

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.02.2020

Date of Verdict : 02.06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1554 of 2003
and C.M.P.Nos.10302, 24134 & 24136 of 2019

1. K.Murali (Died)
2. Senbaga Umabharathi
3. Minor Swetha @ Nithra
4. Minor Hariharan
5. Minor Anusha

(Appellants 2 to 5 and also
R2 brought on record as
legal heirs of the deceased
first appellant vide order
of the Court dated 12.12.2003
made in C.M.P.Nos.19302 of
2003 in S.A.No.1554 of 2003)

(Appellant 2 appointed as
Guardian for the appellants
3 to 5 vide order dated 12.12.2003
made in C.M.P.Nos.19303 of
2003 in S.A.No.1554 of 2003)

...Appellants/Plaintiffs

Vs.

1. K.Karunanithi ... 1st Respondent/Defendant
2. Dieabouchaname ... 2nd Respondents/2nd Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.06.2003 made in A.S.No.11 of 2003 on the file of the Additional District Court, Pondicherry, confirming the judgment and decree dated 30.01.2003 made in O.S.No.121 of 2001 on the file of the Principal Subordinate Court, Pondicherry.

For Appellants : Mr.S.R.Sundar
For Mr.V.Vasanthkumar

For Respondents
For R1 : Mr.K.Chandrasekaran
For R2 : Notice served

JUDGMENT

This second appeal is directed as against the judgment and decree dated 26.06.2003 passed in A.S.No.11 of 2003 by the learned Additional District Judge, Pondicherry, confirming the judgment and decree dated 30.01.2003 passed in O.S.No.121 of 2001 by the learned Principal Subordinate Judge, Pondicherry.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for permanent injunction. The plaintiff and the defendant are brothers. Their father had been running a wine shop in the premises situated at R.S.No.2/1, Villupuram Main Road, Hadagadipet, Pondicherry. Thereafter, their father entered into a partnership with the plaintiff to run the liquor shop under the name and style of "Reagan Wines" and got it registered with Registrar of Firm in No. 187/97 dated 08.07.1997. According to the partnership deed, the plaintiff would be entitled to 75% of the profit and his father would entitle to 25% of the profit. Their trade license stands in the name of the plaintiff. While being so, on 03.02.2001, his father met with a road accident and died on 07.02.2001. He died leaving behind his two sons viz., the plaintiff and the defendant and his wife and four daughters. On the demise any one of the partner, their respective legal heirs would step into the shoes of the partners. Accordingly, the defendant is entitled to have 1/7 share out of 1/4 share of their father, in the partnership firm. However, the plaintiff alone had been running the said business by raising loan from the third parties and purchased stock on credit to improve the business. While being so, on 11.03.2001, the defendant along with henchmen attempted to trespass into suit property and threatened to throw out the plaintiff from the business premises. Hence the suit.

4. Per contra, the defendant by resisting the same filed written statement by stating that his father never entered into partnership with the plaintiff. The entire businesses are joint family property conducted in the name and style of "Reagan Wines" as such all the legal heirs of the deceased father have

their respective equal share. During his life time, the business was run with the help of the plaintiff and the defendant. Therefore, no point of time, the plaintiff was alone operated the business that too with the 75% share of the wine shop. Further stated that one co-sharer cannot restrain another co-sharer from interfering with the joint business by way of injunction and prayed for dismissal of the suit.

5. On the side of the plaintiff, he examined P.W.1 to P.W.4 and were marked Ex.A.1 to Ex.A.20. On the side of the defendant, he examined D.W.1 & D.W.2 and were marked Ex.B.1 to Ex.B.17. The witness document was marked as Ex.X.1. On perusal of the material produced on record and on considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff preferred an appeal suit in A.S.No.11 of 2003 before the III Additional District Judge, Pondicherry, and the first appellate Court also dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the same the plaintiff filed this present second appeal.

6. At the time of admission of this second appeal on 15.09.2003, the following substantial questions of law were formulated for consideration:-

"1. Whether the Courts below were right in refusing the decree for injunction in favour of the plaintiff when admittedly the plaintiff was holding a valid license on the date of institution of the suit as evidenced by Ex.A.6?

