

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

**1. RSA-2540-2015 (O&M)
Reserved on: 11.07.2022
Date of decision: 28.07.2022**

RAJINDER KUMAR KAKRIA AND ANR.

..Appellant

Versus

M/S SHARMA TENT HOUSE AND ORS.

..Respondents

2. RSA-3738-2015 (O&M)

M/S SHARMA TENT HOUSE AND ORS.

..Appellants

Versus

RAJINDER KUMAR KAKRIA & ANR.

..Respondents

3. RSA-3186-2018 (O&M)

RAJIINDER KUMAR

..Appellant

Versus

VINAY KUMAR

..Respondent

4. CR-872-2016 (O&M)

RAJINDER KUMAR KAKRIA

..Petitioner

Versus

M/S SHARMA TENT HOUSE AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Kapila, Advocate (Legal Aid Counsel)
with appellant Mr. Rajinder Kumar Kakria in person
(in RSA-2540-2015)
for respondent No1. (in RSA-3738-2015).

Mr. Harsh Aggarwal, Advocate
for respondent No.3 (in CR-872-2016).

Mr. Raman Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) thorough LRs Vs. Chandrika and others, (2016) 6 SCC 157.**

2. While assailing the concurrent findings of fact arrived at by the Courts below, the plaintiff and defendant No.3 have filed the present appeal. The plaintiff filed a suit for grant of decree of declaration that he along with defendant No.2 to 4 are partners in M/s Sharma Light House with head office at Jhinga Gate, Jalandhar and M/s Sharma Tent House is its branch office. The plaintiff also sought decree of declaration restraining defendant No.2 to 4 from disallowing the plaintiff from entering shop, measuring 80 X 20, known as M/s Sharma Tent House situated at 402, Lajpat Nagar, Jalandhar.

3. The defendant No.1, 2 and 4 contested the suit. It was asserted that the firm M/s Sharma Light House was dissolved in the year 1989 and the plaintiff was never a partner of the firm M/s Sharma Tent House. It was asserted that defendant No.2 and 4 are the partners of M/s Sharma Tent House as per the partnership deed dated 16.05.2001. The defendant challenged the maintainability of the suit in view of bar contained in Section 11 of the Code of Civil Procedure, 1908, claiming that Civil Suit No.164 of 2007 (Vijay Kumar Vs. Vinay Kumar and others) has already been decided while declaring that the firm M/s Sharma Light House stood dissolved in the year 1989. The objections with regard to the suit being barred by limitation was also taken. On the other hand, defendant No.3 supported the

case of the plaintiff. After the pleadings were completed, the trial Court culled out the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable? OPD*
- 4. Whether the plaintiff has got to locus standi to file the present suit? OPD*
- 5. Whether the suit is bad for misjoinder and nonjoinder or necessary parties? OPD*
- 6. Whether the suit is time barred? OPD*
- 7. Whether the plaintiff has not come to the court with clean hands, if so its effect? OPD*
- 8. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 9. Relief.”*

4. The plaintiff appeared as PW-1 and produced Form A and C as Ex.P-1 and Ex.P-2, apart from producing the site-plan of M/s Sharma Tent House as Ex./P-3, partnership deed dated 16.02.1984, as Mark-4 and Income Tax Returns, copy of ejectment order, copy of ejectment petition and various other documents. Sh. Khusha Ram, Assistant District Nazir, DC Office, SAS Nagar, appeared as PW-2, whereas, Sh. Parvesh Kumar, District Nazir, DC Office, Jalandhar, appeared as PW-3, Sh. Rajan Bahri, Manager Deposits, Bank of India, GT Road, appeared as PW-4, whereas, Sh. Pawan Bhalla, Advocate, Income Tax practitioner, appeared as PW-5, Sh. Parshotam Dass, HCSO, appeared as PW-6, whereas, Sh. Gupreet Singh, Record Clerk, Judicial Record Room, Jalandhar, appeared as PW-7, Sh. S.P. Jain, Nodal Officer, Bharti Airtel Ltd., was examined as PW-8, whereas, Sh. Husan Lal, Ahlmad of the Court of Additional Sessions Judge, was examined as PW-9.

On the other hand, the defendants examined Sh. Nitin Gandhi,

Chartered Accountant, as DW-1, whereas, Smt. Manjot Kaur, Senior Tax Assistant, Income Tax Department, appeared as DW-2, Smt. Ritika, Officer of the Imperial Urban Cooperative Bank, was examined as DW-3, whereas, Sh. Gurdev Singh, Officer of the Punjab & Sind Bank, appeared as DW-4, Sh. Anil Kumar, SDO, BSNL, was examined as DW-5, whereas, Sh. Vinay Kumar, defendant No.2, appeared as DW-6.

