



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

CR-7344-2017 (O&M)
Date of Decision: **-07.05.2024**

Sudhir Kumar and Another

... Petitioners

Versus

Veena Rani and Another

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :- Mr. Rakesh Gupta, Advocate
for the petitioners.

Mr. V.P. Yadav, Advocate
for the respondents.

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RITU TAGORE, J.

1. This revision is directed against the order dated 22.09.2017 (Annexure P-1) vide which an application (Annexure P-2) filed by petitioners under Order 7 Rule 11 Code of Civil Procedure, 1908 (hereinafter referred to as the CPC), has been dismissed.

2. Learned counsel for the petitioners submits that respondents (plaintiffs before the learned trial Court) brought a suit for declaration of their ownership and possession to the extent of $\frac{1}{2}$ share in the suit land as detailed in the plaint (Annexure P-3), with further relief to declare mutation bearing No.20088 sanctioned in favour of the petitioner No.1 (defendant



No.1 before the learned trial Court) regarding inheritance of Prithvi Raj s/o Mani Ram on the basis of Will No.275 dated 11.03.2011 as null & void. Consequently, sale deed bearing No.2036 dated 28.07.2016 and resultant mutation No.20442 dated 29.07.2016 regarding transfer of 18 marlas of land in favour of petitioner No.2 (defendant No.2 before the learned trial Court), as illegal and not binding upon the rights of the respondents and are entitled to get their names entered in the revenue record as owners in possession of $\frac{1}{2}$ share of the suit land.

3. Learned counsel submits that on being notified, the petitioners appeared in the suit and filed their written statement (Annexure P-4) denying the assertions of the respondents/plaintiffs by raising several pleas. During the pendency of the suit, the petitioners filed an application (Annexure P-2) under Order 7 Rule 11 CPC, seeking rejection of plaint, pleading non-maintainability of the plaint, on the grounds of being barred by provisions of law under Section 69 of Indian Partnership Act 1932. The learned counsel for the petitioners argued that learned trial Court grossly erred in concluding that suit had been filed by respondents in their individual capacity and not as partners of the Firm M/s Raj Filling Station, Ratia.

4. Learned counsel stated that careful reading of plaint reveals that respondents sought a declaration of their ownership and possession of $\frac{1}{2}$ share, in the suit land being partners of the partnership firm M/s Raj Filling Station, Ratia on the premise that the property is in ownership and possession of the Firm. Learned counsel stated that once claim of the respondents is based on being partners of the firm, M/s Raj Filling Station, Ratia, the bar of



Section 69 of Indian Partnership Act 1932 stands attracted in the case. Learned counsel stated that alleged partnership firm was not registered with Registrar of Firms, and the alleged partnership deeds dated 15.11.1995 and 20.11.2006 are also not registered; therefore, such a suit is barred under Section 69 of Indian Partnership Act. To buttress his arguments, learned counsel referred to the provisions of Section 69 of Indian Partnership Act, 1932 which provides that 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 person in the firm unless the firm is registered with Registrar of Firms as a partner in the firm.

5. The learned counsel for the petitioners submits that it is a settled position of law that for the purpose of adjudication under Order 7 Rule 11 CPC, averments made in the plaint on their face value are to be considered. When the plaint (Annexure P-3) is tested in the light of its averments, it is clearly barred by the law of Indian Partnership Act 1932 and needs to be rejected. Learned counsel stated that learned trial Court ignored the material contents of the plaint and proceeded on wrong assumption and fell in error, in dismissing the application. On the basis of above submissions, a prayer is made to allow the revision by setting aside the impugned order. In support of his contentions, learned counsel for the petitioners relied upon judicial pronouncements titled as **Farooq vs. Sandhya Anthraper Kurishingal and Ors., 2017 AIR (Supreme Court) 2945; Loonkaran Sethia etc. vs. Mr. Ivan E. John and Others etc. 1977 AIR (Supreme Court) 336; Naranjan**



Chauhan vs. State of H.P. & Ors. 2008(56) R.C.R. (Civil) 861 and Ashish Verma vs. Neeraj Vyas & Others 2012(8) R.C.R. (Civil) 252.