2. Whether the Courts below were correct in holding that all the legal heirs of deceased Kanagasabai were entitled to carry on the business as per clause 11 of the partnership deed when there has been no reconstitution of the firm as required under law?

3. Whether the Courts below were correct in holding that the defendant is also a partner of the firm in the absence of any document evidencing partnership deed much less reconstituted partnership between the plaintiff and the defendant?

4. Whether the Courts below were correct in holding that there cannot be an order of injunction against the legal heirs of a deceased partner when the rights of the deceased partnership are protected under

Sec.37 of the Partnership Act?"

7. The learned Counsel appearing for the appellant/plaintiff contended that when the partnership deed dated 02.07.1997 was accepted, even after demise of the one of the partner, another one of the partner can continue with the business as such, the plaintiff is entitled for the decree of injunction. The deed of partnership unless and until, the remaining legal heirs expressed their desire to enter into a partnership with the surviving partner and the new firm is reconstituted, the question of legal heir becoming entitled to run the partnership firm does not arise. Further he submitted that subsequent to the death of a partner unless the surviving partner entered into a fresh partnership deed with the legal heirs, and re-constitutes a firm, there is no partnership in the eye of law enabling the legal heirs to claim the status of partner in the firm. As such the firm stood dissolved and the legal heirs can claim only accounting of the profit from the firm as on the date of death of the deceased partner. Among the two partners, the surviving partner is entitled to continue the business of the firm without interference from any other person in law and at best is accountable to the profits earned by the firm out of the capital belonging to the deceased partner, as per the terms of Section 37 of the Partnership Act.

7.1. Pending the second appeal, the plaintiff filed a petition in C.M.P.No.24136 of 2019 to amend the prayer in the plaint by deleting the word "firm" and also change the place of business from R.S.No.2/1, Villupuram Main Road, Madagadipet, Pondicherry to R.S.No.135/2B, Kothapurinatham Road, Thiruvandarkoil Revenue Village, Puducherry. The plaintiff shifted the shop from R.S.No.2/1, Villupuram Main Road, Madagadipet, Pondicherry to R.S.No.135/2B, Kothapurinatham Road, Thiruvandarkoil Revenue Village, Puducherry, on payment of requisite fee. Subsequent to the shift of the business premises, the Deputy Commissioner, Excise Department, Puducherry, granted licence to the plaintiff in the name of "Reagan Wines". After demise of his father, the legal heirs failed to invoke clause 11 of the Partnership deed by expressing interest to join the firm. Therefore, the firm is not in existence. Notwithstanding the fact that the legal heirs declination to be the part of the partnership firm, the plaintiff is running the shop as "Reagan Wines". Therefore, the word "firm" was inadvertently inserted in the prayer portion. When especially on death of one partner, the partnership firm consisting of two partners is dissolved by operation of law and the word firm in the prayer portion is a misnomer and needs to be amended. Therefore, he prayed to amend the prayer in the plaintiff.

7.2. In support of his contention, the learned counsel

appearing for the appellant/plaintiff relied upon the following reported judgments :-

(i) 1998(I) CTC 22 - V.Devarajan Vs. R.Purushothaman and three ors

(ii) 2002(4) CTC 257 - Ramaswamy (died) and 12 ors Vs. Pappammal (died) and 3 ors.

(iii) 1998-3-L.W.400 - S.Govindan Vs. S.Gopala Aiyengar

(iv) (2013) 15 SCC 217 - AVK Traders Vs. Kerala State Civil Supplies Corporation Limited.

(v) ILR(1991) I Delhi 360 - Shri Sushil Kumar Gupta Vs. Shri Anil

Kumar Gupta & ors

(vi) AIR 1989 Cal 254 - Tilokram Ghosh and ors Vs. Gita Rani

Sadhukhan and ors.

(vii) (2017) 16 SCC 331 - Kodendera K.Uthaiah (died) by legal heirs Vs. P.M.Medappa and ors.