6. Both the Courts have concurrently found that the firm M/s Sharma Ligh House was dissolved in the year 1989. It has also been found that the suit filed by the plaintiff is barred by the principle of *resjudicata* because he was defendant No.2 in the previous suit instituted by defendant No.3-Sh. Vijay, in which a finding has been returned that the firm M/s Sharma Light House stood dissolved.

7. It may be noted here that the plaintiff has not produced any evidence to prove that he was ever a partner in M/s Sharma Tent House which is a separate firm having Sh. Vinay Kumar and Smt. Kailashwati, as partners. It has also come on record that originally, the firm M/s Sharma Light House was constituted in the year 1972, however, it was reconstituted in the year 1984, and was, finally, dissolved in the year 1989. The firm M/s Sharma Light House was a partnership at Will and Sh. Vijay Kumar before filing the suit in the year 2001, served notice of dissolution of the partnership firm.

8. The First Appellate Court while passing a preliminary decree of rendition of accounts of M/s Sharma Sharma Light House, has partially decreed the suit.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook and

the record of Courts below, which was requisitioned.

10. The learned counsel representing the appellants has submitted that from a perusal of the various documents, it is evident that the bank account of M/s Sharma Light House was closed much later and therefore, the findings of the Courts below are erroneous. He also relies upon the judgment of the Supreme Court passed in **Saligram Ruplal Khanna and others Vs. Kanwar Raj Nath, (1974) 2 SCC 642**. On the other hand, the learned counsel representing the respondents have supported the judgment passed by the Courts below.

11. A partnership at Will can be dissolved by sending a notice of dissolution of the firm by any of the partner in accordance with Section 43 of the Indian Partnership Act, 1932. It is not in dispute that the M/s Sharma Light House was a partnership at Will. Once there is finding in Civil Suit No.164 of 2007 (Vijay Kumar Vs. Vinay Kumar and others) to the effect that the firm stood dissolved in the year 1989, there is hardly any scope for interference. On a careful reading of the judgment passed in Civil Suit No.164 of 2007, it is evident that Sh. Vijay Kumar, before filing the suit, served a notice of dissolution of the Firm. Thus, the firm M/s Sharma Light House stood dissolved. The plaintiff has not produced any evidence to prove that he was ever inducted as a partner in M/s Sharma Tent House, which is a separate firm. The defendants have produced its partnership deed dated 16.05.2006, as DW6/A, which proved that Sh. Vinay Kumar and Smt. Kailashwati are partners, whereas, the appellants are not partner therein.

12. This Court has carefully read the judgment passed in **Saligram Ruplal Khanna's case (supra)**. The Supreme Court, after examining the peculiar facts of that case, found that even after dissolution of a firm, the

mutual rights and obligations of the partner continue notwithstanding the dissolution, till the final winding up of the affairs of the firm by passing a decree for rendition of accounts. In the present case, the First Appellate Court has already passed a preliminary decree for rendition of accounts.

13. In RSA-3738-2015, the defendants assail the correctness of the judgment passed by the First Appellate Court while passing the decree for rendition of accounts.

14. Once the partnership firm at Will is dissolved, the defendants are required to render the accounts to the plaintiff.

15. Consequently, there is no merit in this appeal.

16. In RSA-3186-2018, the dispute is between the same parties. Sh.Vijay Kumar, partner of M/s Sharma Tent House filed a suit for permanent injunction restraining the defendant Sh. Rajinder Kumar (appellant) from interfering in the smooth working of the M/s Sharma Tent House. Both the Courts have decreed the suit while observing that he has no right to interfere in the working of the M/s Sharma Tent House, particularly when he was never a partner.

17. Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent findings of the fact arrived at by the Courts below.

18. In CR-872-2016, application filed by Sh. Rajinder Kumar for impleadment as party, has been dismissed. M/s Sharma Tent House has filed a suit for mandatory injunction to direct the State of Punjab and concerned Municipal Corporation to pay a certain amount. Both the Courts have dismissed the application under Order 1 Rule 10 CPC.

19. In view of the aforesaid discussion, the petitioner Sh. Rajinder Kumar Kakria was never a partner of M/s Sharma Tent House, therefore has

no right to become a party.

20. Consequently, there is no scope for interference in the aforesaid revision petition.

21. Hence, all the three Regular Second Appeals bearing No.RSA-2540-1015, RSA-3738-2015 & RSA-3186-2018, as well as the Civil Revision No.872-2016, are, hereby, dismissed.

22. All the pending miscellaneous applications, if any, are also disposed of.

28th July, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*