

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

RSA No.1353 of 2015 (O&M)

Date of decision : 28.02.2019

M/s Hariom Tyres, Nasibpur (Narnaul) through partners

...Appellants

Versus

Sunil Bhardwaj

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. G.S. Gandhi, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM No.3845-C of 2015

Prayer in the application is for permission to amend the grounds of appeal.

Application is allowed.

Main case

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit for specific performance of the agreement to sell dated 15.08.2006 with respect to plot measuring 13 marlas equivalent to approximately 400 square yards land.

Land measuring 3 kanals was purchased through registered sale deed dated 12.03.1986 by the partnership firm-M/s Hariom Tyres, Nasibpur

(Narnaul). As per the last partnership deed dated 29.01.2003, there were only three partners left who were members of the family namely Satish Kumar Sharma (father), Vijay Kumar Sharma (son) and Aarti Sharma (daughter). Aarti Sharma was inducted for the first time as partner through this partnership deed dated 29.01.2003. In the partnership deed itself, it was stipulated that the parties No.1 and 2 i.e. Satish Kumar Sharma and Vijay Kumar Sharma shall be actively engaged in conducting the affairs of the business of the partnership firm as working partners and they shall be entitled to remuneration. The partnership firm entered into the agreement to sell with respect to land measuring 13 marlas equivalent to 400 square yards on 15.08.2006 for a total sale consideration of ₹6,46,000/- and received ₹50,000/- as earnest money. In the agreement, it was written that it shall be the responsibility of Satish Kumar Sharma and Vijay Kumar Sharma to get the signatures of Aarti Sharma also. However, signatures of Aarti Sharma were not obtained on the agreement to sell and the defendant firm did not honour the agreement to sell forcing the plaintiff-respondent to file the present suit.

Defendant Nos.1 and 2 namely Satish Kumar Sharma and Vijay Kumar Sharma denied the execution of the agreement to sell and pleaded that they had obtained loan of ₹50,000/- and thus, the signatures on the blank papers were obtained.

Defendant No.3 i.e. Aarti Sharma contested the suit and pleaded that there could not be any agreement without her consent and unilateral sale of the property is specifically prohibited in the partnership deed.

Both the Courts on appreciation of the evidence have decreed the suit.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing for the appellants has submitted that once Ms. Aarti Sharma has not signed the agreement to sell, therefore, there could not be any enforcement against her rights. He further submitted that deed of partnership does not authorize any partner to sell the property unilaterally.

On the other hand, learned counsel for the respondent has pointed out that entire property of the firm has not been sold. Only 1/3rd of the property approximately is agreed to be sold. He has pointed out that in fact this partnership concern is a family affairs and active partners were Satish Kumar Sharma and Vijay Kumar Sharma who have signed the agreement to sell. He drew attention of the Court to Clause in the partnership deed wherein it has been provided that Satish Kumar Sharma and Vijay Kumar Sharma shall be active partners of the firm. He has further drawn attention of the Court to the statement of Smt. Aarti Sharma who does not know anything about the business. Her name was included in the partnership firm only as a silent partner.

This Court has considered the submissions of the learned counsel and analyze the evidence.

No doubt, one partner in the peculiar facts may not be entitled to sell the property of the partnership firm itself but the facts of the present

case are different. In the present case, Ms. Aarti Sharma comes into the partnership and becomes partner for the first time only on 29.01.2003 whereas the property was purchased in the year 1986. Still further, she is not the active partner. Further, entire property of the firm has not been sold. Even if this sale is considered as sale of share belonging to two signatories, their shares comes to more than 800 square yards. Thus, sale of 400 square yards plot is within their share. Apart from above, one cannot overlook the fact that all the partners were members of one family. Satish Kumar Sharma is father whereas Aarti and Vijay Kumar Sharma are his children. In such circumstances, it was obvious and natural that Satish Kumar Sharma and Vijay Kumar Sharma who were active partners were taking decisions. In these circumstances, the Courts have rightly held that the agreement to sell is enforceable and decree for specific performance of the agreement to sell can be granted.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below .

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No