

126

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

**RSA-718-1998 (O&M)
Date of decision : 10.05.2022**

Sudesh Kumari and Another

.....Appellants

versus

Narain Dass (deceased through LRs) & Another

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arvind Pal Singh, Advocate for the appellants.

Mr. Anurag Jain, Advocate for the respondents.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellants against the judgments and decrees passed by both the Courts below whereby the suit for declaration filed by the plaintiff-respondents has been decreed. The lower Appellate Court has also directed the defendant-appellants to execute and register the sale deed qua their shares in the suit property in favour of the plaintiff-respondents.

Brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for declaration to the effect that they are owners in possession in equal shares of the suit property and that the defendant-appellants have no concern with it and that the plaintiff-respondents are entitled to get their names recorded in the municipal and other relevant

records. The suit property is a double-storeyed Shop No.86 in Rajguru Market, Hisar. As per the plaintiff-respondents the suit property had been purchased by the parties to the suit and they were all, thus, owners in equal shares. It is further averred that after dissolution of the partnership firm the issues were settled and the suit property came to the plaintiff-respondents and the defendant-appellants were compensated through cash and kind and since then the plaintiff-respondents were in possession of the suit property. However, since the defendant-appellants failed to get the suit property recorded in the names of the plaintiff-respondents in the municipal records, the present suit was filed.

On notice, written statement was filed by the defendant-appellants who stated that the suit property was jointly owned by all the parties to the suit, the partnership had not been dissolved and the deed of dissolution did not bear the signatures of all the partners, it was denied that any money had been paid to the defendant-appellants and that the plaintiff-respondents had become owners of the suit property.

The plaintiff-respondents filed a replication controverting the stand taken in the written statement and reiterating the contents of the plaint.

On the pleadings of the parties, the following issues were framed :

- (i) Whether the plaintiffs are owners in possession of the disputed property ? OPP
- (ii) Whether the plaintiffs are estopped by their own act and conduct from filing the suit ? OPD
- (iii) Whether proper court fee has not been affixed on the plaint ? OPD

(iv) Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

(v) Whether the plaintiffs have no cause of action ?
OPD

(vi) Relief.

The Trial Court, vide judgment and decree dated 06.11.1996, held that the plaintiff-respondents were owners in possession of the suit property and decreed the suit of the plaintiff-respondents. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the defendant-appellants which was partly accepted vide judgement and decree dated 23.01.1998. The lower Appellate Court declared the plaintiff-respondents in possession of the suit property as tacit owners and also passed a decree for mandatory injunction directing the defendant-appellants to execute and register sale deeds within two months qua their shares in the suit property in favour of the plaintiff-respondents on payment of stamp duty and registration charges. Hence, the present regular second appeal.

Learned senior counsel for the defendant-appellants has contended that the Courts below have erred in decreeing the suit of the plaintiff-respondents. According to him there was nothing on the record to prove that the defendant-appellants had put their shares in the suit property in the partnership business and, therefore, they remained owners thereof even after the alleged dissolution. It is further contended that neither is the partnership of all the four parties to the suit in any business proved nor it's dissolution. He also contended that the lower Appellate Court exceeded it's jurisdiction by passing a decree for mandatory injunction directing the defendant-appellants to execute and register sale deeds within two months

qua their shares in the suit property in favour of the plaintiff-respondents on payment of stamp duty and registration charges. This relief granted was beyond the pleadings of the plaintiff-respondents and could not be sustained.

Per contra, learned counsel for the plaintiff-respondents argued that the defendant-appellants had put their share in the suit property in the partnership and upon its dissolution the entire suit property was retained by the surviving partners i.e. the plaintiff-respondents while the defendant-appellants were reimbursed in cash. According to him the partnership carried on business from the address of the suit property which proved that the suit property had been put in the common stock. He also drew the attention of the Court to the dissolution deed Ex.P1 and the affidavits Ex.P4 and Ex.P5 executed by the defendant-appellants. It was submitted that the defendant-appellants having accepted bank drafts from the plaintiff-respondents towards transfer of their shares in the suit property in favour of the plaintiff-respondents, they were estopped from denying the ownership of the plaintiff-respondents. Reliance was placed on the decision by the Supreme Court in **Addanki Narayanappa & Anr. vs. Bhaskara Krishnappa (dead) & Ors. [AIR 1966 SC 1300]** to contend that whatever was brought in as capital by one of the partners ceases to be the trading asset of such partner and the person who brought it in would not be able to claim or exercise any exclusive right over any property which he has brought.

Heard learned counsel for the parties and perused the record.

As per the law laid down by a Constitution Bench of the Supreme Court in **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016(6) SCC 157]**, there is no requirement for framing of substantial questions of law.

The case set-up by the plaintiff-respondents is based upon the premise that the parties to the suit constituted a partnership firm, all the four partners owned a share in the suit property which was put in the common stock of the partnership firm and the business was carried on from the address of the suit property, upon dissolution of the partnership firm the defendant-appellants gave up their shares in the suit property in favour of the plaintiff-respondents who compensated them in the form of cash (bank drafts) and, therefore, the plaintiff-respondents alone are now owners of the suit property.

