

14.07.2025
Item No.19
Ct. No. 30
Aloke

CO 3990 of 2024

Sampat Singh
Vs.
M/s. Sharma Properties

Mr. Sk. Reazul Islam
... for the petitioner
Mr. Pradip Mukherjee
Ms. Chaitali Mukhopadhyay
Ms. Neha Singh
Mr. Purnakar Biswas
... for the opposite parties

1. The civil revision has been preferred against an order dated 31.08.2024 passed by the learned Civil Judge (Senior Division), 4th Court at Alipore, District South 24-Parganas, in Title Suit No. 93 of 1996 rejecting an application filed under Order 30 Rule 4(1) C.P.C. regarding substitution of Dhanik Sharma by the swimming partner, Arun Kumar Sharma as representative of M/s. Sharma Properties.
2. Vide the said order under challenge the trial Court rejected the plaintiff/petitioner's prayer for such substitution.
3. It is stated that as Arun Kumar Sharma is the swimming partner, he is to be substituted in place of the deceased partner Dhanik Sharma.
4. The learned trial Court though has not given any specific reason, rejected the application under Order 30 Rule 4(1) C.P.C.
5. Supplementary affidavit has been filed by the parties.

6. The opposite party/defendant herein has filed a copy of the partnership deed, which shows that the partnership was between Dhanik Sharma and his son Arun Kumar Sharma.

7. The opposite party herein had filed an application before the trial Court stating as follows:

“1. That the defendant, a partnership firm, has since been dissolved and one of its partners, Dhanik Sharma, has also expired on 08.12.2014 who left behind him surviving his widow, namely Tara Devi Sharma, and Rajkumar Sharma, Arun Kumar Sharma (the petitioner herein), all of 55/1, Swinhoe Lane, Police Station-Kasba, Kolkata 700 042, Gautam Sharma and Anil Sharma both of 6, Tiljala Road, Rose Valley, Block-A, Kolkata-700039 being his four sons and one daughter, namely Sulekha Sharma who is residing in Flat No.76, Phoenix House, 92A, Bath Road, Hounslow, TW3, 3FF, United Kingdom.

2. Therefore, the proceedings of the instant suit is being proceeded against an non-existent entity, inasmuch as the defendant partnership firm stands dissolved.”

8. It appears that at present the partnership has dissolved, on the death of one of the two partners.

9. The Madras High Court in **K. Murali (died) & Ors. vs. K. Karunanithi & Anr., in S.A. No. 1554 of 2003 and C.M.P. Nos. 10302, 24134 & 24136 of 2019, on 2nd June, 2020**, held as follows:-

"21. He also relied upon the judgment reported in (2010) 2 SCC 407 in the case of Mohammed Laiquiddin and anr Vs. Kamala Devi Misra (died) by LRs and ors which reads as follows :-

<http://www.judis.nic.in> "25. Dissolution of a partnership firm on account of death of one of the partners is subject to the contract entered into by the parties. In this context, it is pertinent to refer to the terms of the deed of partnership. Clause 22 of the Partnership deed reads as follows:

"The partnership shall be in force for a period of 42 years certain from this date and the death of any partner shall not have the effect of dissolving the firm." This clause clearly states that death of any partner shall not have the effect of dissolving the firm. However, in the facts and circumstances of the case, we are not in a position to give absolute effect to this clause of the deed of partnership.

26. The learned counsel for the Respondents contended that since the parties agreed that in spite of the death of any of the partners, the firm shall continue for 42 years irrespective of the death of the original plaintiff (since deceased). They further, argued that it clearly contemplates that the legal representative of the partner, who dies, would be under a duty to enter into a fresh deed of partnership. The legal representatives were precluded from claiming benefits if they deny entering into a fresh

<http://www.judis.nic.in> partnership agreement.

27. In order to arrive at the conclusion that the partnership firm stood dissolved on account of death of one of the partners, the High Court had rightly placed reliance on Smt. S. Parvathammal v. CIT (1987 Income Tax Reports 161), wherein this Court held that in a firm consisting of two partners on account of death of one of the partners, the firm automatically dissolved and observed as follows:

"A partnership normally dissolves on the death of the partner unless there was an agreement in the original partnership deed. Even assuming that there was such an agreement in a partnership consisting of two partners on the death of one of them the partnership automatically comes to an end and there is no partnership

which survives and into which a third party can be introduced. Hence on the death of S, the original partnership was dissolved. The subsequent taking in of the assessee as a partner was only as a result of entering into of a new partnership between R and the assessee. Partnership was not a matter of heritable status but purely one of contract."

In the light of aforementioned case, it is clear that when there are only two partners

<http://www.judis.nic.in> constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner."

10. **In the context of a partnership, substitution of a deceased partner refers to the process of replacing the deceased partner with their legal heir or representative in legal proceedings or business operations. This is often necessary to continue legal actions or manage the deceased partner's share of the partnership assets and liabilities.**

11. A partnership typically dissolves upon the death of a partner, unless there's a specific agreement stating otherwise.

The deceased partner's legal heirs, as determined by law (e.g., spouse, children, parents), inherit the deceased's rights and obligations in the partnership.

12. If a legal case is ongoing, the legal heirs or the executor/administrator of the deceased's estate

may need to be substituted as parties to the suit to continue the proceedings.

13. So, in the present case, as the petitioner's application praying for substitution of the deceased partner by the surviving partner of the partnership which has now dissolved being not in accordance with law, was rightly rejected by the trial Court.

14. Petitioner shall be at liberty to proceed against the legal heirs of the deceased who have inherited the assets and liabilities of the partnership (proportionately) by making an application praying for such substitution.

15. **The civil revision stands disposed of.**

16. Connected application, if any, stands disposed of.

17. Interim order, if any, stands vacated.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)