(viii) 2012 SCC OnLine Del 6129 - Bhagwan Dass Khanna Jewellers Vs. Bhagwan Das Khanna Jewellers Pvt. Ltd., & ors.

8. Per contra the learned counsel appearing for the defendant submitted that the suit itself filed in the personal capacity and the prayer for restraining the defendant with peaceful possession of the management of firm "Reagan Wines". Therefore, the suit itself is not at all maintainable and it is liable to be dismissed. Both the Courts below rightly dismissed the suit concurrently and as such this Court has very limited scope to interfere with the concurrent findings rendered by the Courts below.

8.1. He further submitted that in the cross examination of P.W.1, he categorically admitted that license of the wine shop stands in the name of his father as such in the firm name, the plaintiff alone cannot run the wine shop. Further he contended that once, the partner died, the partnership firm automatically dissolved, as such the plaintiff is not at all entitled for any relief as against the firm. Further the plaintiff cannot maintain the suit for injunction as against his co-owner. In support of his contention, he relied upon the following reported judgments:-

(i) (2001) 9 SCC 333 - Commissioner of Income Tax, Patiala Vs. `

Rangila Ram and ors.

(ii) (2010) 2 SCC 407 - Mohammed Laiquiddin and anr Vs. Kamala Devi Misra (died) by LRs and ors.

(iii) (2019) 5 SCC 360 - Vijay Hathising Shah and anr Vs. Gitaben Parshottamads Mukhi and ors.

(iv) 2002 254 ITR 230 SC - Commissioner of Income Tax Vs.

Rangila Ram and ors.

9. Heard Mr.S.R.Sundar, learned counsel appearing for the appellants/plaintiffs and Mr.K.Chandrasekaran, learned counsel appearing for the respondents/defendants.

10. The plaintiff and the defendant are brothers. The plaintiff along with his father Kanagasabai entered into a partnership firm in the name and style of "Reagan Wines" and running the liquor shop. As per the partnership firm, the plaintiff is entitled to have 75% of the profit and his deceased father is entitled to have 25% of the profit. The partnership deed dated 02.07.1997 was marked as Ex.A.2. The licence of the firm dated 03.07.1997 was marked as Ex.A.3. The trade licence issued by the Mannadipet Commune Panchayat was marked as Ex.A.6. While being so, the plaintiff's father viz., another partner Kanagasabai died on 07.02.2001. As per the clause 11 of the partnership deed the legal heirs of the deceased partner, on the same terms of conditions of the partnership deed, has to be brought under the partnership deed.

11. Admittedly, the license was issued in the name of the father of the plaintiff. Thereafter, they entered into partnership firm to carry the liquor business. As pointed out by the first appellate Court, till he was alive, there was no dispute, to excise the license. Further on perusal of excise rule to the shop that in the terms and conditions attached to the license expressly contemplated that whenever a licensee takes a partner to run the business, he should obtained permission from the license authority. Nothing on record to show that the father of the plaintiff got partnership acknowledgment from the excise authority and also got license in the name of partnership firm. Therefore, the first appellate Court concluded that continuance of the liquor business relating to the suit has not been proved to be a legal one.

12. The learned counsel appearing for the plaintiff contended that as per clause 11 of the partnership deed on the death of his father his legal heirs should step into on the same terms and conditions and even till today, the defendants did not step into the shoes of the partnership firm on same condition. Though the defendants did not do so, one of the partners cannot run the business without getting permission from the excise authority. Therefore, the plaintiff failed to establish that he alone is running the liquor business by having proper licence at present as such he is not entitled for any injunction.

13. That apart, as directed by the Hon'ble Supreme Court of India, the plaintiff shifted the shop premises and now seeks amendment in the prayer. He also sought for deleting the word "firm" in the plaint prayer on demise of one of the partners. Admittedly, the suit filed by the plaintiff on his individual

capacity and sought for injunction against the firm called "Reagan Wines". On demise of his father viz., another partner, the plaintiff sought amendment in the prayer by deleting the word "firm". In this regard, the learned counsel appearing for the appellant relied upon the judgment reported in 2002(4) CTC 257 in the case of Ramaswamy (died) and 12 ors Vs. Pappammal (died) and 3 ors as follows :-

"12. The learned counsel has referred to a number of judgments in support of the petition for amendment. The principle relating to amendment is well settled. Object of Courts and rules of procedure are to decide the rights of parties and not to punish them. Merely because the plaintiff has not chosen to seek a prayer for mesne profits all these years, she cannot be denied that, if she is otherwise entitled to it."