However, the record of the case does not reveal any partnership ever in existence with all the four parties being partners. There is no partnership deed or dissolution deed on the record signed by all the four partners. The only partnership deed on the record is Ex.P8 dated 30.09.1985 signed by defendant-appellant No.2 (Jagdish Parshad) and plaintiff-respondent No.2 (Ramesh Kumar). This partnership deed neither names the defendant-appellant No.1 (Sudesh Kumari) or plaintiff-respondent No.1 (Narain Dass) as partners nor is it signed by them. The dissolution deed on the record is Ex.P1 dated 18.08.1988 which mentions the partnership deed of 30.09.1985. Even this dissolution deed is signed only by defendant-appellant No.2 (Jagdish Parshad) and plaintiff-respondent No.2 (Ramesh Kumar) and neither names the defendant-appellant No.1 (Sudesh Kumari) or plaintiff-respondent No.1 (Narain Dass) as partners nor is it signed by them. Thus, in the absence of any concrete proof about the existence of a partnership firm having all the four parties as partners, this Court is unable to accept that the suit property was put in the common stock the partnership itself having failed to be proved.

The documents Ex.P4 and Ex.P5 put into service by the plaintiff-respondents to show that that the defendant-appellants had accepted bank drafts from the plaintiff-respondents towards transfer of their shares in the suit property in favour of the plaintiff-respondents cannot lend any support to the arguments advanced by the counsel for the plaintiff-respondents. Ex.P4 and Ex.P5 are 'Pratigya Patras' dated 16.08.1988. The 'Pratigya Patra' Ex.P4 mentions that defendant-appellant No.1 had transferred and sold her 1/4 share in the suit property in favour of the plaintiff-respondent No.1 for ₹25,000/- and received a bank draft and also given possession to the plaintiff-respondent No.1. Similarly, the 'Pratigya Patra' Ex.P5 mentions that defendant-appellant No.2 had transferred and sold his 1/4 share in the suit property in favour of the plaintiff-respondent No.2 for ₹20,000/- and received a bank draft and also given possession to the plaintiff-respondent No.2. Both Ex.P4 and Ex.P5 are executed on non-judicial stamp papers of ₹5/- each and are not registered. They do not bear the signatures of either of the plaintiff-respondents' i.e. the vendees.

It is well settled that that a transfer of immovable property by way of sale can only be by a deed of conveyance / sale deed. In **Suraj Lamp & Industries (P) Ltd. vs. State of Haryana [(2012)1 SCC 656]** it was held:

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

Thus, without a stamped and registered deed of conveyance / sale deed, no right, title or interest in immovable property can be transferred. Under the provisions of Section 17 of the Registration Act, 1908 where immovable property of the value of more than ₹100/- is conveyed, such sale could only be effected by a document of sale duly registered. Section 17(1)(b) of the Registration Act, 1908 mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the said Act imposes a bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17. Section 49 of the Registration Act, 1908 reads thus :

“49. Effect of non-registration of documents required to be registered - No document required by Section 17 or

by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall -

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

Since, the ‘Pratigya Patras’ Ex.P4 and Ex.P5 have the effect of creating and taking away the rights in respect of the suit property, they required registration under Section 17 of the Registration Act, 1908. Since both the ‘Pratigya Patras’ have not been registered, they cannot be taken into account to the extent of the transfer of the suit property.

Interestingly, neither of the ‘Pratigya Patras’ mention a word about any partnership firm existing or being dissolved. The status of the signatories of the ‘Pratigya Patras’ is also not that of a partner. There is, therefore, nothing on the record to establish that a partnership firm with four partners (the plaintiff-respondents and the defendant-appellants) was ever in

existence which partnership firm was dissolved on 18.08.1988 vide dissolution deed Ex.P1. The decision in the **Addanki's** case (*supra*) is clearly not applicable to the facts and circumstances of the present case since there was no partnership firm as discussed above. Further, the lower Appellate Court clearly also erred in passing a decree for mandatory injunction directing the defendant-appellants to execute and register sale deeds within two months qua their shares in the suit property in favour of the plaintiff-respondents on payment of stamp duty and registration charges. This relief was not even prayed for by the plaintiff-respondents and could, therefore, not be granted especially when the very existence of a partnership firm was not conclusively proved.

In view of the discussion above, the present regular second appeal deserves to be allowed. Resultantly, the present regular second appeal is allowed. The judgements and decrees dated 06.11.1996 and 23.01.1998 passed by the Trial Court and the lower Appellate Court, respectively, are set aside and the suit for declaration filed by the plaintiff-respondents is dismissed. Pending applications, if any, also stand disposed off.

10.05.2022

Yogesh Sharma

NOTE :

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No

(ALKA SARIN)

JUDGE