



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 10 of 2016 (O&M)

Date of Decision: 23.07.2024

Rajesh Punia

... Appellant(s)

Versus

Surinder Punia (Since Deceased) through his Legal Representatives and
Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas P. Singh, Advocate
for the appellant(s).

Mr. Surjit Singh Salar, Advocate
for respondent No.1 and 2.

Mr. Dinesh Kumar and Mr. Arvind Galav, Advocates
for respondent No.6.

Anil Kshetarpal, J.

1. Defendant No.1 assails the correctness of the First Appellate Court's judgment, which, in turn, has reversed the Trial Court's judgment.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. As many as three plaintiffs, namely Surinder Punia, Ramesh Punia and M/s Punia Enterprises filed a civil suit with the following substantive prayers:-

“i) To grant decree of declaration to the effect that Plaintiff NO.1& No.2 along with Defendant NO.1 & No.2 are owners in possession of Industrial Plot NoAll, Industrial Area, Phase-I, Panchkula, to the extent of 1/4th share

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each being joint family property for all intents and purposes, which is in the name of Plaintiff No.3;

- ii) Further to grant decree of declaration to the effect that Defendant NO.1 is deemed to be expelled from the partnership firm, Plaintiff No.3, by virtue of minutes of meeting dated 26.02.2011 and 25.03.2011 and in terms of expulsion notice dated 27.02.2011 and 14.03.2011. and is having no concern with the affairs of the partnership firm w.e.f. 26.02.2011 in any manner whatsoever;*
- iii) Further to grant decree of permanent Injunction restraining Defendant NO.1 from alienating, selling, mortgaging or to create any third party right either by way of sale or creation of tenancy or lease in favour of any other person in respect of the suit ,property as described hereinabove and further restraining Defendant NO.1 from alienating, selling, lifting or creating any third party right with regard to machinery, stocks and assets of partnership firm, Plaintiff No.3;*
- iv) Further to grant decree of rendition of accounts for settlement of accounts of M/s. Punia Enterprises Plaintiff No.3, along with complete details of machinery, stocks and other assets which are lying in the suit property and which were already sold by Defendant No.1 during the existence of partnership firm being its working partner till the date of his expulsion and to account for receipts*

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received by way of sale of the machinery and stocks of the partnership firm and to make payment to the plaintiffs NO.1 & NO.2 in terms of profit sharing ratio by virtue of partnership deed dated 01.09.1983 and to grant consequential relief in form of mandatory injunction directing Defendant No.1 to settle the accounts of partnership firm with the plaintiffs;

- v) *Further to grant decree of permanent injunction restraining Defendant NO.1 from recovering rent, lease money or any other recovery including arrears of rent in respect of the tenanted portion in possession of Defendant No.3 and any other tenant which may be in possession of any portion of the plot in question by virtue of lease/tenancy;*
- vi) *Further to grant decree of permanent injunction restraining Defendant No.3 & No.4 to pay any amount including rent/lease money or arrears thereof to Defendant NO.1 and to want mandatory injunction directing Defendant No.3 to pay entire arrears of rent/lease money, future rent/lease money or any other payment in respect of tenanted portion of the suit property in question to the plaintiffs or in the alternate to deposit the same in the court with due intimation to the plaintiffs; and*

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vii) Further, to grant any other relief as this Hon'ble Court may deem fit in view of the facts of the present case."

3. Defendant No.1 filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") for rejecting the plaint on the ground that the partnership deed is not registered and hence, the suit is barred under Section 69 of the Partnership Act, 1932 (hereinafter referred to as "the 1932 Act"). The Trial Court has allowed the application and rejected the plaint. The First Appellate Court has reversed the same on the ground that Section 69(3) of the 1932 Act engrafts exception to Section 69 (1) and (2) of the 1932 Act and there is a triable issue between the parties which would require adjudication.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the appellant submits that there is no prayer for dissolution of the firm and hence, the case would fall under Section 69 (1) and (2) of the 1932 Act which bars the maintainability of the suit. Hence, the First Appellate Court has erred in reversing the judgment of the Trial Court.

6. Per contra, the learned counsel representing the respondents submit that on cumulative reading of the substantive prayers, it is evident that the plaintiffs have also sought declaration that defendant No.1 is deemed to have been expelled from the partnership firm in the year 2011 and thereafter, he has no concern with the affairs of the partnership firm. The prayers for grant of decree of declaration that plaintiff No.1 and 2 are the

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accounts has also been made. Hence, the First Appellate Court has correctly reversed the judgment of the Trial Court.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. In the opinion of this Court, the First Appellate Court has correctly reversed the judgment passed by the Trial Court. Order VII Rule 11 CPC engrafts the provisions for rejecting the plaint at the threshold without giving any opportunity to the plaintiff to prove his case. The grounds on which the plaint can be rejected are enlisted under Order VII Rule 11 CPC. At the time of rejection of the plaint, only the contents of the plaint are required to be seen. The defence of the defendant cannot be taken into consideration while rejecting the plaint. Moreover, the plaint cannot be rejected partially. The plaintiffs have made multiple prayers while filing the suit including the decree for declaration that plaintiff No.1 and 2 are the owners in possession of the industrial plot. There is also a prayer for the grant of decree of permanent injunction as well as the rendition of accounts.

9. In view of the above, it would not be appropriate for the Court to reject the plaint particularly when the various triable issues require adjudication. The objection of the appellant (defendant No.1) can be considered by the Court while finally adjudicating the suit. However, it was not appropriate for the Court to reject the plaint at the threshold.

10. Keeping in view the aforesaid facts, there is no ground to interfere with the judgment passed by the First Appellate Court. Hence, the present appeal is dismissed.

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11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 23, 2024
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No