6. On the contrary, learned counsel representing respondents-plaintiffs supported and defended the order, stating that it was passed on a correct appreciation of facts and law. The learned counsel stated that the essence of pleadings is that the respondents filed the suit in their individual capacity, challenging the Will dated 11.03.2011 and sale deed dated 28.07.2016 and mutations sanctioned on the strength of aforesaid documents. Consequently, a decree for declaration in favour of respondents-plaintiffs as owner in possession to the extent of $\frac{1}{2}$ share was sought along with a further relief of permanent injunction, restraining petitioners-defendants from selling, alienating or creating any encumbrance on the suit land.

7. The learned counsel further stated that the petitioners-defendants have not been sued as partners of the firm neither has the firm been sued. The provisions of Section 69 (1) of Indian Partnership Act 1932 are not applicable in this case. Furthermore, it is not the case of respondents that the partnership firm is still in existence. Rather, the respondents claim that petrol pump existing on the suit land has been closed, and land is lying vacant and they are owners in possession of $\frac{1}{2}$ share of the suit land. The petitioner No.1 taking advantage of revenue entries, favoring Prithvi Raj, father of petitioner No.1/defendant No.1, illegally got the suit land mutated in his favour on the basis of forged Will and then sold land to petitioner No.2/defendant No.2, his wife. Learned counsel stated that learned trial Court correctly appraised the pleadings and rightly concluded that that



provisions of Section 69 of Indian Partnership Act, 1932 are not applicable.

On the above submissions, a prayer is made to dismiss the revision.

8. I have heard learned counsel for the parties and have gone through the record, with their valuable assistance.

9. Before going into the merits of the case, it would be appropriate to go through the provisions of Order 7 Rule 11 CPC, which reads as under:-

Rejection of plaint.— The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;]
- (f) where the plaintiff fails to comply with the provisions of rule

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court



and that refusal to extend such time would cause grave injustice to the plaintiff.

10. It is trite that while deciding an application under Order 7 Rule 11 CPC, only averments of plaint need to be looked into and not the assertions contained in the written statement. It is a rule of proceedings that entire plaint has to be read as a whole to find out whether the plaint is liable to be rejected under Order 7 Rule 11 CPC. In this regard, observations made in **Kamala and Others vs. K.T. Eshwara Sa and Others 2008(3) RCR (Civil) 199**, can be taken note of, wherein Hon'ble the Supreme Court observed as below:-

“15. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction, Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.”

11. In **Dahiben vs. Arvindbhai Kalyani Bhanusali (Gajra) dead through legal representatives and others (2020) 7 SCC 366**, it was held as under:-



23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In *Azhar Hussain v. Rajiv Gandhi* 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words:

“12.....The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.



23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success* (2004) 9 SCC 512.

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be



construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V.Janakiraman, (1999) 3 SCC 267.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

12. Thus, bare provisions of Order 7 Rule 11, CPC provides that plaint can be rejected on the grounds, such as, failure to disclose cause of action and barred by any law among others.

13. Since petitioners are relying upon the applicability of the provisions of Section 69 of the Indian Partnership Act, 1932, it is expedient to go through its provisions, which are extracted as below:-

**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,—

(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 (3 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 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 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

14. The provisions of Section 69 of Indian Partnership Act, 1932 contemplates that no suit is maintainable to enforce a right arising out of a contract or conferred under the Act against the firm or partners, unless the firm is registered and person suing is or has been as a partner of the firm in the Registrar of Firms. Sub-Clause (2) Section 69 of the Indian Partnership Act, 1932, however, carves out an exception which states that provision of Sub-Sections (1) and (2) shall not affect, firstly, the enforcement of any right to sue for dissolution of firm; secondly, suit for accounts of a dissolved firm; thirdly, among right or power to realize the property of a dissolved firm.

