



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

10 APEAL FROM ORDER NO. 65 OF 2025
WITH
CIVIL APPLICATION NO. 12266 OF 2023
IN AO/65/2025

PRAKASHCHAND UDAYCHAND KATARIA DIED THR LRS TEJAS
PRAKASHCHAND KATARIA AND ANR

VERSUS

MAHENDRA AJAYRAJ KOTHARI AND ANR

...
Party in person for the Petitioner 1C : Ms. Preetee Prakashchand Kataria
Advocate for Respondent No. 1 : Mr. Praveen G. Gamot

...
CORAM : SHAILESH P. BRAHME, J.

DATE : 15.09.2025

PER COURT :

Learned counsel Mr. Girish Kulkarni seeks discharge from the matter as he has given no objection to both the appellants. Appellant no. 1C is appearing in person. She also admits about that. Mr. Girish Kulkarni needs to be discharged.

2. It reveals from record that party in person is permitted to work out her own matter in the capacity of appellant no. 1C. Her brother appellant no. 1B, is presently unrepresented. She prays for transposition of appellant no. 1B as respondent no. 7. She makes statement that appellant no. 1B, who is present today does not have any objection. The necessary amendment shall be carried out forthwith.

3. Heard both sides.

4. Appeal from Order is emanating from order of rejection of plaint passed below Exh. 20 by the Trial Court, which is reversed by the lower

Appellate Court in Regular Civil Appeal No. 17/2019. The appellant is original defendant no. 1, who has sought rejection of plaint on the basis of Section 96 of the Partnership Act.

5. Following question of law was formulated when initially second appeal was filed:

“(i) Whether the plaint is liable to be rejected under Order VII Rule 11 of the C.P.C. as it was hit under Section 69 of the Partnership Act ?”

6. Respondent no. 1 has filed Special Civil Suit No. 83/2010 for declaration and injunction in respect of the subject matter comprising of plot Nos. 26 to 29 and 31 to 33 as enumerated in paragraph No. 2 of the plaint. It is contended that respondent no. 1 and the appellant started a joint venture of selling and purchasing the plots under the name and style 'M/s. Uday Resort Jalgaon (hereinafter referred to as 'unregistered partnership firm'). The formal partnership deed was not executed and the firm was not registered, but the transactions were entered into with third parties in the name of M/s. Uday Resort Jalgaon. It is clarified in paragraph no. 1 that suit has not been filed in the name of unregistered partnership firm. The suit plots were purchased from other defendants. They were paid consideration from plaintiff. The plots were even mutated in the record of rights in the name of unregistered partnership firm. It is contended that thereafter there started dispute between plaintiff and defendant no. 1 and the suit was required to be filed for the relief of declaration to the extent of half share in the subject matter and injunction.

7. Appellant submitted application Exh. 20 under Order VII Rule 11 of the Code of Civil Procedure. It was contested by the respondents. The Trial Court allowed the application on 01.03.2013 and rejected the plaint. Being aggrieved, Regular Civil Appeal No. 17/2019 was preferred. By the impugned judgment dated 24.08.2023 appeal was allowed and the matter

was relegated to the Trial Court for further trial of the suit.

8. Party-in-person submits that meaningful reading of the plaint discloses that in fact unregistered instrument between the parties is sought to be enforced. It is submitted that admittedly, neither the agreement nor the partnership firm was registered. The parties purchased the properties in the name and style of unregistered partnership firm. Public notices were issued in the name of the firm. Relief of declaration and injunction in the plaint pertains to the properties of unregistered firm. It is submitted that lower Appellate Court committed grave error of jurisdiction in reversing the order passed by the Trial Court. The plaint is liable to be rejected in its inception. It is submitted that averments in the plaint clearly discloses that suit is filed arising out of the contractual liabilities of the partnership agreement without registering the firm and such suit is not maintainable.

9. Per contra, learned counsel Mr. Gamot supports the impugned judgment and order. He would submit that it has been specifically made clear that the suit was filed in the individual capacity. The agreement was proposed to be executed and registered. It is further submitted that the Appellate Court has taken a reasonable view that matter required to be dealt with during the course of trial. He would submit that the averments in the plaint disclose that the payment to the vendors of the plots were made in individual capacity. He would submit that its a suit filed under Section 34 of the Specific Relief Act and not any suit under Partnership Act. He would rely on the judgment of the division bench of Karnataka High Court in the matter of **Sandhya Anthraper Vs. Manju Kathuria and others; 2014 Karnataka 21.**

10. I have considered the rival submissions of the parties. Party-in-person has referred to the judgments, referred in paragraph no. 10 of the order passed by the Trial Court regarding scope of Order VII Rule 11 of the CPC. The principles laid down therein are undisputed. Only averments in the

plaint and documents filed along with it are to be taken into consideration. If the meaningful reading of the plaint discloses that it is barred by law then only power under Order VII Rule 11 can be invoked.