14. He also relied upon the judgment reported in (2013) 15 SCC 217 in the case of AVK Traders Vs. Kerala State Civil Supplies Corporation Limited, as follows :-

"9. The High Court also took the view that there is no question of altering and amending the plaintiff firm as a proprietary concern as that would alter the nature and character of the suit, which cannot be permitted. Further, it was also held by the Court that no further dilation over that aspect is called for in the case other than pointing out that the indefeasible rights of the legal heirs of a deceased partner in a suit filed by a firm are insulated under sub-rule (2) of Rule 4 of Order XXX of the Code. The High Court, however, did not interfere with the order of the Subordinate Court allowing the application for recalling PW1 for further examination. With regard to the prayers of the Respondent Corporation for raising additional issues, the High Court took the view that the same should have been allowed. Consequently, the prayer made by the Respondent Corporation for framing additional issues was allowed. Aggrieved by the above-mentioned order, this appeal has been preferred by the Appellant.

10. Learned counsel appearing for the Appellant submitted that on the death of one of the partners of a partnership firm consisting of only two partners, remaining partner has become the sole proprietor/owner

with all assets and liabilities and as such he can always proceed with the suit as per the provisions contained under Order XXII Rule 10 CPC. Learned counsel also submitted that the reasoning of the High Court, if at all apply, could apply in a case where there are more than one partners after the death of a partner, in the event of which the firm could continue with minimum of two partners. In such a situation, learned counsel suggested that the provision of sub-rule (2) of Rule 4 of Order XXX of the Code would apply. Learned counsel placed reliance on the judgment of this Court in Purushottam Umedbhai & Co. v. Manilal & Sons [AIR 1961 SC 325], particularly para 9 of the said judgment in support of this contention. Learned counsel also made reference to the judgment of this Court in CIT v. Seth Govindram Sugar Mills [AIR 1966 SC 24].

11. Learned counsel appearing for the Respondent Corporation, on the other hand, submitted that if the Appellant is allowed to continue the suit in the name of the firm, all the defence set up by the defendant in the written statement would be frustrated. Learned counsel also submitted that if the amendment sought for is allowed, that will alter the very nature and character of the suit and that the High Court has rightly rejected that prayer which calls for no interference by this Court.

12. We are in this case faced with a situation of a registered partnership firm, consisting of only two partners, filing a suit when both the partners were alive and during the pendency of the suit, one of the partners died and legal heir of the deceased partner did not show any interest either in the assets of the firm or in the liabilities and had refused to join as a partner. The question is, on dissolution of the partnership firm on the death of the partner, could the suit already filed be proceeded with by the remaining so-called partner. We notice, the Subordinate Court has allowed that prayer possibly bearing in mind the principle laid down in Order XXII Rule 10

CPC, which deals with the procedure in case of assignment before the final order of the suit. Rule 10 refers to "devolution of any interest" during the pendency of the suit. In such a case, the Court can grant leave to prosecute the suit against the person to or upon whom such interest has been devolved. Admittedly, the partner who died is none other than the father of the Appellant and the other sole surviving heir is his sister. Sister is admittedly not interested in joining the firm and, therefore, she is not taking over the assets and liabilities of the firm. Therefore, there has been a complete devolution of interest in favour of the Appellant. Under the circumstances, the Subordinate Court had allowed the amendment and permitted the Appellant to proceed with the suit, granting necessary amendment, which, according to the Subordinate Court, was necessary for a proper and effective adjudication of real dispute between the parties. The High Court, in our view, by taking a hypertechnical approach held that if such a prayer is allowed, the same would alter the nature and character of the suit. In our view, such a stand cannot be countenanced considering the peculiar facts and circumstances of the case".