15. The contention of the learned counsel for the petitioners is that contents of plaint, essentially made out the enforcement of rights under Section 69(1) of the Indian Partnership Act, 1932, in view thereof suit is not maintainable, being barred under Order 7 Rule 11(d) CPC. The firm being not registered and parties being not registered as partners with the Registrar of Firms, the suit is hit by Section 69 (1) of the Indian Partnership Act, 1932, therefore, not maintainable, and is covered under Order 7 Rule 11(d) CPC. The plaint is liable to be rejected. The learned trial Court failed to



comprehend the legal position and therefore erred in dismissing the application.

16. In the aforesaid background of the legal position, let's examine the contents of the plaint for profitable reference, same is reproduced herein as under:-

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Suit for declaration to the effect that the plaintiffs are owner in possession to the extent of $\frac{1}{2}$ share of the land measuring 0 kanal 18 marle bearing khasra no 203//4/1/2/2 (0-3), 4/2/2 (0-15) comprised in khewat no. 1329 khatoni no. 1674 situated at Ratia, Tehsil Ratia District Fatehabad as per copy of jamabandi for the year 2013-14 and the mutation No. 20088 sanctioned in favour of the defendant no. 1 regarding inheritance of Prithvi Raj son of Mani Ram on the basis of alleged Will bearing registration no. 275 dated 11.03.2011 is illegal, null and void, without authority, without title, without notice, knowledge and consent of the plaintiffs and as such is not binding on the rights of the plaintiffs and is liable to be set aside and ignore and the sale deed bearing document no. 2036 dated 28.07 2016 alongwith resultant mutation no. 20-442 dated 29.07.2016, whereby the sale of the suit land measuring 18 marle has been shown in favour of the defendant no. 2 for consideration of Rs. 1,37,75,850/ is also without authority, without title, without consideration, without delivery of possession, illegal, null and void, without notice, knowledge and consent of the plaintiffs and as such is not binding on the rights of the plaintiffs and is liable to be set aside and ignore and the plaintiffs entitled to get their names incorporated in the revenue record as owner in possession of $\frac{1}{2}$



share of the suit land and as a consequential relief suit for permanent injunction thereby restraining the defendants permanently from alienating or creating any type of encumbrances over the suit property by way of sale, gift, decree, exchange or in any other manner and also from interfering in joint possession of the plaintiffs of the suit land under the garb of illegal mutation no. 20088 and 20442. On the basis of oral and documentary evidence of each and every description.

R/Sir.

That the plaintiffs respectfully submit as under:-

1. That Raj Filling Station, Ratia is owner in possession of the land measuring 0 kanal 18 marle bearing khasra no. 203//4/1/2/2 (0-3), 4/2/2 (0-15) comprised in khewat no. 1329 khatoni no. 1674 situated at Ratia, Tehsil Ratia District Fatehabad as per copy of jamabandi for the year 2013-14 and the said land is gairmumkin petrol pump. Previously a petrol pump under the name of M/s. Raj Filling Station, Ratia was installed over the suit land, but now the said petrol pump has been closed and the land is lying vacate. In the revenue record the land in dispute is shown to be ownership and Possession of M/s. Raj Filling Station, Ratia through Prithvi Raj son of Mani Ram who is one of the partner of the said firm.
2. That previously as per partnership deed dated 15.12.1995 there were four partners in the firm M/s. Raj Filling Station having equal share namely Prithvi Raj Godara, Sajjan Kumar, Veena Rani and Shanti Devi, but the firm was reconstituted on 21.11.2006 after the death of Prithvi Raj on 18.11.2006 and as per the partnership deed dated 21.11.2006 there are four partners of the said firm namely



Sunil Kumar son of Prithvi Raj, Varun Kumar son of Lok Raj. Smt. Veena Rani wife of Lok Raj and Sudhir Kumar son of Prithvi Raj. All the partners are having equal share in the said firm.

