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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HON'BLE MRS. JUSTICE N.MALA

A.S.No.167 of 2012
and M.P.No.1 of 2012

R.Gopinath ...Appellant/ 1st Defendant

vs.

1.Mrs.Poora Devi (Deceased) ...1st Respondent/Plaintiff

2.Mrs.Malini Sivakumaran ...2nd Respondent/2nd Defendant

3.Ms.S.Nithya Devi ...3rd Respondent

(Third respondent brought on record as Lrs of the deceased 1st respondent vide order of Court dated 06.07.2017 by RSMJ made in C.M.P.Nos.10076 and 10077 of 2017 in A.S.No.167 of 2012)

Prayer: Appeal Suit filed under Section 96 and Order XL1 Rule 1 of the Code of Civil Procedure, 1908, against the Judgment and Decree passed in O.S.No.14056 of 2010 dated 19.04.2011 passed by the learned Additional District Judge, Fast Track Court - V, Chennai.

For Appellant : M/s.S.Annakkodi

For R2 : M/s.Ravichandran Sundaresan

For R3 : Mr.R.Mukundan

For R1 : Died (Steps taken)

J U D G M E N T

This Appeal suit is filed against the Judgment and Decree passed in O.S.No.14056 of 2010 dated 19.04.2011 by the learned Additional District Judge, Fast Track Court - V, Chennai.

2.The first defendant is the appellant in the above said appeal. The suit was filed for the relief of dissolution of partnership for rendition of account, for appointment of receiver and for costs.

3.The parties will be referred to as per their rank in the suit for convenience sake.



4.FACTS IN BRIEF:

The plaintiff is the mother and the defendant Nos.1 and 2 are her son and daughter. The plaintiff's husband and the first defendant entered into a partnership agreement on 16.02.1976 and started a firm in the name and style of M/s.N.S.V.Engineering Work and the firm was to carry the manufacture of fabricated components and machinery parts and other trade as mutually decided by the partners. Under the partnership deed, the plaintiff's husband/first defendant's father had 50% share in the partnership firm. The plaintiff's husband and the first defendant's father died on 23.11.1997 and thereafter the first defendant was running the business individually. The plaintiff stated that she had no source of income except the income from the business and as the first defendant did not pay her any amount, she sought for dissolution of the partnership, for settlement of accounts and for appointment of Receiver to take charge of the assets of the business and discharge the liabilities of the partnership firm from the assets and pay the difference of 1/3 share each to the plaintiff and the defendants.

5.The first defendant filed the written statement, inter alia on the grounds that the suit was not maintainable as Clause 14 of the Deed of partnership provided for an arbitration clause. The first defendant stated that he was paying an amount of Rs.5,000/- to the plaintiff, every month apart from meeting other expenses such as electricity, milk, dress etc. He further stated that under the terms of the partnership deed in the event of the death of the other partner the partnership would come to an end and the surviving partner shall become the sole proprietor of the partnership firm. The defendant objected to the appointment of the receiver and also to the rendition of accounts stating that the plaintiff and the third defendant were not entitled to the same.

6.The second defendant filed a written statement, wherein she supported the case of the plaintiff.

7.The trial Court, based on the pleadings framed the following six issues:

i.Whether the suit is maintainable in the light of the arbitration clause 14 as mentioned in the deed of partnership dated 16.02.1976?

ii.Whether the suit is maintainable for want of territorial jurisdiction?

iii.Whether the first defendant become the sole proprietor of the partnership firm, NSV Engineering Works as per clause 12 of the Partnership deed?

iv.Whether the first defendant, partner of M/s.N.S.V.Engineering Works is liable to render accounts of the firm?



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v. Whether the plaintiff is entitled to 1/3rd share of the firm's assets after discharging its liabilities?

vi. To what relief the plaintiff is entitled to?

8. On consideration of the evidence on record both oral and documentary the trial Court partly decreed the suit and passed the preliminary decree in favour of the plaintiff directing the first defendant to render the accounts to the plaintiff with respect to the firm M/s. N.S.V. Engineering Works. The suit was dismissed with respect to the other reliefs prayed for.

9. Heard the learned counsel for the appellant and the respondents.

10. POINT FOR DETERMINATION:

i. Whether the plaintiff is entitled to a decree for dissolution of partnership, rendition of Accounts and for appointment of receiver?

