In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3846 of 2018 (O&M)

Date of Decision: 04.03.2024

Rajan Setia

... Appellant(s)

Versus

Nirmal Kanta (Deceased) through her Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.S.Malwai, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-9817-C-2018

1. For the reasons stated in the application, the same is allowed and delay of 68 days in re-filing the appeal is condoned.

RSA-3846-2018

2. The Regular Second Appeal in the States of Punjab and 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) through LRs v. Chandrika and Others (2016) 6 SCC 157***.

3. In this regular second appeal, defendant No.2 assails the correctness of the concurrent findings of fact arrived at by both the Courts below while passing a preliminary decree for dissolution of the partnership

firm and for rendition of accounts.

4. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. Late Smt. Nirmal Kanta wife of Kulbhushan Setia filed a suit for dissolution of partnership firm-M/s Sunder Dass Setia Cotton Ginning and Processing Factory, Muktsar. She claimed that the parties entered into a partnership agreement on 01.04.1980, and the plaintiff was no longer interested in continuing as a partner in the partnership firm. The plaintiff has 1/4th share, whereas her husband has another 1/4th share in the aforesaid firm. There was a family settlement which resulted into decree dated 24.11.1993, however, that was not with respect to the plaintiff's or her husband's share. The defendants, while contesting the suit, stated that there is another firm between the same partners, namely M/s Sunder Dass Setia Ice Factory, Hanumangarh, which is controlled by the plaintiff and her husband.

5. Both the Courts below have found that as per the agreement of partnership, the mode of dissolution of the partnership firm is at will. Thus, both the Courts below have passed a preliminary decree for partition and rendition of accounts.

6. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book.

7. The learned counsel representing the appellant contends that both the Courts below have erred in ignoring the fact that there is another partnership firm, namely M/s Sunder Dass Setia Ice Factory, Hanumangarh, with the same partners. He submits that the income-tax return of the aforesaid firm at Hanumangarh was also filed at Muktsar along with the

return of M/s Sunder Dass Setia Cotton Ginning and Processing Factory, Muktsar. He further submits that therefore, both the Courts below have erred in passing the preliminary decree.

8. This Court has considered the submissions of the learned counsel representing the appellant.

9. The parties entered into the partnership by mutual agreement. The relationship being partnership at will is governed by Section 7 of the Partnership Act, 1932. In the absence of any contract to the contrary or subject to the contract, the partners are entitled to dissolve the firm either at will or after the completion of a particular undertaking. M/s Sunder Dass Setia Ice Factory, Hanumangarh, is an independent partnership firm and mode of its dissolution was decided as per the agreement. The partners would not be disentitled to dissolve the firm merely on the ground that the income-tax returns of both the firms were being filed jointly.

10. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

March 04, 2024
"DK"

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