3. That Prithvi Raj son of Mani Ram had died on 18.11.2006. The defendant no. 1 is son of Prithvi Raj son of Mani Ram. The defendant no. 1 with the dishonest intention to grab the suit land in which the plaintiffs have $\frac{1}{2}$ share, taking undue advantage of in the entry in the revenue record showing Raj Filling Station through Prithvi Raj son of Mani Ram as owner in possession of the suit land, forged a Will of Prithvi Raj son of Mani Ram and got sanctioned a mutation regarding inheritance of Prithvi Raj in the revenue record on the basis of said Will in his own favour with regard to whole of the land measuring 0 kanal 18 marle, whereas Prithvi Raj was not owner of the whole of the land measuring 18 marle, but was only a partner of the firm M/s. Raj Filling Station, as such the mutation sanctioned in favour of the defendant no. 1 with regard to the suit land measuring 18 marle on the basis of inheritance of Prithvi Raj son of Mani Ram bearing mutation no. 20088 sanctioned on 14.03 2016 is illegal, null and void, without title and has been sanctioned without notice, knowledge and consent of the plaintiffs who are partners of the firm M/s. Raj Filling Station to the extent of $\frac{1}{2}$ share and as such are owner in possession to the suit land to the extent of $\frac{1}{2}$ share. The said mutation no. 20088 is not binding on the rights of the plaintiffs to own and possess the suit land to the extent of $\frac{1}{2}$ share and the said mutation is liable to be set aside and ignored qua the rights of the plaintiffs.



4. That further more taking undue benefit of the mutation no. 20088 sanctioned in favour of the defendant no. 1 illegally, the defendant no. 1 in order to grab the suit land in collusion and conspiracy with his wife namely Sumnesh, got a false, frivolous sale deed registered at the office of Sub Registrar, Ratia showing the suit land measuring 0 kanal 18 marle for the alleged value of Rs. 1,37,75,850/ in order to cause wrongful loss to the plaintiffs and wrongful gain to themselves. The defendants no. 1 & 2 are well aware about the fact that Pritivi Raj was neither owner nor possession of the whole of the suit land 18 marle and was only a partner of the firm M/s. Raj Filling Station and was owner in possession to the extent of his share in the partnership firm only. The said sale deed no. 2036 dated 28 07.2016 executed by the defendant no. 1 in favour of the defendant no. 2 alongwith its resultant mutation no. 20442 dated 29.07.2016 is without authority, without title, without delivery of possession, without consideration, only a paper transaction and as such is not binding on the rights of the plaintiffs and is liable to be set aside and ignore.

5. That the plaintiffs being owner in possession of $\frac{1}{2}$ share of the suit land are entitled to get their names incorporated in the revenue record as owner in possession and the revenue record is liable to be corrected to that extent in favour of the plaintiffs.

6. That now taking undue advantage of the revenue entries showing the defendant no. 2 as owner in possession of the suit land, the defendants are bent upon to alienate or to create encumbrances over the suit land and to oust the plaintiffs from joint possession of the suit land in case the defendants are successful in their illegal motive



and design, the plaintiffs shall suffer irreparable loss and injury, which shall not be compensated in any terms.

7. That the plaintiffs have repeatedly requested the defendants to admit the claim of the plaintiffs and to set aside the mutation no. 20088, the sale deed no. 2036 and the mutation no. 20442 and not to alienate and create encumbrances over the suit land and not to oust the plaintiffs from joint possession of the suit land, but the defendants have refused to do so, hence the plaintiffs have cause of action to institute the present suit.

8. That no litigation between the parties is pending or has been decided from any Court of law in relation to the matter in controversy in the present suit.

9. That the suit property is situated at village Ratia, Tehsill Ratia District Fatehabad, as such this Hon'ble Court has got jurisdiction to entertain and decide the matter in dispute.

10. That for purposes of Court fees and jurisdiction the suit is valued at Rs.2,000/- and the prescribed Court fees of Rs. 50/- has been paid.

