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SA(MD)No.421 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	29/07/2024
Date of Pronounced	19/10/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

SA(MD)No.421 of 2024

1.S.K.R.Balu @ Balasubramanian
2.Mr.Umamaheswari : Appellants/Appellants/
Plaintiffs

Vs.

1.N.S.Sarathy
2.N.S.Jayakmar (Died)
3.J.Annapoorani : Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 22/04/1999 made in AS No.4 of 1999 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Thanjavur against the judgment and decree dated 10/07/1997 made in OS No.45 of 1993 on the file of the Subordinate Judge, Kumbakonam.

For Appellants : Mr.V.Meenakshi Sundaram
for Mr.S.Michael Heldon Kumar

For 1st Respondent : Mr.K.Govindarajan

For 2nd Respondent : D/W

For 3rd Respondent : Mr.N.Vallinayagam



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J U D G M E N T

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This second appeal is filed against the judgment and decree dated 22/04/1999 passed in AS No.4 of 1999 by the Additional District Judge-cum-Chief Judicial Magistrate, Thanjavur, confirming the judgment and decree, dated 10/07/1997 made in OS No.45 of 1993 by the Subordinate Judge, Kumbakonam.

2.Plaint averments in brief:-

The plaintiffs 1 and 2 are the husband and wife. The defendants 1 and 2 are brothers. On 01/05/1987, they decided to commence a joint business called 'Durga Transport' at Kumbakonam. It was decided that each must contribute 25% of the capital for the purchase of the transport bus including the route, etc. They decided to purchase the Bus bearing registration No.TDO 4748 along with permit running between Kumbakonam and Avoor. The route number is 18. An agreement was entered between one Mohamed Kasim on 01/05/1987. On behalf of the four persons, the first plaintiff paid Rs.10,000/- each. In pursuance of the agreement, totally 1,40,000/- was paid to Mohamed Kasim on 02/05/1987. Vehicle was taken possession on 11/05/1987. Since the partnership deed was not ready and registered on the date of purchase, the joint purchase of the bus rout business account was



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submitted in the name of the first defendant before the concerned authorities. But unfortunately the vendor Mohamed Kasim died on 29/05/1987 before the conclusion of the sale transaction and transfer. His wife name by Mumtaj Begam agreed to receive the balance amount of sale and undertook to transfer the route and permit also to any one of the four persons or in the name of all the persons. The plaintiffs paid Rs.7,500/- in cash to the defendants towards their share capital. The pro-notes were handed over to the first defendant. So, the capital amount of the joint business was shown for a sum of Rs. 2,17,500/-. On 23/06/1997, Mumthaj Begum transferred the right through RTO office.

3.Under the Motor Vehicles Act permit cannot be granted in the name of joint owners. So, permit was granted in the name of the first defendant and subsequently, the vehicle was replaced by another vehicle TAO 9889. It was orally agreed that income upto 11/09/1990 must be adjusted towards loan obtained through the first defendant. From 11/09/1990, the defendants are liable to give account for their profit. The defendants are tried to alienate the vehicle TAO9889 without the permission of the plaintiffs. A notice, dated 03/04/1992 was issued to the defendants claiming profit from



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11/09/1990 to till 1992. So, the suit is laid for declaration, consequential permanent injunction and for costs.

4. The statement:- The suit is laid under section 69(i) of the Partnership Act. The suit is bad for mis-joinder of parties. The second defendant is not a necessary party and is residing in Dubai now. It is further denied that the plaintiffs and the defendants decided to jointly commence a joint venture business in the common name and style of Sri Durga Transport. The plaintiffs did not invest any money. The first plaintiff wanted to join with the first defendant to run the business. So, they entered into agreement with one Mohamed Kasim. But he died before the sale. So that proposal was also dropped. The first defendant paid advance to Mohamed Kasim out of his own funds. After the death of Mohamed Kasim, the first defendant on his own, entered into an agreement with Mumthaj Begum, the wife of the deceased Mohamed Kasim. On his own, purchased the vehicle on 29/10/1987 from Mumthaj Begum for Rs. 1,85,000/-. It is his own money. Since Mohamed Kasim died, suddenly his wife name could not pay the amount paid by the first defendant to clear the Bank loan. So she requested the defendants to collect the collection



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money, he was collecting the money. In spite of that, they could not clear the debts. That is why, the defendants chose to purchase the Bus. Only after that, permit and bus was transferred in the name of the first defendant. The bus bearing No.TDO-4748 was allotted and another bus was purchased namely TAO-9889. The defendants cleared the loan out of his own funds. So the allegation that the first plaintiff advanced towards the capital amount is not true. Since the first plaintiff is a family friend and having residence in Melur, his address was used by this defendant for sometime. Later, the address was changed to some other place by the first defendant.

5.On the basis of the pleadings of both sides, the trial court has framed the following issues:-

(1)Whether the plaintiff's case is maintainable under law?

(2)Whether the suit hit by under section 69(1) of the Partnership Act?