11. It reveals from record that the appellant and respondent no. 1 started a business and plots were purchased under name and style of the unregistered partnership firm. The sale-deeds produced along with plaint disclose that the suit plots were purchased in the name of unregistered partnership firm. It is relevant to reproduce para no. 1 of the plaint which is as follows :

“1. The plaintiff is a businessman having various business including sell and purchase of landed property. So also defendant no. 1 is a businessman. He also is in the business of sale and purchase of landed property and other business. The plaintiff and defendant no. 1 were good friends since long and had family relations with each other. They were jointly doing the business of sale and purchase of lands and plots at Jalgaon. The defendant no. 1 formed a joint venture with the plaintiff under the name and style M/S Uday Resort Jalgaon. It was decided that defendant no. 1 and plaintiff would be the partners investing equal share in the joint venture. The business of the joint venture was decided to be the sale and purchase of lands and plots. Accordingly partnership deed was also prepared. It was further decided that the said partnership would be registered and the formalities of registration would be looked after and completed in all respect by the defendant no. 1. The plaintiff had signed the partnership deed and handed over the original partnership deed to defendant no. 1. It is still with the defendant no. 1. However with ulterior motive the defendant no. 1 did not get it

registered. These are the facts pertaining to the year 1988. Since the business did not suffer and since the relations between plaintiff and defendant no. 1 were amicable and cordial there was no reason for plaintiff to enquire or insist defendant no.1 for registration of partnership deed and firm. The fact remains that M/S Uday Resort Jalgaon is not registered till this date. Therefore the suit is not filed in the name of the unregistered partnership firm M/S Uday Resort Jalgaon. It is filed in the personal capacity of plaintiff and defendant no. 1.”

12. It is candidly made clear that suit has not been filed in the name of unregistered partnership firm. It is filed in the personal capacity of the plaintiff and against the defendant no. 1. Admittedly, neither there is any tangible agreement between the parties either registered or unregistered. Further the firm has not been registered by the parties. The plaint discloses that partnership deed was drafted but remained to be executed or registered. Under these circumstances, I am of the considered view that in the absence of concluded contract, Section 69 of the Partnership Act cannot be made applicable.

13. Section 69 of the Partnership Act prohibits filing of suit to enforce a right arising from a contract or conferred by the Act. In the present case, there is no concluded contract between the parties. By way of either agreement or mutual understanding they purchased the properties and tried to conduct the business. In that view of the matter, it would be inappropriate to close the doors of the plaintiffs at the threshold.

14. I have carefully considered the averments of the plaint, which discloses the transaction of the parties with the third person and the intention of the present appellant. Considering the prayers in the plaint also, I am of the view that relief of declaration and injunction are solicited.

It is rightly contended that those are the reliefs under Section 34 and 37 of the Specific Relief Act. It reveals from the plaint that its a suit under Section 9 of the Code of Civil Procedure read with Section 34 and 37 of the Specific Relief Act. Unregistered firm is neither suing nor being sued.

15. In the impugned judgment a reasonable view is taken and I do not find any perversity or patent illegality to interfere with it. It would be open for the parties to raise the grievance of their individual rights and liabilities before the Trial Court. It cannot be said that either the suit is prohibited by any provisions much less Section 69 of the Partnership Act.

16. The learned counsel for the respondent relied upon the judgment of **Sandhya Anthraper (supra)**. There is no reason to take any different view, which is taken by the division bench, which is as follows :

“16. As per Section 69(1) of the Act, an unregistered partnership firm or partners are disabled from enforcing a right arising from a contract or the right conferred by the Partnership Act, 1932, but the provision does not take away the right of the partners of an unregistered firm to enforce their right under other enactments. According to Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law.”

17. For the aforesaid reasons, I find that the substantial question of law needs to be answered against the appellant. Suit is maintainable and impugned judgment and order requires to be confirmed. Appeal from Order is dismissed. Pending Civil Application is disposed of.

18. After pronouncement of the order, the appellant prays for leave to file review and to stay the proceedings of suit.

19. No leave is required to file a review. The suit of 2010 and is still

pending, which is very shocking. I am not inclined to grant any prayer to the appellant. Prayers are rejected.

(SHAILESH P. BRAHME, J.)

mkd/-