15. Per contra, the learned counsel appearing for the defendant relied upon the judgment of the Hon'ble Supreme Court of India reported in (2019) 5 SCC 360 in the case of Vijay Hathising Shah and anr Vs. Gitaben Parshottamads Mukhi and ors, as follows :-

"Head Note :- R-1 filed an application for amendment of plain in partition suit rejected by trial Court - High Court allowed it by impugned order - Held, trial Court right in rejecting application, firstly, because it was wholly belated; secondly, it was filed when trial in suit was almost over and case was fixed for final arguments; and thirdly, suit could still be decided even without there being any necessity to seek any amendment in plaint - Amendment in plaint was really required for determination of issued in suit - For these reason, impugned order legally unsustainable and set aside and order of trial Court restored - Trial Court

directed to decide civil suit within one month strictly in accordance with law."

The Hon'ble Supreme Court of India held that amendment should not be allowed on the belated stage and the amendment cannot be entertained without there being any necessity.

16. In the case on hand, as discussed above, the suit itself filed after demise of one of the partners of the plaintiff. Even then he filed suit stating that "Reagan Wines" as partnership firm. The plaintiff also filed the suit on his individual capacity and sought prayer in favour of the partnership firm. Therefore, this Court is not inclined to entertain the petition for amendment and accordingly the Civil Miscellaneous Petition in C.M.P.No.24136 of 2019 is dismissed.

17. The learned counsel appearing for the plaintiff emphasis that the suit is very much maintainable and if at all the defendants have any grievance, he has to file the suit for partition and he mainly relied upon the provisions under Section 37 of the Indian Partnership Act, 1932 with regard to the determination of share to the subsequent profit. In support of his contention, he relied upon the judgment reported in ILR (1991) I Delhi 360 in the case of Shri Sushil Kumar Gupta Vs. Shri Anil Kumar Gupta & ors as follows :-

"29) Section 37 of the Partnership Act contemplates the position where after dissolution, the assets remain in possession of one of the partners and some profits are earned then an option is given to the other partner either to ask for profits so earned by the other partner by utilising the assets after the dissolution of the partnership or claim interest @6% per annum on the amount which may be found due to the said partner on taking accounts. In the present case the heirs of deceased partner had given an unequivocal option under Section 37 of, the Act that in case they were to be paid their share in the shape of money, then they should be paid interest @6% per annum. The arbitrator had kept in view this option of these objectors while giving the finding that the share of the said objector has to be evaluated on the value of the assets as on the date of death of the deceased partner. No legal proposition which is applicable to the facts of the present case, has been enunciated in this judgment of the Allahabad High Court. It is true that in case the arbitrator flouts the provisions of Section 48 of the Partnership Act, the same amounts to legal misconduct

(See Sherbanubai Jafferbhoyv. Hooseinbhoy Abdoolabhoy and another Air 1948 Bombay(292) (17). Such is not the case here.

.....
33) Mr. Sahai has made reference to Kasi v. Ramanathan Chettiar Air (36) 1949 Madras 693 (20) wherein it has been laid down that after the dissolution of partnership by the death of a partner, the obligations of surviving partners to the representatives of the deceased partner, are not more onerous than (34) Reference was also made to Morris Robert Syers Vs. Daniel Backhouse Syers and Edward Louis Paraire 1875-6(1), Appeal Cases at page 174(21) but that case related to a partnership at will and the question was when the same came to be determined and dissolved and it was held that the accounts must include the principle, the 8th share of the profits and also the eighth share of the assets up to the date of finding the answer. The facts are totally distinguishable and nothing said in this judgment is of any help in deciding the issues arising before me."

18. He also relied upon the judgment reported in (2017)16 SCC 331 in the case of Kodendera K. Uthaiiah (died) by legal heirs Vs. P.M. Medappa and ors which reads as follows :-

"9. Section 37 of the Act provides that if any member of a firm dies and the surviving partners carry on the business without any final settlement of accounts, the estate of the deceased partner is entitled to such share of the profits made as may be attributable to his share of the property or to interest @ 6% per annum on the amount of his share in the property of the firm. In our considered opinion, it will have no application in the facts of the case in view of Clause 14 of the partnership deed, which also provides for the manner of calculating the dues. Similarly, Section 42(c) of the Act, providing for dissolution of the firm on the death of a partner, will also have no application in view of the aforesaid clause evincing a clear intention to continue the partnership on the death of a partner."

