

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.484 of 2014 and
M.P.No.1 of 2014

Mars Dye Chem,
A Partnership firm,
Rep. by its partner,
K.Selvaraj,
234-1, Muniappan Kovil Street,
Veerappanchatram,
Erode-4.

..Appellant/Appellant/Plaintiff

Vs.

P.Saravana Kumar ... Respondent/Respondent/Defendant

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying against the Judgment and decree dated 05.08.2013 made in A.S.No.92 of 2012 on the file of the learned First Additional Sub Court, Erode, confirming the Judgment and decree dated 16.08.2012 made in O.S.No.335 of 2009 on the file of the learned Principal District Munsif Court, Erode.

For Appellant : Mr.N.Manokaran

JUDGMENT

The plaintiff whose suit in O.S.No.335 of 2009 for permanent injunction, restraining the defendant from entering into the partnership premises at the head office or branch office and from interfering with the internal management of the plaintiff firm was dismissed by the trial Court, upon its confirmation by the lower appellate Court in A.S.No.92 of 2012, has come up with this second appeal.

2. The plaintiff sought for the relief of injunction contending that the defendant who is also a partner of the plaintiff firm is disturbing the business of the plaintiff. The fact that certain police complaints given on the conduct of the defendant was relied upon as cause of action for the suit.

Page numbers

3. The suit was resisted by the defendant contending that he being a partner is entitled to take part in the business activities of the firm. It is also claimed that the other partner of the plaintiff firm is indulging in misappropriation of the funds of the firm and it is also claimed that the defendant is instructing the customers not to pay any amount that is due to the plaintiff firm. This according to the defendant had created a misunderstanding between the partners. The defendant being a partner of the plaintiff firm having 50 % of stake, without dissolving the partnership firm, the suit cannot be maintained against the other partner and co-owner of the plaintiff firm. Hence, the suit has to be dismissed.

4. At trial, the plaintiff was examined as P.W.1 and 4 other witnesses were examined as P.Ws 2 to 5. Ex.A1 to A12 were marked. No oral or documentary evidence was adduced on the side of the defendant.

5. The learned trial Judge on appreciation of the evidence on record concluded that the plaintiff cannot maintain a suit for bare injunction restraining the defendant from entering the business premises so long he is a partner. The fact that the plaintiff had not chosen to sue for dissolution was also considered by the trial Court to refuse the relief of bare injunction as sought for.

6. On the above finding, the trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.92 of 2012.

7. The appellate Court also concurred with the findings of the trial Court after re-appreciation of the evidence on record. Aggrieved by the said concurrent findings of the Courts below, the plaintiff has come up with this second appeal.

8. I have heard Mr.N.Manokaran, learned counsel appearing for the appellant. Though notice of motion ordered, notice to the respondent is yet to be served.

9. Mr.N.Manokaran, learned counsel appearing for the appellant would contend that the suit filed by the partner against his co-partner to a limited extent of protecting his right is maintainable in law. The theory that one co-owner cannot maintain a suit for bare injunction against another co-owner is not applicable to cases between partners.

Page numbers

10. I have considered the submissions of the learned counsel for the appellant.

11. Though technically the learned counsel is right but at the same time it is the settled law that case of partnership business, one partner cannot be prevented from taking part in the business activities or entering into the business premises. The plaintiff has not chosen to sue for dissolution also. I do not find any perversity in the Judgments of the Courts below. There is no question of law much less substantial question of law to order to enable me to entertain the appeal. Therefore, the Second appeal fail and it is dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To:

1. The First Additional Subordinate Judge,
Erode.
2. The Principal District Munsif,
Erode.

Copy to:
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.N.Manokaran, Advocate SR.24783

सत्यमेव जयते

S.A.No.484 of 2014 and
M.P.No.1 of 2014

AD(CO)
CB(03/02/2021)

WEB COPY

Page numbers