

**RSA-3333-2010(O&M)
and connected case**

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

1. RSA-3333-2010(O&M)

M/s Saraswati Rice and General Mills

.....Appellant

Versus

Wazir Chand and others

.....Respondents

2. RSA-3334-2010(O&M)

M/s Sarawati Rice and General Mills

.....Appellant

Versus

Wazir Chand and others

.....Respondent

Date of decision:03.03.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Amit Jain, Advocate for the appellant

**Mr. Sanjeev K Aggarwal, Advocate for
respondent no.5 and 6**

ANIL KSHETARPAL, J.

By this judgment, two Regular Second Appeals i.e RSA-3333, 3334 of 2010 shall stand disposed of.

Learned counsel appearing for the parties are ad idem that these two Regular Second Appeals can be conveniently disposed of by a common judgment.

The dispute in both the cases is with respect to land

measuring 37 kanals 7 marlas in C.S. No. 210/99 of 1986 and 9 kanals 7 marlas in C.S.No.145/97. It is not in dispute that both the pieces of land were purchased by way of a registered sale deed by 4 individuals namely Wazir Chand, Jai Bhagwan, Sat Parkash and Gian Chand. Further, it is established from the record that at one stage, two marlas of land was sold by the aforesaid four individuals jointly in favour of Jai Narayan vide registered sale deed dated 24.06.1967. It is also not in dispute that one of the co-owners i.e Gian Chand was never a partner in the various partnership firms which have been referred to hereinafter. The plaintiff in both the suits claimed that the firm M/s Saraswati Rice and General Mills is the owner in possession of the land referred to above. The question which arises for consideration is *“whether a decree for declaration to the effect that separate immovable property of some of the partners has become the property of the partnership firm in the absence of a specific contract or any cogent evidence.”*

On perusal of the various partnership deeds, dissolution deed and other relevant documents, it is apparent that there is no specific recital that the land was brought in by those partners in the partnership firm so as to make it the firm's property. In fact, there is no cogent evidence to this effect. In the revenue record, the land is recorded to be owned by the individual persons some of whom were no doubt partners but the partnership firm is nowhere recorded to be the owner.

Learned counsel appearing for the plaintiff-appellant while relying upon the dissolution deed dated 19.6.2017 submitted that the land is proved to be owned by the partnership firm. He further

contended that Sat Parkash has remained silent from 1972 to 1988 as he had retired from the partnership firm. He further submitted that in partnership deed dated 03.09.1966, it has been decided that the factory, building and machinery belong to all the partners and assets will be divided as per what has been mutually agreed by the partners. Still further, while referring to clause 4 of the dissolution deed 19.12.1970, learned counsel contends that the assets and business premises were taken over by the continuing partners.

Per contra, learned counsel appearing for defendants no. 5 and 6 has contended that the partnership deed dated 03.09.1966 has never been exhibited and therefore, cannot be read in evidence. He further submitted that the plaintiffs filed a suit without impleading defendants no. 5 and 6 as parties. The effort was to get a decree as defendants no. 1 to 4 admitted the claim of the plaintiff. Fortunately, defendant no. 5 and 6 gained knowledge of the pendency of the suit and got themselves impleaded as a party. He further drew the attention of the Court to the replication filed by the plaintiff wherein there is a tactical shift in the stand. The plaintiff has in the alternative pleaded that the firm has become owner of the said property by way of adverse possession.

As noticed above, there is no document to prove that the suit land in both the suits was ever brought in the common stock of partnership firm. There is no written or oral material evidence to prove the same. Leaned counsel appearing for the appellant has tried to convince the Court to draw an inference by referring to one line from