19. Further the learned counsel appearing for the

appellant/plaintiff relied upon the judgment reported in 2012 SCC OnLine Del 6129 in the case of Bhagwan Dass Khanna Jewellers Vs. Bhagwan Das Khanna Jewellers Pvt. Ltd., & ors as follows :-

"30. Now, then the question remains what shall happen to share of the deceased partner or his legal representative when the surviving partners continue with their business in the firm. Section 37 of the Act provides for such an eventuality and in this respect recognizes the right of outgoing partner or the deceased partner or his legal representative. Section 37 reads as under:

-Right of outgoing partner in certain cases to share subsequent profits. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

31. From the bare reading of Section 37, it is manifest that the said section provides that the whenever there is a death of a partner (as it uses the expression death of a member of firm or otherwise ceases to be a partner and thereafter uses the words -surviving partners?) and the surviving

partners carry on the business of the firm without settling the accounts of the outgoing partner or the representatives, the said estate of the partner or his representative has the option either a share of profit -since he ceased to be a partner? made as per his share in the property of the firm or six percent of interest of his share of the property of the firm.

32. All this would mean that there is a clear eventuality prescribed in the form of Section 37 of the Act of 1932 where under the legal representative of the deceased partners has the option to share the profit or the interest which are all in the form of money. The proviso appended to Section 37 would not be applicable as there is no provision under the deed where the option is given to the legal representative to purchase the share of the deceased partner and enter into the partnership. There is no provision under the partnership deed to the contrary, therefore as per the provisions of Partnership Act, the entitlement of the legal representative of the deceased partner shall be confined to the payment of the commensurate share of the profit as the mode prescribed under Section 37 of the Act."

20. Per contra, the learned counsel appearing for the defendants contended that the partnership firm itself is illegal after demise of one of the partners. In support of his contention he relied upon the judgment reported in (2001) 9 SCC 333 in the case of Commissioner of Income Tax, Patiala Vs. Rangila Ram and ors, as follows :-

"6. The basic principle, as it seems to us, is that the liquor business is res extra commercium. No one may deal in liquor without express permission. It is only the licensee who is granted such permission. If he enters into a partnership to deal in liquor, all the other partners would, as partners, as partners, also be dealing in liquor and holding the same. This would be contrary to the basic principle and illegal."

21. He also relied upon the judgment reported in (2010) 2 SCC 407 in the case of Mohammed Laiquiddin and anr Vs. Kamala Devi Misra (died) by LRs and ors which reads as follows :-

"25. Dissolution of a partnership firm on account of death of one of the partners is subject to the contract entered into by the

parties. In this context, it is pertinent to refer to the terms of the deed of partnership. Clause 22 of the Partnership deed reads as follows:

"The partnership shall be in force for a period of 42 years certain from this date and the death of any partner shall not have the effect of dissolving the firm." This clause clearly states that death of any partner shall not have the effect of dissolving the firm. However, in the facts and circumstances of the case, we are not in a position to give absolute effect to this clause of the deed of partnership.

26. The learned counsel for the Respondents contended that since the parties agreed that in spite of the death of any of the partners, the firm shall continue for 42 years irrespective of the death of the original plaintiff (since deceased). They further, argued that it clearly contemplates that the legal representative of the partner, who dies, would be under a duty to enter into a fresh deed of partnership. The legal representatives were precluded from claiming benefits if they deny entering into a fresh partnership agreement.