It is, therefore, respectfully prayed that a decree for declaration to the effect that the plaintiffs are owner in possession to the extent of $\frac{1}{2}$ share of the land measuring 0 kanal 18 marle bearing khasra no. 203//4/1/2/2 (0-3), 4/2/2 (0-15) comprised in khewat no. 1329 khatoni no. 1674 situated at Ratia, Tehsil Ratia District Fatehabad as per copy of jamabandi for the year 2013-14 and the mutation no. 20088 sanctioned in favour of the defendant no. 1 regarding inheritance of Prithvi Raj son of Mani Ram on the basis of alleged Will bearing registration no. 275 dated 11.03.2011 is illegal, null and void, without authority, without title, without



notice, knowledge and consent of the plaintiffs and as such is not binding on the rights of the plaintiffs and is liable to be set aside and ignore and the sale deed bearing document no. 2036 dated 28.07.2016- alongwith resultant mutation no. 20442 dated 29.07.2016, whereby the sale of the suit land measuring 18 marle has been shown in favour of the defendant no. 2 for a consideration of Rs. 1,37,75,850/- is also without authority, without title, without consideration, without delivery of possession, illegal, null and void. without notice, knowledge and consent of the plaintiffs and as such is not binding on the rights of the plaintiffs and is liable to be set aside and ignore and the plaintiffs entitled to get their names incorporated in the revenue record as owner in possession of share of the suit land and as a consequential relief decree for permanent injunction thereby restraining the defendants permanently from alienating or creating any type of encumbrances over the suit property by way of sale, gift, decree, exchange or in any other manner and also from interfering in joint possession of the plaintiffs of the suit land under the garb of illegal mutation no. 20088 and 20442, may please be passed in favour of the plaintiffs and against the defendants.

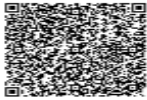
Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be awarded in favour of the plaintiffs in addition to or in the alternative of the main relief. The costs of the suit may also be awarded to the plaintiffs.

17. Thus, bare perusal of the plaint would show that the respondents-plaintiffs filed the suit for declaration against the petitioners, in individual capacity, and not as the partners of the firm. Secondly, the firm



was not arrayed as the defendant. Thirdly, examination of the entire plaint, does not indicate that rights arising from a contract or conferred under the Indian Partnership Act, 1932 were pleaded to be enforced, as the partners of the firm or against the firm. For the applicability of Section 69(1) of the Indian Partnership Act 1932, pre-requisite condition is subsistence of the firm. Here, the petitioners' pleaded case is that firm does not exist. In fact, para No.1 of the plaint, respondents specifically pleaded that the petrol pump M/s Raj Filling Station, Ratia installed on the suit land, has been closed and suit land is lying vacant. In view thereof provisions of Section 69(1) are clearly not applicable. Further Section 69(3)(a) further provides that provisions of Sub-Clause (1) and (2) are not applicable where any suit is filed for enforcement of right to sue for dissolution of firm, or any right or power to realize the property of a dissolved firm, is filed. In face of the above, the suit cannot be taken as barred under Order 7 Rule 11(d) read with Section 69(1) of Indian Partnership Act 1932.

18. To the considered opinion of this Court, learned trial Court rightly concluded that provisions of Section 69(1) of Indian Partnership Act 1932 are not applicable. In **Farooq vs. Sandhya Anthraper Kurishingal and Ors., 2017 AIR (Supreme Court) 2945**, the clause 25(d) of partnership deed as in question. In the present case, there is no reference of any partnership deed or its term. In **Loonkaran Sethia etc. vs. Mr. Ivan E. John and Others etc. 1977 AIR (Supreme Court) 336**, petitioner filed a suit for enforcement of an agreement entered into by him as partner of a firm, which was unregistered. In **Naranjan Chauhan vs. State of H.P. & Ors.**



2008(56) R.C.R. (Civil) 861 a suit was filed on behalf of the firm, as partner of the firm. Lastly in **Ashish Verma vs. Neeraj Vyas & Others 2012(8) R.C.R. (Civil) 252** plaintiff as the partner had claimed the right to participate in the partnership and had claimed money of his share of the business. The above judicial precedents are not applicable to the facts of this petition, being distinguishable.

19. In view of the above discussion, this Court finds no illegality in the impugned order, warranting any interference by this Court. Accordingly, present revision petition is here dismissed.

20. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

07.05.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No