(3)Whether the agreement, dated 01/06/1987 referred by the plaintiff is still in force?



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(4)Whether the fact that the 1st defendant is the only owner of Sri Durga Transport is correct?

(5)Whether the plaintiffs are the partners of Sri Durga Transport?

(6)Whether the plaintiffs are entitled to declaratory relief and any other relief as prayed for in the suit?

(7)Whether the plaintiffs are duly bound to submit the accounts?

(8)What are the other relief that the plaintiffs is entitled to?

6.On the side of the plaintiffs, 4 witnesses were examined and 18 documents marked. On the side of the defendants, 3 witnesses were examined and 19 documents marked.

7.At the conclusion of the trial process, the trial court by its judgment and decree, dated 10/07/1997 dismissed the suit.

8.Against which AS No.4 of 1999 was filed before the Additional Sessions Judge/Chief Judicial Magistrate, Thanjavur at Kumbakonam and the same was the result, the



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appeal was dismissed and the judgment and decree of the trial court were confirmed.

9. Against which, this second appeal is preferred.

10. At the time of argument the following substantial question of law was framed:-

(1) Whether the suit is hit by section 69(1) of the Partnership Act, particularly when the defendants are denying the partnership?

11. A simple suit of alleged joint venture alleged to have been entered between the first plaintiff and the first defendant. The second defendant is only a power of attorney of the first defendant, noway involved in the issue. We can concentrate only on the issue between the first plaintiff and the first defendant. There is a concurrent finding of both courts. The suit is bad in view of the bar under section 69(3) of the Partnership Act.

12. Now we can straightaway go to the finding of the trial court on this aspect and before that, the first



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fundamental fact must be cleared, whether it is a joint venture simpliciter or partnership venture.

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13.Before the trial court, as mentioned above, the Issue Nos.4 and 5 are pertaining the subject issue as to whether the Durga Transport is a proprietorship concern of the first defendant or a partnership concern comprising the plaintiffs and the first defendant.

14.A specific stand was taken by the plaintiffs that it is a joint venture and not a partnership venture. An attempt was made by the first defendant before the trial court to try the said issue as preliminary issue whether the suit is hit under section 69(3) of the Partnership Act must be taken up. To that effect, a petition in IA No.384 of 1994 was filed. That was dismissed. Against which CRP No.151 of 1997 and CMP No.783 of 1997 were filed. That was disposed of holding that it is an issue mixed of the question of law and facts and so, it must be decided only on merits during the course of the trial.

15.To show that it is a partnership Firm, no document was produced on either side. Ex.A1 is pertaining to the agreement entered into between the owner of the vehicle and the partners herein. There cannot be no



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document evidencing the partnership Firm. Since it is admitted by the plaintiffs in the plaint itself that it was not reduced into in writing or registered. But the trial court relied upon Ex.A3 to answer this issue. A3 is the legal notice issued to the defendants. The recitals or averments are extracted in the judgment. It is also relevant for our discussion:-

"50.Ex.B3 is the Notice issued by the appellants/Defendants through their counsel one Thiru.NEETHIMOHAN, B.A.B.L., Advocate of Thanjavur to the respondents/Defendants. In this Notice (Ex.B.3) it is stated as follows:- That the following persons constitute a partnership Firm under the name and style 'SRI DURGA TRANSPORTS'.

<i>(i) Sr.S.K.R.Balu</i>	<i>25%</i>
<i>(ii) Smt.Umamaheswari</i>	<i>25%</i>
<i>(iii) Sri.Sarathy</i>	<i>25%</i>
<i>(iv) Sri.Jayakumar</i>	<i>25%</i>
	<i>---</i>
	<i>100%</i>
	<i>----</i>



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16.Further, it is stated as follows:-

"As seen above the partners have contributed for the capital of the firm equally and as per agreement, they have to share the profits as indicated above. The partnership was constituted for the purpose of running a Transport Business. All the partners acquired a vehicle and the permit by transfer from one Mohamed Kasim son of Mohamed Sheriff Rowther and his wife. The route No.8 Kumbakonam Town Service-Kumbakonam Bus stand to Avoor."

17.The extracted portion of the legal notice fixes the issue. It is a clear admission by the plaintiffs that it is a partnership Firm consisting of S.K.R.Balan, Umamaheswari, Sarathy and Jayakumar each contributing 25% of the share capital. The transport business also named as SRI DURGA TRANSPORTS. Partnership was constituted for the purpose of running a transport business.

18.Further reading shows that the business still running and the business is the asset of the firm and for



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the past two years, there is misunderstanding between the parties.

19. When there is a clear admission on the part of the plaintiffs that it is a partnership Firm, no further discussion is required on that issue. Now it is too late for the plaintiffs to change their stand to sustain the suit, after failure because of the non compliance of section 69(3) of the Partnership Act to show that it is only a joint venture and not a partnership firm.