27. In order to arrive at the conclusion that the partnership firm stood dissolved on account of death of one of the partners, the High Court had rightly placed reliance on Smt. S. Parvathammal v. CIT (1987 Income Tax Reports 161), wherein this Court held that in a firm consisting of two partners on account of death of one of the partners, the firm automatically dissolved and observed as follows:

"A partnership normally dissolves on the death of the partner unless there was an agreement in the original partnership deed. Even assuming that there was such an agreement in a partnership consisting of two partners on the death of one of them the partnership automatically comes to an end and there is no partnership which survives and into which a third party can be introduced. Hence on the death of S, the original partnership was dissolved. The subsequent taking in of the assessee as a partner was only as a result of entering into of a new

partnership between R and the assessee. Partnership was not a matter of heritable status but purely one of contract."

In the light of aforementioned case, it is clear that when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner."

22. Further he relied upon the judgment reported in 2002 254 ITR 230 SC in the case of Commissioner of Income Tax Vs. Rangila Ram and ors, which reads as follows :-

"3. The partnership (the assessee) dealt in liquor. Only some of the partners held the liquor licence. Our attention was drawn by the learned Solicitor-General, appearing for the Revenue, to the judgment of this court in Bihari Lal jaiswal v. C/T [1996] 217 ITR 746. It was held that a licensee could not be "permitted to bring in strangers into the business, which would mean that instead of the licensee carrying on the business, it would be carried on by others—a situation not conducive to effective implementation of the excise law and consequently deleterious to public interest. For this very reason the transfer or subletting of the licence is uniformly prohibited by several State excise enactments. It, therefore, follows that any agreement whereunder the licence is transferred, sublet or a partnership is entered into with respect to the privilege/business under the said licence, contrary to the prohibition contained in the relevant excise enactment, is an agreement prohibited by law." Accordingly, it was held that this not being a genuine agreement, it could not be registered under the Income-tax Act.

Our attention was also drawn to the judgment in CIT v. Hardit Singh Pal Chand and Co. [1979] 120 ITR 289 (P & H), where (at page 291) the rules applicable, even in the State of Himachal Pradesh, have been set out, and

there is no doubt that a liquor licensee may not enter into a partnership without prior permission.

4. The basic principle, as it seems to us, is that the liquor business is *res extra commercium*. No one may deal in liquor without express permission. It is only the licensee who is granted such permission. If he enters into a partnership to deal in liquor, all the other partners would, as partners, also be dealing in liquor and holding the same. This would be contrary to the basic principle and illegal."

The Hon'ble Supreme Court of India held that liquor business is *res extra commercium* and no one may deal in liquor without express permission. It is only the licensee who is granted such permission. If he enters into a partnership to deal with liquor business all other partners would also be dealing in liquor and holding the same. This would be contra to the basic principle and illegal.

23. In the case on hand, admittedly the license was issued in favour of one of the partner viz., the plaintiff's father. Therefore, the plaintiff cannot run business in the firm name and it is illegal. Therefore, the judgments cited by the learned counsel appearing for the plaintiff are not helpful to the case of the plaintiff. Admittedly, the plaintiff and his father entered into the partnership deed under Ex.A.2. Thereafter his father died and therefore, his legal heirs are entitled to become the partner of the firm as per the clause 11 of the partnership deed. The clause 11 of the partnership deed is reads as follows :-

"11. Death, retirement or insolvency of a partner shall not dissolve the firm. On the death of a partner, if the heir/heirs of the deceased partner express or expresses desire to become partner, he/she shall be taken as substitute of the deceased partner on the same terms and conditions as herein provided."

Though the legal heirs did not take any steps to include themselves as partners and as co-sharer, they could not be enjoined by another sharer. Therefore, both the Courts below rightly dismissed the suit filed by the plaintiff.

24. In view of the above discussion, this Court does not find any valid reason to interfere with the reasoning and findings rendered by the Courts below for upholding the case of the plaintiff. As such, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated

by this Court are answered in favour of the defendant and as against the plaintiff.

25. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by Courts below. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Additional District Judge,
Pondicherry.
2. The Principal Subordinate Judge,
Pondicherry.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

S.A.No.1554 of 2003
and C.M.P.Nos.10302,
24134 & 24136 of 2019

SV(CO)
GN(25/08/2020)

सत्यमेव जयते

WEB COPY