiln licence on the premise that original brick licence was issued in favour of plaintiff No.2. Defendant No.2 procured the partnership deed by misrepresentation and got the licence renewed in his favour, thus, renewal in favour of defendant no.2, in view of control order, could not have been issued, as there was emphatic bar regarding transfer.

Defendants opposed the suit, supported the partnership deed dated 11.10.2007 alleging that plaintiff No.1 had 5% share whereas defendant No.1 had 75% share and defendant No.2 had remaining one.

On the basis of pleadings, trial Court framed following issues:-

(1) Whether the plaintiff No.1 is sole proprietor of firm

M/s Jayani BKO, Dhingsara, as alleged? OPD

(2) *If issue No.1 is proved, whether plaintiff is entitled*

for injunction, as prayed for? OPP

(3) Whether the suit of the plaintiff is not maintainable in the present form? OPD

(4) Whether the suit is bad for want of notice under Section 80 CPC? OPD

(4A) Whether the partnership deed dated 11.10.2007 and the subsequent dissolution deed dated 16.10.2009 are genuine and valid? OPD

5. Relief.”

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellants submitted that even if the plaintiffs did not claim specific relief of declaration, issue No.4A covered the relief, which has erroneously been decided against the plaintiffs. The courts below have relied upon handwriting expert report Ex.DW4/B brought on record by the defendants through testimony of the expert. Finding regarding expiry of lease is neither here nor there as the trial Court failed to advert to the provisions of law.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gupta. In the absence of any relief qua declaration with regard to manipulation or obtaining of the partnership deed, despite the fact that issue No.4A was framed, plaintiffs have not been successful in belying the signatures on the partnership deed. Once the appellants-plaintiffs have not found to be partner, there was no impediment for the Department to renew licence in favour of defendant No.1 as it was not a case of transfer. It is a matter of record that defendant No.2 is cousin brother of the wife of

plaintiff No.1, thus, a family member. It appears to be a case of some misunderstanding between the parties after the execution of partnership, resulting into filing of the suit but miserably failed to discharge the onus as per the pleadings set out in the plaint.

In such circumstances, finding of fact and law arrived at by the Courts below cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No