here or there. In the considered view of this Court, such inference cannot be drawn, particularly, in view of the finding of fact arrived at by the court. Still further, undisputedly, one of the co-owner Gian Chand was never a partner in any of the firms. Firstly, a partnership firm M/s Wazir Chand Jai Bhagwan consisting of Wazir Chand, Sat Parkash, Kanshi Ram and Ansi Lal as partners was constituted. Sat Parkash retired on 19.12.1970 and the firm continued its business with the remaining partners (Wazir Chand, Kanshi Ram and Jai Bhagwan). The share of Sat Parkash was taken over by his brother Jai Parkash. Thereafter, the partnership firm was dissolved and it is claimed that all the property of the firm came to the share of Khanshi Ram. It is claimed that Khanshi Ram, subsequently, constituted the partnership firm under the name of M/s Sarawsati Rice and General Mills. Initially there were three partners of the firm (Khanshi Ram, Brij Lal and Ravinder Kumar). The last mentioned firm was also dissolved on 30.9.1986. A new partnership firm with the same name was constituted on 01.12.1986 with Jatinder Kumar s/o Kanshi Ram, Brij Lal and Ravinder Kumar. However, in none of the partnership deeds as noticed above, it has come on record that the suit land referred to above was brought in the partnership firm by the partners and was ever acknowledged to have become the property of the firm.

It may be noticed here that the Hon'ble Supreme Court in **Arjun Kanoji Tanker vs. Santa Ram Kanoji Tanker (1969) 3 SCC 555** after elaborately discussing Section 14 of the Partnership Act, 1932, held that separate assets originally belong to the partners of the firm

cannot presumed to be the property of the firm unless there is an express or implied contract to this effect. Relevant discussion is in Para 13 of the judgment, which is extracted as under:-

“13. Counsel for the defendant contends that in any event by virtue of Section 14 of the Partnership Act, 1932, all the assets with aid of which the business was carried on by the plaintiff must be deemed in law to have become partnership assets, under the deed of partnership, dated March 16, 1953. Section 14 of the Partnership Act, 1932, provides:

“Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.”

Property belonging to a person, in the absence of an agreement to the contrary, does not, on the person entering into a partnership with others, become the property of the partnership merely because it is used for the business of the partnership. It will become property of the partnership only if there is an — agreement express or impliedth — at the property was, under the agreement of partnership, to be treated as the property of the partnership.

In *Lindley on Partnership*, 12th Edn., it is stated at p. 365:

“Again, it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to lease to the firm, or without any lease at all.... If, however, a partner brings such property into the common stock as part of his capital it becomes partnership property, and any increase in its value will belong to the firm.

... the only true method of determining as between the partners themselves what belongs to the firm, and what not, is to ascertain what agreement has been come to upon the subject. But this is by no means always an easy matter.”

We are unable to agree with counsel for the defendant that whenever there is a partnership and the assets which originally belonged to one of the partners are used for the purposes of the partnership, they must be presumed to have become partnership assets. In *Miles v. Clarke* [(1953) 1 All ER 779] the defendant started the business of a photographer and then admitted the plaintiff — a successful free lance photographer — as a partner. The leasehold premises, furniture and studio equipment belonged to the defendant. It was intended to record the terms of partnership into a formal agreement, but no terms were ever settled, except that the partners were to share the profits equally. On dissolution of the partnership it was held that no terms ought to be implied except such as were essential to business efficacy and that only the consumable items of stock-in-trade were to be regarded as assets of the partnership, and the lease of the property, equipment and personal goodwill were to be treated as being the property of the partners who brought them into the business.

Now, the stage is set to examine the submissions of the learned counsel for the appellant. First submission of the learned counsel is with regard to dissolution deed dated 19.06.2017. There is no dispute that the suit land has never been described to be owned by the partnership firm at the first place. In the absence of any specific recital to the aforesaid effect, no declaration as sought for, can be granted. Next argument of the learned counsel is to be noticed and rejected, particularly, when Sat Parkash continue to be recorded as one of the owners of the suit land. Therefore, there is no question of Sat Parkash having remained silent for quite some time. There was no threat to the rights of Sat Parkash with respect to the land in question. Next two submissions of the learned counsel also do not have any substance because there is no recital with regard to the suit land, either in the

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partnership deed dated 03.09.1966 or in clause 4 of dissolution deed dated 19.12.1970.

In view of the aforesaid discussion, there is no ground to interfere with the concurrent findings of the fact arrived at by the courts below in both the suits. Hence, both the appeals are dismissed.

03.03.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE