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Date: 2020.01.06
19:35:29 +0530**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 88 OF 1994**

At Karmala a firm by name :)
M/s Bhagvandas Rajaram Devi,)
Its partners :)
))
1] Dwarkadas Gavardhandas Devi,)
Age 87 years, Occu: Trader,)
Residing at Karmala, District Solapur)
(Abated in Appeal, therefore)
name deleted))
))
2] Haridas Dwarkadas Devi,)
Age 57 years, occupation Trader,)
Residing at Karmala,)
District Solapur.) Appellants
(Original Plaintiffs)

Versus

1] Motilal Supdulal Jain,)
Age about 61 yers. Occupation Trader,)
Residing at Chopda, District Jalgaon.)
))
2] Suvalal Supdulal Jain,)
Age 59 years, Occupation Trader,)
Residing at Chopda, District Jalgaon.)
))
3] M/s Motilal Supdulal Jain)
A Regd. Firm having office at)
Chopda, District Jalgaon.) ... Respondents
(Orig. Defts 1, 2 and 5)

Mr. V. S. Gokhale for the Appellants.
None for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 02, 2020

ORAL JUDGMENT:

1] For recovery of an amount of Rs 9,633.47 ps, Appellants/Plaintiffs initiated Regular Civil Suit No. 50 of 1981 in the Court of Civil Judge, Junior Division, Karmala, which came to be decreed on 07/01/1988. Feeling aggrieved, Respondents/Defendants preferred an appeal being Civil Appeal No. 510 of 1988, which came to be allowed on 29/06/1991. As such, this Second Appeal.

2] The submissions are, judgment of the lower appellate court is not sustainable particularly when transactions in question which are referred to in the plaint are not related to, or on behalf of the Partnership Firm. It is further claimed by the learned Counsel Mr. Gokhale that this Court is required to appreciate the amendment of the plaint and liability of partners qua the Partnership Firm.

3] The Appellants/Plaintiffs initiated suit which was amended on 22/11/1982, thereby impleading the Firm as Defendant No.5. It is claimed that during transactions with the Partnership Firm, an outstanding of Rs 5,506.27 remained unpaid and as such, the suit claim.

4] So as to bring the claim within limitation, Appellants have relied on the cheques dated 02/07/1978 and 01/01/1979. Since the Firm is impleaded on 22/11/1982, the claim was sought to be established against the Partnership Firm.

5] Upon appreciating the evidence, it was noticed by the lower appellate court that in absence of pleadings, the Defendants (Partners) cannot be made liable for payment of the amount. The Appellants/Plaintiffs have failed to demonstrate that Respondents/Defendants have entered into transactions in their individual capacity. The witness of Plaintiffs viz Ashok Lenekar, who has deposed in support of the claim, has admitted that the transactions were entered into with Defendant No.5-Firm.

6] In view of amendment granted by the Court on 22/11/1982, the lower appellate court rightly inferred that the suit claim against the Partnership Firm i.e. defendant No.5, is not within limitation. No case for interference is made out. Second Appeal fails and the same stands dismissed.

(NITIN W. SAMBRE, J.)