20. In reply to the above said legal notice, the first defendant sent a reply notice that it is a proprietary concern.

21. The trial court further records that the plaintiff averments itself does indicate that they wanted to sustain the relief and to enforce the section 69(3) of the Partnership Act.

22. Even though, the contention was raised by the plaintiffs that it is a proprietary concern of themselves, it is not so on record. It is nothing, but a joint venture undertaking by an unregistered partnership Firm. To enforce any right, the suit will not lie in the absence of any registration.



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23. Now we will go to the findings of the appellate court. The appellate court elaborately reproduced section 69 of the Partnership Act, which reads as under:-

"1. Effect of non-registration:-

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect--



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(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (2 of 1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realise the property of an insolvent partner.

(4) This section shall not apply-

(a) to firms or to partners in firms which have no place of business in 1[the territories to which this Act extends], or whose places of business in the said territories are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial



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*proceeding in execution or other
proceeding incidental to or arising
from any such suit or claim."*

24. So, extracting the provision, the appellate court went a step further by relying upon the cause title, wherein it has been shown that they have been shown as partners. The plaintiffs can not be permitted to take double stand that it is only a joint venture, but at the same time, it is a joint venture undertaken by the partnership Firm. A joint venture simpliciter is entirely different from the joint venture undertaken by the partnership Firm. As mentioned above to overcome the hurdle only, such a plea has been taken. The distinction between joint venture and the partnership Firm is elaborately discussed in **Govindsan Nair Vs. Nagabhushanammal and another (A.I.R. (35) 1948 Madras 343)** which was relied, extracted and discussed by the first appellate court which is giving an interesting reading. Since the appellate court judgment form part of the record, I have not extracted the relevant portion. Suffice to say that it gives an interesting reading. Except extracting the relevant portion:-

*"if each owner does nothing more
than take his share of the gross returns*



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obtained by the use of the common property, partnership is not the result."

At page 33 the learned Author observes:-

"Moreover, part owners who divide what is obtained by the use or the employment of the thing owned are not thereby constituted partners. For example, if two tenants in common of a house let in and divide the rent equally between them, they are not partners although they may pay for the repairs out of the rent before dividing it. So, two persons who are co-owners of a race-horse, and share his winnings on the one hand, and the expenses of his keep on the other, are not partners but co-owners only."

Thereafter, His Lordship Hon'ble Mr. Justice SATHYANARAYANA RAO has observed in the above cited decision as follows:-

"The sharing of profits or of gross returns arising from property by persons



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holding a joint or common interest in that property does not of itself made such persons partners."

25.Now we will see, whether even the statement of the plaintiffs that it is only a joint venture has been established. There is a clear finding that the appellate court in para 69. There is no evidence on record to show that financial contribution was made towards capital, more particularly, when the first defendant denies that it is a joint venture.

26.As per section 69(3) of the Partnership Act, only three reliefs can be sought for:-

(i)to apply for dissolution of the firm and for accounts.

(ii)to ask for accounts of a dissolved firm; and

(iii)to realise the property of the dissolved firm.

27.By pointing out this, the appellate court concluded in para 73 that:-



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"On coming to the instant case on hand, the suit is instituted under section 69(3) of Indian Partnership Act. On careful appreciation of the averments of the plaint as well as the oral documentary evidence, I hold that the suit will not in any way come under the 3 reliefs envisaged under section 69(1) of the Indian partnership Act."

28. So, I find that absolutely nothing on record to differ from the view taken by the trial court as confirmed by the first appellate court. The plaintiffs ought to have sought for any one of the reliefs set out in Section 69(3) of the Act and certainly not for recovery.

29. Now in the written arguments, the very same argument is repeated stating that it is only a common law remedy, which is sought in the plaint and not remedy or relief on the basis of the unregistered partnership firm. According to them, common law remedy is not barred. They are relying upon the judgment of the Hon'ble Supreme Court in ***M/s. Haldiram Bhujiawala and another Vs. Anand Kumar Deepak Kaumar and another (AIR 2000 SUPREME COURT 1287)***.



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30.What is sought in the plaint is not arising out of the right in a contract. But the plaintiffs cannot sustain the suit, apart from the reliefs mentioned under section 69(3) of the Act as indicated in the appellate court judgment. To the same effect, the petitioner would rely upon the judgments viz., in ***M/s.S.B.Steel Industries and others Vs. M/s.Indian Re-Rolling Mills (2009(5) LW 422) and Dr.Vijayakumar rati Vs. Dr.B.Manohar Rama Rau and another (2020 SC (Mad) 755) .***

31.None of the judgments cited by the appellants herein coming into the aid of the appellants. So I find absolutely no error has been committed by the trial court and the first appellate court. Accordingly, the substantial question of law is answered that the suit is barred by section 69(1) of the Indian Partnership Act.

32.In the result, this second appeal is **dismissed** confirming the judgment and decree passed by the courts below. No costs.

19/10/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Additional District Judge-cum-
Chief Judicial Magistrate,
Thanjavur.

2.The Subordinate Judge,
Kumbakonam.

3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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