11. The plaintiff is the widow of Late K. Raju. The defendant Nos. 1 and 2 are the son and daughter of the plaintiff and Late K. Raju. The plaintiff's husband K. Raju died on 23.11.1997 and during the life time of the plaintiff's husband, he entered into a partnership agreement with the first defendant on 16.02.1976 and carried a partnership business in the name and style of N.S.V. Engineering Works. The partnership firm of the plaintiff's husband and the first defendant was engaged in the manufacture of fabricated components and machinery parts and other trades as would be decided by the partners. The partnership deed provided that the profits and losses should be shared equally by the two partners. The partnership deed did not specify any profit sharing ratio and therefore, the profits were to be shared equally. The partnership firm had purchased several assets and substantial income was derived from the same. The plaintiff's husband died on 23.11.1997 and thereafter, the first defendant was running the business individually.

12. According to the plaintiff, she had no other income and she is totally dependent on the amounts from the firm for her survival. As the first defendant was appropriating the income for himself she filed the suit for dissolution of partnership, rendition of Accounts and settlement of her 1/3rd share on such account. The first defendant alone contested the suit and the second defendant conceded for decreeing the suit.

13. MAINTAINABILITY OF THE SUIT:

On the maintainability of the suit, the trial Court held that clause 14 of the partnership deed provides for



arbitration, but such arbitration clause could be invoked only by the parties to the partnership deed, as the plaintiff and the second defendant were not parties to the partnership deed. The suit as filed was maintainable.

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14. DISSOLUTION OF PARTNERSHIP:

The trial Court held that the relief was redundant as Under See 42 Clause (C) of the Partnership Act, the partnership firm is dissolved on the death of a partner. The trial Court held that the plaintiff was not entitled to the relief of Dissolution, as on the death of the plaintiff's husband, the partnership stood automatically dissolved.

15. RENDITION OF ACCOUNTS:

The trial Court held that after the death of the plaintiff's husband, the partnership business was continued as a proprietorship concern by the first defendant and that as per Clause 13 of the Partnership Deed, Ex.A1 the accounts of the deceased partner had to be settled within six months from the date of death and from the net out-standings the deceased legal heirs were to be paid the deceased's share. Therefore the trial Court held that the first defendant was bound by the terms of the Partnership Deed and hence he was bound to render accounts of the firm M/s.N.S.V.Engineering Works regarding its assets and liabilities.

16. APPOINTMENT OF RECEIVER:

The trial Court held that the plaintiff and the second defendant were not partners in the firm and further the partnership was already dissolved on the death of the plaintiff's husband and as there was no partnership in existence, the plaintiff could not seek for appointment of receiver. As regards the issue of jurisdiction the Court found favour with plaintiff.

17.The trial Court ultimately passed a preliminary decree directing the first defendant to render accounts to the plaintiff with respect to the firm M/s.N.S.V. Engineering Works then in existence with respects to its assets and liabilities.

18.The first defendant aggrieved by the Judgment and Decree of the trial Court has come by way of appeal.

19.In the grounds of appeal, though several issues are raised, at the hearing of the appeal, the appellant's counsel confined his arguments to the findings on issue No.5.

20.Issue No.5 is extracted hereunder for better appreciation:

v.Whether the plaintiff is entitled to 1/3rd share of the firm's assets after discharging its liabilities?



21.The learned counsel submitted that the trial Court fell into error in its finding that the plaintiff and the defendants were entitled to 1/3rd share in the partnership firm's assets after discharging its liabilities. The learned counsel submitted that as the deceased partner had only 50% share in the firm, the trial Court ought to have held that the plaintiff's and the defendants were each entitled to 1/3rd share in the 50% share of the deceased partner.

22.The learned counsel appearing for the respondents in the appeal had no objection to the modification of the Judgment with respect to the finding on issue No.5 as prayed by the appellant.

23.The trial Court's finding that the plaintiff and the defendants would be entitled to 1/3rd share in the partnership assets on issue No.5 is erroneous. The trial Court overlooked that the deceased had only 50% share in the partnership firm and as such on his death his 50% share would devolve equally on his legal heirs. In other words each of the three heirs would be entitled to 1/3rd share in the deceased partners 50% share. The trial Court's finding on issue No.5 is therefore modified to the effect that the plaintiff and the defendants would each be entitled to 1/3rd share in the 50% share of the deceased partner in the firm assets after discharging the liabilities. The plaintiff's counsel and the defendant's counsel agreed that the finding on issue No.5 needs to be modified as above. I therefore confirm the Judgment and Decree of the trial Court with the above modification on issue No.5. No other issue was argued before me.

24.I therefore find that there is no merit in the appeal and the same is dismissed, confirming the Judgment and the Decree of the trial Court with the modification on issue No.5 as stated above. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

The Additional District Judge,
Fast Track Court - V, Chennai.

+1cc to Mr.Ravichandran Sundaresan, Advocate SR. No. 23106

+1cc to Mr.R.Vijaya Raghavan, Advocate SR. No. 23353

+1cc to Mr.Menon, Advocate SR. No. 23266

A.S.No.167 of 2012

KJ (CO)